



Title 12: Banks and Banking

Part 1024 – Real Estate Settlement Procedures Act (Regulation X)

[...]

Subpart B—Mortgage Settlement and Escrow Accounts

§ 1024.6 Special information booklet at time of loan application.

[...]

(d) Permissible changes.

(1)(i) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Bureau shall be made other than the permissible changes specified in paragraphs (d)(1)(ii)(2) and (d)(3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph. A request to the Bureau for approval of any changes other than the permissible changes specified in paragraphs (d)(1)(ii)(2) and (d)(3) of this section shall be submitted in writing to the address indicated in §1024.3 the definition of Public Guidance Documents in § 1024.2, stating the reasons why the applicant believes such changes, deletions, or additions are necessary.

(ii)

(A) In the Complaints section of the booklet, it is a permissible change to substitute “the Bureau of Consumer Financial Protection” for “HUD’s Office of RESPA” and “the RESPA office.”

(B) In the Avoiding Foreclosure section of the booklet, it is a permissible change to inform homeowners that they may find information on and assistance in avoiding foreclosures at <http://www.consumerfinance.gov>. The deletion of the reference to the HUD Web page, <http://www.hud.gov/foreclosure/>, in the Avoiding Foreclosure section of the booklet is not a permissible change.

(C) In the appendix to the booklet, it is a permissible change to substitute “the Bureau of Consumer Financial Protection” for the reference to the “Board of Governors of the Federal Reserve System” in the No Discrimination section of the appendix to the booklet. In the Contact Information section of the appendix to the booklet, it is a permissible change to add the following contact information for the Bureau: “Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC



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~~20006; www.consumerfinance.gov/learnmore". It is also a permissible change to remove the contact information for HUD's Office of RESPA and Interstate Land Sales from the Contact Information section of the appendix to the booklet.~~

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

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

[...]

§1024.9 Reproduction of settlement statements.

[...]

(c) *Written approval.* Any other deviation in the HUD-1 or HUD-1A forms is permissible only upon receipt of written approval of the Bureau; provided, however, that notwithstanding contrary instructions in this section or appendix A, reproducing the HUD-1 or HUD-1A forms with the Bureau's OMB approval number displayed in place of HUD's OMB approval number does not require the written approval of the Bureau. A request to the Bureau for approval shall be submitted in writing to the address indicated **the definition of Public Guidance Documents** in §1024.3-2 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

[...]

§1024.17 Escrow accounts.

[...]

(h) *Format for initial escrow account statement.*

(1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled "Initial Escrow Account Disclosure Statement—Format" and "Initial Escrow Account Disclosure Statement—Example," available in **accordance with the direction in the definition of Public Guidance Documents in §1024.3-2.**

(2) *Incorporation of initial escrow account statement into HUD-1 or HUD-1A settlement statement.* Pursuant to §1024.9(a)(11), a servicer may add the initial escrow account statement to the HUD-1 or HUD-1A settlement statement. The servicer may include the



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initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD-1 or HUD-1A settlement statement.

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

[...]

Subpart C—Mortgage Servicing

§1024.30 Scope.

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

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

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

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

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

(c) *Scope of certain sections.*

(1) Section 1024.33(a) only applies to reverse mortgage transactions.

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

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



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§1024.31 Definitions.

For purposes of this subpart:

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

[...]

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

[...]

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

- (1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- (2) A transfer to a relative resulting from the death of a borrower;
- (3) A transfer where the spouse or children of the borrower become an owner of the property;
- (4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
- (5) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

[...]



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§1024.32 General disclosure requirements.

[...]

(c) Successors in interest.

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

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

(ii) Unless the successor in interest assumes the mortgage loan obligation under State law, the successor in interest is not liable for the mortgage debt and cannot be required to use the successor in interest's assets to pay the mortgage debt, except that the lender has a security interest in the property and a right to foreclose on the property, when permitted by law and authorized under the mortgage loan contract;

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

(iv) In order to receive such notices and communications, the successor in interest must execute and provide to the servicer an acknowledgment form that:

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

(B) Indicates that the successor in interest understands that such notices do not make the successor in interest liable for the mortgage debt and that the successor in interest is only liable for the mortgage debt if the successor in interest assumes the mortgage loan obligation under State law; and

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

(v) Whether or not the successor in interest executes the acknowledgment described in paragraph (c)(1)(iv) of this section, the successor in interest is



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entitled to submit notices of error under § 1024.35, requests for information under §1024.36, and requests for a payoff statement under §1026.36 with respect to the mortgage loan account, with a brief explanation of those rights and how to exercise them, including appropriate address information.

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

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

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

[...]

§1024.35 Error resolution procedures.

[...]

(e) *Response to notice of error—*

[...]

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

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



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

[...]

§1024.36 Requests for information.

[...]

(d) *Response to information request—*

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

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

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

(2) *Time limits—*

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

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

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

(ii) *Extension of time limit.* For requests for information governed by the time limit set forth in paragraph (d)(2)(i)(B) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for requests for information governed by paragraph (d)(2)(i)(A) of this section.

(3) *Omissions in responses to requests.* In its response to a request for information, a servicer may omit location and contact information and personal financial information



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(other than information about the terms, status, and payment history of the mortgage loan) if:

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

[...]

(i) *Potential successors in interest.*

(1) With respect to any written request from a person that indicates that the person may be a successor in interest and that includes the name of the transferor borrower from whom the person received an ownership interest and information that enables the servicer to identify the mortgage loan account, a servicer shall respond by providing the potential successor in interest with a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and contact information, including a telephone number, for further assistance. With respect to the written request, a servicer shall treat the potential successor in interest as a borrower for purposes of the requirements of paragraphs (c) through (g) of this section.

(2) If a written request under paragraph (i)(1) of this section does not provide sufficient information to enable the servicer to identify the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property, the servicer may provide a response that includes examples of documents typically accepted to establish identity and ownership interest in a property; indicates that the person may obtain a more individualized description of required documents by providing additional information; specifies what additional information is required to enable the servicer to identify the required documents; and provides contact information, including a telephone number, for further assistance. A servicer's response under this paragraph must otherwise comply with the requirements of paragraph (i)(1). Notwithstanding paragraph (f)(1)(i), if a potential successor in interest subsequently provides orally or in writing the required information specified by the servicer pursuant to this paragraph, the servicer must treat the new information, together with the original request, as a new, non-duplicative request under paragraph (i)(1), received as of the date the required information was received, and must respond accordingly.

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



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

§1024.37 Force-placed insurance.

[...]

(c) *Requirements before charging borrower for force-placed insurance—*

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

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

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

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

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

(i) The date of the notice;

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

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

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

(v) A statement that:

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



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

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

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

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

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

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

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

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

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

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

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

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



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(d) *Reminder notice*—

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

(2) *Content of the reminder notice*—

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

- (A) The date of the notice;
- (B) A statement that the notice is the second and final notice;
- (C) The information required by paragraphs (c)(2)(ii) through (xi) of this section; and
- (D) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

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

- (A) The date of the notice;
- (B) The information required by paragraphs (c)(2)(ii) through (iv), ~~(ix)~~, **through** (xi), and (d)(2)(i)(B) and (D) of this section;
- (C) A statement that the servicer has received the hazard insurance information that the borrower provided;
- (D) A statement that requests the borrower to provide the information that is missing;



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

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

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

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

(e) *Renewing or replacing force-placed insurance—*

[...]

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

[...]

§1024.38 General servicing policies, procedures, and requirements.

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



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(b) Objectives—

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

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

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

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

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

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

(vi)

(A) Upon receiving notification of the death of a borrower, or of any transfer of the property securing a mortgage loan, promptly identify and facilitate communication with the any potential or confirmed successors in interest of the deceased borrower with respect to regarding the property; secured by the deceased borrower's mortgage loan.

(B) Upon receiving notice of the existence of a potential successor in interest, promptly determine the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i) (including the appropriate address); and

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

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



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- (i) Provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan;
- (ii) Identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan;
- (iii) Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower pursuant to §1024.40;
- (iv) Identify documents and information that a borrower is required to submit to complete a loss mitigation application and facilitate compliance with the notice required pursuant to §1024.41(b)(2)(i)(B); and
- (v) Properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of §1024.41.
- (vi) Promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of §1024.41(c)(4).

[...]

§1024.39 Early intervention requirements for certain borrowers.

(a) *Live contact.* Except as otherwise provided in this section, a—A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent.—p—Promptly after establishing live contact with a borrower, the servicer shall inform such—the borrower about the availability of loss mitigation options, if appropriate.

(b) *Written notice—*

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



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period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent.

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

- (i) A statement encouraging the borrower to contact the servicer;
- (ii) The telephone number to access servicer personnel assigned pursuant to §1024.40(a) and the servicer's mailing address;
- (iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;
- (iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and
- (v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

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

~~(c) *Borrowers in bankruptcy—Conflicts with other law.* Nothing in this section shall require a servicer to communicate with a borrower in a manner otherwise prohibited by applicable law.~~

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

- (i) Is exempt from the requirements of paragraph (a) of this section;
- (ii) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or if any borrower on the mortgage loan has provided a notification pursuant to the Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)) with respect to that mortgage loan as referenced in paragraph (d) of this section; and
- (iii) If the conditions of paragraph (c)(1)(ii) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (c)(1)(iii):
 - (A) If a borrower is delinquent when the borrower becomes a debtor in bankruptcy, a servicer must provide the written notice required by



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

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

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

(2) *Resuming compliance.*

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

(A) The bankruptcy case is dismissed;

(B) The bankruptcy case is closed; and

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

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

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

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

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



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(1) ~~Borrowers in bankruptcy.~~ A servicer is exempt from the requirements of **paragraph (a)** of this section;

(2) ~~Is exempt for a mortgage loan while the borrower is a debtor in bankruptcy under Title 11 of the United States Code.~~

~~(2) Fair Debt Collections Practices Act.~~ A servicer subject to the Fair Debt Collections Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) with respect to a borrower ~~is~~ exempt from the requirements of **paragraph (b)** of this section with regard to a mortgage loan for which the borrower has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)) ~~if no loss mitigation option is available, or while any borrower on that mortgage loan is a debtor in bankruptcy under title 11 of the United States Code as referenced in paragraph (c) of this section; and~~

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

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

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

(iii) A servicer is prohibited from providing the written notice more than once during any 180-day period.

[...]

§1024.41 Loss mitigation procedures.

[...]

(c) *Evaluation of loss mitigation applications—*

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

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

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a



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loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(2) *Incomplete loss mitigation application evaluation—*

(i) *In general.* Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

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

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

(iv) *Facially complete application.* ~~If a borrower submits all the missing documents and information as stated in the notice required pursuant to §1026.41(b)(2)(i)(B), or no additional information is requested in such notice, the~~



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

(3) Notice of complete application.

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

(A) That the loss mitigation application is complete;

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

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

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

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

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



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

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

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

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

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

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

(4) *Information not in the borrower's control—*

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

(ii) *Effect in case of delay.*

(A)

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

(2) If a servicer has exercised reasonable diligence to obtain required documents or information from a party other than the borrower or the servicer, but the servicer has been unable to obtain such documents or information for a significant period of time following the 30-day period identified in paragraph (c)(1) of this section, and the servicer, in accordance with applicable



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requirements established by the owner or assignee of the borrower's mortgage loan, is unable to determine which loss mitigation options, if any, it will offer the borrower without such documents or information, the servicer may deny the application and provide the borrower with a written notice in accordance with paragraph (c)(1)(ii) of this section. When providing the written notice in accordance with paragraph (c)(1)(ii) of this section, the servicer must also provide the borrower with a copy of the written notice required by paragraph (c)(4)(ii)(B) of this section.

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

(1) That the servicer has not received documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage;

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

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

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

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

[...]

(f) *Prohibition on foreclosure referral*—

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



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- (i) A borrower's mortgage loan obligation is more than 120 days delinquent;
- (ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or
- (iii) The servicer is joining the foreclosure action of a **superior or** subordinate lienholder.

(2) *Application received before foreclosure referral.* If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;
- (ii) The borrower rejects all loss mitigation options offered by the servicer; or
- (iii) The borrower fails to perform under an agreement on a loss mitigation option.

[...]

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

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

(k) *Servicing Transfers.*

(1) *In general—*

(i) *Timing of compliance.* Except as provided in paragraphs (k)(2) through (4) of this section, if a transferee servicer acquires the servicing of a mortgage loan for



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

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

(2) *Acknowledgment notices—*

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

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

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

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

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



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

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

(ii) *Servicer unable to determine appeal.* A transferee servicer that is required to treat a borrower's appeal as a pending complete loss mitigation application under this paragraph (k)(4) must comply with the requirements of this section for such application, including evaluating the borrower for all loss mitigation options available to the borrower from the transferee servicer. For purposes of paragraph (c) or (k)(3) of this section, as applicable, such a pending complete loss mitigation application shall be considered complete as of the date the appeal was received by the transferor servicer or the transferee servicer, whichever occurs first. For purposes of paragraphs (e) through (h) of this section, the transferee servicer must treat such a pending complete loss mitigation application as facially complete under paragraph (c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer.

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

Appendix MS to Part 1024—Mortgage Servicing

[...]

Appendix MS-3 to Part 1024—Model Force-Placed Insurance Notice Forms

[...]



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MS-3(A)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(c)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: ~~Please provide insurance information for~~ **Please provide insurance information for** [Property Address]

Dear [Borrower's Name]:

Our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired] [~~provides insufficient coverage~~], and we do not have evidence that you have obtained new coverage. ~~Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for your property] [we plan to buy insurance for your property].~~ **Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for your property] [we plan to buy insurance for your property].** You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

- ~~• May be more expensive than the insurance you can buy yourself.~~ • **May be significantly more expensive than the insurance you can buy yourself.**



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- ~~• May not provide as much coverage as an insurance policy you buy yourself.~~ • **May not provide as much coverage as an insurance policy you buy yourself.**

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS-3(B)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(d)(2)(i)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: ~~Second and final notice — please provide insurance information for [Property Address]~~ **Second and final notice — please provide insurance information for [Property Address]**

Dear [Borrower's Name]:

This is your second and final notice that our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired] [**provides insufficient coverage**], and we do not have evidence that you have obtained new coverage. ~~Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for your property] [we plan to buy insurance for your property].~~ **Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for your property] [we plan to buy insurance for your**



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property]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

~~• [Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be more expensive than insurance you can buy yourself.~~ • **[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be significantly more expensive than insurance you can buy yourself.**

~~• May not provide as much coverage as an insurance policy you buy yourself.~~ • **May not provide as much coverage as an insurance policy you buy yourself.**

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS-3(C)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(d)(2)(ii)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]



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Subject: ~~Second and final notice — please provide insurance information for [Property Address]~~ **Second and final notice — please provide insurance information for [Property Address]**

Dear [Borrower's Name]:

We received the insurance information you provided, but we are unable to verify coverage from [Date Range].

~~Please provide us with insurance information for [Date Range] immediately.~~ **Please provide us with insurance information for [Date Range] immediately.**

We will charge you for insurance we [bought] [plan to buy] for [Date Range] unless we can verify that you have insurance coverage for [Date Range].

The insurance we [bought] [buy]:

~~• Costs \$[premium charge] [Will cost an estimated \$[premium charge]] annually, which may be more expensive than insurance you can buy yourself.~~ • **[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be significantly more expensive than insurance you can buy yourself.**

~~• May not provide as much coverage as an insurance policy you buy yourself.~~

~~If you have any questions, please contact us at [telephone number].~~ • **May not provide as much coverage as an insurance policy you buy yourself.**

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]



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MS-3(D)—Model Form for Force-Placed Insurance Notice Containing Information Required by §1024.37(e)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: ~~Please update insurance information for [Property Address]~~ **Please update insurance information for [Property Address]**

Dear [Borrower's Name]:

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account.

The policy that we bought [expired] [is scheduled to expire]. ~~Because [hazard][Insurance Type] insurance] is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought.~~ **Because [hazard] [Insurance Type] insurance] is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought.**

The insurance we buy:

- ~~• [Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be more expensive than insurance you can buy yourself.~~ • **[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be significantly more expensive than insurance you can buy yourself.**



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~~• May not provide as much coverage as an insurance policy you buy yourself.~~ • **May not provide as much coverage as an insurance policy you buy yourself.**

If you buy [hazard] [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

Appendix MS-4 to Part 1024—Model Clauses for the Written Early Intervention Notice

[...]

