JUNE 7, 2013

2013 Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules

SMALL ENTITY COMPLIANCE GUIDE

The Bureau recently finalized changes to this rule. The July 2013 Final Rule and October 2013 Final Rule clarify and revise the final rule issued January 17, 2013, which is set to take effect on January 10, 2014. The Bureau plans to update this guide as appropriate.

Consumer Financial Protection Bureau

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1. Introduction

I. What are the Mortgage Servicing Rules?

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) amended the Real Estate Settlement Procedures Act (RESPA) of 1974, which is implemented by Regulation X, and the Truth in Lending Act (TILA), which is implemented by Regulation Z, with regard to the servicing of certain residential mortgage loans. The Consumer Financial Protection Bureau issued rules in January 2013 to implement these Dodd-Frank Act amendments to RESPA and TILA.

This guide provides a summary of those rules. The rules are referred to in this guide as the "Mortgage Servicing Rules." The guide highlights issues that small creditors, and those that work with them, might find helpful to consider when implementing the rules.

The final rules can be found in the Federal Register:

- ☐ Regulation X at 78 FR 10696 (February 14, 2013)
- ☐ Regulation Z at 78 FR 10902 (February 14, 2013)

The Dodd-Frank Act required disclosures for certain adjustable-rate mortgages (ARMs) and force-placed insurance as well as periodic statements for consumers' mortgage loans. It also required prompt crediting of mortgage payments and providing payoff statements to consumers. The Dodd-Frank Act further required servicers to take action to correct certain errors asserted by borrowers regarding their mortgages and to respond to requests for certain information from borrowers regarding their mortgages. The Dodd-Frank Act, TILA, and RESPA, authorized the Bureau to implement these requirements and to issue additional consumer protection regulations. The Mortgage Servicing Rules issued by the Bureau under this (and other) authority require servicers to establish certain policies, procedures, and requirements – including regarding the designation of personnel to assist consumers who fall behind in their mortgage payments – and to contact consumers soon after delinquency and work with them to be considered for applicable loss mitigation options.Note that, subsequent to the publication of this guide, the Bureau may update or amend provisions of the Mortgage Servicing Rules and intends to provide guidance updates to reflect any such future changes.

For example, in April 2013, the Bureau issued a rule proposing to amend certain provisions of the Mortgage Servicing Rules, among others. The proposed rules can be found in the Federal Register at 78 FR 25638 (May 2, 2013).

The proposal addresses certain requirements regarding qualification for the small servicer exemption. *(See Section 3 on page 14 for guidance regarding the small servicer exemption.)* Except for the proposal not to consider certain mortgage loans that are charitably serviced in determining small servicer status, the April proposed rule simply seeks to clarify, but not change, the rules. (Those clarifications are already incorporated into this guide.)

The April proposal also would clarify that the preemption provisions of RESPA and Regulation X do not prevent state governments from issuing regulations that are not in conflict with or that exceed Regulation X requirements, including with regard to mortgage servicers and mortgage servicing.

The Bureau would like to make clear that the Mortgage Servicing Rules set forth ***minimum requirements*** for compliance. Thus, the Mortgage Servicing Rules do not foreclose other entities, such as owners and assignees of mortgage loans, from setting higher servicing standards. That means you must comply with any applicable servicing requirements that exceed (but are not in conflict) with the requirements set forth in the Mortgage Servicing Rules.

The Bureau intends to issue additional proposed rules to help industry understand and comply with the Mortgage Servicing Rules. To this end, the Bureau expects to issue proposed rules in June and August 2013. For the June rule, the Bureau is considering proposing some amendments to the loss mitigation rule discussed in Section 12 of this guide.

II. What is the purpose of this guide?

The purpose of this guide is to provide an easy-to-use summary of the Mortgage Servicing Rules. This guide also highlights issues that small creditors, and those that work with them, might find helpful to consider when implementing the rule.

This guide also meets the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, which requires the Bureau to issue a small entity compliance guide to help small businesses comply with these new regulations.

Servicers may want to review their processes, software, contracts, or other aspects of their business operations in order to identify any changes needed to comply with the Mortgage Servicing Rules. Changes related to the Mortgage Servicing Rules may take careful planning, time, or resources to implement. This guide will help you identify and plan for any necessary changes.

To support rule implementation and ensure the industry is ready for the new consumer protections, the Bureau will coordinate with other agencies, publish plain-language guides, publish updates to the Official Interpretations, and publish a readiness guide.

The guide summarizes the Mortgage Servicing Rules, but it is not a substitute for the rules. Only the rules and their Official Interpretations can provide complete and definitive information regarding the requirements of the rules. The discussions below provide citations to the sections of the rule on the subject under discussion. Keep in mind that the Official Interpretations, which provide detailed explanations of many of the requirements of the rules, are found after the text of the rule and its appendices. The interpretations are arranged by rule section and paragraph for ease of use. The complete rules, including the Official Interpretations, are also available at http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/.This guide focuses on the Mortgage Servicing Rules. It does not discuss other federal or state laws that may apply to the origination of closed-end credit.

At the end of this guide, there is more information about where to find some additional resources.

III. Who should read this guide?

Creditors, assignees, and servicers of mortgage loans may find this guide useful. This guide may also be helpful to companies that serve as business partners to creditors, assignees, and servicers.

This guide may be useful in helping you determine whether these rules regulate the loans you service, and if so, what your compliance obligations are under the rules.

IV. Who can I contact about this guide or the Mortgage Servicing Rules?

For more information on the rules, please contact the Bureau's Office of Regulations at 202-435-7700, or email questions to CFPB_reginquiries@cfpb.gov.

Email comments about the guide to CFPB_TitleXIVRules@cfpb.gov. Your feedback is crucial to making sure the guide is as helpful as possible. The Bureau welcomes your suggestions for improvements and your thoughts on its usefulness and readability.

The Bureau is particularly interested in feedback relating to:

- ☐ How useful you found this guide for understanding the rules

- ☐ How useful you found this guide for implementing the rules at your business
- ☐ Suggestions you have for improving the guide, such as additional implementation tips

2. Overview of the Mortgage Servicing Rules

I. What are the Mortgage Servicing Rules about?

The Mortgage Servicing Rules address the servicing of mortgage loans, and are implemented in both Regulation X and Regulation Z.

The Regulation X rule addresses:

- ☐ Error resolution and information requests (§§ 1024.35 and 1024.36)
- ☐ Force-placed insurance (§ 1024.37)
- ☐ General servicing policies, procedures, and requirements (§ 1024.38)
- ☐ Early intervention with delinquent consumers (§ 1024.39)
- ☐ Continuity of contact with delinquent consumers (§ 1024.40)
- ☐ Loss mitigation (§ 1024.41)

The Regulation Z rule addresses:

- ☐ Interest rate adjustment notices for ARMs (§ 1026.20)
- ☐ Prompt crediting of mortgage payments and responses to requests for payoff amounts (§ 1026.36(c))
- ☐ Periodic statements for mortgage loans (§ 1026.41)

II. When do I have to start following these rules?

These rules take effect on January 10, 2014.

ARM regulations 1026.20(c) and (d) generally apply to ARMs originated both prior to and after the January 10, 2014, effective date. However, no servicer is required to comply with the rule until the effective date.

Thus, because the 20(d) notice must be provided to the consumer between 210 and 240 days before the first payment is due after the initial interest rate adjustment, *servicers will not be required to provide the notice when such payment is due 209 or fewer days from the effective date*. However, payments due 210 or more days from the effective date are subject to the rule.

Under the time frame of current § 1026.20(c), notices are required 25 to 120 days before the first payment is due after the interest rate adjustment. Thus, servicers will have provided the 1026.20(c) notices required by the current rule when such payment is due 24 or fewer days from the January 10, 2014, effective date. Because, under the new rule, 20(c) notices must be provided to consumers between 60 and 120 days before the first payment is due after an interest rate adjustment causing a corresponding change in payment, *servicers will not be required to provide the notices when such payment is due 25 to 59 days from the effective date*.

III. What loans do the Mortgage Servicing Rules cover?

These rules generally apply to mortgage loans. Each section of the rule has its own scope, as discussed in the sections of this guide that follow.

3. Small Servicer Exemption

I. Who is considered a small servicer? (§ 1026.41(e)(4))

Servicers that qualify as small servicers are exempt from certain parts of the Mortgage Servicing Rules. You are a small servicer if you meet one of these criteria:

- ☐ You, together with any affiliates, service 5,000 or fewer mortgage loans, and you (or an affiliate) are the creditor or assignee for all of them.
- ☐ You are a Housing Finance Agency, as defined in 24 CFR 266.5. (§ 1026.41(e)(4)(ii))

i. Servicers that do not qualify for the small servicer exemption

If you service any mortgage loans you (or an affiliate) did not originate or do not own, you do not qualify as a small servicer, even if you service 5,000 or fewer loans overall.

For example, if you own the servicing rights for loans for which you or your affiliate are neither the owner nor the entity to whom the obligation was initially payable, you do not qualify as a small servicer. (Comment 41(e)(4)(ii)-1)

ii. Note on loans acquired through merger or acquisition

Any mortgage loans you or your affiliates obtain as part of a merger or acquisition, or as part of the acquisition of all of the assets or liabilities of a branch office of a creditor counts as a loan for which you (or an affiliate) are the creditor or assignee.

A branch office means either an office of a depository institution that is approved as a branch by a federal or state supervisory agency or an office of a for-profit mortgage lending institution (other than a depository institution) that takes applications from the public for mortgage loans. (Comment 41(e)(4)(iii)-1)

iii. Note on master/subservicer

Where a loan is subserviced, both the master servicer and subservicer (see § 1024.31 for the definition of those terms) must meet the small servicer requirements to qualify for the small servicer exemption. However, even if the subservicer does not qualify as a small servicer, the master servicer may still be eligible for the exemption for loans it services in-house.

II. What loans should be considered? (§ 1026.41(a) and (e))

Only consider mortgage loans that you service. "Mortgage loan" is defined in § 1026.41(a)(1) to mean a closed-end consumer credit transaction secured by a dwelling. Use this definition to identify the pool of loans from which to determine your small servicer status. Do not include reverse mortgages or timeshare plans in the pool of loans from which to determine your small servicer status. This same pool of loans determines your status as a small servicer whether you are looking at the small servicer exemption with regard to provisions in Regulation X or Z.

i. What happens when I cross the 5,000-loan threshold or take on the servicing of a loan I do not own or did not originate? (§ 1026.41(e)(4)(iii))

The small servicer exemption is determined each calendar year based on the loans you and your affiliates service as of January 1 for the remainder of the year.

If you cease to qualify for the exemption, you will have 6 months or until the next January 1 (whichever is later) to comply with any requirements that you were previously exempt from because you qualified as a small servicer.

The following examples demonstrate when a servicer either is considered, or is no longer considered, a small servicer:

- ☐ A servicer that begins servicing more than 5,000 mortgage loans on October 1, and services more than 5,000 mortgage loans as of January 1 of the following year, would no longer be considered a small servicer on April 1 of that following year.

- ☐ A servicer that begins servicing more than 5,000 mortgage loans on February 1, and services more than 5,000 mortgage loans as of the following January 1 of the following year, would no longer be considered a small servicer as of that January 1.

- ☐ A servicer that begins servicing more than 5,000 mortgage loans on February 1, but services less than 5,000 mortgage loans as of the following January 1, is considered a small servicer for that following year. (Comment 41(e)(4)(iii)-2)

III. From what provisions are small servicers exempt?

Small servicers are exempt from the following provisions of the Mortgage Servicing Rules:

- ☐ The periodic statement provisions. (§ 1026.41) *(See Section 4 on page 18 for more on periodic statements.)*

- ☐ The prohibition on purchasing force-placed insurance where a servicer could continue the consumer's existing hazard insurance coverage by advancing funds to escrow under certain circumstances (when the cost of force-placed insurance is less than the cost of advancing for hazard insurance). (§ 1024.17) *(See Section 7 on page 42 for more on force-placed insurance.)*

- ☐ The general servicing policies, procedures, and requirements provisions. (§ 1024.38) *(See Section 9 on page 68 for general servicing policies, procedures, and requirements.)*

- ☐ The early intervention provisions. (§ 1024.39) *(See Section 10 on page 75 for more on early intervention.)*

- ☐ The continuity of contact provisions. (§ 1024.40) *(See Section 11 on page 81 for more on continuity of contact.)*

- ☐ Some of the loss mitigation provisions. (§ 1024.41) *(See Section 12 on page 85 for more on loss mitigation.)*

Small servicers must comply with the following provisions of the Mortgage Servicing Rules regardless of servicers' status as small servicers:

- ☐ The ARMs disclosure provisions. (§ 1026.20(c) and (d)) *(See Section 5 on page 29 for more on interest rate adjustment notices.)*

- ☐ The prompt crediting and payoff statement provisions. (§ 1026.36(c)) *(See Section 6 on page 36 for more on prompt crediting and payoff statements.)*

- ☐ The force-placed insurance provisions. (§ 1024.37) *(See Section 7 on page 42 for more on force-placed insurance.)*

- ☐ The error resolution and information request provisions. (§§ 1024.35 and 1024.36) *(See Section 8 on page 53 for more on error resolution and information requests.)*

- ☐ Some of the loss mitigation provisions. (§ 1024.41(j)) *(See Section 12 on page 85 for more on loss mitigation.)*

4. Periodic Statements

I. What does the rule on periodic statements require? (§ 1026.41)

For loans subject to the periodic statement rule *(see scope discussion below)* you must provide consumers with a statement each billing cycle showing (among other things) information on the payment due and the application of past payments.

The periodic billing statement must meet certain timing, form, and content requirements. *(See "How often must I send periodic billing statements?" on page 20 and "What information must be on the periodic statement, and how must I arrange it?" on page 21).*

II. What is the scope of the periodic statements rule? (§ 1026.41(a)(1))

The periodic statement requirement applies to any closed-end consumer credit transaction secured by a dwelling, unless an exemption listed in § 1026.41(e) applies.

As Table 1 below illustrates, periodic statements are not required for open-end transactions, reverse mortgages, timeshare loans, and in other circumstances.

TABLE 1: LOANS NOT COVERED BY THE PERIODIC STATEMENT PROVISION IN § 1026.41

PERIODIC STATEMENTS **NOT** REQUIRED FOR:	NOTES	CITATION
Open-end lines of credit and Home-Equity Lines of Credit (HELOCs)	The periodic statement provisions in § 1026.41 apply only to closed-end transactions. Note that open-end transactions have separate periodic	§ 1026.41(a)(1)

	statement requirements found in § 1026.7.	
Reverse mortgages	Reverse mortgages are exempt from the periodic statement requirement. Reverse mortgages are defined in § 1026.33(a).	§ 1026.41(e)(1)
Timeshare loans	Timeshare loans are exempt from the periodic statement requirement. Timeshare loans are defined in 11 U.S.C. 101(53D).	§ 1026.41(e)(2)
Fixed-rate loans that have coupon books and certain information made available	*See "How can I use coupon books instead of period statements?" on page 25.*	§ 1026.41(e)(3)
Loans serviced by small servicers	*See "Who is considered a small servicer?" on page 14.*	§ 1026.41(e)(4)

III. Is there a small servicer exemption to the periodic statement rule?

Yes. Small servicers are exempt from all requirements of the periodic statement. (§ 1026.41(e)(4))
(See Section 3 on page 14 for details of the small servicer exemption.)

