

Mortgage Servicing

After completing the risk assessment and examination scoping, examiners should use these procedures, in conjunction with the compliance management system review procedures, to conduct a mortgage servicing examination. The examination procedures contain a series of modules, grouping similar requirements together. Depending on the scope, each examination will cover one or more of the following modules:

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

Routine Servicing

- Module 1 Servicing Transfers, Loan Ownership Transfers, and Escrow Disclosures
- Module 2 Payment Processing and Account Maintenance
- Module 3 Consumer Inquiries, Complaints, and Error Resolution Procedures
- Module 4 Maintenance of Escrow Accounts and Insurance Products
- Module 5 Credit Reporting
- Module 6 Information Sharing and Privacy

Default Servicing

- Module 7 Collections and Accounts in Bankruptcy
- Module 8 Loss Mitigation, Early Intervention, and Continuity of Contact

Foreclosure

- Module 9 Foreclosures

Conclusions

- Module 10 Examiner Conclusions and Wrap-Up

Examination Objectives

1. To assess the quality of the regulated entity's compliance risk management systems, including internal controls and policies and procedures, for preventing violations of Federal consumer financial law in its mortgage servicing business.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law in connection with mortgage servicing.
3. To gather facts that help determine whether a regulated entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with mortgage servicing.

4. To determine, in consultation with Headquarters, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

A servicer may service loans on behalf of itself or an affiliate. It may service as a contractor of the trustee where a mortgage is included in a mortgage-backed security, or it may service whole loans for an outside third-party investor.¹ A servicer may sell the rights to service the loan separately from any ownership transfers. This is because some entities have expertise in payment processing and other servicing responsibilities, while others seek to invest in the underlying mortgages. These procedures apply whether the servicer obtained the servicing rights from another entity or the servicing responsibility is transferred within a company from the origination platform to the servicing platform.

Servicers must comply with various laws to the extent that the law applies to the particular servicer and its activities:

- The Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X, impose requirements for servicing transfers, written consumer information requests, resolution of notices of error, force-placed insurance, early intervention and continuity of contact for delinquent borrowers, loss mitigation procedures, general servicing policies and procedures, and escrow account maintenance.
- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, impose requirements on servicers regarding periodic billing statements, crediting of payments, imposition of late fee and delinquency charges, provision of payoff statements with respect to closed-end consumer credit transactions secured by a principal dwelling, and disclosures regarding rate changes for adjustable rate mortgages. For open-end mortgages, Regulation Z provisions related to payment crediting and error resolution apply to the extent that the servicer is a creditor. Additionally, TILA and Regulation Z generally impose requirements on loan owners for loan ownership transfers.
- The Electronic Funds Transfer Act (EFTA) and its implementing regulation, Regulation E, impose requirements if servicers within the scope of coverage obtain electronic payments from borrowers.
- The Fair Debt Collection Practices Act (FDCPA) governs collection activities conducted by third-party collection agencies, as well as servicer collection activities if the servicer acquired the loan when it was already in default.

¹ If the owner is a separate entity, the servicer generally has contractual commitments to the owner of the loan. In the private securitization market, the contracts generally are called Pooling and Servicing Agreements or PSAs. If a Fannie Mae or Freddie Mac owns the loan, the commitments are set forth in the company's seller/servicer guides.

- The Homeowners Protection Act (HPA) limits private mortgage insurance that can be assessed on consumer accounts.
- The Fair Credit Reporting Act (FCRA) requires servicers that furnish information to consumer reporting agencies to ensure the accuracy of data placed in the consumer reporting system. The FCRA also limits certain information sharing between company affiliates.
- The Gramm-Leach-Bliley Act (GLBA) requires servicers within the scope of coverage to provide privacy notices and limit information sharing in particular ways.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, apply to those servicers that are creditors, such as those who participate in a credit decision about whether to approve a mortgage loan modification. The statute makes it unlawful to discriminate against any borrower with respect to any aspect of a credit transaction:
 - On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
 - Because all or part of the applicant's income derives from any public assistance program; or
 - Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.²

To carry out the objectives set forth in the **Examination Objectives** section, the examination process also will include assessing other risks to consumers that are not governed by specific statutory or regulatory provisions. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to servicers' interactions with consumers.³ Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the Bureau's policymaking. The standards the CFPB will use in assessing UDAAPs are:

- A representation, omission, act, or practice is deceptive when:
 - (1) the representation, omission, act, or practice misleads or is likely to mislead the consumer;
 - (2) the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
 - (3) the misleading representation, omission, act, or practice is material.

