

No-Action Letter Application

For more information on the No-Action Letter program, please review the CFPB's "Policy on No-Action Letters".

If there is not enough room to answer a question on the form, or if an applicant wishes to provide additional supporting information, please provide the information as an attachment to this form.

The Office of Innovation will inform applicants if an application is complete or if additional information is needed. Submitted applications may be withdrawn at any time.

Note: The Bureau is offering this application form on a voluntary basis as a tool to better organize applications; failure to adhere to or provide information requested by these forms will not necessarily render an application incomplete under the Policy.

Potential applicants are strongly encouraged to contact the Office of Innovation for informal, preliminary discussion of a contemplated proposal prior to submitting an application.

Inquiries and questions related to the Policy or application form can be sent directly to the Office of Innovation at officeofinnovation@cfpb.gov with "CFPB No-Action Letter Program Inquiry" in the subject line.

To be considered for the CFPB No-Action Letter Program, applicants may submit this completed form by email to officeofinnovation@cfpb.gov with "CFPB No-Action Letter Application" in the subject line, or by mail to the address listed below:

CFPB No-Action Letter Application
c/o Office of Innovation
1700 G St NW
Washington, DC 20552

NO-ACTION LETTER APPLICATION

Privacy Notice

The Consumer Financial Protection Bureau (CFPB) is seeking information from your institution in connection with your application for a No-Action Letter.

The CFPB will obtain personally identifiable information (PII) such as your full name, mailing address, email address, and phone number, as applicable. Your name and e-mail address may be used to contact you about future related events, reports, or other announcements from the CFPB.

This collection of information is authorized by 12 U.S.C. 5492(a)(10); 12 U.S.C. 5512(b)(4)(B); 15 U.S.C. 1640(f); 15 U.S.C. 1691e(e); 15 U.S.C. 1693m(d).

Participation is voluntary.

Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The OMB control number for this collection is 3170-0059. It expires on 09/30/2022. The time required to complete this information collection is estimated to average approximately 100 hours per response. Comments regarding this collection of information, including the estimated response time, suggestions for improving the usefulness of the information, or suggestions for reducing the burden to respond to this collection should be submitted to the CFPB at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to PRA-Comments@cfpb.gov.



NO-ACTION LETTER APPLICATION

Pre-Application

Was a preliminary discussion held with Office of Innovation staff regarding this application?

YES

NO

(If "Yes," with whom?)

If "no" then please email us at OfficeOfInnovation@cfpb.gov to discuss your idea.

Applicant Information

1 Please list full name of applicant(s).

Please include Legal Entity Identifiers (LEIs) if you have one.

FULL NAME OF APPLICANT(S) INCLUDING ANY TRADE NAMES OR DBAs

2 Please list the mailing address of your company's headquarters.

This should NOT be a P.O. Box.

STREET

CITY

STATE

ZIP CODE

3 Please list the contact information of the person responsible for communicating with the CFPB.

POINT OF CONTACT NAME

WORK PHONE

EMAIL



Product or Service Information

- 4** Describe how your product or service functions, the terms on which it will be offered, and the manner in which it is offered or provided (including any consumer disclosures).

Please see the Addendum below.

Potential Consumer Benefits

5 Describe the potential consumer benefits associated with your product or service.

The borrower-UI and servicer workflow enable consumers to self-service their loss mitigation requests, securely communicate with the servicer, and securely submit documents in support of loss mitigation applications; automates the RESPA timeline process for servicers; and streamlines the loss mitigation decisioning process from weeks to hours – provided that the complete digital solution is utilized by consumers and servicers. Consumers can receive quicker loss mitigation decisions and more accurate RESPA notices while having full transparency into the loss mitigation process.

See also Part 8 below for other benefits of the Brace platform.

Potential Consumer Risks

6 Describe the potential consumer risks associated with your product or service.

Most mortgage servicers have a process in place to manage consumer requests for loss mitigation. The Brace Platform digitizes an existing loss mitigation process; therefore, the potential consumer risks associated with the Brace Platform are the same risks that attend any digital or internet-based process (e.g., data breaches, inability to access a website). Brace is unique in that it has transformed an old paper-based process into a modern, streamlined, digital process.