IV. Who is responsible for sending periodic billing statements?

(§ 1026.41(a)(2) and comment 1026.41(a)-3)

Creditors, assignees, and servicers. Note they do not each need to send a separate statement; the consumer needs to receive only one statement each billing cycle.

Creditors or assignees that do not currently own the mortgage loan or the mortgage servicing rights do not have to provide a periodic statement. (§ 1026.41(a)(2))

V. How often must I send periodic billing statements? (§ 1026.41(a)(2))

You must send a periodic statement each billing cycle. A billing cycle corresponds to the frequency of payments. Thus, if a loan requires the consumer to make monthly payments, that consumer will have a monthly billing cycle. Likewise, if a consumer makes quarterly payments (4 payments a year), that consumer will have a quarterly billing cycle.

You need not send statements more frequently than once a month. If a mortgage loan has a billing cycle shorter than 31 days (for example, a biweekly billing cycle), you may send a periodic statement covering an entire month. (§ 1026.41(a)(2))

- ☐ You may combine information from more than one cycle in a single billing statement to create your explanation of the amount due or the past payment breakdown. (Comment 1026.41(a)-2)
- ☐ For example, if you have a biweekly mortgage that was paid on March 6 and 20, you may send a single statement showing both biweekly payments.

i. Statement timing (§ 1026.41(b))

You must deliver or mail the periodic statement within a "reasonably prompt" time after the payment due date or the end of any courtesy period provided for the previous billing cycle.

"Reasonably prompt" generally means delivering, emailing, or placing the periodic statement in the mail within 4 days of the close of the courtesy period of the previous billing cycle. (Comment 1026.41(b)-1)

The "courtesy period" is the period in which you do not impose a late fee. The meaning of "courtesy period" is explained in Comment 7(b)(11)-1.

If there is no courtesy period, you must send the periodic statement no later than 4 days after the payment due date.

ii. Stopping periodic statements

You no longer have to send periodic statements when:

- ☐ You transfer the loan to another servicer.
- ☐ The loan is fully paid or paid off through a refinance or sale of the house.
- ☐ The loan is discharged in a foreclosure sale.

You must continue to send periodic statements even when consumers are delinquent or in bankruptcy.

VI. What information must be on the periodic statement, and how must I arrange it?

The rule requires certain groupings of information, and has different requirements on where on the statement you must place these grouping. This information is summarized in Table 2 below. You can also see how this would look in the sample forms provided in appendix H-30 of Regulation Z. See more information about sample forms on page 23.

TABLE 2: PERIODIC STATEMENT GROUPING AND PRESENTATION REQUIREMENTS

GROUPING	INFORMATION REQUIRED	PRESENTATION REQUIREMENTS	CITATION
Amount due	(i) Payment due date (ii) Amount of late fee if payment is late (iii) Amount due	Grouped together in close proximity and located at the ***top*** of the first page	§ 1026.41(d)(1)
Explanation of amount due	(i) Monthly payment amount and breakdown of how that will be applied to principal, interest, and escrow (ii) Total of fees imposed (iii) Past amount due	Grouped together in close proximity and located on the first page	§ 1026.41(d)(2)
Past payment breakdown	(i) Total of all payments since the last statement and application to principal, interest, escrow, fees, and suspense account (ii) Total of all payments since the beginning of the calendar year and application to principal, interest, escrow, and fees as well as total amount in the suspense account	Grouped together in close proximity and located on the first page	§ 1026.41(d)(3)

Transaction activity	List of all the transaction activity since the last statement	All activity must be listed together, but the list can be located anywhere on the statement	§ 1026.41(d)(4)
Partial payment information	***Only if funds are held in a suspense account***, information on what must be done for the funds to be applied	Can be on the first page, a separate page, or in a separate letter	§ 1026.41(d)(5)
Contact information	A toll-free number and email address (if applicable) where consumers may obtain information about their account	Must be on the first page	§ 1026.41(d)(6)
Account information	(i) Outstanding principal balance (ii) Current interest rate (iii) Date when that interest rate may change (iv) Existence of any prepayment penalty (v) Housing counselor information	Can be anywhere on the statement; these items do not need to be grouped together	§ 1026.41(d)(7)
Delinquency information	***Only if the consumer is 45 days or more delinquent***, see below for a list of information required	Can be on the first page, a separate page, or in a separate letter	§ 1026.41(d)(8)

i. Housing counselor information

http://www.consumerfinance.gov/mortgagehelp/

ii. Delinquency information

Note that this information is only required if the consumer is 45 days or more delinquent. This information could be on the first page of the statement, on a separate page in the statement, or sent in a separate letter:

- ☐ The date on which the consumer became delinquent
- ☐ A notification of possible risks and expenses (for example, foreclosure or legal fees) that the consumers could face if the delinquency is not cured
- ☐ An account history showing the previous 6 months or the period since the last time the account was current, whichever is shorter. Show the amount remaining past due from each billing cycle. If the consumer made a full payment, show the date you credited the account for the full payment.
- ☐ A notice showing any loss mitigation program the consumer has agreed to, if applicable

- ☐ A notice that you have made the first notice or filing required to start a foreclosure, if applicable
- ☐ The total payment the consumer would have to make to bring the account current
- ☐ A reference to the homeownership counselor information you include elsewhere in your periodic statement (§ 1026.41(d)(7)(v))

iii. Note on sample forms

Appendix H-30 of Regulation Z has sample forms for periodic statements. Some elements of the sample forms are not required by the rules, such as a tear-off coupon or the use of legal-size paper. These elements were included in the sample forms to provide context. While they show one way you could comply with the rule, they are not required elements.

You do not have to use the exact terms or layout used in the sample periodic statements found in appendix H-30. You may use terms consumers in your area commonly understand. For example, servicers in different parts of the country use the terms "escrow account" and "impound account" to describe the account in which servicers collect funds to pay consumers' tax and insurance bills.

VII. How must I deliver the information in periodic statements?

i. Consumer opt-out

A consumer may not opt out of receiving periodic statements altogether. However, if a consumer chooses to receive statements electronically, that consumer may opt out of electronic notification that statements are ready to access online, if they demonstrate the ability to access statements online.

Such an ability may be demonstrated, for example, by the consumer receiving notification that the statements are available, going to the website where the information is available, viewing the information about their account, and selecting a link or option there to indicate they no longer would like to receive notifications when new statements are available. (Comment 41(a)-4)

ii. Clear and conspicuous

Make the information clear and conspicuous. The "clear and conspicuous" standard generally requires that disclosures be presented in a reasonably understandable form. (Comment 1026.41(c)-1)

iii. Additional information

You may add information to the disclosures and combine disclosures, as long as:

- ☐ The added information does not overwhelm or obscure the required disclosures. (Comment 1026.41(c)-1)
- ☐ The combination is not prohibited by these rules or other applicable law. (Comment 1026.41(c)-2)

For example, the Mortgage Servicing Rules do not require you to include certain information about the consumer's escrow account (such as the account balance). You could put escrow information in the periodic statement or coupon book if you wanted to as long as the placement of that information didn't break up a group of disclosures you are required to put together.

Similarly, you could combine the periodic statement with statements from a checking account or other account so long as you meet all the requirements of the periodic statement disclosure, and combining the statements is not prohibited by regulations governing the other account.

iv. Close proximity

Section 1026.41(d) requires you to put several disclosures in close proximity to one another. To meet this requirement, group the items together and set them off from other groupings.

You could, for example, present the information in boxes, or arrange items in groups and then put spaces between the groups. Items in close proximity may not have any intervening text between them. (Comment 1026.41(d)-1)

> **Implementation Tip**: If an item isn't applicable, you don't have to include it. For example, if you don't charge a prepayment penalty, you don't need to include the prepayment penalty disclosures in your periodic statements. (Comment 1026.41(d)-2)

v. Acceptable forms (§ 1026.41(c))

You can send paper statements by mail or provide them in person.

If the consumer gives you affirmative consent, you may send periodic statements electronically. If you send electronic statements, they must be in a form the consumer can print or download (78 FR 10962 (February 14, 2013)).

If you are sending the statement electronically, instead of sending the statement itself, you may send consumers a link to an online site where they can securely access their statements. (Comment 41(c)-3)

If you are currently sending a consumer electronic disclosures for any account (for example, a mortgage or checking account), you do not have to seek affirmative consent again. (Comment 41(c)-4)

You do not need to follow the full E-Sign verification procedures before providing a statement electronically. If you wish to follow the E-Sign Act procedures to obtain consumer consent, you may, but you can also obtain affirmative consent through a simpler process. (Comment 41(c)-4)

> **Implementation Tip**: Be sure you distinguish between consumers who have agreed to receive disclosures and statements electronically and those who opt to pay electronically, for example, via automatic debit. Choosing automatic electronic payment does not equal affirmative consent to receive electronic statements.

VIII. How can I use coupon books instead of periodic statements? (§ 1026.41(e)(3) and comment 1026.41(e)(3))

A coupon book is a book with a page for each billing cycle during a set period (often covering one year). The consumer tears off the page or a portion of the page and returns it to you with a payment for each billing cycle.

You may send a coupon book instead of a periodic statement as long as:

- ☐ The consumer has a fixed-rate loan. You must send periodic statements to all consumers who have ARMs, even if you give them a coupon book (See § 1026.18(s)(7)(iii) and its commentary for guidance on the meaning of "fixed rate.")
- ☐ Your coupon book includes certain information. (*See "Information required in a coupon book" below.)*
- ☐ You make certain information available to the consumer upon request. (*See "Making additional information available" on page 26.)*
- ☐ You provide certain information to consumers who are 45 days or more delinquent. *(See "Delinquent coupon-book consumers" on page 27.)*

i. Information required in a coupon book (§ 1026.41(e)(3)(i) to (ii) and comments 1026.41(e)(3)-2 and -4)

Your coupon book must include 2 types of information:

1. Information that must appear on every coupon

2. Information that can appear anywhere in the coupon book

Each coupon in your book must have this information:

- ☐ The payment due date
- ☐ The amount of any late payment fee and the date on which you will charge a late fee if you don't receive the payment
- ☐ The amount due

You must include other information in your coupon book, but it does **not** have to be included on each coupon:

- ☐ The outstanding principal balance at the beginning of the time period covered by the coupon book
- ☐ The current interest rate
- ☐ The existence of any prepayment penalty (as defined in § 1026.32(b)(6)(i))
- ☐ HUD's toll-free telephone number ((800) 569-4287) to access contact information for homeownership counselors or counseling organizations and the website address for either the Bureau's information page on homeownership counselors (http://www.consumerfinance.gov/mortgagehelp/) or HUD's list of homeownership counselors and counseling organizations (http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm)
- ☐ Contact information on where consumers can get more information about their loans. (*See "Making additional information available" below.*)

You can put the above information on the inside of the front or back cover of the coupon book or on filler pages. (Comment 1026.41(e)(3)-3)

Implementation Tip: You may include other information about the loan on any of the coupon book's pages. (Comment 1026.41(e)(3)-2)

ii. Making additional information available (§ 1026.41(e)(3)(iii))

If you opt to use a coupon book, you must make additional information available to consumers. This information could be made available via telephone, in writing, in person, or electronically (if the consumer consents). Upon request, you must provide any of these items as requested by the consumer:

1. An explanation of the amount due including:

- ☐ The periodic payment amount (including a breakdown showing how you will apply the payment to principal, interest, and escrow)
- ☐ The total fees or charges you imposed since the last statement
- ☐ Any payment amount past due

2. A breakdown of past payments, including:

- ☐ The total of all payments you received since the previous statement, including a breakdown showing the amount, if any, you applied to principal, interest, escrow, fees and charges, and the amount, if any, you sent to a suspense or unapplied funds account
- ☐ The total of all payments you received since the beginning of the calendar year, including a breakdown showing the amount, if any, you applied to principal, interest, escrow, fees and charges, and the amount, if any, you are currently holding in a suspense or unapplied funds account

3. A list of the transaction activity that occurred since the last statement. "Transaction activity" means any activity that causes a credit or debit to the amount currently due.

- ☐ Include the date, a brief description, and the amount for each transaction on the list.

4. If you are currently holding any funds in a suspense or unapplied funds account, include information explaining what the consumer must do for the funds to be applied.

iii. Delinquent coupon-book consumers

When a consumer becomes 45 days or more delinquent, you must provide this additional information in writing for each billing cycle during the delinquency: (§ 1026.41(e)(3)(iv))

- ☐ The date on which the consumer became delinquent
- ☐ A notification of possible risks and expenses (for example, foreclosure or legal fees) that the consumers could face if the delinquency is not cured
- ☐ An account history showing the previous 6 months or the period since the last time the account was current, whichever is shorter. Show the amount remaining past due from each billing cycle. If the consumer made a full payment, show the date you credited the account for the full payment.
- ☐ A notice showing any loss mitigation program the consumer has agreed to, if applicable
- ☐ A notice that you have made the first notice or filing required to start a foreclosure, if applicable

- ☐ The total payment the consumer would have to make to bring the account current
- ☐ A reference to the homeownership counselor information you include in your coupon book (§ 1026.41(d)(7)(v))

5. Interest Rate Adjustment Notices (§ 1026.20(c) and (d))

I. What does the rule on interest rate adjustment notices require? (§ 1026.20(c) and (d))

You must make disclosures in connection with the initial reset of an adjustable-rate mortgage (ARM) and each time an interest rate adjustment results in a payment change.

The rule contains model forms as guides to developing your own notices and sample forms to provide examples of what actual ARM notices might look like.

There are 2 types of notices, which are summarized in Table 4 on page 34.

- ☐ The 20(d) initial interest rate adjustment notice is required only for the first time the interest rate adjusts. It must be provided to a consumer between 210 days and 240 days before the first payment at the new rate is due.

- ☐ The 20(c) ongoing interest rate adjustment notice must be provided to a consumer between 60 and 120 days before the first payment at the new rate is due each time an interest rate adjustment results in a payment change

II. What is the scope of the interest rate adjustment notice rule?

You must provide these notices for ARMs secured by the consumer's principal dwelling. For the purposes of this rule, an ARM is a closed-end consumer credit transaction in which the annual percentage rate may increase after consummation. (§ 1026.20(c)(1)(i) and 20(d)(1)(i))

ARMs with a term of 1 year or less are exempt from both initial and ongoing disclosures (§ 1026.20(c)(1)(ii)(A) and 20(d)(1)(ii)). In some circumstances, certain ARMs may be subject to different timing rules. (§ 1026.20(c)(2) and (d)).

