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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB-2014-0033]

RIN 3170-AA49

Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing amendments to certain mortgage servicing rules issued in 2013. These proposed amendments focus primarily on clarifying, revising, or amending provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and periodic statement requirements under Regulation Z's servicing provisions. The proposed amendments also address proper compliance regarding certain servicing requirements when a consumer is a potential or confirmed successor in interest, is in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act. The proposed rule makes technical corrections to several provisions of Regulations X and Z. The Bureau requests public comment on these changes.

DATES: Comments must be received on or before [**INSERT DATE 90 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

- **ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2014-0033 or RIN 3170-AA49, by any of the following methods:

- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include CFPB-2014-0033 AND/OR RIN 3170-AA49 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Dania L. Ayoubi, David H. Hixson, Bradley S. Lipton, Joel L. Singerman, or Shiri B. Wolf, Counsels; or William R. Corbett or Laura A. Johnson, Senior Counsels; Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States (2013 Title XIV Final Rules), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111-203, 124 Stat. 1376 (2010).[1] Two of these rules were (1) the Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) (2013 RESPA Servicing Final Rule);[2] and (2) the Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z) (2013 TILA Servicing Final Rule).[3] These two rules are referred to collectively as the 2013 Mortgage Servicing Final Rules.

The Bureau clarified and revised those rules through notice and comment rulemaking during the summer and fall of 2013 in the (1) Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act

[1] Specifically, on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725 (Jan. 22, 2013) (2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6855 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (January 2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the January 2013 ATR Final Rule, which was finalized on May 29, 2013. *See* 78 FR 6621 (Jan. 30, 2013) (January 2013 ATR Proposal) and 78 FR 35429 (June 12, 2013) (May 2013 ATR Final Rule). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Feb. 14, 2013) (Regulation Z) and 78 FR 10695 (Feb. 14, 2013) (Regulation X) (2013 Mortgage Servicing Final Rules). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z), 78 FR 10367 (Feb. 13, 2013) (2013 Interagency Appraisals Final Rule). On January 20, 2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013) (2013 Loan Originator Final Rule).

[2] 78 FR 10695 (Feb. 14, 2013).

[3] 78 FR 10901 (Feb. 14, 2013).

(Regulation Z) (July 2013 Mortgage Final Rule)[4] and (2) Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z) (September 2013 Mortgage Final Rule).[5] In October 2013, the Bureau issued clarified compliance requirements in relation to successors in interest, early intervention requirements, bankruptcy law, and the Fair Debt Collection Practices Act (FDCPA),[6] through an Interim Final Rule (October 2013 IFR or IFR)[7] and a contemporaneous compliance bulletin (October 2013 Servicing Bulletin).[8] In addition, in October 2014, the Bureau added an alternative definition of small servicer in the Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z).[9] The purpose of each of these updates was to address important questions raised by industry, consumer advocacy groups, and other stakeholders. The 2013 Mortgage Servicing Final Rules, as amended in 2013 and 2014, are referred to herein as the Mortgage Servicing Rules.

The Bureau is now proposing several additional amendments to the Mortgage Servicing Rules to revise regulatory provisions and official interpretations relating to the Regulation X and Z mortgage servicing rules.[10] The proposals cover nine major topics, summarized below generally in the order they appear in the proposed rule. More details can be found in the proposed rule.

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[4] 78 FR 44685 (July 24, 2013).
[5] 78 FR 60381 (Oct. 1, 2013).
[6] 15 U.S.C. 1692 *et seq.*
[7] 78 FR 62993 (Oct. 23, 2013).
[8] Consumer Fin. Prot. Bureau, CFPB Bulletin 2013-12, *Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.
[9] 79 FR 65300, 65304 (Nov. 3, 2014).
[10] Note that RESPA and TILA differ in their terminology. Whereas Regulation X generally refers to “borrowers,” Regulation Z generally refers to “consumers.”

1. Successors in interest. The Bureau is proposing three sets of rule changes relating to successors in interest. First, the Bureau is proposing to apply all of the Mortgage Servicing Rules to successors in interest once a servicer confirms the successor in interest's identity and ownership interest in the property.[11] Second, the Bureau is proposing rules relating to how a mortgage servicer confirms a successor in interest's status. Third, the Bureau is proposing that, to the extent that the Mortgage Servicing Rules apply to successors in interest, the rules apply with respect to all successors in interest who acquire an ownership interest in a transfer protected from acceleration, and therefore foreclosure, under Federal law.