MS-4(D)—WRITTEN EARLY INTERVENTION NOTICE FOR SERVICERS SUBJECT TO FDCPA (§ 1024.39(D)(2)(III))

This is a legally required notice. We are sending this notice to you because you are behind on your mortgage payment. We want to notify you of possible ways to avoid losing your home. We have a right to invoke foreclosure based on the terms of your mortgage contract. Please read this letter carefully.



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Supplement I to Part 1024 – Official Bureau Interpretations

Subpart C—Mortgage Servicing

Section 1024.30—Scope

30(b) Exemptions.

1. *Exemption for Farm Credit System institutions.* Pursuant to 12 CFR 617.7000, certain servicers may be considered “qualified lenders” only with respect to loans discounted or pledged pursuant to 12 U.S.C. 2015(b)(1). To the extent a servicer, as defined in RESPA, services a mortgage loan that has not been discounted or pledged pursuant to 12 U.S.C. 2015(b)(1), and is not subject to the requirements set forth in 12 CFR 617, the servicer may be required to comply with the requirements of §§1024.38 through 41 with respect to that mortgage loan.

Paragraph 30(c)(2).

1. *Principal residence.* If a property ceases to be a borrower’s principal residence, the procedures set forth in §§1024.39 through 1024.41 do not apply to a mortgage loan secured by that property. Determination of principal residence status will depend on the specific facts and circumstances regarding the property and applicable State law. For example, a vacant property may still be a borrower’s principal residence.

30(d) Successors in interest.

1. *Treatment of confirmed successors in interest.* Under § 1024.30(d), a confirmed successor in interest must be considered a borrower for purposes of this subpart and § 1024.17, regardless of whether the successor in interest assumes the mortgage loan obligation under State law. For example, if a servicer receives a loss mitigation application from a confirmed successor in interest, the servicer must review and evaluate the application and notify the confirmed successor in interest in accordance with the procedures set forth in § 1024.41 if the property is the confirmed successor in interest’s principal residence and the procedures set forth in § 1024.41 are otherwise applicable. Treatment of a confirmed successor in interest as a borrower for purposes of subpart C and § 1024.17 does not affect whether the confirmed successor in interest is subject to the contractual obligations of the mortgage loan agreement, which is determined by applicable State law. Communications in compliance with this part to a confirmed successor in interest as defined in § 1024.31 do not violate section 805(b) of the Fair Debt Collection Practices Act (FDCPA) because consumer for purposes of FDCPA section 805 includes any person who meets the definition in this part of confirmed successor in interest.

2. *Assumption of the mortgage loan obligation.* A servicer may not require a confirmed successor in interest to assume the mortgage loan obligation under State law to be considered a borrower for purposes of § 1024.17 and subpart C. If a successor in interest assumes a mortgage loan obligation under State law or is otherwise liable on the mortgage loan obligation, the protections that the successor in interest enjoys under this part are not limited to the protections that apply under § 1024.30(d) to a confirmed successor in interest.



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3. *Treatment of transferor borrowers.* Even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of this subpart with respect to the transferor borrower.

Section 1024.31—Definitions

Delinquency.

1. *Length of delinquency.* A borrower's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and, if applicable, escrow becomes due and unpaid, and lasts until such time as no periodic payment is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

2. *Application of funds.* If a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent borrower advances the date the borrower's delinquency began. For example, assume a borrower's mortgage loan obligation provides that a periodic payment sufficient to cover principal, interest, and escrow is due on the first of each month. The borrower fails to make a payment on January 1 or on any day in January, and on January 31 the borrower is 30 days delinquent. On February 3, the borrower makes a periodic payment. The servicer applies the payment it received on February 3 to the outstanding January payment. On February 4, the borrower is three days delinquent.

3. *Payment tolerance.* For any given billing cycle for which a borrower's payment is less than the periodic payment due, if a servicer chooses not to treat a borrower as delinquent for purposes of any section of subpart C, that borrower is not delinquent as defined in § 1024.31.

4. *Creditor's contract rights.* This subpart does not prevent a creditor from exercising a right provided by a mortgage loan contract to accelerate payment for a breach of that contract. Failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency.

[...]

Successor in interest.

1. *Joint tenants and tenants by the entirety.* If a borrower who has an ownership interest as a joint tenant or tenant by the entirety in a property securing a mortgage loan subject to this subpart dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in §1024.31.

2. *Beneficiaries of inter vivos trusts.* In the event of a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, the beneficiaries of the inter vivos trust rather than the inter vivos trust itself are considered to be the successors in interest for purposes of § 1024.31. For example, assume Borrower A transfers her home into such an inter vivos trust for the benefit of



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her spouse and herself. As of the transfer date, Borrower A and her spouse would be considered successors in interest and, upon confirmation, would be borrowers for purposes of certain provisions of Regulation X. If the lender has not released Borrower A from the loan obligation, Borrower A would also remain a borrower more generally for purposes of Regulation X.

Section 1024.32—General Disclosure Requirements

32(c) Confirmed successors in interest.

32(c)(1) Optional notice with acknowledgment form.

1. A servicer may identify in the acknowledgment form examples of the types of notices and communications identified in § 1024.32(c)(1)(iii), such as periodic statements and mortgage servicing transfer notices. Any examples provided should be the types of notices or communications that would be available to a confirmed successor in interest if the confirmed successor in interest executed the acknowledgment and returned it to the servicer.

32(c)(2) Effect of failure to execute acknowledgment.

1. *No time limit to return acknowledgment.* A confirmed successor in interest may provide an executed acknowledgment that complies with § 1024.32(c)(1)(iv) to the servicer at any time after confirmation.

2. *Effect of revocation of acknowledgment.* If a confirmed successor in interest who is not liable on the mortgage loan obligation executes and then later revokes an acknowledgment pursuant to § 1024.32(c)(1)(iv), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by §§ 1024.17, 1024.33, 1024.34, 1024.37, or § 1024.39 or to comply with the live contact requirements in § 1024.39(a) with respect to the confirmed successor in interest from the date the revocation is received until the confirmed successor in interest either assumes the mortgage loan obligation under State law or executes a new acknowledgment that complies with §1024.32(c)(1)(iv) and provides it to the servicer.

32(c)(4) Multiple notices unnecessary.

1. *Specific written disclosure.* A servicer may rely on §1024.32(c)(4) if the servicer provides a specific written disclosure required by §§ 1024.17, 1024.33, 1024.34, 1024.37, or § 1024.39(b) to another borrower. For example, a servicer is not required to provide a force-placed insurance notice required under § 1024.37 to a confirmed successor in interest if the servicer is providing the same force-placed insurance notice to a transferor borrower or to another confirmed successor in interest.

[...]



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Section 1024.36—Requests for Information

36(a) Information request.

1. *Borrower's representative.* An information request is submitted by a borrower if the information request is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the borrower.

2. *Owner or assignee of a mortgage loan.* ~~i. When a loan is not held in a trust for which an appointed trustee receives payments on behalf of the trust, a~~ A servicer complies with §1024.36(d) by responding to ~~an a request for information request for~~ regarding the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. ~~A servicer is not the owner or assignee for purposes of § 1024.36(d) if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation. The Government National Mortgage Association is not the owner or assignee for purposes of such requests for information solely as a result of its role as the guarantor of the security in which the loan serves as the collateral. Although investors or guarantors, including among others the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, may be exposed to risks related to the mortgage loans held by a trust either in connection with an investment in securities issued by the trust or the issuance of a guaranty agreement to the trust, such investors or guarantors are not the owners or assignees of the mortgage loans solely as a result of their roles as such. In certain circumstances, however, a party such as a guarantor may assume multiple roles for a securitization transaction. For example, the Federal National Mortgage Association may act as trustee, master servicer, and guarantor in connection with a securitization transaction in which a trust owns a mortgage loan subject to a request. In this example, because the Federal National Mortgage Association is the trustee of the trust that owns the mortgage loan, a servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by providing the name of the trust, and the name, address, and appropriate contact information for the Federal National Mortgage Association as the trustee. The following examples identify the owner or assignee for different forms of mortgage loan ownership:~~

~~ii. When the loan is held in a trust for which an appointed trustee receives~~ A servicer services a mortgage loan that is owned by the servicer, or an affiliate of the servicer, in portfolio. ~~The servicer therefore receives the borrower's payments on behalf of itself or its affiliate~~ ~~the trust.~~ A servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner, ~~or assignee,~~ or trust of the mortgage loan with the following information name, address, and appropriate contact information for the servicer or the affiliate, as applicable.:



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~~A. ii. A servicer services a mortgage loan that has been securitized. In general, in a securitization transaction, a special purpose vehicle, such as a trust, is the owner or assignee of a mortgage loan. Thus, the servicer receives the borrower's payments on behalf of the trust. If a securitization transaction is structured such that a trust is the owner or assignee of a mortgage loan and the trust is administered by an appointed trustee, a servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by providing the borrower with~~ For any request for information where the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is not the owner of the loan or the trustee of the securitization trust in which the loan is held: the name of the trust, and the name, address, and appropriate contract information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee. The servicer complies with §1024.36(d) by ~~responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by~~ identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

B. If the request for information did not expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: the name and contact information for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, as applicable, without also providing the name of the trust.

C. If the request for information did expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: the name of the trust, and the name, address, and appropriate contact information for the trustee, as in comment 36(a)-2.ii.A above.

[...]

36(i) Potential successors in interest.

1. *Requests that indicate that the person may be a successor in interest.* Section 1024.36(i) requires a servicer to respond to certain written requests received from a person that indicate the person may be a successor in interest. Examples of written requests that indicate that the person may be a successor in interest include, without limitation, a written statement from a person other than a borrower indicating that there has been a transfer of ownership or of an ownership interest in the property to the person or that a borrower has been divorced, legally separated, or died, or a written loss mitigation application received from a person other than a borrower.

2. *Time limits.* A servicer must respond to a request under § 1024.36(i) not later than the time limits set forth in §1024.36(d)(2). Servicers subject to § 1024.38(b)(1)(vi)(B) must also maintain policies and procedures reasonably designed to ensure that, upon receiving notice of the existence of a potential successor in interest, the servicer can promptly determine the documents the servicer reasonably requires to confirm that person's identity and ownership



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interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i) (including the appropriate address). Depending on the facts and circumstances of the request, responding promptly may require a servicer to respond more quickly than the time limits established in § 1024.36(d)(2).

3. *Potential successor in interest's representative.* An information request pursuant to § 1024.36(i) is submitted by a potential successor in interest if the information request is submitted by an agent of the potential successor in interest. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a potential successor in interest has authority from the potential successor in interest to act on the potential successor in interest's behalf, for example, by requiring that a person that claims to be an agent of the potential successor in interest provide documentation from the potential successor in interest stating that the purported agent is acting on the potential successor in interest's behalf. Upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the potential successor in interest.

Section 1024.37—Force-Placed Insurance

[...]

37(d)(45) Updating notice with borrower information.

1. *Reasonable time.* ~~A servicer may have to prepare~~ If the written notice required by §1024.37(c)(1)(ii) ~~in advance of~~ **was put into production a reasonable time prior to the servicer** delivering or placing the notice in the mail. ~~If the notice has already been put into production, the servicer is not required to update the notice with new insurance information received. about the borrower so long as the written notice was put into production within a reasonable time prior to the servicer delivering or placing the notice in the mail.~~ For purposes of §1024.37(d)(45), **a reasonable time is no more than** five days (excluding legal holidays, Saturdays, and Sundays)-~~is a reasonable time.~~

[...]

Section 1024.38—General Servicing Policies, Procedures, and Requirements

[...]

38(b) Objectives.

38(b)(1) Accessing and providing timely and accurate information.

Paragraph 38(b)(1)(ii).

1. *Errors committed by service providers.* A servicer's policies and procedures must be reasonably designed to provide for promptly obtaining information from service providers to



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facilitate achieving the objective of correcting errors resulting from actions of service providers, including obligations arising pursuant to §1024.35.

Paragraph 38(b)(1)(iv).

1. *Accurate and current information for owners or assignees of mortgage loans relating to loan modifications.* The relevant current information to owners or assignees of mortgage loans includes, among other things, information about a servicer's evaluation of borrowers for loss mitigation options and a servicer's agreements with borrowers on loss mitigation options, including loan modifications. Such information includes, for example, information regarding the date, terms, and features of loan modifications, the components of any capitalized arrears, the amount of any servicer advances, and any assumptions regarding the value of a property used in evaluating any loss mitigation options.

Paragraph 38(b)(1)(vi).

1. *Identification of potential successors in interest.* A servicer may be notified of the existence of a potential successor in interest in a variety of ways. For example, a person could indicate that there has been a transfer of ownership or of an ownership interest in the property or that a borrower has been divorced, legally separated, or died, or a person other than a borrower could submit a loss mitigation application. A servicer must maintain policies and procedures reasonably designed to ensure that the servicer can retain this information and promptly facilitate communication with potential successors in interest when a servicer is notified of their existence. A servicer is not required to conduct a search for potential successors in interest if the servicer has not received actual notice of their existence.

2. *Documents reasonably required.* The documents a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property must be reasonable in light of the laws of the relevant jurisdiction, the specific situation of the potential successor in interest, and the documents already in the servicer's possession. The required documents may, where appropriate, include, for example, a death certificate, an executed will, or a court order. The required documents may also include documents that the servicer reasonably believes are necessary to prevent fraud or other criminal activity (for example, if a servicer has reason to believe that documents presented are forged).

3. *Examples of reasonable requirements.* Because the relevant law governing each situation may vary from State to State, the following examples are illustrative only. The examples illustrate what documents it would generally be reasonable for a servicer to require to confirm a potential successor in interest's identity and ownership interest in the property under the specific circumstances described.

i. *Tenancy by the entirety or joint tenancy.* Assume that a servicer knows that the potential successor in interest and the transferor borrower owned the property as tenants by the entirety or joint tenants and that the transferor borrower has died. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has sole interest in the property but requires only that there be a prior recorded deed listing both the potential



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successor in interest and the transferor borrower as tenants by the entirety (e.g., married grantees) or joint tenants. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the recorded instrument, if the servicer does not already have it, and the death certificate of the transferor borrower. Because in this situation a probate proceeding is not required under the applicable law of the relevant jurisdiction, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

ii. *Affidavits of heirship.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest upon the death of the transferor borrower through intestate succession and offers an affidavit of heirship as confirmation. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has an interest in the property but requires only an appropriate affidavit of heirship. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the affidavit of heirship and the death certificate of the transferor borrower. Because a probate proceeding is not required under the applicable law of the relevant jurisdiction to recognize the transfer of title, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

iii. *Divorce or legal separation.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a spouse who is a borrower as a result of a property agreement incident to a divorce proceeding. Assume further that the applicable law of the relevant jurisdiction does not require a deed conveying the interest in the property but accepts a final divorce decree and accompanying separation agreement executed by both spouses to evidence transfer of title. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the final divorce decree and an executed separation agreement. Because the applicable law of the relevant jurisdiction does not require a deed, it generally would not be reasonable for the servicer to require a deed.

iv. *Living spouses or parents.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a living spouse or parent who is a borrower by quitclaim deed or act of donation. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the quitclaim deed or act of donation. It generally would not be reasonable, however, for the servicer to require additional documents.

4. *Additional documentation required for confirmation determination.* Section 1024.38(b)(1)(vi)(C) requires a servicer to maintain policies and procedures reasonably designed to ensure that, upon receipt of the documents identified by the servicer, the servicer promptly notifies a potential successor in interest that, as applicable, the servicer has confirmed the potential successor in interest's status, has determined that additional documents are required, or has determined that the potential successor in interest is not a successor in interest. If a servicer reasonably determines that it cannot make a determination of the potential successor in interest's status based on the documentation provided, it must specify what additional documentation is required. For example, if there is pending litigation involving the potential successor in interest and other claimants regarding who has title to the property at



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issue, a servicer may specify that documentation of a court determination or other resolution of the litigation is required.

5. *Prompt confirmation and loss mitigation.* A servicer's policies and procedures must be reasonably designed to ensure that the servicer can promptly notify the potential successor in interest that the servicer has confirmed the potential successor in interest's status. Notification is not prompt for purposes of this requirement if it unreasonably interferes with a successor in interest's ability to apply for loss mitigation options according to the procedures provided in § 1024.41.

[...]

38(b)(3) Facilitating oversight of, and compliance by, service providers.

Paragraph 38(b)(3)(iii).

1. *Sharing information with service provider personnel handling foreclosure proceedings.* A servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application and promptly instruct foreclosure counsel to take any step required by §1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale.

[...]

Section 1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Live contact.