In addition, there are potential consumer risks indirectly associated with the Brace software, such as if the mortgage servicer fails to use the software or Platform as intended. Such failure could lead to the types of consumer harm that the laws and regulations discussed in Part 8 below (or other laws and regulations) are designed to address. For example, improper use of the software could result in consumers not being considered for types of loss mitigation for which they may qualify, improper denials of loss mitigation applications, or even unjustified foreclosures.

Potential Consumer Risks cont.

7 Describe how you will mitigate the anticipated consumer risks.

Brace has taken steps to mitigate the potential risks associated with its Platform.

In order to mitigate the risks associated with moving from a paper process to a digital process, Brace has taken it upon itself to complete an external audit of its security systems. Annually, Brace undergoes a SOC 2 Type II audit by an independent Certified Public Accounting Firm. The SOC 2 Type II audit is considered the "gold standard" for security audits in the marketplace.

As for the indirect risk of servicers failing to use the software as intended, the Platform embeds multi-stage warnings designed to trigger an alert if the mortgage servicer fails to comply with RESPA by failing to provide any required notice or disclosure. The alerts are internal to the Platform and act as a management tool for the servicer. It should be noted that this risk currently exists in a mortgage servicer's paper process. The Platform enables a servicer to strengthen its control over timelines and disclosures by providing automated messaging.

Statutory and Regulatory Scope

Applicants should describe the statutory and regulatory scope of the requested No-Action Letter with as much specificity as practicable, in part to enable the CFPB to respond expeditiously to the application.

8 Explain why you need a No-Action Letter and identify the statutory and/or regulatory provisions for which you seek no-action.

Please see the Addendum below.

Coordination and Confidentiality

9 If the applicant would like the CFPB to coordinate with other regulators on this application, please identify those regulators and provide their contact information, if available.

N/A

10 If the applicant wishes to request confidential treatment for certain information or data, the applicant should identify this information or data and the basis for such treatment as specifically as possible.

Yes. Brace requests confidential treatment of information provided to the Bureau in connection with this application. The information includes descriptions of proprietary processes and controls. There are no other current competitors with the same level of technology; but there exists a vast array of vendors who have the capability to step in quickly and design a similar process and have much larger resources than Brace. Brace's strategic competitive advantage would be unduly and unfairly harmed by disclosure of this information.

Submitting the application

11

By checking this box, I am indicating that the information given is true to the best of my knowledge and belief.

DATE

April 2020

COMPANY NAME

Brace Software, Inc.

FULL NAME

Nicholas Corpuz

POSITION/TITLE

Director of Compliance

EMAIL

Nick@brace.ai

WORK PHONE

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Addendum

Part 4 – Product or Service Information

According to the CFPB's Consumer Complaint Database, as of April 2020 over 112,000 complaints have been submitted focused on loan modification, collection, and foreclosure. It is likely that a significant number of these complaints could have been prevented if servicers properly communicated with consumers and provided consumers with clear information about the proper documentation needed to qualify themselves for loss mitigation.

Brace Software, Inc. ("Brace") offers a digital loss mitigation solution to mortgage servicers that solves many of the communication issues in mortgage servicing (the "Platform"). (See <https://brace.ai/>.) There are two aspects to Brace's Platform: the consumer user interface ("borrower-UI"), which consists of a dynamic workflow with directed document upload, and the servicer workflow.

The borrower-UI is a digitized version of the [Fannie Mae/Freddie Mac Form 710/Borrower Solicitation Package](#) which is commonly offered in paper format to consumers in need of assistance by mortgage servicers. The borrower-UI is consumer facing and allows mortgage servicers to digitize an offline process, including the delivery of all attendant Real Estate Settlement Procedures Act ("RESPA") disclosures via the consumer's preferred method of electronic communication. The borrower-UI permits borrowers to specify their preferred methods of contact and, depending on which methods are selected, captures up-to-date consumer contact information -- such as cell phone numbers, email addresses, and mailing addresses -- which enables the servicer to communicate with a consumer on the status of a loss mitigation application over multiple channels. The borrower-UI also provides mortgage servicers with a method to electronically communicate to the consumer the status of any application for loss mitigation, as well as about the status of the loan. The specific content of these communications is provided by particular mortgage servicers. But such messaging could include, for example, a message that the borrower has started the application but has not yet submitted it. In addition, the borrower-UI permits borrowers to request that servicers "cease communication" with them. Following submission of an application through the Platform, the consumer can download a PDF copy of the submitted Form 710 which includes all fields and values the consumer entered in the borrower-UI.