In addition, a 20(c) ongoing interest rate adjustment disclosure is not required the first time the ARM adjusts if the first payment at the adjusted level is due within 210 days after consummation and the new interest rate you disclosed in the 20(d) notice at consummation was not an estimate. (§ 1026.20(c)(1)(ii)(B))

III. Is there a small servicer exemption to the interest rate adjustment notices rule?

No, there is no small servicer exemption to the interest rate adjustment notice requirements.

IV. Who is responsible for sending the ARM notices? (§ 1026.20(c) and (d))

The creditor, assignee, or servicer. Note they do not each need to send a separate notice; the consumer needs to receive only one notice each time it is required. A creditor or assignee that no longer owns the loan is not required to send ARM notices.

V. How are these rules different from the existing rule on interest rate adjustment notices?

The Mortgage Servicing Rules:

- ☐ Implement a Dodd-Frank Act requirement to create a new 20(d) initial interest rate adjustment disclosure notice (§ 1026.20(d))

- ☐ Modify the timing and content of the existing 20(c) interest rate adjustment notice sent to disclose rate adjustments that cause payment changes (§ 1026.20(c))

- ☐ Eliminate the 20(c) annual notice. The 20(c) ongoing interest rate adjustment disclosure notice was previously required both when a rate adjustment caused a payment change and annually even if there was no payment change.

VI. When must I send these notices? (§ 1026.20(c)(2) and (d)(2))

In general, you must send the 20(d) initial interest rate adjustment disclosure (§ 1026.20(d)) *at least 210 days, but no more than 240 days*, before the first payment at the adjusted level is due.

- ☐ If the first payment at the adjusted level is due within the first 210 days after consummation, provide the disclosures at consummation.

In general, you must send the 20(c) ongoing interest rate adjustment notice disclosing an interest rate adjustment causing a payment change *at least 60 days, but no more than 120 days*, before the first payment at the adjusted level is due.

The rules also provide special timing requirements to address frequently-adjusting ARMs, ARMs with short look-back periods, and ARMs adjusting soon after consummation:

- ☐ If an ARM has regularly scheduled interest rate adjustments occurring every 60 days or more frequently, provide the disclosures at least 25 days, but no more than 120 days, before the first payment at the adjusted level is due.

- ☐ If an ARM was originated prior to January 10, 2015, and the adjusted interest rate and payment are calculated based on an index figure available less than 45 days prior to the adjustment date, provide the 20(c) disclosures at least 25 days, but no more than 120 days, before the first payment at the adjusted level is due.

- ☐ If the first adjustment to an ARM is to occur within 60 days of consummation and the 20(d) notice you provided at consummation contained an estimated adjusted interest rate, provide the 20(c) disclosure as soon as practicable, but not less than 25 days before the first payment at the adjusted level is due.

VII. What information must be included in the initial and ongoing interest rate adjustment notices?

The notices must have the content and format specified in the rule and demonstrated in the model and sample forms.

Proper use of the forms will comply with both the content and format requirements of this rule. (See Table 3 below for the content requirement and Table 4 on page 34 for an overview of ARM disclosure presentation). The model forms may be filled out and used, while the sample forms demonstrate an example of the proper way to fill out the forms.

TABLE 3: CONTENT OF THE ARM DISCLOSURES

ITEM	DETAILS	REQUIRED IN § 1026.20(d)	REQUIRED IN § 1026.20(c)
Date	The date of the disclosure	§ 1026.20(d)(2)(i)	n/a
A statement including:	(i) An explanation that under the terms of the loan, the interest rate may change (ii) The effective date of the adjustment and future adjustments (iii) Any other changes to loan terms, features, or options on the same date	§ 1026.20(d)(2)(ii)	§ 1026.20(c)(2)(i)
A table containing:	(i) The current and new rates (ii) The current and new payments and the date the first payment is due (iii) For interest-only or negatively-amortizing payments, allocation and other information	§ 1026.20(d)(2)(iii)	§ 1026.20(c)(2)(ii)
An explanation of how the rate is determined, including:	(i) The specific index or formula used in making the adjustment, and a source of information about that index or formula (ii) The type and amount of any adjustment to the index, including any margin and	§ 1026.20(d)(2)(iv)	§ 1026.20(c)(2)(iii)

	information on the margin		
Any limits on the interest rate or payment increases	Including the extent to which such limits result in foregone increase to the interest rate, and the earliest date such increases may apply in the future	§ 1026.20(d)(2)(v)	§ 1026.20(c)(2)(iv)
An explanation of how the new payment is determined, including:	(i) The index or formula used (ii) Any adjustment to the index or formula, such as a margin (iii) The loan balance expected on the date of the adjustment (iv) The length of the remaining loan term and (v) If the new rate or payment is an estimate (see below for more information), a statement that actual information will be coming 2 to 4 months before the adjustment	§ 1026.20(d)(2)(vi)	§ 1026.20(c)(2)(v)
If applicable, a statement that the new payment will be interest only, or will result in negative amortization	See the regulation text for details of the statement.	§ 1026.20(d)(2)(vii)	§ 1026.20(c)(2)(vi)
The circumstances under which a prepayment penalty may be imposed	A prepayment penalty is defined in § 1026.32(b)(6)(i).	§ 1026.20(d)(2)(viii)	§ 1026.20(c)(2)(vii)
The telephone number of the servicer	The number for consumers to call if they anticipate not being able to make payments	§ 1026.20(d)(2)(ix)	n/a
Alternatives to paying at the new rate	Include a brief explanation of (i) Refinancing the loan (ii) Selling the property (iii) Modifying the terms of the	§ 1026.20(d)(2)(x)	n/a

	loan (iv) Arranging payment forbearance		
Housing counseling information	See below for details on the housing counseling information.	§ 1026.20(d)(2)(xi)	n/a

i. Estimates

For the initial interest rate notice, if the new interest rate (or the new payment calculated from the new interest rate) is not known as of the date of the disclosure, you must use an estimate and label it as such. This estimate must be based on the index as reported within 15 business days prior to the date of the disclosure. (§ 1026.20(d)(2))

ii. Housing counseling information

The following housing counselor information must be provided in the 20(d) initial interest rate adjustment notice: (§ 1026.20(d)(2)(xi))

- ☐ The website to access either the Bureau list or the HUD list of homeownership counselors and counseling organizations (http://www.consumerfinance.gov/mortgagehelp/)
- ☐ The HUD toll-free number to access the HUD list of homeownership counselors and counseling organizations ((800) 569-4287)
- ☐ The Bureau website to access contact information for state housing finance authorities (http://www.consumerfinance.gov/mortgagehelp/)

TABLE 4: AT A GLANCE: ARM DISCLOSURE PRESENTATION

ITEM	REQUIRED BY § 1024.20(d)	REQUIRED BY § 1024.20(c)
Required when	The first time the interest rate adjusts	Every time an interest rate adjustment results in a corresponding change in the payment amount. An annual notice (if there is no payment change during the year) is no longer required.

Timing	210 to 240 days before the first payment at the new rate is due	60 to 120 days before the first payment at the new rate is due
Estimate	You may use estimated information.	Use the exact information
Formatting	§ 1026.20(d)(3)	§ 1026.20(c)(3)
Sample form	Appendix H-4(D)(4)	Appendix H-4(D)(2)
Model form	Appendix H-4(D)(3)	Appendix H-4(D)(1)
Delivery	Must be a separate document from all other written materials (but may be provided in same envelope with other notices)	Must be segregated from other information (but may be provided in same envelope with other notices)

iii. How must I arrange the information in the notices?

You must provide the information in the form of a table, substantially similar to the forms in appendix H.

iv. How must the notices be sent?

The 20(d) initial interest rate adjustment disclosure must be a separate document. (§§ 1026.17(a) and 1026.20(d)) The 20(c) ongoing interest rate adjustment disclosure must be segregated from other information but may be on the same document as other information. Both ARM disclosures may be sent in the same envelope with other disclosures, such as the periodic statement.

6. Prompt Payment Crediting and Payoff Statements (§ 1026.36(c))

I. What do the prompt crediting and payoff statements rules require?

Periodic payments must be promptly credited as of the day of receipt. A periodic payment consists of the amount necessary to cover principal, interest, and escrow (if applicable).

If you receive a payment that is less than the amount due for a periodic payment, you may place the payment in a suspense account. When the amount in the suspense account covers a periodic payment, you must treat the accumulated amount as a periodic payment and promptly credit it to the consumer's account.

In addition, creditors, assignees, and servicers must provide an accurate payoff balance to a consumer no later than 7 business days after receipt of a written request from the consumer for that information.

II. What is the scope of the prompt crediting and payoff statement rules? (§ 1026.36(c)(1) and (3))

The prompt crediting and payoff statement provisions apply to certain types of mortgage loans. Additionally, different parties are responsible for the different provisions. This information is set out in Table 5 below.

Implementation Tip: A creditor or assignee that does not currently own the mortgage loan or servicing rights is not subject to the requirement to provide a payoff statement.

TABLE 5: PROMPT CREDITING AND PAYOFF STATEMENTS: APPLICATION AND RESPONSIBLE PARTIES

	RESPONSIBLE PARTY	OPEN / CLOSED-END LOANS?	PRINCIPAL / ALL DWELLINGS?
Prompt crediting	Servicer	Both	Principal only
Payoff statements	Creditor, assignee, or servicer	Both	All dwellings

III. Is there a small servicer exemption to the prompt crediting and payoff statement rules?

No, there is no small servicer exemption to the prompt crediting and payoff statement provisions.

IV. How are these rules different from the existing payoff statement and prompt crediting rules?

The new rule clarifies the handling of partial payments, which are not addressed in the current rules.

The new rule also makes these changes to the requirements concerning payoff statement requests from consumers:

- ☐ It expands the requirements to respond to payoff statement requests from servicers to include creditors and assignees.
- ☐ It expands the requirement to apply to transactions secured by any dwelling, rather than by the consumer's principal dwelling.
- ☐ It generally expands the timeline to respond to requests from 5 days to 7 business days.
- ☐ It limits the requirement to apply only to written requests.

> 💬 **Implementation Tip**: The new rule rearranges the organization of § 1026.36(c), so existing requirements may now have different citations.

V. What is a periodic payment, and how must I handle it? (§ 1026.36 (c)(1)(i))

A periodic payment 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 you advanced on a consumer's behalf.

You must credit a periodic payment to the consumer's account as of the day 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.

In cases where you specified in advance and in writing requirements for the consumer to follow when making payments and then accept a payment that does not conform to your requirements, you may wait up to 5 days after receipt to credit the payment. Any requirements you set must be reasonable. *(See "What is a non-conforming payment, and how must I handle it?" on page 40.)*

Note that the legal obligation between the creditor and the consumer, subject to the applicable law, is what determines the method for crediting payments. (Comment 1026.36(c)(1)(i)-2)

VI. What is a partial payment, and how must I handle it? (§ 1026.36(c)(1)(ii) and comment 1026.36(c)(1)(ii)-1)

A partial payment is any payment that is less than a periodic payment. *(See "What is a periodic payment, and how must I handle it?" on page 38.)*

If you receive a partial payment from a consumer, to the extent that you are not prohibited by applicable law or the legal obligation between the parties, you may:

- ☐ Credit the partial payment upon receipt
- ☐ Return the partial payment to the consumer
- ☐ Hold the payment in a suspense or unapplied funds account

If you opt to retain a partial payment in a suspense or unapplied funds account, you must:

- ☐ Disclose on the consumer's periodic statement the total amount of funds you are holding in the suspense or unapplied funds account – if you are required to send the consumer a periodic statement. (*See "What information must be on the periodic statement, and how must I arrange it?" on page 21.*)
- ☐ Once you have accumulated sufficient funds to cover a periodic payment, you must apply them as you would apply a periodic payment

VII. What is a non-conforming payment, and how must I handle it? (§ 1026.36(c)(1)(iii))

A non-conforming payment is a payment that a consumer sends without following any reasonable requirements that you set in advance in writing for making payments, such as:

- ☐ Requiring that payments be accompanied by the account number or payment coupon
- ☐ Setting a cutoff 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
- ☐ Accepting only U.S. dollars as payment
- ☐ Having one particular address for receiving payments, such as a post office box

Your payment requirements must be reasonable and cannot make it difficult for most consumers to make conforming payments. For example, it would be reasonable to require a cutoff time of 5 p.m. for receipt of a mailed check at the address you specify for receiving payments. (Comment 1026.36(c)(1)(iii)-2)

You may not require consumers to pay solely by preauthorized electronic funds transfer. (See Section 913 of the Electronic Fund Transfer Act, 15 U.S.C. 1693k for more information on this issue.)

In cases where you specify in writing requirements for the consumer to follow when making payments and then you accept a payment that does not conform to your requirements, you have up to 5 days after receipt to credit the payment.

If you do not set specific payment requirements, then you must allow consumers to make payments by cash, money order, draft, or other similar instrument in properly negotiable form during regular business hours at any location where you conduct business, or by electronic fund transfer, if you have agreed to accept electronic payments from the consumer. (Comment 1026.36(c)(1)(iii)-3) Under the general rule, such payments must be credited as of the day of receipt.

The partial payments you hold in a suspense or unapplied funds account, discussed above, would not be considered to have been "accepted," so they are not required to be applied within 5 days. (78 FR 10956 (February 14, 2013))

VIII. How must I respond to written requests for payoff statements? (§ 1026.36(c)(3))

If a consumer (or any person acting on behalf of the consumer) makes a written request for a payoff statement, a creditor, assignee, or servicer must provide the statement within 7 business days.

When a creditor, assignee, or servicer, as applicable, is not able to provide the statement within 7 business days because the loan is in bankruptcy or foreclosure, the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or other similar circumstances, the payoff statement must be provided within a reasonable time.

7. Force-Placed Insurance

I. What does the force-placed insurance rule require? (§ 1024.37)

This rule puts limits on the use of force-placed insurance. These limits include:

- ☐ You must have a reasonable basis to believe that a consumer has failed to maintain required hazard insurance before charging for force-placed insurance.
- ☐ You must send 2 notices to the consumer and not have received in response to these notices evidence that the consumer has had in place, continuously, required hazard insurance before you charge for force-placed insurance.
- ☐ You must notify the consumer and not have received in response to this notice evidence that the consumer has purchased required hazard insurance before you charge the consumer for renewing force-placed insurance.
- ☐ You must cancel force-placed insurance within 15 days of receiving evidence that the consumer has required hazard insurance in place and refund to the consumer any fees or charges for periods of overlapping coverage.
- ☐ Force-placed insurance charges imposed by a servicer on a borrower, beyond those subject to state regulation as insurance charges, must be bona fide and reasonable.