1. *Delinquency.* ~~A borrower is delinquent for purposes of §1024.39~~ **Section 1024.39 requires a servicer to establish or attempt to establish live contact no later than the 36th day of a borrower's delinquency. This provision is illustrated as follows:**

i. ~~Delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee. For example, if a payment due date is January 1 and the amount due is not fully paid during the 36-day period after January 1, the servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—i.e., by February 6.~~ **Assume a mortgage loan obligation with a monthly billing cycle and monthly payments of \$2,000 representing principal, interest, and escrow due on the first of each month.**

A. **The borrower fails to make a payment of \$2,000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—i.e., on or before February 6.**



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B. The borrower makes no payments during the period January 1 through April 1, although payments of \$2,000 each on January 1, February 1, and March 1 are due. Assuming it is not a leap year, the borrower is 90 days delinquent as of April 1. The servicer may time its attempts to establish live contact such that a single attempt will meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5 and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of §1024.39(a) for the March 1 missed payment.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of §1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of §1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly. See §1024.33(c)(1) and comment 33(c)(1)-2.

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. *Establishing live contact.* Live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency. Live contact with a borrower includes **speaking on the telephone** or conducting an in-person meeting with the borrower, but not leaving a recorded phone message. A servicer may, ~~but need not,~~ rely on live contact established at the borrower's initiative to satisfy the live contact requirement in §1024.39(a). **Servicers may also combine contacts made pursuant to § 1024.39(a) with contacts made with borrowers for other reasons, for instance, by telling borrowers on collection calls that loss mitigation options may be available.**

3. *Good faith efforts.* Good faith efforts to establish live contact consist of reasonable steps, under the circumstances, to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer. **The length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to § 1024.39(a), are relevant circumstances to consider.** For example, whereas "good faith efforts" to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, "good faith efforts" to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication. Comment 39(a)-6



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discusses the relationship between live contact and the loss mitigation procedures set forth in § 1024.41.

34. *Promptly inform if appropriate.* i. *Servicer's determination.* It is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a material adverse change in the borrower's financial circumstances that is likely to cause the borrower to experience a long-term delinquency for which loss mitigation options may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. *Promptly inform.* If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in §1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by § 1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

45. *Borrower's representative.* Section 1024.39 does not prohibit a servicer from satisfying ~~the its~~ requirements ~~§1024.39~~ by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower **to** provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

6. *Relationship between live contact and loss mitigation procedures.* If the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41, including during the borrower's completion of a loss mitigation application or the servicer's evaluation of the borrower's complete loss mitigation application, or if the servicer has sent the borrower a notice pursuant to § 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options, the servicer complies with §1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. A servicer must resume compliance with the requirements of §1024.39(a) for a borrower who becomes delinquent again after curing a prior delinquency.



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39(b) *Written notice.*

39(b)(1) *Notice required.*

1. *Delinquency.* For guidance on the circumstances under which a borrower is delinquent for purposes of §1024.39, see comment 39(a)-1. For example, if a payment due date is January 1 and the payment remains unpaid during the 45-day period after January 1, the servicer must provide the written notice within 45 days after January 1—*i.e.*, by February 15. However, if a borrower satisfies a late payment in full before the end of the 45-day period, the servicer need not provide the written notice. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not provide the written notice by February 15.

2. *Frequency of the written notice.* A servicer need not provide the written notice under §1024.39(a**b**) more than once during a 180-day period beginning on the date on which the written notice is provided. **A servicer must provide the written notice under § 1024.39(b) at least once every 180 days to a borrower who is 45 days or more delinquent. This provision is illustrated as follows:** For example, **Assume** a borrower has a payment due becomes delinquent on March 1, ~~the amount due is not fully paid during the 45 days after March 1, and the servicer provides the written notice within~~ **on the 45th days** after March 1, ~~—*i.e.*, by which is~~ April 15. **If Assume** the borrower ~~subsequently~~ **also** fails to make ~~a~~ **the** payment due April 1 and the amount due is not fully paid during the 45 days after April 1, ~~the servicer need not provide the written notice again during~~ **until after** the 180-day period beginning on April 15. ~~—*i.e.*, no sooner than on October 12—and then only if the borrower is at that time 45 days or more delinquent.~~

i. **If the borrower is 45 days or more delinquent on October 12, the date that is 180 days after the prior provision of the written notice, the servicer is required to provide the written notice again on October 12.**

ii. **If the borrower is less than 45 days delinquent on October 12, the servicer must again provide the written notice 45 days after the payment due date for which the borrower remains delinquent. For example, if the borrower becomes delinquent on October 1, and the amount due is not fully paid during the 45 days after October 1, the servicer will need to provide the written notice again no later than 45 days after October 1—*i.e.*, by November 15.**

3. *Borrower's representative.* ~~See c~~**Comment 39(a)-45** explains how a servicer may satisfy the requirements under § 1024.39 with a person authorized by the borrower to communicate with the servicer on the borrower's behalf.

4. *Relationship to §1024.39(a).* The written notice required under §1024.39(b)(1) must be provided even if the servicer provided information about loss mitigation and foreclosure previously during an oral communication with the borrower under §1024.39(a).

5. *Servicing transfers.* **A transferee servicer is required to comply with the requirements of § 1024.39(b) regardless of whether the transferor servicer provided a written notice to the borrower in the preceding 180-day period. However, a transferee servicer is not required to provide a written notice under § 1024.39(b) if the transferor servicer provided the written notice**



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under § 1024.39(b) within 45 days of the transfer date. For example, assume a borrower has monthly payments, with a payment due on March 1. The transferor servicer provides the notice required by § 1024.39(b) on April 10. The loan is transferred on April 12. Assuming the borrower remains delinquent, the transferee servicer is not required to provide another written notice until 45 days after May 1, the first post-transfer payment due date—*i.e.*, by June 15.

[...]

39(c) Borrowers in bankruptcy.

1. *Borrower's representative.* If the borrower is represented by a person authorized by the borrower to communicate with the servicer on the borrower's behalf, the servicer may provide the written notice required by § 1024.39(b), as modified by § 1024.39(c)(1)(iii), to the borrower's representative. See comment 39(a)-5. In general, bankruptcy counsel is the borrower's representative. A servicer's procedures for determining whether counsel is the borrower's representative are generally considered reasonable if they are limited to, for example, confirming that the attorney's name is listed on the borrower's bankruptcy petition or other court filing.

2. *Adapting requirements in bankruptcy.* Section 1024.39(c) does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. If necessary to comply with such law or court order, a servicer may adapt the requirements of §1024.39 as appropriate.

39(c)(1) Borrowers in bankruptcy—Partial exemption.

1. *Commencing a case.* Section 1024.39(c)(1) applies once a petition is filed under title 11 of the United States Code, commencing a case in which the borrower is a debtor in bankruptcy.

Paragraph 39(c)(1)(ii).

1. *Availability of loss mitigation options.* In part, § 1024.39(c)(1)(ii) exempts a servicer from the requirements of § 1024.39(b) if no loss mitigation option is available. A loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

2. *Fair Debt Collections Practices Act. i. Exemption.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower in bankruptcy and any borrower on the mortgage loan has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease further communications, with regard to that mortgage loan, § 1024.39(c)(1)(ii) exempts a servicer from providing the written notice required by §1024.39(b).

ii. *Example.* For example, assume that two spouses jointly own a home and are both primarily liable on the mortgage loan. Further assume that the servicer is subject to the FDCPA



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with respect to that mortgage loan. One spouse is a debtor in bankruptcy under title 11 of the United States Code subject to § 1024.39(c). The other spouse provided the servicer a notification pursuant to FDCPA section 805(c). Section 1024.39(c)(1)(ii) exempts the servicer from providing the written notice required by §1024.39(b) with respect to that mortgage loan.

Paragraph 39(c)(1)(iii).

1. *Joint obligors.* When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to § 1024.39, if any of the borrowers is a debtor in bankruptcy, a servicer may provide the written notice required by § 1024.39(b), as modified by § 1024.39(c)(1)(iii), to any borrower.

39(c)(2) Resuming compliance.

1. *Bankruptcy case revived.* If the borrower's bankruptcy case is revived, for example if the court reinstates a previously dismissed case or reopens the case, §1024.39(c)(1) once again applies. However, § 1024.39(c)(1)(iii)(C) provides that a servicer is not required to provide the written notice more than once during a single bankruptcy case. For example, assume a borrower's bankruptcy case commences on June 1, the servicer provides the written notice on July 10 in compliance with § 1024.39(b) as modified by § 1024.39(c)(1)(iii), and the bankruptcy case is dismissed on August 1. If the court subsequently reopens or reinstates the borrower's bankruptcy case and the servicer does not provide a second written notice for that bankruptcy case, the servicer has complied with §1024.39(b) and (c)(1)(iii).

39(d)(1) Borrowers in bankruptcy.

~~1. *Commencing a case.* The requirements of §1024.39 do not apply once a petition is filed under Title 11 of the United States Code, commencing a case in which the borrower is a debtor.~~

~~2. *Obligation to resume early intervention requirements.* i. With respect to any portion of the mortgage debt that is not discharged, a servicer must resume compliance with §1024.39 after the first delinquency that follows the earliest of any of three potential outcomes in the borrower's bankruptcy case: the case is dismissed, the case is closed, or the borrower receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, this requirement to resume compliance with §1024.39 does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent permitted by such law or court order, a servicer may adapt the requirements of §1024.39 in any manner believed necessary.~~

~~ii. Compliance with §1024.39 is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the borrower's bankruptcy case is revived—for example if the court reinstates a previously dismissed case, reopens the case, or revokes a discharge—the servicer is again exempt from the requirement in §1024.39.~~



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~~3. *Joint obligors.* When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to §1024.39, the exemption in §1024.39(d)(1) applies if any of the borrowers is in bankruptcy. For example, if a husband and wife jointly own a home, and the husband files for bankruptcy, the servicer is exempt from complying with §1024.39 as to both the husband and the wife.~~

39(d) Fair Debt Collection Practices Act—Partial exemption.

1. *Availability of loss mitigation options.* In part, § 1024.39(d)(2) exempts a servicer from providing the written notice required by § 1024.39(b) if no loss mitigation option is available. A loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

2. *Early intervention communications under the FDCPA.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower, a servicer does not violate FDCPA section 805(c) by providing the written notice required by § 1024.39(b) as modified by § 1024.39(d)(3) after a borrower has provided a notification pursuant to FDCPA section 805(c) with respect to that borrower's loan. Nor does a servicer violate FDCPA section 805(c) by providing loss mitigation information or assistance in response to a borrower-initiated communication after the borrower has invoked the cease communication right under FDCPA section 805(c). A servicer subject to the FDCPA must continue to comply with all other applicable provisions of the FDCPA, including restrictions on communications and prohibitions on harassment or abuse, false or misleading representations, and unfair practices as contained in FDCPA sections 805 through 808 (15 U.S.C. 1692c through 1692f).

Paragraph 39(d)(2).

1. *Borrowers in bankruptcy.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower and the borrower has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease further communications, with regard to that mortgage loan, § 1024.39(d)(2) exempts a servicer from providing the written notice required by § 1024.39(b) while any borrower on the mortgage loan is also a debtor in bankruptcy under title 11 of the United States Code. For an example, see comment 39(c)(1)(ii)-1.ii.

Section 1024.40—Continuity of Contact

40(a) In general.

1. *Delinquent borrower.* A borrower is not considered delinquent if the borrower has refinanced the mortgage loan, paid off the mortgage loan, brought the mortgage loan current by paying all amounts owed in arrears, or if title to the borrower's property has been transferred to a new owner through, for example, a deed-in-lieu of foreclosure, a sale of the borrower's



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property, including, as applicable, a short sale, or a foreclosure sale. For purposes of responding to a borrower's inquiries and assisting a borrower with loss mitigation options, the term "borrower" includes a person authorized by the borrower to act on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example by requiring that a person who claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

2. *Assignment of personnel.* A servicer has discretion to determine whether to assign a single person or a team of personnel to respond to a delinquent borrower. The personnel a servicer assigns to the borrower as described in §1024.40(a)(1) may be single-purpose or multi-purpose personnel. Single-purpose personnel are personnel whose primary responsibility is to respond to a delinquent borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options. Multi-purpose personnel can be personnel that do not have a primary responsibility at all, or personnel for whom responding to a delinquent borrower's inquiries, and as applicable, assisting the borrower with available loss mitigation options is not the personnel's primary responsibility. If the delinquent borrower files for bankruptcy, a servicer may assign personnel with specialized knowledge in bankruptcy law to assist the borrower.

3. *Delinquency.* See §1024.31 for the definition of delinquency applicable to subpart C of Regulation X. For purposes of §1024.40(a), delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee. See the example set forth in comment 39(a)-1.i.

Section 1024.41—Loss Mitigation Procedures

41(b) Receipt of a loss mitigation application.

1. *Successors in interest.* i. If a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but need not, review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41. If a servicer complies with the requirements of § 1024.41 for a complete loss mitigation application submitted by a potential successor in interest before confirming that person's identity and ownership interest in the property, § 1024.41(i)'s limitation on duplicative requests applies to that person, provided the servicer's evaluation of loss mitigation options available to the person would not have resulted in a different determination due to the person's confirmation as a successor in interest if it had been conducted after the servicer confirmed the person's status as a successor in interest.

ii. If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming that person's identity and ownership interest in the property, the servicer must preserve the loss mitigation application and all documents submitted in connection with the application, and, upon such confirmation, the servicer must review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41 if the property is the confirmed successor in interest's principal residence and the procedures set forth in § 1024.41 are otherwise



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applicable. For purposes of § 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after they were submitted and confirmation is 45 days or more before a foreclosure sale, the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to § 1024.41(b)(2).

41(b)(1) Complete loss mitigation application.

1. *In general.* A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options. In the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan, the borrower is ineligible for that option. A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by any requirements established by the owner or assignee. A servicer must continue to exercise reasonable diligence to obtain documents and information from the borrower that the servicer requires to evaluate the borrower as to all other loss mitigation options available to the borrower. For example:

i. Assume a particular loss mitigation option is only available for borrowers whose mortgage loans were originated before a specific date. Once a servicer receives documents or information confirming that a mortgage loan was originated after that date, the servicer may stop collecting documents or information from the borrower that the servicer would use to evaluate the borrower for that loss mitigation option, but the servicer must continue its efforts to obtain documents and information from the borrower that the servicer requires to evaluate the borrower for all other available loss mitigation options.

ii. Assume applicable requirements established by the owner or assignee of the mortgage loan provide that a borrower is ineligible for home retention loss mitigation options if the borrower states a preference for a short sale and provides evidence of another applicable hardship, such as military Permanent Change of Station orders or an employment transfer more than 50 miles away. If the borrower indicates a preference for a short sale or, more generally, not to retain the property, the servicer may not stop collecting documents and information from the borrower pertaining to available home retention options solely because the borrower has indicated such a preference, but the servicer may stop collecting such documents and information once the servicer receives information confirming that the borrower has an applicable hardship under requirements established by the owner or assignee, such as military Permanent Change of Station orders or employment transfer.

2. *When an inquiry or prequalification request becomes an application.* A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation



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option and provides information the servicer would evaluate in connection with a loss mitigation application, the borrower's inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any "prequalification" for a loss mitigation option. For example, if a borrower requests that a servicer determine if the borrower is "prequalified" for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application.

3. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place and no loss mitigation application has been submitted:

i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower's eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.

ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation application.

4. ~~*Diligence requirements.*~~ Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application, **the servicer must act with reasonable diligence to collect information needed to complete the application.** ~~Further, a~~ A servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence **for purposes of § 1024.41(b)(1)** includes, without limitation, the following actions:

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and

iii. A servicer offers a borrower a **short-term** payment forbearance program **or a short-term repayment plan** based on an **evaluation of** incomplete loss mitigation application; **and provides the borrower the written notice pursuant to § 1024.41(c)(2)(iii).** ~~the servicer notifies the borrower that he or she is being offered a payment forbearance program based on an evaluation of an incomplete application, and that the borrower has the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower. If a~~



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~~servicer provides such a notification,~~ If the borrower remains in compliance with the **short-term** payment forbearance program **or short-term repayment plan**, and the borrower does not request further assistance, the servicer ~~could~~**may** suspend reasonable diligence efforts until near the end of the payment forbearance program **or repayment plan**. However, if the borrower fails to comply with the program or plan or requests further assistance, the servicer must immediately resume reasonable diligence efforts. Near the end of ~~the~~**a short-term payment forbearance program offered based on an evaluation of an incomplete loss mitigation application pursuant to § 1024.41(c)(2)(iii)**, and prior to the end of the forbearance period, ~~it may be necessary for the~~ **if the borrower remains delinquent, a servicer**~~to~~ **must** contact the borrower to determine if the borrower wishes to complete the **loss mitigation** application and proceed with a full loss mitigation evaluation.