² The Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have dispute rights for consumers, such as the Fair Credit Reporting Act. The ECOA prohibits discriminating against an applicant who has exercised a dispute right pursuant to one of the statutes outlined in the Act.

³ Dodd-Frank Act, Sec. 1036, PL 111-203 (July 21, 2010).

- An act or practice is unfair when:
 - (1) it causes or is likely to cause substantial injury to consumers;
 - (2) the injury is not reasonably avoidable by consumers; and
 - (3) the injury is not outweighed by countervailing benefits to consumers or to competition.
- An abusive act or practice:
 - (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or
 - (2) takes unreasonable advantage of –
 - a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - the inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Please refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs.

The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. As set out in the **Examination Objectives** section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a violation of any federal consumer financial law could be cited, including a UDAAP violation.

Module 1 – Servicing Transfers, Loan Ownership Transfers, and Escrow Disclosures

Servicing Transfers

Examiners should engage in several steps to assess potential violations of law in connection with servicing transfers, loan ownership transfers, and escrow disclosures. First, examiners should review a sample of servicing records, from the servicer's primary computer system, for loans transferred within the previous year. Examiners also may need to review copies of the electronic and paper documents transferred from the prior servicer. Additionally, they should review relevant records outside the servicer's primary computer system, such as copies of monthly statements sent to consumers, copies of the RESPA disclosures, and evidence of delivery. If consumer complaints or document review indicate potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

RESPA

1. Assess compliance with RESPA provisions regarding Mortgage Servicing Transfer Disclosures and General Servicing Policies, Procedures and Requirements. Please refer to the examination procedures regarding RESPA, 12 CFR 1024.33 and 1024.38(a) & (b)(4), for more information.

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FDCPA

2. Assess compliance with FDCPA, Right to Validation Notice for Certain Consumers. Please refer to the examination procedures regarding FDCPA, 15 U.S.C. 1692g (a), for more information.

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Other Risks to Consumers

3. Determine whether the servicer takes steps to facilitate the transfer of the consumer's automated clearing house (ACH) payments in connection with the transfer of servicing rights. For example, determine whether the servicer takes steps, including making disclosures, so that consumers do not inadvertently fail to make a timely mortgage payment or make a double mortgage payment following the transfer.

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4. Determine whether a servicer who receives servicing transfers complies with the terms of loss mitigation agreements entered into by the borrower and the prior servicer.

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Ownership Transfer

Regulation Z

Examiners should determine whether the servicer is required to transmit the loan ownership transfer notice. The institution would have this obligation if (a) it owns any of the loans in the servicing portfolio and (b) the loan is secured by the principal dwelling of the consumer. (12 CFR 1026.39(a)(1)).⁴

To assess whether the servicer is complying with obligations under Regulation Z to notify consumers of changes in the loan ownership, examiners should sample from the list of loans in which the *loan's owner* changed within the previous year. For the loans in the sample, examiners should review copies of consumer disclosures regarding loan ownership and evidence of delivery.

5. Assess compliance with Regulation Z, Notice of Ownership Transfer Provision. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.39, for more information.

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Escrow Transfers

RESPA

To assess whether the servicer is complying with obligations under Regulation X to notify consumers of changes in the escrow account requirements resulting from a transfer of servicing, examiners should sample from the list of loans transferred within the previous year that included escrow accounts. For the loans in the sample, examiners should review copies of consumer disclosures regarding the escrow accounts and evidence of delivery.

6. Assess compliance with RESPA, Escrow Accounts, Transfer of Servicing Provisions. Please refer to the examination procedures regarding RESPA, 12 CFR 1024.17(e), for more information.

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⁴ A servicer of a mortgage loan is not treated as an owner of the obligation if the servicer holds title to the loans, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation.

Contractually, the loan owner may have delegated the Regulation Z obligation to the servicer. Although the loan owner cannot delegate its obligation under law, examiners should assess whether the servicer is fulfilling its commitment, if applicable.