Furthermore, the Brace borrower-UI is a dynamic workflow with directed document upload interface. Dynamic workflow is the process by which a consumer's experience in the borrower-UI changes based on the information provided by the consumer. The dynamic workflow embedded in the borrower-UI makes a complicated process simpler for the consumer.

Directed document upload is the process by which a consumer is prompted to upload supporting documents for the consumer's hardship, income, assets, and expenses. Universally, loss mitigation applications require the consumer to document hardships, incomes, assets, and expenses prior to the servicer approving a request for assistance. Brace's borrower-UI allows a consumer to seamlessly connect bank and brokerage accounts to the Platform. This process enables the consumer to take full advantage of the dynamic workflow and only upload the documents which are necessary to complete the loss mitigation application.

The second aspect of the Brace Platform is the servicer workflow, which is internal to mortgage servicers and is not intended to be used, or seen, by consumers. The servicer workflow includes built-in safeguards for RESPA timelines to empower the servicer to properly respond to completed loss mitigation applications, and to respond to consumers in cases of incomplete applications. If a

consumer chooses to complete a paper (“off line”) assistance application, the servicer workflow enables the servicer to process paper applications and respond back to the consumer in the traditional offline manner that exists today at all servicers. The Brace Platform enables a servicer to communicate with a consumer via the consumer’s preferred method of contact, which can be one of the following methods:

- SMS;
- Email;
- Cell phone, home phone, work phone; or
- Mail, via United States Postal Service.

If a paper application is processed by the Brace Platform in the servicer workflow, and the consumer selects a preferred method of contact which is not mail, then the consumer receives a mailed document and a notice through the selected preferred method of contact with instructions on how to log into the borrower-UI.

A consumer must log back into the Brace borrower-UI to provide incomplete or missing documentation to the servicer; the borrower-UI provides dynamic workflow and directed document upload to guide the consumer in uploading incomplete or missing documentation. The same borrower-UI interface is used by consumers to provide missing or incomplete documentation and to accept or reject loss mitigation offers. It also allows consumers to appeal loss mitigation decisions. The borrower-UI dynamic workflow reopens and escorts the consumer through the appeal process while directing the consumer to upload the specific documents the servicer requires in order to complete the appeal process.

The Platform is only offered on a "Software-as-a-Service" ("SaaS") basis via a contract with a mortgage servicer. It is not offered directly to consumers. All contracts are between Brace and the mortgage servicer and paid on a per-loan basis following the opening of an assistance application. Brace is further paid following a successful loss mitigation outcome. All consumer disclosures, as mandated by RESPA requirements, are designed and sent by the mortgage servicer. Brace’s software is a communication conduit for mortgage servicers for consumer communications. Brace does not send any disclosures itself, but rather, will support and streamline the servicer’s ability to send timely disclosures to consumers. It is intended, as a part of Brace’s offering, to send all disclosures via an online interface accessible by consumers of mortgage servicers.

Part 8 – Statutory and Regulatory Scope

Brace’s digital approach and workflow solution to loss mitigation is novel. Given that the statutes and regulations applicable to mortgage servicing were drafted largely with the existing, offline paper process in mind, the application of certain provisions of these statutes/regulations to Brace’s Platform is ambiguous in certain respects.

Given that the Brace Platform is provided as a SaaS to mortgage servicers that are subject to these statutes and regulations, Brace is requesting a No-Action Letter Template under section E.1 of the Bureau’s Policy on No-Action Letters regarding (i) Regulation X section 41(b)(2) (12 CFR 1024.41(b)(2)); and (ii) Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)).