5. *Information not in the borrower's control.* A loss mitigation application is complete when a borrower provides all information required from the borrower notwithstanding that additional information may be required by a servicer that is not in the control of a borrower. For example, if a servicer requires a consumer report for a loss mitigation evaluation, a loss mitigation application is considered complete if a borrower has submitted all information required from the borrower without regard to whether a servicer has obtained a consumer report that a servicer has requested from a consumer reporting agency.

41(b)(2) Review of loss mitigation application submission.

41(b)(2)(i) Requirements.

1. **Foreclosure sale not scheduled.** For purposes of § 1024.41(b)(2)(i), if no foreclosure sale has been scheduled as of the date a servicer receives a loss mitigation application, the servicer must treat the application as having been received 45 days or more before any foreclosure sale.

Paragraph 41(b)(2)(i)(B).

1. *Later discovery of additional information required to evaluate application.* Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in §1024.41(b)(1). See §1024.41(c)(2)(iv) addressing facially complete applications.

41(b)(2)(ii) Time period disclosure.

1. **Thirty days is generally** ~~Reasonable date.~~ ~~Section~~ In general and subject to the restrictions described in comments 4024.41(b)(2)(ii)-2 and -3, a servicer complies with the requirement to include a reasonable date in the written notice required under § 1024.41(b)(2)(i)(B) ~~by requires that a notice informing a borrower that a loss mitigation application is incomplete must include~~ **ing a reasonable date that is 30 days after the date the**



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~~servicer provides the written notice~~ by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. In determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under §1024.41 based on the milestones listed below, except when doing so would be impracticable to permit the borrower sufficient time to obtain and submit the type of documentation needed. Generally, it would be impracticable for a borrower to obtain and submit documents in less than seven days. In setting a date, the following milestones should be considered (if the date of a foreclosure sale is not known, a servicer may use a reasonable estimate of the date for which a foreclosure sale may be scheduled):

2. No later than the next milestone. For purposes of § 1024.41(b)(2)(ii), subject to the restriction described in comment 41(b)(2)(ii)-3, the reasonable date must be no later than the earliest of:

- i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;
- ii. The date that is the 120th day of the borrower's delinquency;
- iii. The date that is 90 days before a foreclosure sale;
- iv. The date that is 38 days before a foreclosure sale.

3. Seven-day minimum. A reasonable date for purposes of § 1024.41(b)(2)(ii) must never be less than seven days from the date on which the servicer provides the written notice pursuant to § 1024.41(b)(2)(i)(B).

41(b)(3) Determining Protections.

1. *Foreclosure sale not scheduled.* If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application is considered to have been received more than 90 days before any foreclosure sale.

2. *Foreclosure sale re-scheduled.* The protections under §1024.41 that have been determined to apply to a borrower pursuant to §1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled or rescheduled.

~~41(c) Review~~ **Evaluation** of loss mitigation applications.

41(c)(1) Complete loss mitigation application.

1. *Definition of "evaluation."* The conduct of a servicer's evaluation with respect to any loss mitigation option is in the sole discretion of a servicer. A servicer meets the requirements of §1024.41(c)(1)(i) if the servicer makes a determination regarding the borrower's eligibility for a loss mitigation program. Consistent with §1024.41(a), because nothing in section 1024.41



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should be construed to permit a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or provision of, any loss mitigation option, §1024.41(c)(1) does not require that an evaluation meet any standard other than the discretion of the servicer.

2. *Loss mitigation options available to a borrower.* The loss mitigation options available to a borrower are those options offered by an owner or assignee of the borrower's mortgage loan. Loss mitigation options administered by a servicer for an owner or assignee of a mortgage loan other than the owner or assignee of the borrower's mortgage loan are not available to the borrower solely because such options are administered by the servicer. For example:

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. Loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

3. *Offer of a non-home retention option.* A servicer's offer of a non-home retention option may be conditional upon receipt of further information not in the borrower's possession and necessary to establish the parameters of a servicer's offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

4. *Other notices.* A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B, 12 CFR part 1002, or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to § 1024.41(c)(1), unless otherwise prohibited by applicable law.

41(c)(2) *Incomplete loss mitigation application evaluation.*

41(c)(2)(i) *In general.*

1. *Offer of a loss mitigation option without an evaluation of a loss mitigation application.* Nothing in §1024.41(c)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing in §1024.41(c)(2)(i) prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of the loss mitigation



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option is not based on any evaluation of information submitted by the borrower in connection with such loss mitigation application. For example, if a servicer offers trial loan modification programs to all borrowers who become 150 days delinquent without an application or consideration of any information provided by a borrower in connection with a loss mitigation application, the servicer's offer of any such program does not violate §1024.41(c)(2)(i), and a servicer is not required to comply with §1024.41 with respect to any such program, because the offer of the loss mitigation option is not based on an evaluation of a loss mitigation application.

2. *Servicer discretion.* Although a review of a borrower's incomplete loss mitigation application is within a servicer's discretion, and is not required by §1024.41, a servicer may be required separately, in accordance with policies and procedures maintained pursuant to §1024.38(b)(2)(v), to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to loss mitigation applications otherwise considered incomplete pursuant to §1024.41.

41(c)(2)(ii) Reasonable time.

1. *Significant period of time.* A significant period of time under the circumstances may include consideration of the timing of the foreclosure process. For example, if a borrower is less than 50 days before a foreclosure sale, an application remaining incomplete for 15 days may be a more significant period of time under the circumstances than if the borrower is still less than 120 days delinquent on a mortgage loan obligation.

41(c)(2)(iii) Short-term loss mitigation options.

1. *Short-term payment forbearance program.* The exemption in §1024.41(c)(2)(iii) applies to, among other things, short-term payment forbearance programs. For purposes of § 1024.41(c)(2)(iii), a payment forbearance program is a loss mitigation option for pursuant to which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program for purposes of §1024.41(c)(2)(iii) allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

2. *Short-term loss mitigation options Payment forbearance and incomplete applications.* Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application. The servicer must still comply with the other requirements of § 1024.41 with respect to the incomplete loss mitigation application is still subject to the other obligations in §1024.41, including the obligation requirement in §1024.41(b)(2) to review the application to determine if it is complete, the obligation requirement in §1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (see comment 41(b)(1)-4.iii), and the obligation to provide the borrower with the and the requirement in §1024.41(b)(2)(i)(B) to provide the borrower with written notice that the



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servicer acknowledges the receipt of the application and has determined **that** the application is incomplete.

3. *Short-term loss mitigation options* ~~Payment forbearance and complete applications.~~ Even if a servicer offers a borrower a **short-term** payment forbearance program **or a short-term repayment plan** based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all the requirements in §1024.41 if the borrower completes ~~his or her~~ **a** loss mitigation application.

4. *Short-term repayment plan.* The exemption in § 1024.41(c)(2)(iii) applies to, among other things, short-term repayment plans. For purposes of § 1024.41(c)(2)(iii), a repayment plan is a loss mitigation option with terms under which a borrower would repay all past due payments over a specified period of time to bring the mortgage loan account current. A short-term repayment plan for purposes of § 1024.41(c)(2)(iii) allows for the repayment of no more than three months of past due payments and allows a borrower to repay the arrearage over a period lasting no more than six months.

5. *Specific payment terms and duration.* i. *General requirement.* Section 1024.41(c)(2)(iii) requires a servicer to provide the borrower a written notice stating, among other things, the specific payment terms and duration of a short-term payment forbearance program or a short-term repayment plan offered based on an evaluation of an incomplete application. Generally, a servicer complies with these requirements if the written notice states the amount of each payment due during the program or plan, the date by which the borrower must make each payment, and whether the mortgage loan will be current at the end of the program or plan if the borrower complies with the program or plan.

ii. *Disclosure of payment amounts that may change.* At the time a servicer provides the written notice pursuant to § 1024.41(c)(2)(iii), if the servicer lacks information necessary to determine the amount of a specific payment due during the program or plan (for example, because the borrower's interest rate will change to an unknown rate based on an index or because an escrow account computation year as defined in § 1024.17(b) will end and the borrower's escrow payment might change), the servicer complies with the requirement to disclose the specific payment terms and duration of a short-term payment forbearance program or short-term repayment plan if the disclosures are based on the best information reasonably available to the servicer at the time the notice is provided and the written notice identifies which payment amounts may change, states that such payment amounts are estimates, and states the general reason that such payment amounts might change. For example, if an escrow account computation year as defined in § 1024.17(b) will end during a borrower's short-term repayment plan, the written notice complies with §1024.41(c)(2)(iii) if it identifies the payment amounts that may change, states that those payment amounts are estimates, and states that the affected payments might change because the borrower's escrow payment might change.

6. *Timing of notice.* Generally, a servicer acts promptly to provide the written notice required by § 1024.41(c)(2)(iii) if the servicer provides such written notice no later than five days (excluding legal public holidays, Saturdays, and Sundays) after offering the borrower a short-term payment forbearance program or short-term repayment plan. A servicer may provide the written notice at the same time the servicer offers the borrower the program or plan. A written



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offer that contains all the required elements of the written notice also satisfies § 1024.41(c)(2)(iii).

41(c)(2)(iv) Facially complete application.

1. *Reasonable opportunity.* Section 1024.41(c)(2)(iv) requires a servicer to treat a facially complete application as complete for the purposes of paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the application. A reasonable opportunity requires the servicer to notify the borrower of what additional information or corrected documents are required, and to afford the borrower sufficient time to gather the information and documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

2. *Borrower fails to complete the application.* If the borrower fails to complete the application within the timeframe provided under §1024.41(c)(2)(iv), the application shall be considered incomplete.

41(c)(3) Notice of complete application.

Paragraph 41(c)(3)(i).

1. *Completion date.* A servicer complies with §1024.41(c)(3)(i)(B) by disclosing on the notice the most recent date the servicer received the complete loss mitigation application. For example, assume that a borrower first submits a complete loss mitigation application on March 1. The servicer must disclose March 1 as the date the servicer received the application under § 1024.41(c)(3)(i)(B). Assume the servicer discovers on March 10 that it requires additional information or corrected documents to complete the application and promptly requests such additional information or documents from the borrower pursuant to § 1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with §1024.41(c)(3)(i) and disclose March 21 as the date the servicer received the complete application. See comment 41(c)(3)(i)-3.

2. *First notice or filing.* Section 1024.41(c)(3)(i)(D)(1) and (2) sets forth different requirements depending on whether the servicer has made the first notice or filing under applicable law for any judicial or non-judicial foreclosure process at the time the borrower submits a complete loss mitigation application. See comment 41(f)-1 for a description of whether a document is considered the first notice or filing under applicable law.

3. *Additional notices.* Except as provided in § 1024.41(c)(3)(ii), § 1024.41(c)(3)(i) requires a servicer to provide a written notice every time a loss mitigation application becomes complete. For example, assume that a borrower first submits a complete loss mitigation application on March 1, and the servicer provides the notice under § 1024.41(c)(3)(i). Assume the servicer discovers on March 10 that it requires additional information or corrected documents regarding a source of income that the borrower previously identified. The servicer must promptly request such additional information or documents from the borrower pursuant to



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§ 1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with § 1024.41(c)(3)(i), unless an exception applies under § 1024.41(c)(3)(ii). See comment 41(c)(3)(i)-1.

41(c)(4) Information not in the borrower's control.

41(c)(4)(i) Diligence requirements.

1. *During the first 30 days following receipt of a complete loss mitigation application.* Section 1024.41(c)(4)(i) requires a servicer to act with reasonable diligence to obtain documents or information not in the borrower's control, which includes information in the servicer's control, that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower. At a minimum and without limitation, a servicer must request such documents or information from the appropriate party:

i. Promptly upon determining that the servicer requires the documents or information to determine which loss mitigation options, if any, the servicer will offer the borrower; and

ii. By a date that will enable the servicer to complete the evaluation within 30 days of receiving the complete loss mitigation application, as set forth in §1024.41(c)(1), to the extent practicable.

2. *More than 30 days following receipt of a complete loss mitigation application.* If a servicer has not, within 30 days of receiving a complete loss mitigation application, received the required documents or information from a party other than the borrower or the servicer, the servicer acts with reasonable diligence pursuant to §1024.41(c)(4)(i) by heightening efforts to obtain the documents or information promptly, to minimize delay in making a determination of which loss mitigation options, if any, it will offer to the borrower. Such heightened efforts include, for example, promptly verifying that it has contacted the appropriate party and determining whether it should obtain the required documents or information from a different party.

41(c)(4)(ii) Effect in case of delay.

1. *Third-party delay.* Notwithstanding delay in receiving required documents or information from any party other than the borrower or the servicer, § 1024.41(c)(1)(i) requires a servicer to complete all possible steps in the process of evaluating a complete loss mitigation application within 30 days of receiving the complete loss mitigation application. Such steps may include requirements imposed on the servicer by third parties, such as mortgage insurance companies, guarantors, owners, or assignees. For example, if a servicer can determine a borrower's eligibility for all available loss mitigation options based on an evaluation of the borrower's complete loss mitigation application subject only to approval from the mortgage insurance company, § 1024.41(c)(1)(i) requires the servicer to do so within 30 days of receiving the complete loss mitigation application notwithstanding the need to obtain such approval before offering the borrower any loss mitigation options.

2. *Offers not prohibited.* Section 1024.41(c)(4)(ii)(A)(2) permits a servicer to deny a complete loss mitigation application (in accordance with applicable investor requirements) if, after exercising reasonable diligence to obtain the required documents or information from a



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party other than the borrower or the servicer, the servicer has been unable to obtain such documents or information for a significant period of time and the servicer cannot complete its determination without the required documents or information. Section 1024.41(c)(4)(ii)(A)(2) does not require a servicer to deny a complete loss mitigation application and permits a servicer to offer a borrower a loss mitigation option, even if the servicer does not obtain the requested documents or information.

[...]

41(g) Prohibition on foreclosure sale.

1. *Dispositive motion.* The prohibition on a servicer moving for judgment or order of sale includes making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. A servicer that has made any such motion before receiving a complete loss mitigation application has not moved for a foreclosure judgment or order of sale if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order prior to completing the procedures required by §1024.41, notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.

2. *Proceeding with the foreclosure process.* Nothing in §1024.41(g) prevents a servicer from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements established by applicable law, when the first notice or filing for a foreclosure proceeding occurred before a servicer receives a complete loss mitigation application so long as any such steps in the foreclosure process do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of §1024.41.

3. *Interaction with foreclosure counsel.* ~~The prohibitions in § 1024.41(g) against moving for judgment or order of sale or conducting a sale may require a servicer is responsible for promptly instructing to act through~~ foreclosure counsel retained by the servicer ~~in a foreclosure proceeding. not to proceed with filing for~~ If a servicer has received a complete loss mitigation application, the servicer must instruct counsel promptly not to make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or insurance of an order of sale; ~~or and, where a sale is scheduled, to prevent~~ conduct of a foreclosure sale, ~~in violation of~~ unless one of the conditions in §1024.41(g)(1) through (3) is met. ~~when a servicer has received a complete loss mitigation application, which may include instructing counsel to move for a continuance with respect to the deadline for filing a dispositive motion.~~ A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation.

4. *Loss mitigation applications submitted 37 days or less before foreclosure sale.* Although a servicer is not required to comply with the requirements in §1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to §1024.38(b)(2)(v) to properly evaluate a borrower who submits an application for a loss



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mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale.

5. Conducting a sale prohibited. Section 1024.41(g) prohibits a servicer from conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings. Where a foreclosure sale is scheduled, and none of the conditions under § 1024.41(g)(1) through (3) are applicable, conduct of the sale violates § 1024.41(g).

[...]

41(i) Duplicative requests.

1. Applicability of loss mitigation protections. Under § 1024.41(i), a servicer must comply with § 1024.41 with respect to a loss mitigation application unless the servicer has previously done so for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application. Thus, for example, if the borrower has previously submitted a complete loss mitigation application and the servicer complied fully with § 1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, the servicer again must comply with § 1024.41 for any subsequent loss mitigation application submitted by the borrower. When a servicer is required to comply with the requirements of § 1024.41 for such a subsequent loss mitigation application, the servicer must comply with all applicable requirements of §1024.41. For example, in such a case, the servicer's provision of the notice of determination of which loss mitigation options, if any, it will offer to the borrower under § 1024.41(c)(1)(ii) regarding the borrower's prior complete loss mitigation application does not affect the servicer's obligations to provide a new notice of complete application under § 1024.41(c)(3)(i) regarding the borrower's subsequent complete loss mitigation application.