Additional rules apply for consumers with escrow accounts, as described in § 1024.17. *(See "What additional rules apply for consumers with escrow accounts for payment of hazard insurance?" on page 51.)*

II. What is the scope of the force-placed insurance rule?

The rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in §§ 1024.5(b) and 1024.17(k)(5)(iii), and open-end lines of credit.

For more information on § 1024.17(k)(5)(iii), *see "What is the small servicer exemption from the escrow provisions?" on page 52.*

III. Is there a small servicer exemption to the force-placed insurance rule?

In general, there is no small servicer exemption to the force-placed insurance provisions. There is a limited small servicer exemption to the prohibition on the purchase of force-placed insurance for consumers with escrow accounts in certain circumstances. *(See "What is the small servicer exemption from the escrow provisions?" on page 52.)*

IV. What is force-placed insurance?

"Force-placed insurance" is hazard insurance the servicer obtains on behalf of the owner or assignee. (§ 1024.37(a)(1))

The following insurance does not constitute "force-placed insurance" under this section:

- ☐ Flood insurance required because the consumer's property is in a special hazard flood zone. In these cases, the Flood Disaster Protection Act of 1973 (FDPA) rules covering force-placed flood insurance govern.

- ☐ Hazard insurance the consumer obtains and that you renew using escrow funds (including funds you advance to escrow) per the escrow account provisions in § 1024.17(k)(5) or by advancing your own funds at your discretion if the consumer agrees. (§ 1024.37(a)(2))

V. What must I do before I charge a consumer for force-placed insurance?

i. First notice and reminder notice

You must have a reasonable basis to believe that a consumer has failed to maintain required hazard insurance to charge for force-placed insurance. As part of having a reasonable basis, you must send 2 notices. You must deliver these notices to the consumer or place them in the mail. In response to these notices, you must not have received evidence that the consumer had in place, continuously, required hazard insurance.

The first notice must be sent at least 45 days before you charge the consumer for force-placed insurance.

If you do not receive evidence that the consumer has had hazard insurance that complies with the loan contract's requirements continuously in place, you must deliver or place in the mail to the consumer a written reminder notice at least 30 days after you sent the first notice. If you do not receive evidence that the consumer has had in place required hazard insurance continuously after the second notice, you may assess a force-placed insurance fee 15 days or more after sending the second notice.

VI. May I charge a consumer for insurance placed before the notices have been sent?

You may charge a consumer for insurance coverage that was in place before the notices were sent if you do not receive evidence that the consumer had in place, continuously, required hazard insurance during these periods, but you may not impose that charge until after the notices have been sent and the notice periods specified in the rule have elapsed.

i. Renewal notice

Before each anniversary of your purchase of force-placed insurance, you must deliver or place in the mail to the consumer a written notice explaining the renewal and requesting the consumer to provide evidence of having purchased hazard insurance on the property. You only have to provide this written renewal notice once a year. (§ 1024.37(e)(5)). In response to this notice, you must not have received evidence that the consumer purchased required hazard insurance.The written renewal notice generally must be delivered or mailed at least 45 days before assessing on a consumer a charge or fee related to the renewal. (§ 1024.37(e)(1)(i))

If you renewed or replaced an existing force-placed insurance policy and you receive evidence that the consumer lacked insurance coverage after the existing force-placed insurance expired (including during the 45-day notice period), you may immediately after receiving such evidence assess a premium charge or fee related to renewing or replacing the existing force-placed insurance for that period without coverage – as long as not prohibited by state or other applicable laws. (§ 1024.37(e)(1)(iii))

ii. What class of postage must I use if I mail the notices? (§ 1024.37(f))

When you mail notices, you must use at least first-class mail.

VII. May I charge a consumer for insurance placed before the notices have been sent?

You may charge a consumer for insurance coverage that was in place before the notices were sent if you do not receive evidence that the consumer had in place, continuously, required hazard insurance during these periods, but you may not impose that charge until after the notices have been sent and the notice periods specified in the rule have elapsed.

VIII. What must be in the force-placed insurance notices?

The notices must have the content and format specified in the rule and demonstrated in the model and sample forms.

Proper use of the forms will comply with both the content and format requirements of this rule. (See Table 6 below for the content requirement and Table 7 on page 48 for the format requirement.) The model forms may be filled out and used, while the sample forms demonstrate the proper way to fill out the forms.

TABLE 6: CONTENT OF THE FORCE-PLACED INSURANCE DISCLOSURES

	FIRST NOTICE (§ 1024.37(c)(2))	REMINDER NOTICE (§ 1024.37(d)(2))	RENEWAL NOTICE (§ 1024.37(e)(2))
The date of the notice	§ 1024.37(c)(2)(i)	§ 1024.37(d)(2)(i)(A)	§ 1024.37(e)(2)(i)

		§ 1024.37(d)(2)(ii)(A)	
A statement that this is the second and final notice		§ 1024.37(d)(2)(i)(B) § 1024.37(d)(2)(ii)(B)	
The servicer's name and mailing address	§ 1024.37(c)(2)(ii)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(ii)
The consumer's name and mailing address	§ 1024.37(c)(2)(iii)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(iii)
A request for the consumer to provide hazard insurance information for the property (and states the property's address)	§ 1024.37(c)(2)(iv)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(iv)
A statement that the servicer previously purchased insurance, charged to the consumer, because the servicer did not have evidence that the consumer had required hazard insurance on the property			§ 1024.37(e)(2)(v)
A statement that, the insurance the servicer purchased previously has expired or is expiring, and because hazard insurance is required the servicer intends to maintain insurance by renewing or replacing the insurance it previously purchased.			§ 1024.37(e)(2)(vi)
A statement that the hazard insurance has expired (is expiring) and the servicer does not have evidence of further insurance	§ 1024.37(c)(2)(v)	§ 1024.37(d)(2)(i)(C)	
A statement that hazard insurance is required and the	§ 1024.37(c)(2)(vi)	§ 1024.37(d)(2)(i)(C)	

servicer has purchased (will purchase) such insurance at the consumer's expense			
A statement requesting the consumer to promptly provide the servicer with insurance information	§ 1024.37(c)(2)(vii)	§ 1024.37(d)(2)(i)(C)	§ 1024.37(e)(2)(viii)
A description of the requested insurance information, and how the consumer may provide such information	§ 1024.37(c)(2)(viii)	§ 1024.37(d)(2)(i)(C)	§ 1024.37(e)(2)(ix)
A statement that the insurance the servicer will (has) purchase(d): (i) may cost significantly more and (ii) may not provide as much coverage as hazard insurance purchased by the consumer	§ 1024.37(c)(2)(ix)	§ 1024.37(d)(2)(i)(C)	§ 1024.37(e)(2)(vii)(A) to (B)
The servicer's telephone number for consumer inquiries	§ 1024.37(c)(2)(x)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(ii)(x)
If applicable, a statement advising the consumer to review additional information provided in the same transmittal	§ 1024.37(c)(2)(xi)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(xi)
The cost of the force-placed insurance, stated as an annual premium (or if the servicer does not know the cost, a reasonable estimate)		§ 1024.37(d)(2)(i)(D) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(vii)(C)

If applicable, a statement that the information the consumer sent to the servicer is incomplete and the consumer must send the missing information to avoid charge for any period for which the servicer is unable to verify hazard insurance coverage		§ 1024.37(d)(2)(ii)(C) to (E)	

TABLE 7: AT A GLANCE: FORCE-PLACED INSURANCE DISCLOSURES PRESENTATION

	FIRST NOTICE (§ 1024.37(c)(1))	REMINDER NOTICE (§ 1024.37(d)(1))	RENEWAL NOTICE (§ 1024.37(e)(1))
Timing	At least 45 days before you assess a force-placed insurance fee	At least 30 days after the first notice, at least 15 days before assessing a force-placed insurance fee	Before each anniversary of your purchase of force-placed insurance, and generally at least 45 days before assessing on a consumer fee related to the renewal, but not more than once annually
Content	§ 1024.37(c)(2)	§ 1024.37(d)(2)	§ 1024.37(e)(2)
Format	§ 1024.37(c)(3).	§ 1024.37(d)(3)	§ 1024.37(e)(3)
Forms	Appendix MS-3(A)	Appendix MS-3(B) to (C)	Appendix MS-3(D)
Additional information	You may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paper in the same transmittal. (§ 1024.37(c)(4))	You may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paper in the same transmittal. (§ 1024.37(d)(4))	You may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paper in the same transmittal. (§ 1024.37(e)(4))

Note		If you receive new information about the consumer's hazard insurance after you put the reminder notice into production, you are not required to update the notice based on the new information provided the notice was put into production a reasonable time prior to mailing it to the consumer. (§ 1024.37(d)(5))	You are not required to provide this notice more than once a year.

In assessing whether the consumer has had hazard insurance that complies with the loan's contract requirements continuously in place, check to make sure that applicable law, such as state law or the terms and conditions of the consumer's insurance policy, do not give the consumer a grace period or extension of time to pay the premium after the due date.

> **Implementation Tip**: The content of your reminder notice will vary based on the insurance information you receive from the consumer. See comment 37(d)(1)-1 for more information.

If there is a grace period and the consumer pays the premium during the extension and the insurance company accepts the payment with no lapse in insurance coverage, then that satisfies the requirement to have continuous hazard insurance coverage. (Comment 37(c)(1)(iii)-1)

i. Can I combine the notices required by these rules with the notices for flood insurance? (§ 1024.37(i))

You may include your notices for force-placed insurance in the same transmittal as your notices concerning flood insurance, as long as you use separate pieces of paper. (See also Section 102(e) of the Flood Disaster Protection Act of 1973.)

IX. What evidence may I request from consumers showing they have had continuous hazard insurance coverage? (Comment 37(c)(1)(iii)-2)

You may ask the consumer to supply a copy of:

- ☐ The consumer's hazard insurance policy declaration page
- ☐ The consumer's insurance certificate
- ☐ The consumer's insurance policy or similar forms of written confirmation of insurance

You may reject evidence of hazard insurance coverage submitted by the consumer if:

- ☐ Neither the consumer's insurance provider nor insurance agent provides confirmation of the information the consumer submitted.
- ☐ The terms and conditions of the consumer's hazard insurance policy do not comply with the requirements of the consumer's loan contract.

X. What do I do when the consumer responds?

i. If the consumer sends evidence that he or she has hazard insurance coverage

If the consumer sends evidence of **having hazard insurance coverage in place** that complies with the loan contract's requirements, within 15 days you must:

- ☐ Cancel any force-placed insurance you purchased for the consumer (§ 1024.37(g)(1))
- ☐ Refund to the consumer all force-placed insurance premium charges and related fees for any period of overlapping insurance coverage (§ 1024.37(g)(2))
- ☐ Remove from the consumer's account all force-placed insurance charges and related fees for the overlapping period (§ 1024.37(g)(2))

If the consumer **does not respond** or **does not provide evidence of having hazard insurance**, and you do not otherwise have such evidence, you may charge the consumer for force-placed insurance 15 days after sending the second notice.

XI. What are the limitations on charges? (§ 1024.37(h)(1) and (2))

Except for charges subject to state regulation as the business of insurance and charges authorized by the Flood Disaster Protection Act of 1973, all charges related to force-placed insurance assessed by or through the servicer must be "bona fide and reasonable."

A "bona fide and reasonable" charge is a charge for a service you actually perform that bears a reasonable relationship to your cost to provide the service, and is not otherwise prohibited by applicable law. (§ 1024.37(h)(2))

XII. What additional rules apply for consumers with escrow accounts for payment of hazard insurance?(§ 1024.17(k)(5))

If a consumer has an escrow account for payment of hazard insurance, you may not obtain force-placed insurance unless you are unable to maintain the consumer's existing hazard insurance coverage.

You are not considered unable to maintain the consumer's hazard insurance just because a consumer's mortgage loan obligation is overdue or the escrow account has insufficient funds. Therefore, generally, you will have to advance funds through escrow to maintain coverage. You can add this cost to the escrow balance or otherwise seek reimbursement from the consumer for the funds you advance.

You are considered unable to maintain the consumer's hazard insurance, and may therefore obtain force-placed insurance in accordance with the general rules rather than advance funds through escrow, if you have a reasonable basis to believe that the hazard insurance provider has canceled the policy for reasons other than non-payment or that the property is vacant.

Implementation Tip: When a delinquent consumer's escrow account has insufficient funds to cover payment of the consumer's hazard insurance premium, generally, you will have to advance the funds through escrow to continue coverage.

XIII. What is the small servicer exemption from the escrow provisions? (§ 1024.17(k)(5)(iii))

A small servicer may purchase force-placed insurance for a consumer with an escrow account whose mortgage loan obligation is more than 30 days overdue, if the cost of the force-placed insurance to the consumer is less than the amount the small servicer would need to disburse from the consumer's escrow account to pay the consumer's hazard insurance premium.

8. Error Resolution and Information Requests

I. What do the error resolution and information request rules require?

The error resolution and information request provisions of the Mortgage Servicing Rules establish requirements for responding to written information requests and complaints of errors.

You must follow these requirements for complaints asserting specific errors, as well as any errors relating to servicing the consumer's mortgage loan and when responding to requests for information regarding a consumer's mortgage loan.

In general, when consumers send a written request asking you to resolve an error or to send information about their account, you must:

- ☐ Within 5 days, acknowledge the request or notice of error.
- ☐ Within 30 to 45 days, correct the error and provide the consumer written notification of the correction, or conduct an investigation and provide the consumer written notification that no error occurred.
- ☐ Within 30 to 45 days, provide the information or conduct a reasonable search for the requested information and provide the consumer with a written notification explaining why the information is not available.

II. What is the scope of the error resolution and information request rules?

The rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in § 1024.5(b) and open-end lines of credit.

Thus, these rules do not apply to HELOCs and open-end lines of credit.

III. Is there a small servicer exemption to the error resolution and information request rules?

No, there is no small servicer exemption to the rules on error resolution or information requests.

IV. How is this different from the existing requirements on error resolution and information request?

The new error resolution and information request requirements expand on (and encompass) the existing qualified written request (QWR) requirements.

V. What is a notice of error? (§ 1024.35(a))

The rules apply generally to any written notice from the consumer that asserts certain specified errors and includes:

- ☐ The name of the consumer
- ☐ Information that enables you to identify the consumer's mortgage loan account
- ☐ The error the consumer believes has occurred

A notice on a payment coupon or other payment form is not considered a notice of error.