2. Definition of delinquency. The Bureau is proposing to add a general definition of delinquency that would apply to all of the servicing provisions of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. Under the proposed definition, a borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid.

3. Requests for information. The Bureau is proposing amendments that would change how a servicer must respond to requests for information asking for ownership information for loans in trust for which the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) is the trustee, investor, or guarantor.

4. Force-placed insurance. The Bureau is proposing to amend the required disclosures to account for when a servicer wishes to force-place insurance when the borrower has insufficient,

[11] This proposal uses the term "successor in interest's status" to refer to the successor in interest's identity and ownership interest in the property.

rather than expiring or expired, hazard insurance coverage on the property. Additionally, the Bureau is proposing to give servicers the option to include a borrower's mortgage loan account number on the notices required under § 1024.37. The Bureau is also proposing several technical edits to correct discrepancies between the model forms and the text of § 1024.37.

5. Early intervention. The Bureau is proposing to clarify generally the early intervention live contact obligations and written early intervention notice obligations. The Bureau is also proposing to require servicers to provide written early intervention notices to certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the FDCPA.

6. Loss mitigation. The Bureau is proposing to: (1) Require servicers to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current after a delinquency; (2) Modify the existing exception to the 120-day prohibition on foreclosure filing to allow a servicer to join the foreclosure action of a senior lienholder; (3) Clarify that servicers have significant flexibility in setting a reasonable date by which a borrower must return documents and information to complete an application, so long as the date maximizes borrower protections and allows borrowers a reasonable period of time to return documents and information; (4) Clarify that servicers must take affirmative steps to delay a foreclosure sale, even where the sale is conducted by a third party; clarify the servicer's duty to instruct foreclosure counsel to take steps to comply with the dual-tracking prohibitions; and indicate that a servicer who has not taken, or caused counsel to take, all reasonable affirmative steps to delay the sale, is required to dismiss the foreclosure action if necessary to avoid the sale; (5) Require that servicers promptly provide a written notice once they receive a complete loss mitigation application; require that the notice indicate that the servicer has received a complete application but clarify that the servicer might later request additional information if needed; require that the notice provide the date of completion and a disclosure indicating whether a foreclosure sale was scheduled as of that date, the date foreclosure protections began, a statement informing the borrower of applicable appeal rights, and a statement that the servicer will complete its evaluation within 30 days from the date of the complete application; (6) Address and clarify how servicers obtain information not in the borrower's control and evaluate a loss mitigation application while waiting for such third party information; prohibit servicers from denying borrowers based upon delay in receiving such third party information; require that servicers promptly provide a written notice to the borrower if the servicer lacks third party information 30 days after receiving the borrower's complete application; and require servicers to notify borrowers of their determination in writing promptly upon receipt of the third party information; (7) Permit servicers to offer a short-term repayment plan based upon an evaluation of an incomplete application; (8) Clarify that servicers may stop collecting documents and information from a borrower pertaining to a loss mitigation option after receiving information confirming that the borrower is ineligible for that option; and (9) Address and clarify how loss mitigation procedures and timelines apply to a transferee servicer that receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer.

7. Prompt payment crediting. The Bureau is proposing to clarify how servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications. Under the Bureau's proposal, periodic payments made pursuant to temporary loss mitigation programs would continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments, while periodic payments made pursuant to a permanent loan modification would be credited under the terms of the permanent loan agreement.

8. Periodic statements. The Bureau is proposing to: (1) Clarify certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in temporary loss mitigation programs, or have been permanently modified, to conform generally the disclosure of the amount due with the Bureau's understanding of the legal obligation in each of those circumstances; (2) Require servicers to send modified periodic statements to consumers who have filed for bankruptcy, subject to certain exceptions, with content varying depending on whether the consumer is a debtor in a Chapter 7 or Chapter 13 bankruptcy case; and to conduct consumer testing on proposed sample periodic statement forms that servicers could use for consumers in bankruptcy to ensure compliance with § 1026.41; and (3) Exempt servicers from the periodic statement requirement for charged-off mortgage loans if the servicer will not charge any additional fees or interest on the account and provides a final periodic statement.

9. Small servicer. The proposal would make certain changes to the small servicer definition. The small servicer definition generally applies to servicers who service 5,000 or fewer mortgage loans for all of which the servicer is the creditor or assignee. The proposal would exclude certain seller-financed transactions from being counted toward the 5,000 loan limit, allowing servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

The proposed rule also makes technical corrections to several provisions of Regulations X and Z. The Bureau seeks public comment on all of the proposed changes.