Module 2 – Payment Processing and Account Maintenance

To assess payment posting and fee practices, examiners should review a sample of servicing records. Examiners should begin by reviewing a sample of records from the servicer's primary record system; if potential problems are found, examiners should review copies of relevant records outside the primary system, such as copies of monthly statements, copies of consumer payment records, and copies of bills from vendors *documenting* any services related to the consumer's loan account. If consumer complaints or document review indicates potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

Payment Processing

Regulation Z

1. Assess compliance with Regulation Z, Payment Posting Provisions for closed-end mortgages secured by a consumer's principal dwelling. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.36(c)(1), for more information.
2. Assess compliance with Regulation Z, Payment Posting Provisions for open-end mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.10, for more information.

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Optional Products

ECOA

3. Determine whether the servicer offers debt cancellation, debt suspension, or other similar additional products or services and, if so, which products and/or services the servicer offers.
4. Determine whether each such optional product or service is offered and provided in a manner consistent with ECOA. Targeted marketing of these products on the basis of race, for example, may indicate an increased risk of potential ECOA violations and require further inquiry. In consultation with Headquarters, assess whether marketing is targeted on such a basis to particular consumers or in particular areas.

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Other Risks to Consumers

5. Determine whether the servicer offers additional products or services (such as bi-weekly payment plans, payment protection or credit protection) and, if so, which products and/or services the servicer offers.

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6. Review marketing materials, whether they are telemarketing scripts, direct mail, web-based, or other media, and determine whether each optional product's costs and terms are clearly and prominently disclosed. If consumer complaints or document review indicates potential violations in these areas and the servicer engages in telemarketing, monitor call center activity, and statements of representatives marketing the products. If the servicer engages in web-based marketing, monitor Internet communications related to the marketing.

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7. Determine whether the servicer added on optional products or services without obtaining explicit authorization from the consumer. If the servicer obtains written authorization, review records of consumers who received additional products or services to ensure that written authorization has been provided and retained.

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8. For bi-weekly payment plan solicitations, determine whether the servicer clearly and conspicuously explains the terms and conditions, including, where applicable, whether the servicer will be crediting payments bi-weekly or only monthly.

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9. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act requires a servicer to reduce the interest rate that a servicemember must pay on private and federal student loans to 6 percent upon receiving a written request and a copy of the servicemember's military orders calling them into military service. The servicer must reduce the servicemember's interest rate to 6 percent when:

- The loan is a pre-service obligation – entered into prior to the borrower entering military service;
- The borrower has submitted a written request to the servicer; and
- The borrower has provided a copy of their military orders to the servicer.

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Periodic Statements and Other Disclosures

Examiners must review the servicer's policies, procedures, and systems to assess the adequacy of periodic statements and whether applicable disclosures are furnished when required by Regulation Z. Examiners also should review a sample of periodic statements.

Regulation Z

Periodic Statements

9. Assess compliance with Regulation Z, Periodic Statements for Open End Mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.7, for more information.

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10. Assess compliance with Regulation Z, Periodic Statements for Closed-End Mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.41, for more information.

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11. Assess compliance with Regulation Z, Periodic Statements for Home Equity Plans. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.40, for more information.

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Adjustable Rate Mortgage Disclosures

12. Assess compliance with Regulation Z, Disclosure of Initial Rate Change for Adjustable Rate Mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.20(d), for more information.

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13. Assess compliance with Regulation Z, Disclosure of Rate Adjustments Resulting in Payment Changes. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.20(c), for more information.

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EFTA

14. If the servicer is within the scope of coverage and obtains electronic payments from borrowers, assess compliance with EFTA's requirements for handling authorizations for electronic payments from consumers. Please refer to the examination procedures regarding EFTA's provisions on pre-authorized electronic transfers, 12 CFR 1005, for more information.

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Payoff Statements

Regulation Z – Payoff Statements

15. Assess compliance with Regulation Z, Providing Payoff Statements. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.36(c)(3), for more information.

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Other Risks to Consumers – Payoff Statements

16. Determine whether, when calculating the payoff amount, the servicer includes late charges and fees owed in the payoff amount or instead deducts such fees and charges from the escrow account.