~~42. Servicing transfers. Section 1024.41(i) provides that Aa transferee servicer is required to need not comply with the requirements of §1024.41 for a subsequent loss mitigation application from a borrower where certain conditions are met. regardless of whether a borrower received an evaluation of a complete loss mitigation application from a transferor servicer. Documents and information transferred from a transferor servicer to a transferee servicer may constitute a loss mitigation application to the transferee servicer and may cause a transferee servicer to be required to comply with the requirements of §1024.41 with respect to a borrower's mortgage loan account.2. Application in process during servicing transfer. A transferee servicer must obtain documents and information submitted by a borrower in connection with a loss mitigation application during a servicing transfer, consistent with policies and procedures adopted pursuant to §1024.38. A servicer that obtains the servicing of a mortgage loan for which an evaluation of a complete loss mitigation option is in process should continue the evaluation to the extent practicable. For purposes of §1024.41(e)(1), 1024.41(f), 1024.41(g), and 1024.41(h), a transferee servicer must consider documents and information received from a transferor servicer that constitute a complete loss mitigation application for the transferee servicer to have been received by the transferee servicer as of the date such documents and~~



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~~information were provided to the transferor servicer.~~ A transferee servicer and a transferor servicer, however, are not the same servicer. Accordingly, a transferee servicer is required to comply with the applicable requirements of § 1024.41 upon receipt of a loss mitigation application from a borrower whose servicing the transferee servicer has obtained through a servicing transfer, even if the borrower previously received an evaluation of a complete loss mitigation application from the transferor servicer.

41(k) Servicing transfers.

1. *Pending loss mitigation application.* For purposes of § 1024.41(k), a loss mitigation application is pending if it was subject to § 1024.41 and had not been fully resolved before the transfer date. For example, a loss mitigation application would not be considered pending if a transferor servicer had denied a borrower for all options and the borrower's time for making an appeal, if any, had expired prior to the transfer date, such that the transferor servicer had no continuing obligations under § 1024.41 with respect to the application. A pending application is considered a pending complete application if it was complete as of the transfer date under the transferor servicer's criteria for evaluating loss mitigation applications.

41(k)(1) In general.

41(k)(1)(i) Timing of compliance.

1. *Obtaining loss mitigation documents and information.* i. In connection with a transfer, a transferor servicer must timely transfer, and a transferee servicer must obtain from the transferor servicer, documents and information submitted by a borrower in connection with a loss mitigation application, consistent with policies and procedures adopted pursuant to § 1024.38(b)(4). A transferee servicer must comply with the applicable requirements of § 1024.41 with respect to a loss mitigation application received as a result of a transfer, even if the transferor servicer was not required to comply with § 1024.41 with respect to that application (for example, because § 1024.41(i) precluded applicability of § 1024.41 with respect to the transferor servicer). If an application was not subject to § 1024.41 prior to a transfer, then for purposes of § 1024.41(b) and (c), a transferee servicer is considered to have received the loss mitigation application on the transfer date. Any such application is subject to the timeframes for compliance set forth in §1024.41(k).

ii. A transferee servicer must, in accordance with §1024.41(b)(1), exercise reasonable diligence to complete a loss mitigation application, including a facially complete application, received as a result of a transfer.

In the transfer context, reasonable diligence includes ensuring that a borrower is informed of any changes to the application process, such as a change in the address to which the borrower should submit documents and information to complete the application, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application.

iii. A borrower may provide documents and information necessary to complete an application to a transferor servicer after the transfer date. Consistent with policies and



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procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, such documents and information.

2. *Determination of rights and protections.* For purposes of § 1024.41(c) through (h), a transferee servicer must consider documents and information that constitute a complete loss mitigation application for the transferee servicer to have been received as of the date such documents and information were received by the transferor servicer, even if such documents and information were received by the transferor servicer after the transfer date.

See comment 41(k)(1)(i)-1.iii. An application that was facially complete under § 1024.41(c)(2)(iv) with respect to the transferor servicer remains facially complete under § 1024.41(c)(2)(iv) with respect to the transferee servicer as of the date it was facially complete with respect to the transferor servicer. If an application was complete with respect to the transferor servicer, but is not complete with respect to the transferee servicer, the transferee servicer must treat the application as facially complete under § 1024.41(c)(2)(iv) as of the date the application was complete with respect to the transferor servicer.

3. *Duplicative notices not required.* A transferee servicer is not required to provide notices under § 1024.41 with respect to a particular loss mitigation application that the transferor servicer provided prior to the transfer. For example, if the transferor servicer provided the notice required by § 1024.41(b)(2)(i)(B) prior to the transfer, the transferee servicer is not required to provide the notice again for that application.

41(k)(1)(ii) Transfer date defined.

1. *Transfer date.* Section 1024.41(k)(1)(ii) provides that the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv). The transfer date is the same date as that on which the transfer of the servicing responsibilities from the transferor servicer to the transferee servicer occurs. The transfer date is not necessarily the same date as either the effective date of the transfer of servicing as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(i) or the sale date identified in a servicing transfer agreement.

41(k)(2) Acknowledgment notices.

41(k)(2)(ii) Prohibitions.

1. *Examples of prohibitions.* Section 1024.41(k)(2)(ii)(A) and (B) adjusts the timeframes for certain borrower rights and foreclosure protections where § 1024.41(k)(2)(i) applies. These provisions are illustrated as follows: Assume a transferor servicer receives a borrower's initial loss mitigation application on October 1, and the loan is transferred five days (excluding legal public holidays, Saturdays, or Sundays) later, on October 8. Assume that Columbus Day, a legal public holiday, occurs on October 14, and the transferee servicer provides the notice required by § 1024.41(b)(2)(i)(B) 10 days (excluding legal public holidays, Saturdays, or Sundays) after the transfer date, on October 23. Assume the transferee servicer discloses a 30-day reasonable date, November 22, under § 1024.41(b)(2)(ii).



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i. If the transferor servicer receives the borrower's initial loss mitigation application when the borrower's mortgage loan is 101 days delinquent, the borrower's mortgage loan would be 123 days delinquent on October 23, the date the transferee servicer provides the notice required by §1024.41(b)(2)(i)(B). Pursuant to § 1024.41(k)(2)(ii)(A), the transferee servicer cannot make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after November 22, the reasonable date disclosed under § 1024.41(b)(2)(ii), and then only if the borrower has not submitted a complete application by that date.

ii. If the transferor servicer receives the borrower's initial loss mitigation application 55 days before the foreclosure sale, the date that the transferee servicer provides the notice required by §1024.41(b)(2)(i)(B), October 23, is 33 days before the foreclosure sale. Pursuant to § 1024.41(k)(2)(ii)(B), the transferee servicer must comply with § 1024.41(c), (d), and (g) if the borrower submits a complete loss mitigation application on or before November 22, the reasonable date disclosed under §1024.41(b)(2)(ii).

2. *Applicability of loss mitigation provisions.* Section 1024.41(k)(2)(ii)(A) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii), notwithstanding § 1024.41(f)(1). Section 1024.41(k)(2)(ii)(B) requires a servicer to comply with § 1024.41(c), (d), and (g) if a borrower submits a complete loss mitigation application on or before the reasonable date disclosed in the notice required by § 1024.41(b)(2)(i)(B), even if the servicer would otherwise not be required to comply with § 1024.41(c), (d), and (g) because the application is submitted 37 days or fewer before a foreclosure sale. Section 1024.41(k)(2)(ii) provides additional protections for borrowers but does not remove any protections. Servicers remain subject to the requirements of § 1024.41 as applicable and so, for example, must comply with § 1024.41(h) if the servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale. Similarly, a servicer is prohibited from making the first notice or filing before the borrower's mortgage loan obligation is more than 120 days delinquent, even if that is after the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii).

3. *Reasonable date when no milestones remain.* Generally, a servicer does not provide the notice required under § 1024.41(b)(2)(i)(B) after the date that is 38 days before a foreclosure sale, so at least one milestone specified in comment 41(b)(ii)-1 always remains applicable. When § 1024.41(k)(2)(i) applies, however, the transferee servicer may sometimes provide the notice after the date that is 38 days before a foreclosure sale. When this occurs, the transferee servicer must determine the reasonable date when none of the four specified milestones remain. The other requirements of § 1024.41(b)(2)(ii) continue to apply. In this circumstance, a reasonable date may occur less than 30 days, but not less than seven days, after the date the transferee servicer provides the written notice pursuant to § 1024.41(b)(2)(i)(B).

41(k)(3) Complete loss mitigation applications pending at transfer.

1. *Additional information or corrections to a previously submitted document.* If a transferee servicer acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date and the transferee servicer determines



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that additional information or a correction to a previously submitted document is required based upon its criteria for evaluating loss mitigation applications, the application is considered facially complete under § 1024.41(c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer. Once the transferee servicer receives the information or corrections necessary to complete the application, § 1024.41(c)(3) requires the transferee servicer to provide a notice of complete application.

2. *Applications first complete upon transfer.* If the borrower's loss mitigation application was incomplete based on the transferor servicer's criteria prior to transfer but is complete based upon the transferee servicer's criteria, the application is considered a pending loss mitigation application complete as of the transfer date for purposes of § 1024.41(k)(3). Consequently, the transferee servicer must comply with the applicable requirements of § 1024.41(c)(1) and (4) within 30 days of the transfer date. For purposes of § 1024.41(c) through (h), the application is complete as of the date the transferor servicer received the documents and information constituting the complete application. See comment 41(k)(1)(i) -2. In such circumstances, § 1024.41(c)(3) requires the transferee servicer to provide a notice of complete application that discloses the date the transferor servicer received the documents and information constituting the complete application.

41(k)(4) Applications subject to appeal process.

1. *Obtaining appeal.* A borrower may submit an appeal of a transferor servicer's determination pursuant to § 1024.41(h) to the transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such appeals.

2. *Servicer unable to determine appeal.* A transferee servicer may be unable to make a determination on an appeal when, for example, the transferor servicer denied a borrower for a loan modification option that the transferee servicer does not offer or when the transferee servicer receives the mortgage loan through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer lacks sufficient information to review the appeal. In that circumstance, the transferee servicer is required to treat the appeal as a pending complete application, and it must permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer, even if it does not offer the loss mitigation options offered by the transferor servicer, in addition to the loss mitigation options, if any, that the transferee servicer determines to offer the borrower based on its own evaluation of the borrower's complete loss mitigation application. For example, assume a transferor servicer denied a borrower for all loan modification options but offered the borrower a short sale option, and assume that the borrower's appeal of the loan modification denial was pending as of the transfer date. If the transferee servicer is unable to determine the borrower's appeal, the transferee servicer must evaluate the borrower for all available loss mitigation options in accordance with §1024.41(c) and (k)(3). At the conclusion of such evaluation, the transferee servicer must permit the borrower to accept the short sale option offered by the transferor servicer, even if the transferee servicer does not offer the short sale option, in addition to any loss mitigation options the transferee servicer determines to offer the borrower based upon its own evaluation.



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41(k)(5) Pending loss mitigation offers.

1. *Obtaining evidence of borrower acceptance.* A borrower may provide an acceptance or rejection of a pending loss mitigation offer to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain , documents and information regarding such acceptances and rejections, and the transferee servicer must provide the borrower with any timely accepted loss mitigation option, even if the borrower submitted the acceptance to the transferor servicer.

Appendix MS to Part 1024—Mortgage Servicing Model Forms and Clauses

1. *In general.* This appendix contains model forms and clauses for mortgage servicing disclosures required by §§1024.33, 37, and 39. Each of the model forms is designated for uses in a particular set of circumstances as indicated by the title of that model form or clause. Although use of the model forms and clauses is not required, servicers using them appropriately will be in compliance with disclosure requirements of §§1024.33, 37, and 39. To use the forms appropriately, information required by regulation must be set forth in the disclosures.

2. *Permissible changes.* Servicers may make certain changes to the format or content of the forms and clauses and may delete any disclosures that are inapplicable without losing the protection from liability so long as those changes do not affect the substance, clarity, or meaningful sequence of the forms and clauses. Servicers making revisions to that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

- i. Use of “borrower” and “servicer” instead of pronouns.
- ii. Substitution of the words “lender” and “servicer” for each other.
- iii. Addition of graphics or icons, such as the servicer's corporate logo.

iv. Modifications to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, this could include:

A. Use of “the mortgage loan” or “this mortgage loan” instead of “your mortgage loan” and “the monthly payments” instead of “your monthly payments.”

B. Use of “Payments due on or after [Date] may be sent to” instead of “Send all payments due on or after [Date] to” in notices of transfer.

C. Use of “We will charge the loan account” instead of “You must pay us” in notices relating to force-placed insurance.



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Appendix MS-3—Model Force-Placed Insurance Notice Forms

1. Where the model forms MS-3(A), MS-3(B), MS-3(C), and MS-3(D) use the term “hazard insurance,” the servicer may substitute “hazard insurance” with “homeowners’ insurance” or “property insurance.”

Appendix MS-4—Model Clauses for the Written Early Intervention Notice

1. *Model MS-4(A)*. These model clauses illustrate how a servicer may provide its contact information, how a servicer may request that the borrower contact the servicer, and how the servicer may inform the borrower how to obtain additional information about loss mitigation options, as required by §1024.39(b)(2)(i), (ii), and (iv).

2. *Model MS-4(B)*. These model clauses illustrate how the servicer may inform the borrower of loss mitigation options that may be available, as required by §1024.39(b)(2)(iii), if applicable. A servicer may include clauses describing particular loss mitigation options to the extent such options are available. Model MS-4(B) does not contain sample clauses for all loss mitigation options that may be available. The language in the model clauses contained in square brackets is optional; a servicer may comply with the disclosure requirements of §1024.39(b)(2)(iii) by using language substantially similar to the language in the model clauses, providing additional detail about the options, or by adding or substituting applicable loss mitigation options for options not represented in these model clauses, provided the information disclosed is accurate and clear and conspicuous.

3. *Model MS-4(C)*. These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by §1024.39(b)(2)(v). A servicer may, at its option, provide the Web site and telephone number for either the Bureau's or the Department of Housing and Urban Development's housing counselors list, as provided by paragraphs §1024.39(b)(2)(v).



Part 1026 – Truth in Lending (Regulation Z)

Subpart A—General

§1026.2 Definitions and rules of construction.

[...]

(11) *Consumer* means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. For purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41, the term includes a confirmed successor in interest.



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[...]

(27)

(i) *Successor in interest* means a person to whom an ownership interest in a dwelling securing a closed-end consumer credit transaction is transferred from a consumer, provided that the transfer is:

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

(B) A transfer to a relative resulting from the death of the consumer;

(C) A transfer where the spouse or children of the consumer become an owner of the property;

(D) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the consumer becomes an owner of the property; or

(E) A transfer into an inter vivos trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) *Confirmed successor in interest* means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the dwelling.

[...]

Subpart C—Closed-End Credit

[...]

§1026.20 Disclosure requirements regarding post-consummation events.

[...]

(f) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, § 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by paragraphs (c), (d), and (e) of this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, § 1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked.



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Subpart E—Special Rules for Certain Home Mortgage Transactions

[...]

§1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.

[...]

(b) *Scope.* Paragraphs (c)(1) and (2) of this section apply to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraph (c)(3) of this section applies to a consumer credit transaction secured by a dwelling. Paragraphs (d) through (i) of this section apply to closed-end consumer credit transactions secured by a dwelling. This section does not apply to a home equity line of credit subject to §1026.40, except that paragraphs (h) and (i) of this section apply to such credit when secured by the consumer's principal dwelling and paragraph (c)(3) applies to such credit when secured by a dwelling. Paragraphs (d) through (i) of this section do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

(c) *Servicing practices.* For purposes of this paragraph (c), the terms “servicer” and “servicing” have the same meanings as provided in 12 CFR 1024.2(b).

(1) *Payment processing.* In connection with a **closed-end** consumer credit transaction secured by a consumer's principal dwelling:

(i) *Periodic payments.* No servicer shall fail to credit a periodic payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (c)(1)(iii) of this section. A periodic payment, as used in this paragraph (c), is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle. A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments a servicer has advanced on a consumer's behalf.

(ii) *Partial payments.* Any servicer that retains a partial payment, meaning any payment less than a periodic payment, in a suspense or unapplied funds account shall:

(A) Disclose to the consumer the total amount of funds held in such suspense or unapplied funds account on the periodic statement as required by §1026.41(d)(3), if a periodic statement is required; and

(B) On accumulation of sufficient funds to cover a periodic payment in any suspense or unapplied funds account, treat such funds as a periodic payment received in accordance with paragraph (c)(1)(i) of this section.