A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error. (§ 1024.35(a))

The error resolution rules apply to the following categories of errors: (§ 1024.35(b))

- ☐ Failure to accept a payment that conforms to any written requirements that the consumer must follow in making payments. (*See "What is a non-conforming payment, and how must I handle it?" on page 40.*)

- ☐ Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law

- ☐ Failure to credit a payment to a consumer's mortgage loan account as of the date of receipt, in violation of the prompt crediting provisions in 12 CFR 1026.36(c)(1)

- ☐ Failure to pay taxes, insurance premiums, or other charges, including charges that the consumer has voluntarily agreed that you should collect and pay, in a timely manner as required by the escrow provisions (§ 1024.34(a)), or to refund an escrow account balance as required (§ 1024.34(b))

- ☐ Imposition of a fee or charge that you lack a reasonable basis to impose upon the consumer, which includes, for example, a late fee for a payment that was not late, a charge you imposed for a service that was not provided, a default property-management fee for consumers who are not in a delinquency status that would justify the charge, or a charge for force-placed insurance in a circumstance not permitted by the force-placed insurance provisions. (§ 1024.37) (*See Section 7 on page 42 for more on force-placed insurance.*)

- ☐ Failure to provide an accurate payoff balance amount upon a consumer's request within 7 days in violation of 12 CFR 1026.36(c)(3). (*See Section 6 on page 36 for more on prompt payment crediting and payoff statements.)*

- ☐ Failure to provide accurate information to a consumer regarding loss mitigation options and foreclosure, as required by the early intervention provisions of this rule. (§ 1024.39) (*See Section 10 on page 75 for more on early intervention.*)

- ☐ Failure to transfer accurately and timely information relating to the servicing of a consumer's mortgage loan account to a transferee servicer

- ☐ Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of the loss mitigation procedures of this rule. (§ 1024.41(f) or (j)) (*See Section 12 on page 85 for more on loss mitigation.)*

- ☐ Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of the loss mitigation procedures of this rule. (§ 1024.41(g) or (j)) (*See Section 12 on page 85 for more on loss mitigation.).*

- ☐ Any other error relating to the servicing of a consumer's mortgage loan. Note that "servicing" is defined in § 1024.2(b).

You **do not** have to acknowledge or follow the response provisions of this rule for errors that are outside the scope of the above list, although you may want to do so as a matter of customer service. For example, the rule would not cover an error related to: (Comment 35(b)-1)

- ☐ The origination of a mortgage loan
- ☐ The underwriting of a mortgage loan
- ☐ A subsequent sale or securitization of a mortgage loan
- ☐ A determination to sell, assign, or transfer the servicing of a mortgage loan

Note that an error relating to the failure to transfer accurate and timely information relating to the servicing of a consumer's mortgage loan account to a transferee servicer is a covered error.

VI. What is an information request? (§ 1024.36(a))

This rule applies generally to any written request for information from a consumer relating to the servicing of the consumer's mortgage loan that includes:

- ☐ The name of the consumer
- ☐ Information that enables the servicer to identify the consumer's mortgage loan account
- ☐ A statement of the information the consumer is requesting with respect to the consumer's mortgage loan

A notice on a payment coupon or other payment form is not considered a request for information.

A request for a payoff balance is not considered a request for information.

A qualified written request that requests information relating to the servicing of the mortgage loan is a request for information subject to the provisions of this rule. "Servicing" is defined in § 1024.2(b).

i. Must I distinguish between an information request and an error notice?

Some consumers will describe their communication as a request for information when they are asking you to correct a purported error or vice versa. You should not rely solely on the consumer's description of a submission to determine whether the submission constitutes a notice of error, an information request, or both.

For example, a consumer may submit a letter that claims to be a "notice of error" when the consumer is asking to receive the information set forth in an annual escrow account statement and also asserts that you made an error by failing to provide an annual escrow statement. This letter may constitute an information request that triggers an obligation for you to provide an annual escrow statement. You should not rely on the consumer's characterization of the letter as a "notice of error." Instead, you must evaluate whether the letter fulfills the substantive requirements of a notice of error, information request, or both. (Comment 35(a)-2)

VII. Are there situations that do not trigger the error resolution or information request response procedures? (§§ 1024.35(g) and 1024.36(f))

Yes, there are several situations that do not trigger the error resolution or information request procedures.

If you determine that for any of the reasons listed below, you are not required to comply with the error resolution or information request requirements, you must notify the consumer in writing of your determination no later than 5 days (excluding legal public holidays, Saturdays, and Sundays) after making your determination. The notice must explain the basis upon which you made the determination. (§§ 1024.35(g)(2) and 1024.36(f)(2))

The following situations do not trigger the error resolution/information request procedures:

i. Duplicative notice of error or information requests (§§ 1024.35(g)(1)(i) and 1024.36(f)(1)(i))

If the asserted error or information request is substantially the same as one the consumer previously asserted, and you have already complied with the requirements to respond to the earlier notice of error or request, the new notice of error or request does not trigger the error resolution or information request procedures.

However, if a resubmitted notice of error contains new and material information to support the asserted error, the exception for duplicative notices of error does not apply.

"New and material information" is information you did not review in your prior investigation of the same error and is reasonably likely to change your prior determination about the error. (§§ 1024.35(g)(1)(i) and 1024.36(f)(1)(i))

A consumer's statement that the consumer disagrees with your determination does not constitute new or material information, nor do you have to re-open the dispute simply because the consumer disagrees. (Comment 35(g)(1)(i)-1)

ii. Overbroad or unduly burdensome request for information (§ 1024.36(f)(1)(iv))

An information request is overbroad or unduly burdensome if:

- ☐ The consumer asks you to provide an unreasonable volume of documents or information.
- ☐ A diligent servicer could not respond to the request without exceeding the time limit to respond to information requests (*See "What is the timeline for responding to consumers who request information?" on page 65*) or incurring costs that would be unreasonable in light of the circumstances.

If you can identify a valid information request in a submission that is otherwise overbroad or unduly burdensome, you must respond in accordance with the rule with respect to that requested information.

iii. Overbroad notice of error (§ 1024.35(g)(ii))

A notice of error is overbroad if you cannot reasonably determine the specific error that the consumer asserts has occurred.

To the extent you can reasonably identify a valid assertion of an error in a notice of error that is otherwise overbroad, you must follow the error resolution requirements with respect to that asserted error.

Examples of error assertions that are overbroad include: (Comment 35(g)(1)(ii)-1)

- ☐ An assertion that you have made errors in all aspects of the loan including origination, servicing, and foreclosure, including errors relating to substantially every consumer payment and escrow account transaction
- ☐ Assertions in the form of a judicial action complaint, subpoena, or discovery request that purports to require you to respond to each numbered paragraph
- ☐ Incomprehensible requests that are not reasonably understandable

- ☐ Assertions that include voluminous tangential discussion or requests for so much information that you cannot reasonably identify from the notice any error that the notice of error provisions requires you to correct

iv. Untimely notices of error or information requests (§§ 1024.35(g)(1)(iii) and 1024.36(f)(1)(v))

A notice of error or information request is untimely if it is delivered to you more than one year after:

- ☐ You transfer the loan in question.
- ☐ The mortgage loan balance is paid in full.

v. Confidential, proprietary, or privileged information (§ 1024.41(f)(1)(ii))

You are not required to provide documents relied upon that constitute confidential, proprietary, or privileged information.

vi. Irrelevant requests for information (§ 1024.41(f)(1)(iii))

You are not required to provide irrelevant information requested by a borrower. Information is irrelevant if it is not directly related to the borrower's mortgage loan account.

> **Implementation Tip**: You must treat the error notice or information request submitted by an agent of the consumer as though it came directly from the consumer. You may find it useful to set up a procedure to verify that a consumer has authorized a person claiming to be an agent of the consumer to act on his or her behalf. (Comments 35(a)-1 and 36(a)-1)

VIII. Can I designate addresses for notices of error or requests for information?

You may set up an address for consumers to use to submit their notices of errors and requests for information, as long as you provide them with written notice of the address. The notice shall include a statement that the consumer must use the established address to assert an error or request information.

If you designate a specific address for receiving notices of error, you must use the same address for receiving information requests. Before you change the designated address, you must send a written notice to the consumer. You must post the designated address on any websites you maintain that contain your contact address. (§§ 1024.35(c) and 1024.36(b))

i. Exclusive, designated address not required

You are not required to designate a specific address that consumers must use to assert an error or request information. If you do not designate a specific address, you must respond to a notice of error or an information request received by any of your offices. (Comments 35(c)-1 and 36(b)-1)

ii. Notice of exclusive, designated address

You may send the notice establishing the designated address with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice must be clear and conspicuous, in writing, and in a form the consumers can keep (§ 1024.32(a)(1)). You must include the designated address in any consumer communications that include contact information for consumers seeking assistance. (Comments 35(c)-2 and 36(b)-2)

iii. Multiple offices

You may designate multiple office addresses for receiving notices of errors or requests for information. If you choose to do that, you must respond to all notices of error and requests for information that come to any of your multiple offices.

For example, suppose you designate a California address to receive notices of error or information requests for California consumers and another address to receive notices of errors or information requests for Texas consumers. If a Texas consumer sends an error notice or information request to your California address, you are considered to have received the notice of error or information request and must comply with the error resolution or information request provisions of the Mortgage Servicing Rules with respect to the notice or request, as applicable. (Comments 35(c)-3 and 36(b)-3)

iv. Internet intake

If you wish, you may set up a process to receive notices of error or information requests through email, a website form, or other online intake methods. Even if you have an online intake process, you still have to offer consumers the option of submitting notices of error and information requests by mail.

Whatever online process you establish will be considered your exclusive online process. You are not required to send a notice regarding the online process in order to establish it as your exclusive online process. (Comments 35(c)-4 and 36(b)-4)

IX. What must I do if I receive a notice of error?

Generally, when you receive a written notice of error, you must provide the consumer a written response acknowledging receipt within 5 days (excluding legal public holidays, Saturdays, and Sundays). Then, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the notice of error, either correct the errors and provide the consumer with written notice of the correction, or conduct a reasonable investigation and provide the consumer with written notice that no error occurred. (§ 1024.35(d) to (e))

i. Responding to consumers

Generally, a servicer must share its response to a notice of error with the consumer within the time frame discussed in *"What is the timeline for responding to consumers who send notices of errors?" on page 63*.

If you correct an error, send the consumer a written notification explaining:

- ☐ The correction you made
- ☐ The effective date of the correction
- ☐ Your contact information, including a telephone number, for further assistance

If you determine after a reasonable investigation that no error occurred, send the consumer a written notification explaining:

- ☐ That no error occurred
- ☐ The reason or reasons for your determination
- ☐ A statement of the consumer's right to request the documents you relied upon to reach your determination and information regarding how the consumer can request such documents
- ☐ Your contact information, including a telephone number, for further assistance

ii. What type of documents do I have to provide when I deny that an error occurred?

If a consumer requests the documents you relied upon to determine that no error occurred, you are required to respond to this request within 15 days. (§ 1024.35(e)(4)). You must provide only the documents you actually relied upon to determine that no error occurred, including documents reflecting information entered in your collection system. (Comment 35(e)(4)-1)

For example, if a consumer asserts you made a payment allocation error, you may provide a printed screen-capture showing amounts your servicing system credited to the consumer's account for principal, interest, escrow, or other charges.

iii. What must I do when consumers assert multiple errors or send multiple notices of errors or I discover more errors during my investigation?

When a consumer sends a notice that alleges multiple errors, you may send a single response or separate responses that address each asserted error. (Comment 35(e)(1)(i)-1)

If you discover different or additional errors, you must correct such errors and provide written notification of the correction to the consumer. You may provide this written notice either in the same notice you send in response to the initial notice of error or in a separate response. (Comment 35(e)(1)(ii)-1)

When notifying consumers that you found a different or additional error during your investigation, include a description of:

- ☐ The errors you identified
- ☐ The action you took to correct the errors
- ☐ The effective date of the correction
- ☐ Your contact information, including a telephone number, for further assistance (§ 1024.35(e)(1)(ii))

You may request supporting documentation from a consumer in connection with the investigation of an asserted error, but you may not: (§ 1024.35(e)(2))

- ☐ Require the consumer to provide the information as a condition of investigating an asserted error
- ☐ Determine that no error occurred simply because the consumer failed to provide the information you requested. You must still conduct a reasonable investigation even when you do not get the requested information

X. What is the timeline for responding to consumers who send notices of errors?

You must either correct the error asserted by the consumer and inform the consumer of the correction or conduct a reasonable investigation and inform the consumer that no error occurred:

- ☐ Not later than 7 days (excluding legal public holidays, Saturdays, and Sundays) after you receive a notice of error asserting a failure to provide an accurate payoff balance amount in violation of 12 CFR 1026.36(c)(3) (§ 1024.35(e)(3)(i)(A))

- ☐ Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays), whichever is earlier, after you receive a notice of error asserting that you improperly made the first foreclosure notice or filing, or moved for foreclosure judgment or order of sale, or conducted a foreclosure sale in violation of the Bureau's rules on loss mitigation procedures (§ 1024.35(e)(3)(i)(B)). Note: If you cannot investigate, correct, or respond to a consumer who asserts this error by the earlier of a foreclosure sale or 30 days after receipt of the error notice, you may cancel or postpone a foreclosure sale to meet the deadline (Comment 35(e)(3)(i)(B)-1)

- ☐ For all other errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after you receive the notice of error (§ 1024.35(e)(3)(i)(C))

i. May I extend the time limit to respond to notices of errors?

For errors other than those related to payoff statements or the foreclosure process, you 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 after receipt of the notice of error, you notify the consumer in writing of the extension and the reasons for the extension. (§ 1024.35(e)(3)(ii))

If the original notice of error alleges multiple errors, you may treat each asserted error as a separate notice of error and extend the time period for responding to those notices for which an extension is permissible (i.e, those that do not relate to payoff statements or the foreclosure process). (Comment 35(e)(3)(ii)-1)

ii. If I correct an error within 5 days, can I send a notice of correction instead of the acknowledgement?

If you correct an error and notify the consumer in writing of the correction within 5 days (excluding legal public holidays, Saturdays, and Sundays), you do not also have to send the acknowledgement. (§ 1024.35(f)(1))

iii. What must I do when a consumer asserts an error shortly before a scheduled foreclosure sale?

You are not required to acknowledge and respond to notices of error related to foreclosure if you receive the error notice 7 or fewer days before a foreclosure sale. However, you must make a good faith attempt to respond to the consumer, orally or in writing, and either correct the error or state the reason you have determined that no error has occurred. (§ 1024.35(f)(2))

XI. What must I do when I receive an information request?

Generally, when you receive an information request, you must provide the consumer a written response acknowledging receipt within 5 days (excluding legal public holidays, Saturdays, and Sundays). Then, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the notice, either provide the information requested or conduct a reasonable search for the information and provide the consumer with a written notice that the information is not available. (§ 1024.35(d) to (e))

If you can provide the information, share it in writing within the time frames discussed in *"What is the timeline for responding to consumers who request information?" on page 65*. Include your contact information and a telephone number for further assistance. (§ 1024.36(d)(1)(i))

i. What if I do not maintain the type of information requested?

You are not required to provide information that is not available to you. Information is not available if it is not in your control or possession, or you cannot retrieve it in the ordinary course of business through reasonable efforts. (Comment 36(d)(1)(ii)-1)

Here are some examples: (Comment 36(d)(1)(ii)-2)

- ☐ A consumer requests a copy of a telephonic communication with your staff. Your personnel have access in the ordinary course of business to audio recording files with organized recordings or transcripts of consumer telephone calls and can identify the communication referred to by the consumer through reasonable business efforts. The information requested by the consumer is available to you, so you must share it.