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Treatment of Credit Balances

Regulation Z – Treatment of Credit Balances

17. Assess compliance with Regulation Z, Treatment of Credit Balances. Please refer to the regulation and examination narrative and procedures regarding Regulation Z, 12 CFR 1026.11 and 1026.21, for more information.

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Treatment of Private Mortgage Insurance

Homeowners' Protection Act of 1998

18. Assess compliance with Homeowners' Protection Act. Please refer to the examination procedures regarding the HPA, 12 U.S.C. 4902 and 4903(a)(3), for more information.

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Record Retention and Servicing File

RESPA

19. Assess compliance with Regulation X, Record Retention. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(c)(1), for more information.

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20. Assess compliance with Regulation X, Servicing File. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(c)(2), for more information.

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Module 3 – Consumer Inquiries, Complaints and Error Resolution Procedures

Examiners should review consumer complaints and call specific complaining consumers to interview them regarding their experiences. Examiners should listen to live calls and taped calls to assess the quality and training of call center personnel. Examiners should determine whether their complaints were resolved adequately, and whether they were resolved in a timely manner.

RESPA

Error Resolution Procedures

1. Assess compliance with Regulation X, Notice of Error Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.35, for more information.

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Requests for Information

2. Assess compliance with Regulation X, Written Information Request Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.36, for more information.

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Policies and Procedures

3. Assess compliance with Regulation X's requirement to maintain policies and procedures that are reasonably designed to achieve the objective of informing borrowers of the written error resolution and information request procedures. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(b)(5), for more information.

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4. Assess compliance with Regulation X's requirement to maintain policies and procedures that are reasonably designed to achieve the objective of accessing and providing timely and accurate information. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(b)(1), for more information.

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Open-End Mortgages – Billing Errors

5. Assess compliance with Regulation Z, Open-End Credit, Billing Errors Procedures. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.13, for more information.

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Module 4 – Maintenance of Escrow Accounts and Insurance Products

Maintenance of Escrow

Examiners should obtain a sample of servicing records. For the loans in the sample, examiners should assess whether the servicer is complying with the law in the areas listed below. If the file review indicates potential risks, examiners also should conduct interviews of a sample of consumers and staff, if appropriate, to assess consumer experiences with escrow accounts and any force-placed insurance products.

Escrow Disclosures

1. Assess compliance with Regulation X, Escrow Disclosures. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.17, for more information.

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Force-Placed Insurance

2. Assess compliance with Regulation X, Timely Payments. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.17(k)(5), for more information.

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3. Assess compliance with Regulation X, Force-Placed Insurance Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.37, for more information.

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Module 5 – Credit Reporting

Examiners should obtain a sample of loan servicing records. For the loans in the sample, compare the information in the servicer's system of record with the information reported to the credit reporting agencies. Particular concerns in the mortgage servicing context include ensuring that servicers report short sales accurately, instead of reporting transactions as resulting in a foreclosure when they actually resulted in a short sale, and ensuring that servicers report loan modification outcomes accurately. If consumer complaints or document review indicates potential FCRA violations, examiners also may conduct interviews of consumers from the sample.

FCRA Furnisher Requirements

1. Assess compliance with FCRA Furnisher Requirements. Please refer to the FCRA examination procedures, 12 CFR 1022.40-43, for more information.

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Module 6 – Information Sharing and Privacy

Privacy Notices

1. Assess compliance with Privacy of Consumer Financial Information Regulation that implements the GLBA. Please refer to the GLBA examination procedures, 12 CFR 1016.4 and 1016.5, for more information.

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Information Sharing With Affiliates

2. Assess compliance with the FCRA Affiliate Marketing Rule. Please refer to the FCRA examination procedures, 12 CFR 1022.21, for more information.

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Module 7 – Collections and Accounts in Bankruptcy

Examiners should obtain a sample of servicing records of consumers in default, including a sufficient number of loans in which the consumer has filed for bankruptcy, to assess collection practices. Examiners should obtain collection call records and listen to a sample of collection calls. If consumer complaints or document review indicates potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below. In connection with these steps, examiners should evaluate the following.

Under the FDCPA, a “debt collector” is defined as any person who regularly collects, or attempts to collect, consumer debts for another person or institution or uses some name other than its own when collecting its own consumer debts, with certain exceptions. The definition includes, for example, an institution that regularly collects debts for an unrelated institution.