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(iii) *Non-conforming payments.* If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of five days after receipt.

(2) *No pyramiding of late fees.* In connection with a **closed-end** consumer credit transaction secured by a consumer's principal dwelling, a servicer shall not impose any late fee or delinquency charge for a payment if:

(i) Such a fee or charge is attributable solely to failure of the consumer to pay a late fee or delinquency charge on an earlier payment; and

(ii) The payment is otherwise a periodic payment received on the due date, or within any applicable courtesy period.

[...]

§1026.39 Mortgage transfer disclosures.

[...]

(f) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, § 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by paragraph (b) of this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, §1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked.

[...]

§1026.41 Periodic statements for residential mortgage loans.

[...]

(d) *Content and layout of the periodic statement.* The periodic statement required by this section shall include:

[...]

(8) *Delinquency information.* If the consumer is more than 45 days delinquent, the following items, grouped together in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:



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- (i) The ~~date on which~~ length of the consumer's delinquency ~~became delinquent~~;
- (ii) A notification of possible risks, such as foreclosure, and expenses, that may be incurred if the delinquency is not cured;
- (iii) An account history showing, for the previous six months or the period since the last time the account was current, whichever is shorter, the amount remaining past due from each billing cycle or, if any such payment was fully paid, the date on which it was credited as fully paid;
- (iv) A notice indicating any loss mitigation program to which the consumer has agreed, if applicable;
- (v) A notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable;
- (vi) The total payment amount needed to bring the account current; and
- (vii) A reference to the homeownership counselor information disclosed pursuant to paragraph (d)(7)(v) of this section.

(e) *Exemptions*—

[...]

(4) *Small servicers*—

- (i) *Exemption.* A creditor, assignee, or servicer is exempt from the requirements of this section for mortgage loans serviced by a small servicer.
- (ii) *Small servicer defined.* A small servicer is a servicer that:
 - (A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee;
 - (B) Is a Housing Finance Agency, as defined in 24 CFR 266.5; or
 - (C) Is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. For purposes of this paragraph (e)(4)(ii)(C), the following definitions apply:
 - (1) The term “nonprofit entity” means an entity having a tax exemption ruling or determination letter from the Internal Revenue



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Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)-1), and;

(2) The term “associated nonprofit entities” means nonprofit entities that by agreement operate using a common name, trademark, or servicemark to further and support a common charitable mission or purpose.

(iii) *Small servicer determination.* In determining whether a servicer satisfies paragraph (e)(4)(ii)(A) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer and any affiliates as of January 1 and for the remainder of the calendar year. In determining whether a servicer satisfies paragraph (e)(4)(ii)(C) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer as of January 1 and for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer. The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer:

(A) Mortgage loans voluntarily serviced by the servicer for a ~~creditor or assignee that is not an~~ non-affiliate of the servicer and for which the servicer does not receive any compensation or fees.

(B) Reverse mortgage transactions.

(C) Mortgage loans secured by consumers' interests in timeshare plans.

(D) Transactions serviced by the servicer for a seller financier that meets all of the criteria identified in §1026.36(a)(5).

(5) *Certain Consumers in ~~Bankruptcy.~~*

(i) *Exemption.* Except as provided in paragraph (e)(5)(ii) of this section, Aa servicer is exempt from the requirements of this section with regard to ~~for~~ a mortgage loan if:

(A) Any consumer on the mortgage loan is a debtor ~~while the consumer is a debtor~~ in bankruptcy under Title 11 of the United States Code, or has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328; and

(B) With regard to any consumer on the mortgage loan:

(1) The consumer requests in writing that the servicer cease providing a periodic statement or coupon book;



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(2) The consumer's bankruptcy plan provides that the consumer will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan;

(3) A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring the servicer to cease providing a periodic statement or coupon book; or

(4) The consumer files with the court overseeing the bankruptcy case a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling securing the mortgage loan and a consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case.

(ii) *Reaffirmation or consumer request to receive statement or coupon book.* A servicer ceases to qualify for an exemption pursuant to paragraph (e)(5)(i) of this section with respect to a mortgage loan if the consumer reaffirms personal liability for the loan or any consumer on the loan requests in writing that the servicer provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement or coupon book.

(iii) *Exclusive address.* A servicer may establish an address that a consumer must use to submit a written request under paragraph (e)(5)(i)(B)(1) or (ii) of this section, provided that the servicer notifies the consumer of the address in a manner that is reasonably designed to inform the consumer of the address. If a servicer designates a specific address for requests under paragraph (e)(5)(i)(B)(1) or (ii) of this section, the servicer shall designate the same address for purposes of both paragraphs (e)(5)(i)(B)(1) and (ii) of this section.

(iv) *Timing of compliance following transition—*

(A) *Triggering events for transitioning to modified and unmodified periodic statements.* A servicer transitions to providing a periodic statement or coupon book with the modifications set forth in paragraph (f) of this section or to providing a periodic statement or coupon book without such modifications when one of the following three events occurs:

(1) A mortgage loan becomes subject to the requirements of paragraph (f) of this section;



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(2) A mortgage loan ceases to be subject to the requirements of paragraph (f) of this section; or

(3) A servicer ceases to qualify for an exemption pursuant to paragraph (e)(5)(i) of this section with respect to a mortgage loan.

(B) *Transitional single-billing-cycle exemption.* A servicer is exempt from the requirements of this section with respect to a single billing cycle when the payment due date for that billing cycle is no more than 14 days after the date on which one of the events listed in paragraph (e)(5)(iv)(A) of this section occurs.

(C) *Timing of first modified or unmodified statement after transition.* When one of the events listed in paragraph (e)(5)(iv)(A) of this section occurs, a servicer must provide the next modified or unmodified periodic statement or coupon book that complies with the requirements of this section by delivering or placing it in the mail within a reasonably prompt time after the first payment due date, or the end of any courtesy period for the payment's corresponding billing cycle, that is more than 14 days after the date on which the applicable event listed in paragraph (e)(5)(iv)(A) of this section occurs.

(6) *Charged-off loans.*

(i) A servicer is exempt from the requirements of this section for a mortgage loan if the servicer:

(A) Has charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account; and

(B) Provides, within 30 days of charge-off or the most recent periodic statement, a periodic statement, clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records." The periodic statement must clearly and conspicuously explain that, as applicable, the mortgage loan has been charged off and the servicer will not charge any additional fees or interest on the account; the servicer will no longer provide the consumer a periodic statement for each billing cycle; the lien on the property remains in place and the consumer remains liable for the mortgage loan obligation and any obligations arising from or related to the property, which may include property taxes; the consumer may be required to pay the balance on the account in the future, for example, upon sale of the property; the balance on the account is not being canceled or forgiven; and the loan may be purchased, assigned, or transferred.

(ii) *Resuming compliance—*



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(A) If a servicer fails at any time to treat a mortgage loan that is exempt under paragraph (e)(6)(i) of this section as charged off or charges any additional fees or interest on the account, the obligation to provide a periodic statement pursuant to this section resumes.

(B) Prohibition on retroactive fees. A servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption in paragraph (e)(6)(i) of this section applied.

(f) *Modified periodic statements and coupon books for certain consumers in bankruptcy.* While any consumer on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, or if such consumer has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, the requirements of this section are subject to the following modifications with regard to that mortgage loan:

(1) *Requirements not applicable.* The periodic statement may omit the information set forth in paragraphs (d)(1)(ii) and (d)(8)(i), (ii), and (v) of this section. The requirement in paragraph (d)(1)(iii) of this section that the amount due must be shown more prominently than other disclosures on the page shall not apply.

(2) *Bankruptcy notices.* The periodic statement must include the following:

(i) A statement identifying the consumer's status as a debtor in bankruptcy or the discharged status of the mortgage loan; and

(ii) A statement that the periodic statement is for informational purposes only.

(3) *Chapter 12 and chapter 13 consumers.* In addition to any other provisions of this paragraph (f) that may apply, with regard to a mortgage loan for which any consumer with primary liability is a debtor in a chapter 12 or chapter 13 bankruptcy case, the requirements of this section are subject to the following modifications:

(i) *Requirements not applicable.* In addition to omitting the information set forth in paragraph (f)(1) of this section, the periodic statement may also omit the information set forth in paragraphs (d)(8)(iii), (iv), (vi), and (vii) of this section.

(ii) *Amount due.* The amount due information set forth in paragraph (d)(1) of this section may be limited to the date and amount of the post-petition payments due and any post-petition fees and charges imposed by the servicer.

(iii) *Explanation of amount due.* The explanation of amount due information set forth in paragraph (d)(2) of this section may be limited to:

(A) The monthly post-petition payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow;



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(B) The total sum of any post-petition fees or charges imposed since the last statement; and

(C) Any post-petition payment amount past due.

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

(v) *Pre-petition arrearage.* If applicable, a servicer must disclose, grouped in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:

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

(B) The total of all pre-petition payments received since the beginning of the consumer's bankruptcy case; and

(C) The current balance of the consumer's pre-petition arrearage.

(vi) *Additional disclosures.* The periodic statement must include, as applicable:

(A) A statement that the amount due includes only post-petition payments and does not include other payments that may be due under the terms of the consumer's bankruptcy plan;

(B) If the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, a statement that the consumer should send the payment to the trustee and not to the servicer;

(C) A statement that the information disclosed on the periodic statement may not include payments the consumer has made to the trustee and may not be consistent with the trustee's records;

(D) A statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments; and

(E) If the consumer is more than 45 days delinquent on post-petition payments, a statement that the servicer has not received all the payments that became due since the consumer filed for bankruptcy.



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(4) *Multiple obligors.* If this paragraph (f) applies in connection with a mortgage loan with more than one primary obligor, the servicer may provide the modified statement to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy.

(5) *Coupon books.* A servicer that provides a coupon book instead of a periodic statement under paragraph (e)(3) of this section must include in the coupon book the disclosures set forth in paragraph (f)(2) and (f)(3)(vi) of this section, as applicable. The servicer may include these disclosures anywhere in the coupon book provided to the consumer or on a separate page enclosed with the coupon book. The servicer must make available upon request to the consumer by telephone, in writing, in person, or electronically, if the consumer consents, the information listed in paragraph (f)(3)(v) of this section, as applicable. The modifications set forth in paragraph (f)(1) and (f)(3)(i) through (iv) and (vi) of this section apply to a coupon book and other information a servicer provides to the consumer under paragraph (e)(3) of this section.

(g) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, § 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, § 1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked.

Appendix H to Part 1026—Closed-End Model Forms and Clauses

[...]

H-4(C)—Variable-Rate Model Clauses

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

~~How Your Interest Rate and Payment Are Determined~~ *How Your Interest Rate and Payment Are Determined*

- Your interest rate will be based on [an index plus a margin] [a formula].
- Your payment will be based on the interest rate, loan balance, and loan term.

—[The interest rate will be based on (identification of index) plus our margin. Ask for our current interest rate and margin.]



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—[The interest rate will be based on (identification of formula). Ask us for our current interest rate.]

—Information about the index [formula for rate adjustments] is published [can be found] _____.

—[The initial interest rate is not based on the (index) (formula) used to make later adjustments. Ask us for the amount of current interest rate discounts.]

How Your Interest Rate Can Change

- Your interest rate can change (frequency).
- [Your interest rate cannot increase or decrease more than ___ percentage points at each adjustment.]
- Your interest rate cannot increase [or decrease] more than ___ percentage points over the term of the loan.

How Your Payment Can Change

- Your payment can change (frequency) based on changes in the interest rate.
- [Your payment cannot increase more than (amount or percentage) at each adjustment.]
- [You will be notified ~~in writing~~ _____ at least 210, but no more than 240, days before the ~~due date of a first~~ payment at a ~~new~~ the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about ~~your interest rates~~ the adjustment, including the interest rate, payment amount, and loan balance.]
- [You will be notified ~~once each year~~ at least 60, but no more than 120, days before the first payment at the adjusted level is due after any ~~during which~~ interest rate adjustments resulting in a corresponding payment change., ~~but no payment adjustments, have been made to~~



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~~your loan.~~ This notice will contain information about **the adjustment, including the** ~~your~~ interest rate, payment amount, and loan balance.]

- [For example, on a \$10,000 [term] loan with an initial interest rate of ____ [(the rate shown in the interest rate column below for the year 19 ____)] [(in effect (month) (year))], the maximum amount that the interest rate can rise under this program is ____ percentage points, to ____%, and the monthly payment can rise from a first-year payment of \$____ to a maximum of \$____ in the ____ year. To see what your payments would be, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of \$60,000 would be: $\$60,000 \div \$10,000 = 6$; $6 \times ____ = \$____$ per month.)]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:



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Amount	\$10,000
Term	_____
Change date	_____
Payment adjustment	(frequency)
Interest adjustment	(frequency)
[Margin]*	_____
Caps _____ [periodic interest rate cap]	
_____ [lifetime interest rate cap]	
_____ [payment cap]	
[Interest rate carryover]	
[Negative amortization]	
[Interest rate discount]**	
Index.....(identification of index or formula)	

*This is a margin we have used recently, your margin may be different.

**This is the amount of a discount we have provided recently; your loan may be discounted by a different amount.]



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Year	Index (%)	Margin (Percentage points)	Interest Rate (%)	Monthly Payment (\$)	Remaining Balance (\$)
1982					
1983					
1984					
1985					
1986					
1987					
1988					
1989					
1990					
1991					
1992					
1993					
1994					
1995					
1996					

Note: To see what your payments would have been during that period, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of \$60,000 taken out in 1982 would be: $\$60,000 \div \$10,000 = 6$; $6 \times \underline{\hspace{1cm}} = \$ \underline{\hspace{1cm}}$ per month.)



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[...]

H-14—Variable-Rate Mortgage Sample

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

- Your interest rate will be based on an index rate plus a margin.
- Your payment will be based on the interest rate, loan balance, and loan term.

—The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.

—Information about the index rate is published weekly in the Wall Street Journal.

- Your interest rate will equal the index rate plus our margin unless your interest rate “caps” limit the amount of change in the interest rate.

How Your Interest Rate Can Change

- Your interest rate can change yearly.
- Your interest rate cannot increase or decrease more than 2 percentage points per year.

- Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

How Your Monthly Payment Can Change

- Your monthly payment can increase or decrease substantially based on annual changes in the interest rate.

- [For example, on a \$10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is



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5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of \$106.03 to a maximum of \$145.34 in the fourth year. To see what your payment is, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of \$60,000 would be: $\$60,000 \div \$10,000 = 6$; $6 \times 106.03 = \$636.18$ per month.)

- [You will be notified ~~in writing 25~~ **at least 210, but no more than 240**, days before the ~~annual~~ **first payment at the adjusted** ~~ment~~ **level is due after the initial interest rate adjustment of the loan.** ~~may be made.~~ This notice will contain information about ~~you're the~~ **adjustment, including the** interest rate, payment amount, and loan balance.]

- [You will be notified at least 60, but no more than 120, days before first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:



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Amount	\$10,000				
Term	30 years				
Payment adjustment	1 year				
Interest adjustment	1 year				
Margin	3 percentage points				
Caps ___ 2 percentage points annual interest rate					
___ 5 percentage points lifetime interest rate					
Index ___ Weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year.					
Year (as of 1st week ending in July)	Index (%)	Margin* (percentage points)	Interest Rate (%)	Monthly Payment (\$)	Remaining Balance (\$)
1982	14.41	3	17.41	145.90	9,989.37
1983	9.78	3	**15.41	129.81	9,969.66
1984	12.17	3	15.17	127.91	9,945.51
1985	7.66	3	**13.17	112.43	9,903.70
1986	6.36	3	***12.41	106.73	9,848.94
1987	6.71	3	***12.41	106.73	9,786.98



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1988	7.52	3	***12.41	106.73	9,716.88
1989	7.97	3	***12.41	106.73	9,637.56
1990	8.06	3	***12.41	106.73	9,547.83
1991	6.40	3	***12.41	106.73	9,446.29
1992	3.96	3	***12.41	106.73	9,331.56
1993	3.42	3	***12.41	106.73	9,201.61
1994	5.47	3	***12.41	106.73	9,054.72
1995	5.53	3	***12.41	106.73	8,888.52
1996	5.82	3	***12.41	106.73	8,700.37

*This is a margin we have used recently; your margin may be different.