- ☐ A consumer requests information stored on electronic backup media that is not accessible to your personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore the information from the electronic backup media. The information the consumer is requesting is not available to you, so you need not share it.

- ☐ A consumer requests information stored at an off-site document storage facility. You have the right to access documents at the off-site document storage facility, and your personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the consumer is available to you, assuming that the information can be found within the off-site documents with reasonable efforts.

If you determine that the information is not available to you after conducting a reasonable search, send the consumer written notification stating that you have determined the requested information is not available. Provide the basis for your determination and your contact information, including a telephone number, for further assistance. (§ 1024.36(d)(1)(ii))

XII. What is the timeline for responding to consumers who request information?

How long you have to respond depends upon the information requested. In general, you must respond not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after you receive the information request. (§ 1024.36(d)(2)(i)(B))

However, when you receive an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan, you must respond to the consumer not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after you receive the request. (§ 1024.36(d)(2)(i)(A))

i. May I extend the time limit for responding to information requests?

For requests for information other than those requesting contact information for the owner or assignee, you 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, you notify the consumer in writing of the extension and the reasons for the extension. (§ 1024.36(d)(2)(ii))

ii. If I provide the information requested within 5 days, do I need to send an acknowledgement?

If you provide the information requested and contact information, including a telephone number for further assistance, in writing, within 5 days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request, you do not also need to send the acknowledgement. (§ 1024.36(e))

XIII. May I charge consumers a fee for responding to notices of errors or requests for information?

You generally may not charge fees for responding to notices of errors or information requests, and you may not require a consumer to make any payment owed to you as a condition for providing a response. You may charge a fee for certain limited types of information, such as payoff statements (because a request for a payoff balance is not an information request) or state law beneficiary notices. (§§ 1024.35(h), 1024. 36(a), and 1024.36(g))

Note that this does not alter or otherwise affect the consumer's obligation to make the payments owed. For example, if the consumer makes a monthly payment in February, but asserts an error relating to your acceptance of the February payment, the consumer must still make the March payment. However, you may not require the consumer to make the March monthly payment as a condition of responding to the notice of error. (Comment 35(h)-1)

XIV. How do error notices and information requests affect collections and credit reporting? (§ 1024.35(i)(1) to (2))

Generally, nothing in the error resolution and information request provisions of the rule limits or restricts you from pursuing any remedy you have under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.

However, as discussed above, certain timely notices of error regarding the foreclosure process must be resolved before a foreclosure sale may proceed. (§§ 1024.35(i) and 1024.36(h))

Also, for 60 days after receipt of a notice of error, you may not furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error. (§ 1024.35(i)) This prohibition does not apply to requests for information.

9. General Servicing Policies, Procedures, and Requirements

I. What does the general servicing policies, procedures, and requirements rule require?

The rule requires you to establish policies and procedures reasonably designed to achieve the following objectives, which are described in more detail in *"What objectives must I design my policies and procedures to achieve?" on page 69:*

- ☐ Accessing and providing timely and accurate information
- ☐ Properly evaluating loss mitigation applications
- ☐ Facilitating oversight of, and compliance by, service providers
- ☐ Facilitating transfer of information during servicing transfers
- ☐ Informing consumers of the written error resolution and information request procedures

Additionally, the rule sets standards for:

- ☐ Record retention
- ☐ Servicing file creation

You may determine the best policies, procedures, and methods for your organization so long as they are reasonably designed to achieve the objectives set forth in the general servicing policies, procedures, and requirements provisions of the Mortgage Servicing Rules.

You have flexibility to set policies, procedures, and methods in light of the size, nature, and scope of your operations, including, for example, the volume and aggregate unpaid principal balance of the mortgage loans you service, the credit quality (including the default risk) of the mortgage loans you service, and your history of consumer complaints.

II. What is the scope of the general servicing policies, procedures, and requirements rule?

The rules apply to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in § 1024.5(b), the exemptions in § 1024.30(b), and open-end lines of credit.

Thus, these rules do not apply to:

- ☐ HELOCs and open-end lines of credit
- ☐ Small servicers
- ☐ Reverse mortgage transactions
- ☐ Loans for which the servicer is a qualified lender under the Farm Credit Act of 1971

III. Is there a small servicer exemption to the general servicing policies, procedures, and requirements rule?

Yes, there is a small servicer exemption. Small servicers are exempt from all requirements of the provisions on general servicing policies, procedures, and requirements.

IV. What objectives must I design my policies and procedures to achieve?

Your policies and procedures must be reasonably designed to achieve the following goals:

i. Accessing and providing timely and accurate information (§ 1024.38(b)(1))

To meet the objective of accessing and providing timely and accurate information, your policies and procedures must be reasonably designed to ensure that you can:

- ☐ Provide accurate disclosures to consumers within the correct timeframes
- ☐ Investigate, respond to, and when needed, make corrections in response to consumer complaints. *(See Section 8 on page 53 for more on error resolutions.)*
- ☐ Respond to consumers' requests for information regarding their mortgage loans with accurate and timely information. *(See Section 8 on page 53 for more on information requests.)*
- ☐ Provide owners or assignees with accurate and current information and documents about mortgage loans you service for them, including detailed information about loss mitigation actions
- ☐ Submit documents or filings required for a foreclosure process, including those required by a court of competent jurisdiction, that reflect accurate and current information and comply with applicable law
- ☐ Upon notification of a consumer's death, promptly identify and facilitate communication with the successor in interest of the deceased with respect to the property secured by the deceased consumer's mortgage loan

ii. Properly evaluating loss mitigation applications (§ 1024.38(b)(2))

To meet the objective of properly evaluating loss mitigation applications, your policies and procedures must be reasonably designed to ensure that you can:

- ☐ Provide accurate information to the consumer regarding loss mitigation options that the owner or assignee makes available
- ☐ Identify with specificity all loss mitigation options for which consumers may be eligible
- ☐ Provide personnel assigned to manage delinquent consumers with prompt access to all loss mitigation documents and information consumers submit. *(See Section 11 on page 81 for more on continuity of contact.)*
- ☐ Identify documents and information that a consumer must submit to apply for loss mitigation and facilitate compliance with the requirement to notify consumers whether a loss mitigation application is complete or incomplete, and how to complete an incomplete application.(§ 1024.41(b)(2)(i)(B)) *(See Section 12 on page 85 for more on loss mitigation.)*

- ☐ Properly evaluate consumers' loss mitigation applications based on all the options available to them and in accordance with the loss mitigation rules

So, for example, if an assignee requires that you only make a particular loss mitigation option available to a certain percentage of the loans you service, then your procedures must be reasonably designed to determine in advance how you will apply that threshold to those mortgage loans. You will also need to ensure that this information is accessible to the personnel assigned to manage delinquent consumers. (Comment 38(b)(2)(ii)-1)

> 💬 **Implementation Tip**: In your policies and procedures to identify all the loss mitigation options available for the mortgage loans you service, address how you will identify all of the consumers' options, the criteria you will apply when evaluating those options, and how you will apply specific eligibility thresholds.

iii. Facilitating oversight of, and compliance by, service providers (§ 1024.38(b)(3))

To meet the objective of facilitating oversight of, and compliance by, service providers, your policies and procedures must be reasonably designed to ensure that you can:

- ☐ Provide servicing personnel (your own and those working for your service providers) with access to accurate and current documents and information reflecting your service providers' actions
- ☐ Facilitate periodic reviews of your service providers, including by providing your personnel with documents and information they need to audit your service providers' compliance with their contractual obligations and applicable law
- ☐ Share accurate and current information about consumers' loss mitigation applications and the status of any foreclosure proceeding among appropriate servicer personnel and service provider personnel, including personnel assigned to manage delinquent consumers and those handling foreclosure proceedings

iv. Facilitating transfer of information during servicing transfers (§ 1024.38(b)(4))

To meet the objective of facilitating the sharing of consumer information during servicing transfers, your policies and procedures must be reasonably designed to ensure that all information and documents move from the transferor servicer to the transferee servicer.

When you are the transferor servicer, your policies and procedures must be reasonably designed to ensure that you timely transfer all the information and documents you possess or control related to transferred mortgage loans. You must do this in a form or manner that ensures accuracy and enables the transferee servicer to comply with its obligations to owners or assignees and applicable law.

Your policies and procedures may provide for the electronic transfer of documents provided these requirements are satisfied.

When you transfer the servicing for a loan in loss mitigation, you must ensure that the transfer includes:

- ☐ Information reflecting the status of your discussions with the consumer
- ☐ Agreements you have with the consumer
- ☐ Your analysis of any potential recovery from the mortgage, as appropriate (Comment 38(b)(4)(i)-2)

When you are the transferee servicer, you must have policies and procedures reasonably designed to identify and obtain necessary documents or information that the transferor servicer should have, but did not, transfer.

You must ensure that you get copies of any loss mitigation applications and agreements, find out about the status of any prior discussions with consumers, and that you are able to retrieve missing loss mitigation documents and information from the transferor servicer before asking the consumer for the information. (Comment 38(b)(4)(ii)-1)

v. Informing consumers of the written error resolution and information request procedures (§ 1024.38(b)(5))

Your policies and procedures must be reasonably designed to inform consumers of the procedures for submitting written notices of errors and written information requests. (§§ 1024.35 and 1024.36). You may satisfy this requirement by sending a brief statement informing consumers of their rights (mailed or delivered electronically) or posting the information on a website.

- ☐ You may choose to include the information in a consumer's monthly periodic statement, or you could choose to disclose the information in a separate notice that you create to inform consumers of the exclusive address for submitting notices of error and requests for information. (§§ 1024.35(c), 1024.36(b), and comment 38(b)(5)-1)

Your policies and procedures must also be reasonably designed to provide information about the procedures for submitting written notices of error and requests for information to consumers who are not satisfied with the resolution of an oral complaint or request for information submitted orally. (Comment 38(b)(5)-2)

V. What are the standard requirements I must meet?

Two of the rule requirements are written to provide specific requirements and standards, rather than requiring policies and procedures reasonably designed to achieve general objectives.

i. Document retention

You must retain records that document your actions with respect to a consumer's mortgage loan account until one year after the date you discharged the mortgage or transferred the servicing. (§ 1024.38(c)(1))

This does not mean you must keep actual paper copies of documents. You may retain the records using any method that accurately reproduces them (including computer programs) and that ensures you can easily access the records (including a contractual right to access records possessed by another entity). (Comment 38(c)(1)-1)

ii. Servicing file

For each mortgage loan you service, you must maintain the following documents and data in a way that allows you to compile them into a servicing file within 5 days: (§ 1024.38(c)(2))

- ☐ A schedule of all transactions credited or debited to the mortgage loan account, including escrow and suspense accounts
- ☐ A copy of the security instrument that establishes the lien securing the mortgage loan
- ☐ Any notes your personnel create that reflect communications with the consumer about the mortgage loan account
- ☐ To the extent applicable, a report of the data fields your electronic system creates related to the consumer's mortgage loan account, such as the terms of the consumer's mortgage loan, the occurrence of automated or manual collection calls, loss mitigation evaluation information, owner or assignee information, or any credit reporting history
- ☐ Copies of documents and information consumers submit as part of loss mitigation or error resolution requests

You must be ready to comply with the 5-day compilation rule beginning on or after January 10, 2014. However, you are not required to comply with the 5-day rule for information created before that date.

- For example, if you originate a loan on January 1, 2013, you would not have to maintain information about transactions credited or debited prior to January 10, 2014 in any particular manner. But you would have to maintain information about payments made on or after January 10, 2014, in a manner that facilitates compiling the information into a servicing file within 5 days (Comment 38(c)(2)-1)

The 5-day compilation requirement (§ 1024.38(c)(2)) does not confer upon any consumer an independent right to access information contained in the servicing file. When consumers file a written request for their servicing file, you must give them a copy of the information contained in their servicing file, subject to the procedures and limitations set forth in the information request provisions of the Mortgage Servicing Rules. (§ 1024.36 and comment 38(c)(2)-2)

10. Early Intervention with Delinquent Consumers

I. What does the early intervention rule require? (§ 1024.39)

You must, at a minimum, establish or make good faith efforts to establish live contact with consumers by the 36th day of their delinquency and, if appropriate to their situation, promptly inform them of loss mitigation options that may be available, as described below.

In addition, you must, at a minimum, provide the consumers with written information about any available loss mitigation options by the 45th day of delinquency, as described below.

The rules contain model language servicers may use for the written notice.

II. What is the scope of the early intervention rule?

The early intervention rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in 1024.5(b), the exemptions in 1024.30(b) and (c), and open-end lines of credit.

Thus, these rules do not apply to:

- ☐ HELOCs and open-end lines of credit
- ☐ Small servicers
- ☐ Reverse mortgage transactions
- ☐ Loans for which the servicer is a qualified lender under the Farm Credit Act of 1971

- ☐ Any loan that is secured by a property that is not the consumer's principal residence

III. Is there a small servicer exemption to the early intervention rule?

Yes, there is a small servicer exemption. Small servicers are exempt from all the requirements of the provisions on early intervention.

IV. When must I establish live contact with a delinquent consumer? (§ 1024.39(a))

You must establish or make good faith efforts to establish live contact with a delinquent consumer no later than the 36th day of the consumer's delinquency.

To calculate the 36 days, start with the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if you give the consumer a grace period after the payment is due before you assess 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, you must establish or make good faith efforts to establish live contact not later than 36 days after January 1 – meaning by February 6.

Consumers who are performing as agreed under a loss mitigation option designed to bring them current on a previously missed payment are not delinquent for the purposes of this section of the Mortgage Servicing Rules. Thus, for such consumers you are not required to engage in the early intervention actions.

If the consumer makes a full payment before the end of the 36-day period, you need not establish live contact with them. For example, if the consumer misses a January 1 due date but makes that payment on February 1, you do not have to contact them by February 6.

i. What is "establishing live contact"? (Comment 39(a)-2)

Live contact with a consumer includes telephoning or conducting an in-person meeting with the consumer, but not leaving a recorded phone message. You may, but need not, rely on live contact established at the consumer's initiative to satisfy the live contact requirement of this rule.

Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a consumer and may include telephoning the consumer on more than one occasion or sending the consumer a written or electronic communication encouraging the consumer to establish live contact with you.

ii. Does providing loss mitigation information to a consumer's representative satisfy the requirement to establish live contact? (Comment 39(a)-4)

The rules do not prohibit you from satisfying the live contact requirement by providing information about loss mitigation options to the consumer's authorized representative.

You may set up reasonable procedures to determine whether a person that claims to be the consumer's agent has authority to act on the consumer's behalf. For example, you can require the agent to provide documentation from the consumer stating that the purported agent is acting on his or her behalf.