The debt collector definition has an exception that frequently applies to mortgage servicing: an institution is not a debt collector under the FDCPA when it collects debts that were *not* in default when they were obtained by the servicer.⁵ Thus, a servicer that purchases the servicing rights for a portfolio of loans will be a debt collector only for loans that were in “default” at the time of the purchase.⁶

Examiners should obtain a sample of collection call records and assess whether collectors complied with the requirements listed in the FDCPA procedures. Examiners should also listen on a sample of collection calls.

FDCPA

1. Assess compliance with FDCPA. Please refer to the FDCPA examination procedures for more information.

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Other Risks to Consumers

2. Determine whether the servicer contacts borrowers in an appropriate manner:
 - a. Employees and third-party contractors clearly indicate to consumers that they are calling about the collection of a debt.
 - b. Employees and third-party contractors do not disclose the existence of a consumer’s debt to the public without the consent of the consumer, except as permitted by law.

⁵ 15 U.S.C. 1692a (6)(F)(iii).

⁶ The FDCPA itself does not contain a definition of the term “default.” In determining whether a debt is in default, the following factors, among others, are generally considered: the creditor’s customary policies and practices; terms of the contract; determinations by the originator; and State law.

- c. The entity has policies on avoiding repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

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- 3. Determine whether the servicer's representatives make misrepresentations or use deceptive means to collect debts.

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- 4. Determine whether collections staff transfer borrowers to loss mitigation staff, in accordance with the institution's policies and procedures, to discuss loss mitigation alternatives.

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Bankruptcy

Other Risks to Consumers

- 5. Determine whether the servicer properly identifies accounts as being in active bankruptcy to ensure that the servicer provides protection from foreclosure or collections to which the borrower is entitled under federal bankruptcy law.

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- 6. For consumers who have filed for bankruptcy, determine whether the servicer notifies the debtor of the total amount due, including principal, interest, fees, expenses, or other charges, as of the date the debtor filed for bankruptcy, and whether the servicer provides the debtor with an escrow account statement prepared as of the date the debtor filed for bankruptcy.

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- 7. For consumers who have filed for chapter 13 bankruptcy, determine whether the servicer provides notice of any change in the payment amount due, including any change that results from an interest rate or escrow account adjustment, to the debtor, the debtor's counsel, the bankruptcy trustee, and the court, before a payment in the new amount is due.

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- 8. For consumers who have filed for chapter 13 bankruptcy, determine whether the servicer provides notice of fees or other amounts charged to the account to the debtor, the debtor's counsel, the bankruptcy trustee, and the court during the pendency of the bankruptcy case.

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- 9. Determine whether payments received from a bankruptcy trustee are properly applied to the consumer's account.

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Module 8 – Loss Mitigation, Early Intervention, and Continuity of Contact

Examiners should obtain a sample of servicing records of consumers who are delinquent or at imminent risk of default to assess loss mitigation activity. If consumer complaints or document review indicates potential concerns in these areas, examiners also may conduct interviews of consumers from the sample who sought loss mitigation in the prior year and ask questions relevant to each topic area below.

ECOA

Disparate Treatment in Loss Mitigation

As discussed above, examiners should obtain a sample of servicing records of consumers in default or at imminent risk of default to assess loss mitigation activity. While conducting the review of the servicer's loss mitigation activities discussed above, examiners must be mindful of activities that may indicate disparate treatment of consumers in violation of the ECOA on the bases of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. An examination of whether a servicer's loss mitigation program involves disparate treatment of consumers in violation of the ECOA will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

Examiners should:

1. Determine whether the file documents indicate that decisions were made based upon any protected status.
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2. Determine whether there were clear policies and procedures for making loss mitigation decisions or whether there was broad employee discretion. If employees have discretion, determine whether the procedures, controls, and monitoring that govern the exercise of discretion are adequate.
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3. Assess policies and procedures for assessing fees, with a specific focus on discretion.
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4. Determine whether there were adequate processes and controls for policy exceptions and adequate documentation of decisions.
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5. Review complaints of discrimination and litigation alleging discrimination.

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6. Review any internal fair lending audits or reports.