Regulation X Section 41 – Loss Mitigation Procedures

Section 41(b)

Regulation X section 41(b) governs a mortgage servicer’s receipt and review of loss mitigation applications. Under section 41(b)(2), “if a servicer receives a loss mitigation application 45 days or more before a foreclosure sale,” the servicer must, *inter alia*,

notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section . . .¹

A loss mitigation application is defined as an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option.² Comment 41(b)(1)-2 of the Bureau Official Interpretations of Regulation X clarifies when an inquiry or prequalification request becomes an application. It provides in relevant part:

A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation option and provides information the servicer would evaluate in connection with a loss mitigation application, the borrower's inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any “prequalification” for a loss mitigation option.³

The application of the 5-day notice requirement – as clarified by comment 41(b)(1)-2 – to applications submitted via the Brace Platform is uncertain for the following reasons.

The Platform allows a consumer to log in and begin an application for loss mitigation. The consumer may begin an application and partially complete it and log off the Platform before clicking on the “submit” button. Or the consumer may never return to submit the application. Or the consumer may begin an application and click on the “submit” button before completing the application. The same is generally true of a paper application. However, whereas a servicer has no real-time knowledge that a consumer has partially completed a paper application, a servicer using the Platform has access to any information the consumer has filled in in real time, *i.e.*, before the consumer submits the application.

Given the novelty of the Brace Platform, it is unsurprising that the Bureau Official Interpretations do not

¹ 12 CFR 1024.41(b)(2).

² See 12 CFR 1024.31.

³ See also 78 FR 10695, 10825 (Feb. 14, 2013) (“[T]he Bureau believes it is necessary and appropriate to achieve the purposes of RESPA to implement requirements on servicers to treat oral communications that have sufficiently passed the point of inquiries as loss mitigation applications subject to the loss mitigation procedures. The Bureau has added comment 41(b)(1)-2 to clarify when an inquiry or prequalification request becomes an application. The Bureau recognizes there is substantial ambiguity in interpersonal communications but believes that loss mitigation applications should be considered expansively. For example, if a consumer indicates that the consumer would like to apply for a loss mitigation option and provides any information the servicer would evaluate in connection with a loss mitigation application, a consumer has submitted a loss mitigation application.”).

include a comment clarifying at what stage a consumer’s activity on such a platform becomes an application that triggers the 5-day notice. But comment 41(b)(1)-2 could be read to suggest that an application has been submitted by the consumer, and received by the servicer, as soon as the consumer fills in even a minimal amount of information in the online application and the servicer views it in real time.

In Brace’s view, the considerations that led the Bureau to provide comment 41(b)(1)-2 – regarding communications between the consumer and the servicer – are largely inapplicable to the Brace Platform. A consumer who has been given access to the Platform has already indicated to the servicer that they wish to submit a loss mitigation application.

When such a consumer begins to fill out the online application, they are essentially in the same situation as a consumer who begins to fill out a paper loss mitigation application. In each case, the consumer realizes that they are in the process of filing out an application, and that filling out an application is different than submitting it to the servicer. Consequently, requiring the servicer to provide the 5-day notice as soon as the consumer fills in some information on the online application form and the servicer views it in real time likely would result in consumer confusion. As in the paper context, it makes more sense for the 5-day notice to be triggered by actual submission/receipt of an application when the consumer hits “submit” in the online application form, even if the application is not complete.

FDCPA section 805(c) Communication in Connection with Debt Collection

FDCPA section 805(c) provides that “[i]f a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt,” except for certain limited purposes.⁴ In addition, it specifies that “[i]f such notice from the consumer is made by mail, notification shall be complete upon receipt.”⁵

As noted above, the Brace Platform permits a consumer to invoke an option to “cease communications” and considers such notification complete upon receipt through the Platform. However, it is uncertain how section 805(c) applies to such cease communication requests effected on the Platform. There are no regulations implementing section 805(c), let alone official interpretations clarifying whether and how a servicer may accept cease communication requests consistent with section 805(c) through a platform of the type developed by Brace. Brace believes that a servicer who processes and gives effect to cease communication requests (i.e., by not communicating further with the consumer with respect to such debt except under the circumstances outlined in 15 U.S.C. 1692c(c)) received on its Platform in addition to (but not instead of) processing and giving effect to cease communication requests received in writing would not violate section 805(c).

⁴ 15 U.S.C. 1692c(c).

⁵ *Id.*