II. Background

A. Title XIV Rules under the Dodd-Frank Act

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. In the Dodd-Frank Act, Congress established the Bureau and generally consolidated the rulemaking authority for Federal consumer financial laws, including the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), in the Bureau.[12] At the same time, Congress significantly amended the statutory requirements governing mortgages with the intent to restrict the practices that contributed to and exacerbated the crisis.[13] Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[14] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules in a span of less than two weeks in January 2013 to implement these new statutory provisions and provide for an orderly transition. These rules included the 2013 Mortgage Servicing Final Rules, issued on January 17.

On January 17, 2013, the Bureau issued the 2013 Mortgage Servicing Final Rules. Pursuant to the Dodd-Frank Act, which permitted a maximum of one year for implementation, these rules became effective on January 10, 2014. The Bureau issued additional corrections and clarifications to the 2013 Mortgage Servicing Final Rules in the summer and fall of 2013 and in the fall of 2014.

[12] *See, e.g.*, sections 1011 and 1021 of the Dodd-Frank Act, 12 U.S.C. 5491 and 5511 (establishing and setting forth the purpose, objectives, and functions of the Bureau); section 1061 of the Dodd-Frank Act, 12 U.S.C. 5581 (consolidating certain rulemaking authority for Federal consumer financial laws in the Bureau); section 1100A of the Dodd-Frank Act (codified in scattered sections of 15 U.S.C.) (similarly consolidating certain rulemaking authority in the Bureau). *But see* Section 1029 of the Dodd-Frank Act, 12 U.S.C. 5519 (subject to certain exceptions, excluding from the Bureau's authority any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both).

[13] *See* title XIV of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010) (codified in scattered sections of 12 U.S.C., 15 U.S.C., and 42 U.S.C.).

[14] *See* Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note.

B. Implementation Plan for New Mortgage Rules

On February 13, 2013, the Bureau announced an initiative to support implementation of the new mortgage rules (Implementation Plan),[15] under which the Bureau would work with the mortgage industry to ensure that the 2013 Title XIV Final Rules could be implemented accurately and expeditiously. The Implementation Plan included: (1) coordination with other agencies; (2) publication of plain-language guides to the new rules; (3) ongoing conversations with stakeholders involved in implementation with respect to questions and concerns they had identified; (4) publication of additional interpretive guidance and corrections or clarifications of the new rules as needed; (5) publication of readiness guides for the new rules; and (5) education of consumers on the new rules.

In the course of the implementation process, the Bureau identified a number of respects in which the 2013 Mortgage Servicing Final Rules posed implementation challenges. As a result, in July 2013 and September 2013, following notice and comment, the Bureau issued two final rules amending discrete aspects of the 2013 Mortgage Servicing Final Rules. Among other things, the July 2013 Mortgage Final Rule clarified, corrected, or amended provisions on the relation to State law of Regulation X's servicing requirements; implementation dates for certain adjustable-rate mortgage servicing notices under Regulation Z; and the small servicer exemption from certain servicing rules. Among other things, the September 2013 Mortgage Final Rule modified provisions of Regulation X related to error resolution, information requests, and loss mitigation procedures. In October 2013, the Bureau issued an IFR, which among other things,

[15] Press Release, Consumer Fin. Prot. Bureau, CFPB Lays Out Implementation Plan for New Mortgage Rules (Feb. 13, 2013), *available at* http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-lays-out-implementation-plan-for-new-mortgage-rules/.

provisionally suspended the effectiveness of certain requirements of the 2013 Mortgage Servicing Final Rules with respect to consumers in bankruptcy and consumers who had exercised their rights under the FDCPA to direct that debt collectors cease contacting them with respect to outstanding debts. In the October 2013 Servicing Bulletin, the Bureau also clarified compliance requirements regarding successors in interest, early intervention live contact requirements, and the FDCPA. In addition, in October 2014, the Bureau issued a final rule that, among other things, adds an alternative definition of small servicer that applies to certain nonprofit entities that service, for a fee, only loans for which the servicer or an associated nonprofit entity is the creditor.

C. Ongoing Monitoring

After the January 10, 2014 effective date of the rules, the Bureau has continued to engage in ongoing outreach and monitoring with industry, consumer advocacy groups, and other stakeholders, including holding numerous individual meetings as well as hosting a bankruptcy roundtable discussion on June 16, 2014, among representatives of consumer advocacy groups, bankruptcy attorneys, mortgage servicers, trade groups, and bankruptcy trustees. As a result, the Bureau has identified further issues that continue to pose implementation challenges or require clarification. The Bureau has also recognized that there are instances in which the rules are creating unintended consequences or failing to achieve desired objectives.