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7. Assess policies and procedures for considering various types of income of an applicant or the spouse of an applicant.

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8. Assess policies and procedures for servicing loans held by borrowers with limited English proficiency (LEP borrowers). Among other things, assess whether the institution (a) identifies borrowers that may require non-English language assistance; (b) provides an option for customer service calls in a language other than English; (c) has customer service personnel available to provide assistance in languages other than English and, if so, (i) whether they are dedicated service personnel and (ii) whether they receive the same training, and have the same authority, as other customer service personnel; and (d) provides translations of English language documents to LEP borrowers.

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Disparate Impact in Loss Mitigation

An examination of whether a servicer's loss mitigation program results in adverse impact on a protected class will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

Examiners, in consultation with Headquarters, should:

9. Obtain information sufficient to determine whether loss mitigation workouts have been provided to consumers in compliance with ECOA and Regulation B. For example, this may involve an analysis of the distribution of protected class members in the pool of delinquent borrowers versus the distribution of protected class members receiving a range of loss mitigation outcomes, including: reinstatement, repayment plan, forbearance, loan modification, short sale, deed-in-lieu, and foreclosure.

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10. Obtain information sufficient to determine whether loan modifications have been provided in compliance with ECOA and Regulation B. For example, this may involve an analysis of processing times and loan modification attributes including interest rate, principal, and monthly payment reductions for protected class members when compared to non-protected class members.

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11. Obtain information sufficient to determine whether the rate and timing of foreclosures are in compliance with ECOA and Regulation B. For example, this may include analysis of the representation of protected classes in the group of seriously delinquent borrowers versus their representation among borrowers who lose their homes to foreclosure.

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To complete a disparate impact analysis of a servicer's loss mitigation program, and determine whether a facially neutral policy or practice that has an adverse effect on a protected class meets a legitimate business need that cannot reasonably be achieved by a less discriminatory alternative, refer to Section B of the CFPB's Fair Lending Examination Procedures and consult with Headquarters.

RESPA

Early Intervention Requirements for Certain Borrowers

12. Assess compliance with Regulation X, Live Contact Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.39(a), for more information.

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13. Assess compliance with Regulation X, Written Notice Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.39(b), for more information.

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Continuity of Contact

14. Assess compliance with Regulation X, General Continuity of Contact Policies and Procedures Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.40(a), for more information.

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15. Assess compliance with Regulation X, Functions of Servicer Personnel Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.40(b), for more information.

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Loss Mitigation Procedures

16. Assess compliance with Regulation X's requirement to maintain policies and procedures that are reasonably designed to achieve the objective of properly evaluating loss mitigation applications. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(b)(2), for more information.

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17. Assess compliance with Regulation X, Receipt of a Loss Mitigation Application Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(b), for more information.

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18. Assess compliance with Regulation X, Evaluation of a Loss Mitigation Application Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(c), for more information.

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19. Assess compliance with Regulation X, Denial of Loss Mitigation Application Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(d), for more information.

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20. Assess compliance with Regulation X, Borrower Response Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(e), for more information.

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21. Assess compliance with Regulation X, Appeal Process Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(h), for more information.

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Other Risks to Consumers

Application Process

22. Determine whether information provided to consumers about loss mitigation alternatives is clear, prominent, and readily understandable.

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23. Determine whether the servicer is providing military homeowners who have informed the servicer that they have received military Permanent Change of Station orders with accurate, clear, and readily understandable information about available assistance options for which the consumer may qualify.

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24. Determine whether the servicer advises consumers to stop payments in order to qualify for loss mitigation relief.

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Consequences of Loss Mitigation

25. Determine whether the servicer discloses any rescheduling of payments that may occur under an existing obligation in a clear, prominent, and understandable manner.

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26. Determine whether the servicer discloses any material negative consequences that may occur as a result of the borrower's failing to make payments during the loss mitigation process.

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27. Determine whether the servicer discloses any material negative consequences that may occur as a result of a completed loan modification (e.g., decreased credit score, income tax implications if principal reduction is offered, and any increase in monthly payment amount).

[Click&type]

28. Determine whether the servicer discloses future changes in the modified loan terms (e.g., with respect to any principal forbearance or temporary interest rate reductions).