V. What Information must I share with delinquent consumers about loss mitigation options? (Comment 39(a)-3.i)

The rule requires you to provide loss mitigation information where appropriate. It is within your reasonable discretion to determine whether informing a consumer about the availability of loss mitigation options is appropriate under particular circumstances, as you determine from establishing live contact with the consumer. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options:

- ☐ During live contact, the consumer notifies you of a material adverse change in financial circumstances that is likely to cause the consumer to experience a long-term delinquency, such as loss of a job, for which loss mitigation options may be available. You provide loss mitigation information to the consumer.

- ☐ A consumer who misses a January 1 payment notifies you that the consumer will make a full late payment by February 15. You do not provide information about the availability of loss mitigation options because there does not appear to be a long-term issue.

i. What do I need to do when I "promptly inform" consumers about loss mitigation options? (Comment 39(a)-3.ii)

The Mortgage Servicing Rules say that where appropriate you must "promptly inform" consumers about loss mitigation after establishing live contact. You may provide loss mitigation information orally, in writing, or through electronic communication, as long as you share the information promptly after you establish live contact.

You do not need to notify a consumer about any particular loss mitigation options promptly after establishing live contact. If appropriate, you need only inform the consumer generally that loss mitigation options may be available.

You may satisfy the requirements of the early intervention provisions of the Mortgage Servicing Rules to inform consumers about loss mitigation options promptly after establishing live contact by providing them with the written notice laid out in MS-4(A), MS-4(B), and MS-4(C) found in appendix MS-4 of these rules. *(See "What information must be in the written notice about loss mitigation options?" on page 79.)*

VI. When must I provide a written notice about loss mitigation to delinquent consumers? (§ 1024.39(b) and comments 39(a)-1.i and 39(b)(1)-4)

By the 45th day of delinquency, you must provide delinquent consumers with a written notice about loss mitigation. You must provide the written notice even if you provided information about loss mitigation and foreclosure previously during an oral communication with the consumer, as discussed above.

Delinquency, as discussed above, 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 you offer the consumer a period of time after the due date has passed to pay before you assess a late fee.

- ☐ For example, if a payment is due January 1 and unpaid during the 45-day period after January 1, you must provide the written notice within 45 days after January 1—i.e., by February 15. However, if the consumer satisfies the late payment in full on February 1, you would not need to provide the written notice.

You are not required to provide the written notice more than once during any 180-day period.

- For example, a consumer has a payment due on March 1. The amount due is not fully paid during the 45 days after March 1, so you provide the written notice on April 15. The consumer fails to make the April 1 payment and does not pay the amount due during the 45 days after April 1. You do not need to provide the written notice again during the 180-day period beginning on April 15.(Comment 39(b)(1)-2)

VII. What information must be in the notice about loss mitigation options? (§ 1024.39(b)(2) to (3))

Model clauses MS-4(A), MS-4(B), and MS-4(C) in appendix MS-4 have text you can use in your loss mitigation notice.

The notice must include:

- A statement encouraging the consumer to contact you
- The telephone number for the personnel assigned to the consumers. *(See "Do I have to assign a single point of contact to a delinquent consumer? on page 83.)*
- Your mailing address
- If applicable, a statement providing a brief description of examples of loss mitigation options that may be available
- If applicable, either application instructions or a statement informing the consumer how to obtain more information about loss mitigation options from you
- The website 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
- You may also include additional information that you determine to be helpful, or which may be required by applicable law or the owner or assignee of the mortgage loan (Comment 39(b)(2)-1)

Implementation Tip: Consumers are likely to benefit from examples of options that would permit them to retain ownership of their home and examples of options that may require them to end their ownership to avoid foreclosure. You may send a generic list of loss mitigation options you typically offer to consumers and include a warning that not all consumers may qualify for the listed options. (Comment 1024.39(b)(2)(iii)-1)

You may use any color, number of pages, size and quality of paper, size and type of print, and method of reproduction for your notice, provided each of the required statements satisfies the clear and conspicuous standard. (§ 1024.32(a)(1) and comment 1024.39(b)(2)-2)

You may combine this notice in a single mailing with other notices that satisfy the content requirements, provided each of the required statements satisfies the clear and conspicuous standard. (Comment 1024.39(b)(2)-2)

Implementation Tip: You may find it helpful to give consumers detailed information and instructions about loss mitigation, such as list of documents they should have in hand when contacting you, or an estimate of how quickly you typically evaluate applications. You can even supplement your written notice with a loss mitigation application form. (Comment 39(b)(2)(iv)-1)

VIII. How must I communicate with consumers in bankruptcy?

Nothing in the early intervention section of the Mortgage Servicing Rules requires you to communicate with a consumer in a manner otherwise prohibited by other applicable law, including bankruptcy law or a court order in a bankruptcy case. You may adapt the early intervention requirements of these rules in any manner that would permit you to notify consumers of loss mitigation options in accordance with such laws. (§ 1024.39(c) and comment 1024.39(c)-1)

11. Continuity of Contact with Delinquent Consumers

I. What does the continuity of contact rule require?

In general, you must maintain policies and procedures reasonably designed to provide delinquent consumers with access to personnel who can assist them with loss mitigation options where applicable.

II. What is the scope of the continuity of contact rule?

The rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in 1024.5(b), the exemptions in 1024.30(b) and (c), and open-end lines of credit.

Thus, these rules do not apply to:

- ☐ HELOCs and other open-end lines of credit
- ☐ Small servicers
- ☐ Reverse mortgage transactions
- ☐ Loans for which the servicer is a qualified under the Farm Credit Act of 1971
- ☐ Any loan that is secured by a property that is not the consumer's principal residence

III. Is there a small servicer exemption to the continuity of contact rule?

Yes, there is a small servicer exemption. Small servicers are exempt from all the requirements of the provisions on continuity of contact.

IV. What is continuity of contact? (§ 1024.40(a))

You must design policies and procedures to ensure, among other things, that:

- ☐ You assign personnel to delinquent consumers by the time you send the written notice required by the early intervention requirements, but in any event, by the 45th day of the consumers' delinquency.
- ☐ Consumers can reach the assigned personnel by phone and that such personnel can respond to consumer inquiries and, as applicable, help them pursue loss mitigation options, including by advising them about the status of any loss mitigation application and applicable timelines.
- ☐ Your personnel can retrieve, in a timely manner, the complete record of the consumer's payment history and all of the written information the consumers provide in connection with a loss mitigation application and, when appropriate, provide such information to other persons responsible for evaluating a consumer for available loss mitigation options.
- ☐ Your personnel can provide a timely live response to consumers who call and have to leave a message when they cannot reach a live person.

> **Implementation Tip**: Consider who is a delinquent consumer. Consumers who have refinanced or paid off their loan, brought it current by paying all amounts owed in arrears, and those who have transferred title (for example, though a deed-in-lieu of foreclosure or a short sale) are no longer delinquent consumers. After a foreclosure sale, the consumers are no longer delinquent consumers, so the rule no longer applies to them.

i. How do I respond to people who claim they represent a delinquent consumer? (Comment 40(a)-1)

You are required to interact with a person authorized by a consumer to act on the consumer's behalf.

You may set up reasonable procedures to determine if a person that claims to be the consumer's agent has authority to act on the consumer's behalf. For example, you can require the agent to provide documentation from the consumer stating that the purported agent is acting on his or her behalf.

ii. Do I have to assign a single point of contact to a delinquent consumer? (Comment 40(a)-2)

It is up to you to decide whether to assign a single person or a team of personnel to respond to a delinquent consumer.

The personnel you assign to the consumer to comply with the continuity of contact provisions described in § 1024.40(a)(1) may be single-purpose or multi-purpose personnel. Single-purpose personnel are employees whose primary responsibility is to respond to a delinquent consumer's inquiries and, if you offer loss mitigation, assist with that. Multi-purpose personnel are employees who do not have a primary responsibility at all or those for whom delinquency and loss mitigation activities are not a primary duty.

You may assign personnel with specialized knowledge in bankruptcy law to assist consumers who file for bankruptcy.

V. When must continuity of contact personnel be available to consumers? (§ 1024.40(a)(1) to (2))

You must maintain policies and procedures reasonably designed to ensure that you assign personnel to delinquent consumers by the time you send the written notice required by the early intervention requirements, which means at least by the 45th day of the consumers' delinquency.

As set forth above, 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 you offer the consumer a grace period before assessing a late fee. (Comments 39(a)-1.i and 40(a)-3)

Your policies and procedures must be designed to ensure that personnel remain available until the consumers have made, without incurring a late charge, 2 consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement or the mortgage. If a consumer redefaults after making 2 payments, the clock resets and personnel must be available by the time you send the written notice required by the early intervention requirements, but in any event, by the 45th day of the consumer's delinquency.

VI. What must personnel be able to do? (§ 1024.40(b)(1)-(2))

Your policies and procedures shall be reasonably designed to ensure that the personnel assigned to delinquent consumers provide them with accurate information about:

- ☐ The specific loss mitigation options made available to them by the owner or assignee
- ☐ How to submit a complete loss mitigation application, get it evaluated and, if applicable, how to appeal an application that is denied
- ☐ The status of a consumer's submitted loss mitigation application
- ☐ The circumstances under which you may refer consumers to foreclosure
- ☐ Loss mitigation deadlines set by the loan's owner or assignee or the provisions of the Mortgage Servicing Rules
- ☐ How to submit a written notice of error or information request. *(See Section 8 on page 53 for more on error resolutions and information requests.)*

Your policies and procedure must be reasonably designed to ensure that personnel are able to retrieve certain information in a timely manner, including:

- ☐ A complete record of the consumer's payment history
- ☐ All written information the consumer has provided to you, and, if applicable, to prior servicers, in connection with a loss mitigation application

12. Loss Mitigation Procedures

I. What does the loss mitigation rule require?

The loss mitigation provisions of the Mortgage Servicing Rules generally require you to:

- ☐ Work with consumers to complete timely applications for loss mitigation options
- ☐ Evaluate complete and timely loss mitigation applications within 30 days for all loss mitigation options available to the applicant
- ☐ For complete and timely applications, inform consumers of whether the servicer will offer the consumer a loss mitigation option and, if the consumer is denied a loan modification option, of the reasons for the denial
- ☐ Evaluate timely appeals submitted by eligible consumers by independent personnel, that is, not the same personnel who evaluated the loss mitigation application
- ☐ Refrain from beginning or completing the foreclosure process in certain circumstances, as set forth below, when a consumer is being evaluated for loss mitigation options as required under the rule

The rule does not require you or the owner of a mortgage loan to offer any specific loss mitigation option. Nor does it require you to use any particular criteria to evaluate consumers for loss mitigation.

Implementation Tip: Although the loss mitigation procedures do not require that you use any particular criteria to evaluate consumers for loss mitigation options, you are required to maintain policies and procedures reasonably designed to achieve the objective of properly evaluating consumers for loss mitigation options pursuant to requirements imposed by owners or investors of the mortgage loans. (§ 1024.38(b))

The rule does not entitle a consumer to receive an evaluation for (or an offer of) any particular loss mitigation option, and you are not liable to a consumer for a claim that a servicer's agreement with an owner of a mortgage loan requires the servicer to evaluate a consumer for, or offer a consumer, any particular loss mitigation option.

II. What is the scope of the loss mitigation rule?

The rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in 1024.5(b), the exemptions in 1024.30(b) and (c), and open-end lines of credit.

Thus, these rules do not apply to:

- ☐ HELOCs and open-end lines of credit
- ☐ Reverse mortgage transactions
- ☐ Loans for which the servicer is a qualified lender under the Farm Credit Act of 1971
- ☐ Any loan that is secured by a property that is not the consumer's principal residence

III. Is there a small servicer exemption to the loss mitigation rule? (§ 1024.41(j))

Small servicers are exempt from the majority of the loss mitigation requirements. However, 2 prohibitions apply to small servicers. Small servicers shall not:

- ☐ Make the first notice or filing required to foreclose unless a consumer's mortgage loan obligation is more than 120 days delinquent
- ☐ Move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a consumer is performing pursuant to the terms of a loss mitigation agreement

IV. What must I do when I receive a loss mitigation application?

When you receive a timely loss mitigation application, you must acknowledge receipt of the application and inform the consumer whether the application is complete or incomplete; evaluate a complete loss mitigation application; and notify the consumer about the result of your evaluation, including your determination of the particular loss mitigation options available to the consumer or specifics about why an application for a loan modification option was denied and information about any applicable appeal process.

i. Acknowledging loss mitigation applications (§ 1024.41(b)(1)-2 and comment 41(b)(1)-4)

If you receive a loss mitigation application 45 days or more before a foreclosure sale, you must do the following:

1. Determine if the application is complete, meaning you have received all the information you need from the consumer to evaluate the consumer for all loss mitigations available from the owner or investor of the mortgage loan.

2. If you determine that the application is incomplete, you must provide a notice within 5 days (excluding legal public holidays, Saturdays and Sundays) to the consumer acknowledging receipt of the application and stating:

> **Implementation Tip**: A loss mitigation application is an expansive concept. It includes a consumer's assertion of an interest in evaluation for a loss mitigation option, if the assertion is accompanied by information the servicer may consider when evaluating a loss mitigation option. You should make sure your staff is trained to recognize when an inquiry about loss mitigation has become a loss mitigation application. (Comments 41(b)(1)-1 and -3)

- ☐ That you have determined the application is incomplete
- ☐ The additional documents and information the consumer must submit to make the loss mitigation application complete
- ☐ The date most beneficial to the consumer to submit the missing information based on the earlier of, the date by which any document or information submitted by the consumer will be considered stale or invalid or the proximity or the proximity of a foreclosure sale
- ☐ A statement that the consumer should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options

You must exercise reasonable diligence to make an incomplete application complete. Although providing a notice to the consumer about the information or documents that are missing from the application is a required step for applications submitted 45 days or more before a foreclosure sale, you may be required to take additional steps to comply with the reasonable diligence standard. Examples of reasonable diligence include:

- ☐ You need additional information from the consumer, such as an address or a telephone number to verify employment, and you promptly contact the consumer to obtain the information after receiving a loss mitigation application.

- ☐ Servicing for a mortgage loan is transferred to your company. The consumer made an incomplete loss mitigation application to the transferor servicer after the transfer. You review documents provided by the transferor servicer and, if necessary, request from the consumer additional documents needed to complete the application.

3. If you determine the application is complete, you must provide a notice to the consumer within 5 days (excluding legal public holidays, Saturdays, and Sundays) stating that you have determined the application is complete and that the consumer should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options. You must then proceed with evaluating that application for all loss mitigation options available to the consumer within 30 days, as discussed further below.

ii. Information not in the consumer's control

When a consumer sends you everything you have asked for other than information that is not in the consumer's control, you must consider the consumer's application complete. For example, if you require a consumer credit report and the consumer has submitted all the required information but you do not yet have the consumer credit report from the consumer reporting agency, you must consider the application complete. (Comment 41(b)(1)-5)

iii. Evaluating loss mitigation options (§ 1024.41(c))

The Mortgage Servicing Rules set certain deadlines and procedures concerning review of applications for loss mitigation options.