The Bureau recognizes both the implementation process that industry has experienced with respect to the Mortgage Servicing Rules and the costs that industry has incurred. The Bureau believes that the majority of the provisions in this proposal will impose, at most, minimal new compliance burdens, and in many cases will reduce the compliance burden relative to the existing rules. Where the Bureau is proposing adding new requirements, the Bureau is doing so after careful weighing of incremental costs and benefits.

This proposal concerns additional revisions to the Mortgage Servicing Rules. The purpose of these revisions is to address important questions raised by industry, consumer advocacy groups, or other stakeholders. As discussed below, the Bureau contemplates additional revisions in several sections of Regulations X and Z.

III. Legal Authority

As discussed more fully in the section-by-section analysis, the Bureau is proposing this rule pursuant to the FDCPA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies, including the Board of Governors of the Federal Reserve System (Board). The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines." Section 1061 of the Dodd-Frank Act also transferred to the Bureau all of the Department of Housing and Urban Development's (HUD's) consumer protection functions relating to RESPA. Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with TILA, RESPA, the FDCPA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[16]

[16] *See* Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws," the provisions of title X of the Dodd-Frank Act, and the laws for which authorities are transferred under title X subtitles F and H of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include TILA); Dodd-Frank Act section 1400(b), 12 U.S.C. 5481(12) note (defining "enumerated consumer laws" to include certain subtitles and provisions of Dodd-Frank Act title XIV); Dodd-Frank Act section 1061(b)(7), 12 U.S.C. 5581(b)(7) (transferring to the Bureau all of HUD's consumer protection functions relating to RESPA).

A. RESPA

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, and section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E), authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. As identified in the 2013 RESPA Servicing Final Rule, the consumer protection purposes of RESPA include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options. Each of the proposed amendments or clarifications to Regulation X is intended to achieve some or all these purposes.

Additionally, as explained below, certain of the proposed amendments to Regulation X implement specific provisions of RESPA.

This proposed rule also includes amendments to the official Bureau commentary in Regulation X. Section 19(a) of RESPA authorizes the Bureau to make such reasonable interpretations of RESPA as may be necessary to achieve the consumer protection purposes of RESPA. Good faith compliance with the interpretations would afford servicers protection from liability under section 19(b) of RESPA.

B. TILA

Section 105(a) of TILA, 15 U.S.C. 1604(a), authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Under section 102(a), 15 U.S.C. 1601(a), the purposes of TILA are "to assure a meaningful disclosure of credit terms so that the consumers will be able to compare more readily the various credit terms available and avoid the uniformed use of credit" and to protect consumers against inaccurate and unfair credit billing practices. For the reasons discussed in this proposal, the Bureau is proposing to adopt amendments to Regulation Z to carry out TILA's purposes and such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance therewith.

Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA any class of transactions if the Bureau determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. For the reasons discussed in this notice, the Bureau is proposing to exempt certain transactions from the requirements of TILA pursuant to its authority under section 105(f) of TILA.

Additionally, as explained below, certain of the proposed amendments to Regulation Z implement specific provisions of TILA.

This proposed rule also includes amendments to the official Bureau commentary in Regulation Z. Good faith compliance with the interpretations would afford protection from liability under section 130(f) of TILA.

C. FDCPA

The Bureau also exercises its authority to prescribe rules with respect to the collection of debts by debt collectors pursuant to section 814(d) of the FDCPA, 15 U.S.C. 1692l(d). For the reasons discussed below, the Bureau proposes to rely on this authority to clarify a borrower's cease communication protections under section 805(c) of the FDCPA and to interpret the exceptions set forth in section 805(c)(2) and (3) of the FDCPA to include the written early intervention notice required by proposed § 1024.39(d)(2)(iii). The proposed rule also includes Bureau advisory opinions for purposes of section 813(e) of the FDCPA, 15 U.S.C. 1692k(e). Under that section, "[n]o provision of [the FDCPA] imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

D. The Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1), authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." RESPA, TILA, the FDCPA, and title X of the Dodd-Frank Act are Federal consumer financial laws.