[Click&type]

29. Determine whether the servicer asks consumers to waive their legal rights under the Servicemembers Civil Relief Act or any other law as a prerequisite to the servicer either providing information to the consumer about available options or evaluating the consumer's eligibility for assistance.

[Click&type]

30. Determine if the servicer includes any waiver of legal rights in its loan modification or other foreclosure alternative agreements.

[Click&type]

Short Sales

31. If the servicer is offering short sales as a loss mitigation tool, determine whether it provides clear, timely disclosures to the consumer about the process.

[Click&type]

32. If the servicer demands deficiency payments upon agreeing to a short sale to recoup any principal not recovered through the short sale, determine whether the servicer discloses in a clear, prominent, and understandable manner that it or an investor will demand a deficiency payment or related cash contribution and the approximate amount of that deficiency.

[Click&type]

Deeds-In-Lieu of Foreclosures

33. If the servicer offers deeds-in-lieu of foreclosures, determine whether it provides clear, timely disclosures about requirements and cost to the consumer.

[Click&type]

Module 9 – Foreclosures

Examiners should obtain a sample of servicing records of consumers whose loans have been referred to foreclosure. For the loans in the sample, examiners should focus on whether the consumer is in fact in default and whether all amounts due are correct. Examiners should review amounts set forth in foreclosure affidavits, compare them to amounts recorded in the servicer's primary computer system, and compare them to all statements made in communications from the borrower, including consumer complaints. In appropriate cases, examiners should compare the filing dates reflected in the servicer's records to the dates identified in public records. Examiners also should review all complaints of consumers whose loans were referred to foreclosure in the prior year. In reviewing foreclosure practices, examiners should focus on the following areas:

ECOA

1. See above, Module 8. Examiners should collect information sufficient to determine whether there has been disparate treatment discrimination in violation of the ECOA and Regulation B in the servicer's foreclosure processing as part of the file review. Examiners should work with OFLEO to determine whether there has been disparate impact discrimination in foreclosure processing as part of the loss mitigation data analysis discussed above.

[Click&type]

RESPA

Dual Tracking

2. Assess compliance with Regulation X, Prohibition on Foreclosure Referral Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1041.41(f), for more information.
3. Assess compliance with Regulation X, Prohibition on Foreclosure Sale Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(g), for more information.
4. If the servicer is a small servicer, assess compliance with Regulation X, Small Servicer Requirements Provision. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(j).

[Click&type]

Oversight of Service Providers

5. Assess compliance with Regulation X's requirement to maintain policies and procedures that are reasonably designed to achieve the objective of facilitating oversight of, and compliance by, service providers, including both service providers performing foreclosure-related services and service providers performing other services. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(b)(3), for more information.

[Click&type]

Other Risks to Consumers

6. Determine whether the servicer has foreclosed on any consumers paying on a trial modification agreement, permanent modification agreement, forbearance agreement, or other similar agreement.

[Click&type]

7. Determine whether the servicer has foreclosed on any consumer with whom the servicer had agreed to a modification agreement, forbearance agreement, or other similar agreement, but the first payment was not yet due.

[Click&type]

8. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act prohibits servicers from foreclosing on any active duty military consumer, or any consumer within one year of active duty servicer, with pre-service obligations, unless the servicer satisfies certain requirements. Examiners should determine whether compliance policies and procedures include checking the Department of Defense's Manpower Database prior to completing a foreclosure and documenting the results.

[Click&type]

Walkaways

9. Evaluate the servicer's process for informing consumers about changes in the foreclosure process, including decisions not to go forward.

[Click&type]

10. Evaluate the servicer's process for informing consumers about determinations to charge off loans for accounting purposes or to release liens but not related debts prior to full repayment of the loan.

[Click&type]

Module 10 – Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity’s risk profile.

- Summarize the findings, supervisory concerns, and regulatory violations.
- For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether each violation is a pattern or practice, or an isolated occurrence.
- Identify action needed to correct violations and weaknesses in the institution’s compliance management system, as appropriate.
- Discuss findings with the institution’s management and, if necessary, obtain a commitment for corrective action
- Record violations according to Bureau policy in the Report of Examination/Supervisory Letter and CFPB’s electronic database system to facilitate analysis and reporting.
- If the examiner believes enforcement action may be appropriate, contact appropriate agency personnel for guidance.
- Prepare a memorandum for inclusion in the work papers and CFPB’s official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

GLOSSARY

BPOs: broker price opinions, which provide estimates of the property value.