**This interest rate reflects a 2 percentage point annual interest rate cap.

***This interest rate reflects a 5 percentage point lifetime interest rate cap.

Note: To see what your payments would have been during that period, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of \$60,000 taken out in 1982 would be: $\$60,000 \div \$10,000 = 6$; $6 \times \$106.73 = \640.38 .)]

• [You will be notified ~~in writing~~ **at least 210, but no more than 240, 25** days before the **first payment at the annual payment adjusted level is due after the initial interest rate adjustment of the loan.** This notice will contain information about ~~you're~~ **the adjustment, including the** interest rate, payment amount and loan balance.]

• [You will be notified **at least 60, but no more than 120, days** before first payment at **the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change.** This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]



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[...]

H-30(C) Sample Form of Periodic Statement for a Payment-Options Loan

H-30(C) Sample Form of Periodic Statement for a Payment-Options Loan

Springside Mortgage
Customer Service: 1-800-555-1234
www.springsidemortgage.com

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38105

Mortgage Statement
Statement Date: 3/20/2012

Account Number	1234567
Payment Due Date	4/1/2012
Amount Due	Option 1 [Full]: \$1,829.71
	Option 2 [Interest-Only]: \$1,443.25
	Option 3 [Minimum]: \$1,156.43

If payment is received after 4/15/12, \$160 late fee will be charged.

Account Information	
Outstanding Principal	\$260,000.00
Interest Rate (Until October 2012)	4.75%
Prepayment Penalty	Yes

Explanation of Amount Due			
	Option 1 [Full]	Option 2 [Interest-Only]	Option 3 [Minimum]
Principal	\$386.46	\$0	\$0
Interest	\$1,048.07	\$1,048.07	\$762.25
Escrow (Taxes and Insurance)	\$235.18	\$435.18	\$235.18
Regular Monthly Payment	\$1,669.71	\$1,293.25	\$996.43
Total Fees and Charges	\$160.00	\$160.00	\$160.00
Total Amount Due	\$1,829.71	\$1,443.25	\$1,156.43
If you make this payment...	... your principal balance will decrease , and you will be closer to paying off your loan.	... your principal balance will stay the same , and you will not be closer to paying off your loan.	... your principal balance will increase . You will be borrowing more money and losing equity in your home.

Transaction Activity (2/20 to 3/19)			
Date	Description	Charges	Payments
3/16/12	Late Fee (charged because payment was received after 3/15/2012)	\$160.00	
3/15/12	Payment Received - Thank you		\$1,669.71

Paid Payments Breakdown		
	Paid Last Month	Paid Year to Date
Principal	\$384.98	\$1,150.25
Interest	\$1,049.80	\$3,153.34
Escrow (Taxes and Insurance)	\$235.18	\$705.54
Fees	\$0.00	\$0.00
Total	\$1,669.71	\$5,009.13

Springside Mortgage
Springside Mortgage
P.O. Box 111111
Los Angeles, CA 90010

Amount Due	
Due By 4/1/2012:	<input type="checkbox"/> Option 1 [Full]: \$1,829.71
	<input type="checkbox"/> Option 2 [Interest-Only]: \$1,443.25
	<input type="checkbox"/> Option 3 [Minimum]: \$1,156.43
<small>\$160 late fee will be charged after 4/25/12</small>	
Additional Principal	\$ -
Additional Escrow	\$ -
Total Amount Included	\$ -

Make check payable to Springside Mortgage.

1234567 34571892 342359127 P

[...]



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H-30(E) Sample Form of Periodic Statement for Consumer in Chapter 7 or Chapter 11

Bankruptcy

SAMPLE FORMS

H-30(F) Sample Form of Periodic Statement for Consumer in Chapter 12 or Chapter 13

Bankruptcy

SAMPLE FORMS

Supplement I to Part 1026—Official Interpretations

Subpart A—General

[...]

2(a)(11) Consumer

1. *Scope.* Guarantors, endorsers, and sureties are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.

2. *Rescission rules.* For purposes of rescission under §§1026.15 and 1026.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.

3. *Land trusts.* Credit extended to land trusts, as described in the commentary to §1026.3(a), is considered to be extended to a natural person for purposes of the definition of consumer.

4. *Successors in interest.* i. *Assumption of the mortgage loan obligation.* A servicer may not require a confirmed successor in interest to assume the mortgage loan obligation to be considered a consumer for purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41. If a successor in interest assumes a mortgage loan obligation under State law or is otherwise liable on the mortgage loan obligation, the protections the successor in interest enjoys under this part are not limited to §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41.

ii. *Communications with confirmed successors in interest.* Communications in compliance with this part to a confirmed successor in interest as defined in § 1026.2(a)(27)(ii) do not violate section 805(b) of the Fair Debt Collection Practices Act (FDCPA) because



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consumer for purposes of FDCPA section 805 includes any person who meets the definition in this part of confirmed successor in interest.

iii. *Treatment of transferor consumer.* Even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41 with respect to the consumer who transferred an ownership interest to the successor in interest.

iv. *Multiple notices unnecessary.* Except as required by Regulation X, 12 CFR 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by § 1026.20(c), (d), or (e), § 1026.39, or § 1026.41 if the servicer is providing the same specific disclosure to another consumer on the account. For example, a servicer is not required to provide a periodic statement required by § 1026.41 to a confirmed successor in interest if the servicer is providing the same periodic statement to another consumer; a single statement may be sent in that billing cycle. If a servicer confirms more than one successor in interest, the servicer need not send any disclosure required by § 1026.20(c), (d), or (e), § 1026.39, or § 1026.41 to more than one of the confirmed successors in interest.

[...]

2(a)(27)(i) Successor in interest.

1. *Joint tenants and tenants by the entirety.* If a consumer who has an ownership interest as a joint tenant or tenant by the entirety in a dwelling securing a closed-end consumer credit transaction dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in §1026.2(a)(27)(i).

2. *Beneficiaries of inter vivos trusts.* In the event of a transfer into an *inter vivos* trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, the beneficiaries of the *inter vivos* trust rather than the *inter vivos* trust itself are considered to be the successors in interest for purposes of § 1026.2(a)(27)(i). For example, assume Consumer A transfers her home into such an *inter vivos* trust for the benefit of her spouse and herself. As of the transfer date, Consumer A and her spouse are considered successors in interest and, upon confirmation, are consumers for purposes of certain provisions of this part. If the creditor has not released Consumer A from the loan obligation, Consumer A also remains a consumer more generally for purposes of this part.

2(b) Rules of Construction

1. [Reserved]

2. *Amount.* The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash-advance fee (which is a finance charge) is a



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percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

[...]

Subpart C—Closed-End Credit

[...]

Section 1026.20 Disclosure requirements regarding post-consummation events

[...]

20(e)(4) Form of disclosures.

1. *Grouped and separate.* The disclosures required by §1026.20(e)(2) must be grouped together on the front side of a separate one-page document that contains no other material.

2. *Notice must be in writing in a form that the consumer may keep.* The notice containing the disclosures required by §1026.20(e)(2) must be in writing in a form that the consumer may keep. See also §1026.17(a) and related commentary for additional guidance on the form requirements applicable to the disclosures required by §1026.20(e)(2).

3. *Modifications of disclosures.* The requirements of § 1026.20(e)(4) to provide the § 1026.20(e) disclosures with the headings, content, order, and format substantially similar to model form H-29 in appendix H to this part do not preclude creditors and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the form or from adjusting the statement required by § 1026.20(e)(2)(ii)(A), concerning consequences if the consumer fails to pay property costs, to the circumstances of the particular consumer.

[...]

Subpart E—Special Rules for Certain Home Mortgage Transactions

[...]

Section 1026.36—Prohibited acts or practices and certain requirements for credit secured by a dwelling

[...]

36(c) Servicing Practices

Paragraph 36(c)(1)(i)



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1. *Crediting of payments.* Under §1026.36(c)(1)(i), a mortgage servicer must credit a payment to a consumer's loan account as of the date of receipt. This does not require that a mortgage servicer post the payment to the consumer's loan account on a particular date; the servicer is only required to credit the payment as of the date of receipt. Accordingly, a servicer that receives a payment on or before its due date (or within any grace period), and does not enter the payment on its books or in its system until after the payment's due date (or expiration of any grace period), does not violate this rule as long as the entry does not result in the imposition of a late charge, additional interest, or similar penalty to the consumer, or in the reporting of negative information to a consumer reporting agency.

2. *Method of crediting periodic payments.* The method by which periodic payments shall be credited is based on the legal obligation between the creditor and consumer, subject to applicable law.

3. *Date of receipt.* The “date of receipt” is the date that the payment instrument or other means of payment reaches the mortgage servicer. For example, payment by check is received when the mortgage servicer receives it, not when the funds are collected. If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the mortgage servicer receives the third-party payor's check or other transfer medium, such as an electronic fund transfer.

4. *Temporary loss mitigation programs.* If a loan contract has not been permanently modified but the consumer has agreed to a temporary loss mitigation program, a periodic payment under § 1026.36(c)(1)(i) is the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, regardless of the payment due under the temporary loss mitigation program.

5. *Permanent loan modifications.* If a loan contract has been permanently modified, a periodic payment under § 1026.36(c)(1)(i) is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract.

[...]

Paragraph 36(c)(1)(iii).

1. *Payment requirements.* The servicer may specify reasonable requirements for making payments in writing, such as requiring that payments be accompanied by the account number or payment coupon; setting a cut-off hour for payment to be received, or setting different hours for payment by mail and payments made in person; specifying that only checks or money orders should be sent by mail; specifying that payment is to be made in U.S. dollars; or specifying one particular address for receiving payments, such as a post office box. The servicer may be prohibited, however, from requiring payment solely by preauthorized electronic fund transfer. See section 913 of the Electronic Fund Transfer Act, 15 U.S.C. 1693k.

2. *Payment requirements—Limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers and potential successors in interest to



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make conforming payments. For example, it would be reasonable to require a cut-off time of 5 p.m. for receipt of a mailed check at the location specified by the servicer for receipt of such check.

3. *Implied guidelines for payments.* In the absence of specified requirements for making payments, payments may be made at any location where the servicer conducts business; any time during the servicer's normal business hours; and by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the servicer and consumer have so agreed.

[...]

Section 1026.41—Periodic Statements for Residential Mortgage Loans

41(a) In general.

1. *Recipient of periodic statement.* When two consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling, subject to §1026.41, the periodic statement may be sent to either one of them. For example, if ~~a husband and wife~~ **spouses** jointly own a home, the servicer need not send statements to both ~~the husband and the wife~~ **spouses**; a single statement may be sent.

[...]

41(c) Form of the periodic statement.

[...]

5. *Permissible changes.* Servicers may modify the sample forms for periodic statements provided in appendix H–30 to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, a servicer may modify the forms to:

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

41(d) Content and layout of the periodic statement.

1. *Close proximity.* ~~Paragraph~~ **Section 1026.41(d)** requires several disclosures to be provided in close proximity to one another. To meet this requirement, the items to be provided in



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close proximity must be grouped together, and set off from the other groupings of items. This ~~could~~ **may** be accomplished in a variety of ways, for example, by presenting the information in boxes, or by arranging the items on the document and including spacing between the groupings. Items in close proximity may not have any unrelated text between them. **Text is unrelated if it does not explain or expand upon the required disclosures.**

2. *Not applicable.* If an item required by paragraph (d) or (e) of this section is not applicable to the loan, it may be omitted from the periodic statement or coupon book. For example, if there is no prepayment penalty associated with a loan, the prepayment penalty disclosures need not be provided on the periodic statement.

3. *Terminology.* A servicer may use terminology other than that found on the sample periodic statements in appendix H-30, so long as the new terminology is commonly understood. For example, servicers may take into consideration regional differences in terminology and refer to the account for the collection of taxes and insurance, referred to in §1026.41(d) as the “escrow account,” as an “impound account.”

4. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program, the disclosures required by § 1026.41(d)(2), (3), and (5) regarding how payments were and will be applied must identify how payments are applied according to the loan contract, regardless of the temporary loss mitigation program.

5. *First statement after exemption terminates.* Section 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) requires the disclosure of the total sum of any fees or charges imposed since the last statement, the total of all payments received since the last statement, including a breakdown of how payments were applied, and a list of all transaction activity since the last statement. For purposes of the first periodic statement provided to the consumer following termination of an exemption under § 1026.41(e), the disclosures required by § 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) may be limited to account activity since the last payment due date that occurred while the exemption was in effect. For example, if mortgage loan payments are due on the first of each month and the servicer’s exemption under § 1026.41(e) terminated on January 15, the first statement provided to the consumer after January 15 may be limited to the total sum of any fees or charges imposed, the total of all payments received, a breakdown of how the payments were applied, and a list of all transaction activity since January 1.

41(d)(1) Amount due.

1. *Acceleration.* If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due under § 1026.41(d)(1) must identify only the lesser amount that will be accepted to reinstate the loan. The periodic statement must be accurate when provided and should indicate, if applicable, that the amount due is accurate only for a specified period of time. For example, the statement may include language such as “as of [date]” or “good through [date]” and provide an amount due that will reinstate the loan as of that date or good through that date, respectively.



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2. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program, the amount due under § 1026.41(d)(1) may identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract.

3. *Permanent loan modifications.* If the loan contract has been permanently modified, the amount due under § 1026.41(d)(1) must identify only the amount due under the modified loan contract.

41(d)(2) Explanation of amount due.

1. *Acceleration.* If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due under § 1026.41(d)(2) must list both the reinstatement amount that is disclosed as the amount due and the accelerated amount but not the monthly payment amount that would otherwise be required under § 1026.41(d)(2)(i). The periodic statement must also include an explanation that the reinstatement amount will be accepted to reinstate the loan through the “as of [date]” or “good through [date],” as applicable, along with any special instructions for submitting the payment. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement. The explanation may include related information, such as a statement that the amount disclosed is “not a payoff amount.”

2. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program and the amount due identifies the payment due under the temporary loss mitigation program, the explanation of amount due under § 1026.41(d)(2) must include both the amount due according to the loan contract and the payment due under the temporary loss mitigation program. The statement must also include an explanation that the amount due is being disclosed as a different amount because of the temporary loss mitigation program. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

[...]

41(d)(8) Delinquency information.

1. *Length of delinquency.* For purposes of § 1026.41(d)(8), the length of a consumer’s delinquency is measured as of the date of the periodic statement or the date of the written notice provided under § 1026.41(e)(3)(iv). A consumer’s delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and escrow, if applicable, becomes due and unpaid, even if the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. A consumer is delinquent if one or more periodic payments of principal, interest, and escrow, if applicable, are due and unpaid.

2. *Application of funds.* For purposes of § 1026.41(d)(8), if a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent consumer advances the date the consumer’s delinquency began. For example, assume a mortgage loan obligation under which a consumer’s periodic payment is due on the first of each month. A consumer fails to make a payment on January 1 but makes a periodic payment on February 3. The servicer



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applies the payment received on February 3 to the outstanding January payment. On February 4, the consumer is three days delinquent, and the next periodic statement should disclose the length of the consumer's delinquency musing February 2 as the first day of delinquency.

[...]

41(e)(5) *Certain consumers in bankruptcy.*

1. ~~Commencing a case.~~ *Consumer's representative.* The requirements of §1026.41 do not apply once a petition is filed under Title 11 of the United States Code, commencing a case in which the consumer is a debtor. If an agent of the consumer, such as the consumer's bankruptcy counsel, submits a request under § 1026.41(e)(5)(i)(B)(1) or (ii), the request is deemed to be submitted by the consumer.

2. ~~Obligation to resume sending periodic statements.~~ *Multiple requests.* A consumer's most recent written request under § 1026.41(e)(5)(i)(B)(1) or (ii) that the servicer cease or continue, as applicable, providing a periodic statement or coupon book determines whether the exemption in §1026.41(e)(5)(i) applies. i. ~~With respect to any portion of the mortgage debt that is not discharged, a servicer must resume sending periodic statements in compliance with §1026.41 within a reasonably prompt time after the next payment due date that follows the earliest of any of three potential outcomes in the consumer's bankruptcy case: the case is dismissed, the case is closed, or the consumer receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, this requirement to resume sending periodic statements does not require a servicer to communicate with a consumer in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent permitted by such law or court order, a servicer may adapt the requirements of §1026.41 in any manner believed necessary.~~

ii. ~~The periodic statement is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the consumer's bankruptcy case is revived—for example if the court reinstates a previously dismissed case, reopens the case, or revokes a discharge—the servicer is again exempt from the requirement in §1026.41.~~

3. *Joint obligors Effective upon receipt.* ~~When two or more consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling subject to §1026.41, the exemption in §1026.41(e)(5) applies if any of the consumers is in bankruptcy. For example, if a husband and wife jointly own a home, and the husband files for bankruptcy, the servicer is exempt from providing periodic statements to both the husband and the wife. A consumer's written request under § 1026.41(e)(5)(i)(B)(1) or (ii) is effective as of the date of receipt by the servicer.~~

4. *Bankruptcy case revived.* If a consumer's bankruptcy case is revived, for example, if the court reinstates a previously dismissed case or reopens a case, § 1026.41(e)(5) may apply again, including the timing requirements in § 1026.41(e)(5)(iv).