In general, if you receive a complete loss mitigation application more than 37 days before a foreclosure sale, you must evaluate it within 30 days for all available loss mitigation options and provide the consumer a notice in writing stating your determination of which loss mitigation options, if any, you will offer to the consumer.

iv. Incomplete loss mitigation applications (§ 1024.41(c)(2) and comment 41(c)(2)(ii)-1)

If you receive an incomplete application, you may not evade the requirement to evaluate complete loss mitigation applications for all available loss mitigation options by evaluating the incomplete application.

Instead, you must seek the information needed to complete the application, as discussed earlier. But if you have exercised reasonable diligence to complete the application and the application nevertheless remains incomplete for a "significant period of time" under the circumstances without the consumer taking action to complete it, you may in your discretion, evaluate the incomplete application and offer the consumer a loss mitigation option for which the consumer qualifies. The requirements in § 1024.41 do not apply to such evaluation, and it is not considered an evaluation of a complete loss mitigation application for purposes of determining whether a complete application is duplicative.

A "significant period of time" depends on the circumstances, including consideration of the timing of the foreclosure process. For example, if a consumer has 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 consumer is still less than 120 days delinquent on a mortgage loan obligation.

Implementation Tip: Nothing in the Mortgage Servicing Rules prohibits you from offering a loss mitigation option to a consumer who has not submitted a loss mitigation application or has submitted an incomplete application, if the loss mitigation option is not based on any evaluation of information submitted by the consumer in connection with the application. For example, if you offer a trial loan modification to all 150-day delinquent consumers without an application or consideration of any information the consumer provides, you are not required to comply with the loss mitigation procedures of the Mortgage Servicing Rules with respect to such program, and an offer of any such program does not violate the prohibition against evading the requirement to evaluate complete loss mitigation applications for all loss mitigation options available to the consumer by offering a loss mitigation option based upon an evaluation of any information provided by a consumer. (§ 1024.41(c)(2)(i))

v. Non-home retention options

You may offer the consumer a non-home retention option conditioned upon receipt of further information not in the consumer's possession and necessary to establish the parameters of your offer.

For example, you can comply with the requirement for evaluating the consumer for a short sale option if you offer the consumer the opportunity to enter into a listing or marketing period agreement, but indicate that the specifics are subject to an appraisal or title search. (Comment 41(c)(1)-3)

vi. Evaluating loss mitigation applications when servicing is transferred (§ 1024.41(i) and comment 41(i)-1,-2)

When you receive the transfer of servicing of a mortgage loan, you, as the transferee servicer, must review a loss mitigation application submitted by a consumer to the transferor servicer, consistent with the requirements of § 1024.41. Further, if you, as the transferee servicer, receive a loss mitigation application from a consumer after a transfer, you must review a complete and timely application regardless of whether the consumer already received a prior review from the transferor servicer.

- ☐ When the consumer's application is in process during a servicing transfer, you must obtain the documents and information the consumer has already submitted. You should continue to evaluate the consumer for loss mitigation within the deadlines required by the rule to the extent practicable.

- ☐ When calculating timelines and deadlines for a consumer who came to you as part of a servicing transfer, consider the application to have been submitted by the date when the transferor servicer received the complete application. You must exercise reasonable diligence to complete a transferred application that, under your requirements, is considered incomplete. A consumer must not lose the timing protections provided in the rule that are based on the proximity of a foreclosure sale solely because servicing was transferred to a new servicer.

V. What must I do when I deny a loan modification application? (§ 1024.41(d) and comments 41(d)(1)-1 to -2)

If you deny a consumer's complete loss mitigation application received more than 37 days before a foreclosure sale for any trial or permanent loan modification option, you must send the consumer a notice that states:

- ☐ The specific reasons for your decision for each trial or permanent loan modification option denied:

> 💬 **Implementation Tip**: Any decision not to offer a loan modification option is a denial. If you have 4 loan modification options and you offer the consumer only one option, you have denied the consumer for the other 3 options and must provide the required contents of the notice for those denials. (Comment 41(d)(1)-4)

- See Comment 41(d)(1)-1 for additional guidance on denials based on investor requirements

☐ If you base your denial on a net present value calculation, you must include in your notice the specific inputs you used in your net present value calculation

☐ If the consumer may appeal, as discussed below, that the consumer may appeal your determination, and information about the requirements for the appeal process, including the deadline for requesting that appeal. *(See "What appeals must I allow when I offer loan modifications?" on page 92.)*

> **Implementation Tip**: You may combine this notice with other notices required by applicable law, including, without limitation, a Regulation B adverse action notice (12 CFR 1002 et seq.) or a Fair Credit Reporting Act notice, unless otherwise prohibited by applicable law. (Comment 41(d)(1)-3)

VI. How long must I give consumers to respond to loss mitigation offers? (§ 1024.41(e)(1))

How much time you must give a consumer to respond to loss mitigation offers under the rule depends on the proximity of a foreclosure sale:

☐ When a consumer submits a loss mitigation application 90 days or more before a foreclosure sale, you must give the consumer 14 days to accept or reject a loss mitigation offer.

☐ When a consumer submits a loss mitigation application less than 90 days but more than 37 days before a foreclosure sale, you must give the consumer 7 days or more to accept or reject a loss mitigation offer.

If the consumer doesn't respond within the 7-day or 14-day deadline, you can deem that as a rejection of your loss mitigation offer except in these cases: (§ 1024.41(e)(2))

☐ If the consumer does not satisfy your requirements for accepting a trial loan modification plan, but does submit the payments the trial plan calls for within the deadline, you must give the consumer a reasonable period to fulfill any remaining requirements.

- ☐ In cases where an appeal is available, if a consumer timely appeals your decision, you must extend the deadline for accepting any loss mitigation option you offered until 14 days after you provide the notice concerning how the appeal was resolved. *(See "What appeals must I allow when I offer loan modifications?" below.)*

VII. What appeals must I allow when I offer loan modifications? (§ 1024.41(h))

You must allow consumers to appeal your decision regarding loan modifications when you receive a complete loss mitigation application 90 days or more before a foreclosure sale. The appeal process is limited to denial of **loan modification** programs, and is not required for other **loss mitigation** programs. A loss mitigation application received during the pre-foreclosure review period (or before a servicer has made the first notice or filing to begin the foreclosure process) is considered to be received 90 days or more before a foreclosure sale.

The appeal must include an independent evaluation. That means you cannot use the same personnel who evaluated the application to review the appeal. Supervisors can review appeals so long as they were not directly involved in the initial evaluation of the consumer's complete loss mitigation application. (§ 1024.41(h)(3) and comment 41(h)-1)

Within 30 days of a consumer making an appeal, you must notify the consumer of your decision to offer or reject the loan modification option that is the subject of the appeal. You must give the consumer at least 14 days to accept or reject an offer of a loss mitigation option resulting from your independent evaluation, after the servicer provides this notice to the consumer. The rules do not require that you provide any additional appeal. (§ 1024.41(h)(2))

Implementation Tip: If you previously offered a consumer a loss mitigation option, and a consumer timely requested an appeal of a denial for some other loan modification option, the consumer's deadline for accepting the original offer of a loss mitigation option must be extended to 14 days after you notify the consumer of your decision on the appeal. (§ 1024.41(e)(2)(iii))

VIII. When am I prohibited from starting foreclosure or completing a foreclosure for which I have already made the first notice or filing? (§ 1024.41(f)(1)-2 and comment 41(f)(1)-1)

You cannot make the first notice or filing for any judicial or non-judicial foreclosure process until the consumer is more than 120 days delinquent.

If a consumer has submitted a complete loss mitigation application before you have begun the foreclosure process, you may not begin the foreclosure process until one of the following occurs:

- ☐ You send the consumer a notice that the consumer is not eligible for any loss mitigation option, and the consumer has exhausted the appeal process. This can happen when the appeal process is not applicable, the consumer has not requested an appeal within the applicable time period, or you have denied the consumer's appeal.
- ☐ The consumer rejects all loss mitigation options you offer.
- ☐ The consumer fails to perform under an agreement on a loss mitigation option. (See commentary to 41(g)(3) for additional guidance on short sales.)

If a consumer submits a complete loss mitigation application after you have made the first notice or filing for the foreclosure process but more than 37 days before a foreclosure sale, you must not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, until one of the following occurs:

- ☐ You send the consumer a notice that the consumer is not eligible for any loss mitigation option and the consumer has exhausted the appeal process. This can happen when the appeal process is not applicable, the consumer has not requested an appeal within the applicable time period, or you have denied the consumer's appeal.
- ☐ The consumer rejects all loss mitigation options you offer.
- ☐ The consumer fails to perform under an agreement on a loss mitigation option. (See commentary to 41(g)(3) for additional guidance on short sales.)

Beginning the foreclosure process means making the first notice or filing required by applicable law, including filing documents with a court or in the land records, or sending notice to the consumer as a requirement for proceeding with a judicial or non-judicial foreclosure process.

i. Dispositive motion

The prohibition on 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. (Comment 41(g)-1)

If you have made a dispositive motion (meaning you have asked the court to rule in your favor without further trial proceedings) and you then receive a complete and timely loss mitigation application, you should take reasonable steps to avoid a ruling on your dispositive motion until you complete the loss mitigation evaluation process, such as requesting that the court delay consideration of your dispositive motion.

ii. Proceeding with the foreclosure process

The prohibition on moving for judgment or order of sale does not prevent you from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements, in cases where you receive a complete and timely loss mitigation application after you file the first notice or you file for a foreclosure proceeding--so long as the steps you take 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 the loss mitigation provisions of the servicing rule. (Comment 41(g)-2)

iii. Interaction with foreclosure counsel

It is your responsibility to promptly instruct your foreclosure counsel not to proceed with filing for foreclosure judgment or order of sale or to conduct a foreclosure sale when you receive a complete loss mitigation application within the deadlines specified in the rule. This may include instructing counsel to move for a continuance of the deadline for filing dispositive motions. (Comment 41(g)-3)

IX. What requirements apply to loss mitigation applications submitted 37 days or less before a foreclosure sale?

You are not required to comply with the loss mitigation requirements of this rule when consumers submit their completed loss mitigation application 37 days or less before a foreclosure sale.

Implementation Tip: You are required separately by the general servicing policies, procedures, and requirements provisions to maintain policies and procedures that are reasonably designed to achieve the objective of properly evaluating loss mitigation applications. (See Section 9 on page 68.) This objective includes properly evaluating a consumer 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 consumer's mortgage loan. Accordingly, if the owner or assignee requires evaluations of loss mitigation applications received closer to a foreclosure sale than required by the Bureau's loss mitigation rule, your policies and procedures must ensure that such reviews are performed as required by the owner or assignee. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a consumer 37 days or less before a foreclosure sale. (Comment 41(g)-4)

X. Is there a private right of action for a consumer to enforce the loss mitigation procedures?

Yes, there is a private right of action and the consumer may enforce the loss mitigation procedures pursuant to the provisions of Section 6(f) of RESPA (12 U.S.C. 2605(f)). However, there is no private right of action for loss mitigation policies and procedures that you design that are not required by the loss mitigation rule.

Implementation Tip: The rule does not entitle a consumer to receive an evaluation for (or an offer of) any particular loss mitigation option. Under this particular rule, you are not liable to a consumer for a claim that your agreement with an owner of a mortgage loan requires you to evaluate a consumer for, or to offer a consumer, any particular loss mitigation option. Instead, a consumer may file a private right of action if you fail to follow the timelines and procedures required by the loss mitigation rule.

13. Practical Implementation and Compliance Considerations

You should consult with legal counsel or your compliance officer to understand your obligations under the Mortgage Servicing Rules and to devise the policies and procedures you will need to have in place to comply with the rules' requirements.

How you comply with the Mortgage Servicing Rules may depend on your business model. When mapping out your compliance plan, you should consider practical implementation issues in addition to understanding your obligations under the rule. Your compliance plan may include:

1. Identifying affected products, departments, and staff

Servicers, or others subject to this rule, may offer some or all of the mortgage loan products and servicing activities discussed in the Mortgage Servicing Rules. To begin compliance, you may find it useful to identify all affected products, services, departments, and staff.

2. Identifying what business process, operational, and technology changes will be necessary for compliance

Fully understanding the changes required may involve a review of your existing business processes, as well as the hardware and software that you, your agents, or other business partners use. Gap analyses may be a helpful output of such a review and help to inform a robust implementation plan.

3. Identifying impacts on key service providers or business partner impacts.

Third-party updates may be necessary to ensure you interact with consumers in a compliant fashion; to incorporate new disclosures; and to make sure your servicing software, compliance, quality control, and records management protocols comply with this rule.

Software providers, or other vendors and business partners, such as subservicers, may offer compliance solutions that can assist with any necessary changes. These key partners will depend on your business model. In some cases, you may need to negotiate revised or new contracts with these parties, or seek a different set of services.

If you seek the assistance of vendors or business partners, make sure you understand the extent of the assistance that they provide. For example, if vendors provide software that produces and distributes ARM disclosures, do they guarantee the accuracy of their disclosures?

4. Identify training needs

Consider what training will be necessary for your servicing, compliance, loss mitigation, collections, bankruptcy, and quality control staff. Training may also be required for other individuals that are your employees, or your agents' or business partners' employees.

5. Considering other Title XIV rules

The Mortgage Servicing Rules are just one component of the Bureau's Dodd-Frank Act Title XIV rulemakings.

Other Title XIV rules include:

- ☐ Ability-to-Repay and Qualified Mortgage Rule
- ☐ 2013 HOEPA Rule
- ☐ ECOA Valuations Rule
- ☐ TILA Higher-Priced Mortgage Loans Appraisal Rule
- ☐ Loan Originator Compensation Rule
- ☐ TILA Higher-Priced Mortgage Loans Escrow Rule

Each of these rules affects aspects of the mortgage industry and its regulation. Many of these rules intersect with one or more of the others. Therefore, the compliance considerations for these rules may overlap in your organization. You will find copies of these rules online at http://www.consumerfinance.gov/regulations/.

14. Other Resources

I. Where can I find a copy of the Mortgage Servicing Rules and get more information about them?

You will find the rules on the Bureau's website at http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/.

In addition to a complete copy of the rules, that web page also contains:

- ☐ The preambles, which explain why the Bureau issued the rules; the legal authority and reasoning behind the rules; responses to comments; and analysis of the benefits, costs, and impacts of the rules
- ☐ Official Interpretations of the rules
- ☐ Summary of the rules

For email updates about Bureau regulations and when additional Dodd-Frank Act Title XIV implementation resources become available, please submit your email address within the "Email updates" box at https://www.consumerfinance.gov/regulations/.