Consumer Reporting Agency: a person which, for monetary fees, dues, or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Deed in Lieu of Foreclosure: a foreclosure alternative in which the consumer voluntarily transfers the property title to the servicer in exchange for cancellation of the remainder of the debt.

Escrow Account: an account the servicer maintains to pay property taxes and insurance on behalf of the borrower.

Forbearance: a foreclosure alternative in which the servicer reduces or suspends the consumer's mortgage payments for an agreed period of time. At the end of that time, the consumer resumes making the regular payments as well as a lump sum payment or additional monthly payments to bring the loan current. Forbearance may be an option if the consumer's income is reduced temporarily and the mortgage is affordable.

Force-Placed Insurance: an insurance policy taken out by a lender or creditor when it determines that a consumer has breached the mortgage contract by failing to carry appropriate insurance on the home that is collateral for the mortgage.

Foreclosure Trustee: an individual or company chosen to administer the assets of the beneficiary and facilitate the foreclosure process.

HAMP: The Home Affordable Modification Program (HAMP) is a temporary government program established by the U.S. Treasury to encourage loan modifications through use of financial incentives paid to borrowers, mortgage servicers, and investors.

A consumer is eligible to apply for a HAMP modification if he: (a) obtained the mortgage on or before January 1, 2009; (b) has a mortgage payment that is more than 31 percent of monthly gross income; (c) owes up to \$729,750 on the home; (d) has a financial hardship and is either delinquent or in danger of falling behind; (e) has sufficient, documented income to support the modified payment; and (f) has not been convicted within the last ten years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction.

Participation in HAMP is voluntary; but once a servicer agrees to participate, the terms of HAMP require the servicer to consider HAMP before other loss mitigation options. The list of servicers participating in HAMP is available at <http://www.makinghomeaffordable.gov/get-assistance/contact-mortgage/Pages/default.aspx>.

Loan Instruments: the promissory note and the security instrument that detail the rights and obligations of the parties.

Loan Modification: a foreclosure alternative in which the servicer changes one or more of the terms of the mortgage contract, typically to lower the monthly payments. Modifications may include reducing the interest rate, extending the term of the loan, or adding missed payments to the loan balance. A modification also may involve reducing the amount of money the consumer owes by forgiving a portion of the mortgage debt, which is known as “principal forgiveness.”

Loss Mitigation: a process for considering alternatives to foreclosure when consumers fall behind on their mortgage payments or are at risk of default.

PITI Payment: principal, interest, taxes, and insurance payment

Promissory Note: a document that evidences the debt and the promise to repay.

Property Inspection Fees: fees for inspections of the property so that the servicer can make sure that it is occupied and not abandoned.

Property Preservation Fees: fees for services purchased to maintain the property in good condition and typically include lawn mowing, winterizing, and making repairs.

Proprietary Loan Modifications: loan modifications other than HAMP modifications. The eligibility requirements and structure of these modifications depend on the servicer and the investor that owns the particular loan.

Reinstatement: a process by which, after going into default, the consumer pays the loan servicer the entire past-due amount, plus any late fees or penalties, by an agreed date. This option may be appropriate if the consumer’s problem paying the mortgage is temporary.

Repayment Plan: a foreclosure alternative in which the servicer allows the consumer a fixed amount of time to repay the amount he is behind by adding a portion of what is past due to the regular payment. This option may be appropriate if the consumer has missed a small number of payments and can afford the mortgage.

Security Instrument: a document that evidences the lien on the property. Depending on the state, the security instrument is called either a deed of trust or mortgage deed.

Short Sale: a foreclosure alternative in which the servicer allows the consumer to sell the home for less than the mortgage balance before it forecloses on the property and may agree to forgive any shortfall between the sale price and the mortgage balance.

Suspense Account: an account holding funds that are earmarked for — but not immediately credited to — the consumer’s loan account. Also called an unapplied funds account.

Uniform Instruments: form instruments developed by Fannie Mae and Freddie Mac that are used to document the large majority of mortgage loans.