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41(e)(5)(i) Exemption.

1. *Multiple obligors.* When two or more consumers are joint obligors with primary liability on a mortgage loan subject to § 1026.41, § 1026.41(e)(5)(i) applies if any one of the consumers meets its criteria. For example, assume that two spouses jointly own a home and are primary obligors on the mortgage loan. One spouse files for chapter 13 bankruptcy and has a bankruptcy plan that provides for surrendering the dwelling that secures the mortgage loan. In part, § 1026.41(e)(5)(i) exempts the servicer from providing a periodic statement with regard to that mortgage loan, unless one of the spouses requests in writing that the servicer provide a periodic statement or coupon book pursuant to § 1026.41(e)(5)(ii). If either spouse, including the one who is not a debtor in bankruptcy, submits a written request to receive a periodic statement or coupon book, the servicer must provide a periodic statement or coupon book for that mortgage loan account.

Paragraph 41(e)(5)(i)(B)(2)..

1. *Bankruptcy plan.* For purposes of § 1026.41(e)(5)(i)(B)(2), bankruptcy plan refers to the consumer's most recently filed bankruptcy plan under the applicable provisions of title 11 of the United States Code, regardless of whether the court overseeing the consumer's bankruptcy case has confirmed or approved the plan.

Paragraph 41(e)(5)(i)(B)(4).

1. *Statement of intention.* For purposes of § 1026.41(e)(5)(i)(B)(4), the statement of intention refers to the consumer's most recently filed statement of intention. For example, if a consumer files a statement of intention on June 1 identifying an intent to surrender the dwelling securing the mortgage loan but files an amended statement of intention on June 15 identifying an intent to retain the dwelling, the consumer's June 15 statement of intention is the relevant filing for purposes of § 1026.41(e)(5)(i)(B)(4).

41(e)(5)(ii) Reaffirmation or consumer request to receive statement or coupon book.

1. *Form of periodic statement or coupon book.* Section 1026.41(e)(5)(ii) generally requires a servicer, notwithstanding § 1026.41(e)(5)(i), to resume providing a periodic statement or coupon book if the consumer in bankruptcy reaffirms personal liability for the mortgage loan or any consumer on the mortgage loan requests in writing that the servicer provide a periodic statement or coupon book. Whether a servicer provides a periodic statement or coupon book as modified by § 1026.41(f) or an unmodified periodic statement or coupon book depends on whether or not § 1026.41(f) applies to that mortgage loan at that time. For example, § 1026.41(f) does not apply with respect to a mortgage loan once the consumer has reaffirmed personal liability; therefore, following a consumer's reaffirmation, a servicer generally would provide a periodic statement or coupon book that complies with § 1026.41 but without the modifications set forth in § 1026.41(f). See comment 41(f)-6. Section 1026.41(f) does apply, however, with respect to a mortgage loan following a consumer's written request to receive a periodic statement or coupon book, so long as any consumer on the mortgage loan remains in bankruptcy or has discharged personal liability for the mortgage loan; accordingly, following that written request, a servicer must provide a periodic statement or coupon book that includes the modifications set forth in § 1026.41(f).



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41(e)(5)(iv) Timing of compliance following transition.

41(e)(5)(iv)(A) Triggering events for transitioning to modified and unmodified periodic statements.

1. *Section 1026.41(f) becomes applicable or ceases to apply.* Section 1026.41(e)(5)(iv) sets forth the time period in which a servicer must provide a periodic statement or coupon book for the first time after a mortgage loan either becomes subject to the requirements of § 1026.41(f) or ceases to be subject to the requirements of § 1026.41(f). A mortgage loan becomes subject to the requirements of § 1026.41(f) when, for example, any consumer on the mortgage loan becomes a debtor in bankruptcy or discharges personal liability for the mortgage loan. A mortgage loan may cease to be subject to the requirements of § 1026.41(f) when, for example, the consumer in bankruptcy reaffirms personal liability for a mortgage loan or the consumer's bankruptcy case is closed or dismissed without the consumer having discharged personal liability for the mortgage loan. See comment 41(f)-6.

2. *Servicer ceases to qualify for an exemption.* Section 1026.41(e)(5)(iv) sets forth the time period in which a servicer must provide a periodic statement or coupon book for the first time after a servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i) with respect to a mortgage loan. A servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i) with respect to a mortgage loan when, for example:

i. The consumer's bankruptcy case is dismissed or closed without the consumer having discharged personal liability for the mortgage loan;

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

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

iv. The consumer in bankruptcy reaffirms personal liability for the mortgage loan; or

v. The consumer submits a written request pursuant to § 1026.41(e)(ii) that the servicer resume providing a periodic statement or coupon book.

41(e)(5)(iv)(B) Transitional single-billing-cycle exemption.

1. An exemption under § 1026.41(e)(5)(iv) applies for only the first billing cycle that occurs after one of the events listed in §1026.41(e)(5)(iv)(A) occurs. If a servicer is required to provide a periodic statement or coupon book, the servicer must do so beginning with the next billing cycle in accordance with the timing provisions of § 1026.41(e)(5)(iv)(C).



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41(e)(5)(iv)(C) Timing of first modified or unmodified statement or coupon book after transition.

1. *Reasonably prompt time.* Section 1026.41(e)(5)(iv)(C) requires that, when one of the events listed in § 1026.41(e)(5)(iv)(A) occurs, a servicer must provide the next periodic statement or coupon book by delivering or placing it in the mail within a reasonably prompt time after the next payment due date, or the end of any courtesy period for the payment's corresponding billing cycle, that is more than 14 days after the date on which the applicable event listed in § 1026.41(e)(5)(iv)(A) occurs. Delivering, emailing, or placing the periodic statement or coupon book in the mail within four days after the payment due date or the end of the courtesy period generally would be considered reasonably prompt. See comment 41(b)-1.

2. *Subsequent periodic statements or coupon books.* Section 1026.41(e)(5)(iv)(C) applies to the timing of only the first periodic statement or coupon book a servicer provides after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs. For subsequent billing cycles, a servicer must provide a periodic statement or coupon book in accordance with the timing requirements of § 1026.41(a)(2) and (b), as applicable.

3. *Duplicate coupon books not required.* With respect to coupon books, § 1026.41 requires a servicer to provide a new coupon book after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs only to the extent the servicer has not previously provided the consumer with a coupon book that covered the upcoming billing cycle.

41(e)(6) Charged-off loans.

1. *Change in ownership.* If a charged-off mortgage loan is subsequently purchased, assigned, or transferred, § 1026.39(b) requires a covered person, as defined in § 1026.39(a)(1), to provide mortgage transfer disclosures. See § 1026.39.

2. *Change in servicing.* A servicer may take advantage of the exemption in § 1026.41(e)(6)(i), subject to the requirements of that paragraph, and may rely on a prior servicer's provision to the consumer of a periodic statement pursuant to § 1026.41(e)(6)(i)(B) unless the servicer provided the consumer a periodic statement pursuant to § 1026.41(a).

Paragraph 41(e)(6)(i)(B).

1. *Clearly and conspicuously.* Section 1026.41(e)(6)(i)(B) requires that the periodic statement be clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records" and that it clearly and conspicuously provide certain explanations to the consumer, as applicable, but no minimum type size or other technical requirements are imposed. The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer. See comment 41(c)-1.



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41(f) Modified periodic statements and coupon books for certain consumers in bankruptcy.

1. *Compliance after the bankruptcy case ends.* Except as provided in § 1026.41(e)(5), § 1026.41(f) applies with regard to a mortgage loan for which any consumer with primary liability is a debtor in a case under title 11 of the United States Code. After the debtor exits bankruptcy, § 1026.41(f) continues to apply if the consumer has discharged personal liability for the mortgage loan, but § 1026.41(f) does not apply if the consumer has reaffirmed personal liability for the mortgage loan or otherwise has not discharged personal liability for the mortgage loan.

2. *Terminology.* With regard to a periodic statement provided under § 1026.41(f), a servicer may use terminology other than that found on the sample periodic statements in appendix H-30, so long as the new terminology is commonly understood. See comment 41(d)-3. For example, a servicer may take into account terminology appropriate for consumers in bankruptcy and refer to the “amount due” identified in § 1026.41(d)(1), as the “payment amount.” Similarly, a servicer may refer to an amount past due identified in § 1026.41(d)(2)(iii) as “past unpaid amount.” Additionally, a servicer may refer to the delinquency information required by § 1026.41(d)(8) as an “account history,” and to the amount needed to bring the loan current, referred to in § 1026.41(d)(8)(vi) as “the total payment amount needed to bring the account current,” as “unpaid amount.”

3. *Other periodic statement requirements continue to apply.* The requirements of § 1026.41, including the content and layout requirements of § 1026.41(d), apply unless modified expressly by § 1026.41(e)(5) or (f). For example, the requirement under § 1026.41(d)(3) to disclose a past payment breakdown applies without modification with respect to a periodic statement provided to a consumer in bankruptcy.

4. *Further modifications.* A periodic statement or coupon book provided under § 1026.41(f) may be modified as necessary to facilitate compliance with title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure, court orders, and local rules, guidelines, and standing orders. For example, a periodic statement or coupon book may include additional disclosures or disclaimers not required under § 1026.41(f) but that are related to the consumer’s status as a debtor in bankruptcy or that advise the consumer how to submit a written request under § 1026.41(e)(5)(i)(B)(1).

See comment 41(f)(3)-1.ii for a discussion of the treatment of a bankruptcy plan that modifies the terms of the mortgage loan, such as by reducing the outstanding balance of the mortgage loan or altering the applicable interest rate.

5. *Commencing compliance.* A servicer must begin to provide a periodic statement or coupon book that complies with paragraph (f) of this section within the timeframe set forth in § 1026.41(e)(5)(iv).

6. *Reaffirmation.* For purposes of § 1026.41(f), a consumer who has reaffirmed personal liability for a mortgage loan is not considered to be a debtor in bankruptcy.



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41(f)(3) Chapter 12 and chapter 13 consumers.

1. *Pre-petition payments and post-petition payments.* i. For purposes of § 1026.41(f)(3), pre-petition payments are payments made to cure the consumer's pre-bankruptcy defaults, and post-petition payments are payments made to satisfy the mortgage loan's periodic payments as they come due after the bankruptcy case is filed. For example, assume a consumer is \$3,600 in arrears as of the bankruptcy filing date on a mortgage loan requiring monthly periodic payments of \$2,000. The consumer's most recently filed bankruptcy plan requires the consumer to make payments of \$100 each month for 36 months to pay the pre-bankruptcy arrearage, and \$2,000 each month to satisfy the monthly periodic payments. Assuming the consumer makes the payments according to the plan, the \$100 payments are the pre-petition payments and the \$2,000 payments are the post-petition payments for purposes of the disclosures required under § 1026.41(f)(3).

ii. If a consumer is a debtor in a case under chapter 12 or if a consumer's bankruptcy plan modifies the terms of the mortgage loan, such as by reducing the outstanding balance of the mortgage loan or altering the applicable interest rate, the disclosures under § 1026.41(d)(1), (2), (f)(3)(ii), and (iii) may disclose either the amount payable under the original terms of the mortgage loan, the amount payable under the remaining secured portion of the adjusted mortgage loan, or a statement that the consumer should contact the trustee or the consumer's attorney with any questions about the amount payable. In such cases, the remaining disclosures under § 1026.41(d) or (f)(3), as applicable, may be limited to how payments are applied to the remaining secured portion of the adjusted mortgage loan.

2. *Post-petition fees and charges.* For purposes of § 1026.41(f)(3), post-petition fees and charges are those fees and charges imposed after the bankruptcy case is filed. To the extent that the court overseeing the consumer's bankruptcy case requires such fees and charges to be included as an amendment to a servicer's proof of claim, a servicer may include such fees and charges in the balance of the pre-petition arrearage under § 1026.41(f)(3)(v)(C) rather than treating them as post-petition fees and charges for purposes of § 1026.41(f)(3).

3. *First statement after exemption terminates.* Section § 1026.41(f)(3)(iii) through (v) requires, in part, the disclosure of certain information regarding account activity that has occurred since the last statement. For purposes of the first periodic statement provided to the consumer following termination of an exemption under § 1026.41(e), those disclosures regarding account activity that has occurred since the last statement may be limited to account activity since the last payment due date that occurred while the exemption was in effect. See comment 41(d)-5.

41(f)(3)(ii) Amount due.

1. *Amount due.* The amount due under § 1026.41(d)(1) is not required to include any amounts other than post-petition payments the consumer is required to make under the terms of a bankruptcy plan, including any past due post-petition payments, and post-petition fees and charges that a servicer has imposed. The servicer is not required to include in the amount due any pre-petition payments due under a bankruptcy plan or other amounts payable pursuant to a court order. The servicer is not required to include in the amount due any post-petition fees and charges that the servicer has not imposed. A servicer that defers collecting a fee or charge until



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after complying with the Federal Rule of Bankruptcy Procedure 3002.1 procedures, and thus after a potential court determination on whether the fee or charge is allowed, is not required to disclose the fee or charge until complying with such procedures. However, a servicer may include in the amount due other amounts due to the servicer that are not post-petition payments or fees or charges, such as amounts due under an agreed order, provided those other amounts are also disclosed in the explanation of amount due and transaction activity.

41(f)(3)(iii) Explanation of amount due.

1. *Explanation of amount due.* The explanation of amount due under § 1026.41(d)(2) is not required to include any amounts other than the post-petition payments, including the amount of any past due post-petition payments and post-petition fees and charges that a servicer has imposed. Consistent with § 1026.41(d)(3)(i), the post-petition payments must be broken down by the amount, if any, that will be applied to principal, interest, and escrow. The servicer is not required to disclose, as part of the explanation of amount due, any pre-petition payments or the amount of the consumer's pre-bankruptcy arrearage. However, a servicer may identify other amounts due to the servicer provided those amounts are also disclosed in the amount due and transaction activity. See comment 41(d)-4.

41(f)(3)(v) Pre-petition arrearage.

1. *Pre-petition arrearage.* If the pre-petition arrearage is subject to dispute, or has not yet been determined by the servicer, the periodic statement may include a statement acknowledging the unresolved amount of the pre-petition arrearage. A servicer may omit the information required by §1026.41(f)(3)(v) from the periodic statement until such time as the servicer has had a reasonable opportunity to determine the amount of the pre-petition arrearage. The servicer may not omit the information required by § 1026.41(f)(3)(v) from the periodic statement after the date that the bankruptcy court has fixed for filing proofs of claim in the consumer's bankruptcy case.

41(f)(4) Multiple obligors.

1. *Modified statements.* When two or more consumers are joint obligors with primary liability on a mortgage loan subject to § 1026.41, a servicer may send the periodic statement to any one of the primary obligors. See comment 41(a)-1. Section 1026.41(f)(4) provides that a servicer may provide a modified statement under §1026.41(f), if applicable, to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy. The servicer need not provide an unmodified statement to any of the primary obligors. For example, assume that two spouses jointly own a home and are both primarily liable on the mortgage loan. One spouse files for chapter 13 bankruptcy, and that spouse's chapter 13 bankruptcy plan provides that the same spouse will retain the home by making pre-petition and post-petition payments. The servicer complies with § 1026.41 by providing the modified periodic statement under §1026.41(f) to either spouse.

2. *Obligors in different chapters of bankruptcy.* If two or more consumers are joint obligors with primary liability on a mortgage loan subject to § 1026.41 and are debtors under different chapters of bankruptcy, only one of which is subject to § 1026.41(f)(3), a servicer may, but need not, include the modifications set forth in § 1026.41(f)(3). For example, assume one



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joint obligor is a debtor in a case under chapter 7 and another joint obligor is a debtor in a case under chapter 13, and that the servicer is not exempt from the periodic statement requirement under § 1026.41(e)(5). The periodic statement or coupon book is subject to the modifications set forth in § 1026.41(f)(1) and (2), but the servicer may determine whether it is appropriate to include the modifications set forth in § 1026.41(f)(3).