Section 1032(a) of the Dodd-Frank Act, 12 U.S.C. 5532(a), provides that the Bureau "may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." The authority granted to the Bureau in section 1032(a) of the Dodd-Frank Act is broad and empowers the Bureau to prescribe rules regarding the disclosure of the “features” of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Section 1032(c) of the Dodd-Frank Act, 12 U.S.C. 5532(c), provides that, in prescribing rules pursuant to section 1032 of the Dodd-Frank Act, the Bureau “shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.” Accordingly, in proposing to amend provisions authorized under section 1032(a) of the Dodd-Frank Act, the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

IV. Proposed Effective Date

The Bureau proposes that all of the changes proposed herein, except for the changes in proposed § 1026.41(e)(5) and (f), take effect 280 days after publication of a final rule in the **Federal Register**. The Bureau believes that the proposed changes generally reinforce existing Bureau guidance, provide greater clarity in an effort to facilitate compliance, expand existing preemptions, or otherwise provide relief from regulatory requirements; therefore the Bureau believes an effective date of 280 days after publication may be appropriate.

The Bureau proposes that the changes to proposed § 1026.41(e)(5) and (f) take effect one year after publication of a final rule in the **Federal Register**. These proposed changes would limit the circumstances in which a servicer is exempt from the periodic statement requirements with respect to a consumer who is a debtor in bankruptcy and, when an exemption does not apply with respect to such consumers, require that periodic statements contain certain bankruptcy-related modifications; therefore the Bureau believes an effective date of one year after publication may be appropriate.

The Bureau seeks comment on whether the proposed effective dates are appropriate, or whether the Bureau should adopt alternative effective dates.

V. Section-by-Section Analysis of the Proposed Rule

A. Regulation X and Regulation Z

Several of the Bureau's proposals under either Regulation X or Regulation Z affect provisions in both Regulations X and Z. For example, the proposed definition of delinquency in § 1024.31 affects requirements in §§ 1024.39 through 1024.41 of Regulation X, as well as § 1026.41 of Regulation Z. Generally, the Bureau discusses each section of the proposed rule under the heading designating the applicable regulation below—part V.B. for Regulation X and part V.C. for Regulation Z. However, because the proposed rule and commentary relating to successors in interest are interspersed throughout Regulation X and Regulation Z, the Bureau is providing an overview of the proposed rule under this combined part V.A for both Regulation X and Regulation Z. In this combined part, references to specific sections of part 1024 refer to Regulation X, and references to specific sections of part 1026 refer to Regulation Z. The Bureau then discusses each specific section of the proposed rule relating to successors in interest in more detail under the heading designating the applicable regulation below.

Overview of Proposed Rule Relating to Successors in Interest.

Background. Current § 1024.38(b)(1)(vi) provides that servicers are required to maintain policies and procedures that are reasonably designed to ensure that the servicer can, upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower with respect to the property securing the deceased borrower's mortgage loan.[17] When the Bureau adopted this requirement in the 2013 RESPA Servicing Final Rule, the Bureau stated that it "understands that successors in interest may encounter challenges in communicating with mortgage servicers about a deceased borrower's mortgage loan account. The Bureau believes that it is essential that servicers' policies and procedures are reasonably designed to facilitate communication with successors in interest regarding a deceased borrower's mortgage loan accounts."[18] The Bureau issued the October 2013 Servicing Bulletin to provide implementation guidance about this requirement.[19] The Bureau noted that it had received "reports of servicers either outright refusing to speak to a successor in interest or demanding documents to prove the successor in interest's claim to the property that either do not exist . . . or are not reasonably available."[20] The Bureau also stated that these practices "often prevent a successor in interest from pursuing assumption of the mortgage loan and, if applicable, loss mitigation options."[21] The October 2013 Servicing Bulletin provided examples of servicer practices and procedures that would accomplish the objectives set forth in § 1024.38(b)(1)(vi) and alleviate these problems.[22]

[17] A successor in interest is "[o]ne who follows another in ownership or control of property." Black's Law Dictionary (9th ed. 2009). For the purposes of this proposal, the Bureau is referring to successors in interest who have been transferred a legal interest in a property securing a mortgage loan from a borrower on the mortgage loan; the successor in interest may not necessarily have assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law, and the servicer may not necessarily have agreed to add the successor in interest as obligor on the mortgage loan.
[18] 78 FR 10695, 10781 (Feb. 14, 2013).
[19] October 2013 Servicing Bulletin.
[20] *Id.* at 2.
[21] *Id.*
[22] *Id.* On July 17, 2014, the Bureau also issued an interpretive rule clarifying that where a successor in interest who has previously acquired a legal interest in a dwelling agrees to be added as obligor on the mortgage loan, the

As explained in more detail in the discussion that follows and in the section-by-section analysis of the proposed sections,[23] the Bureau is proposing three sets of rules relating to successors in interest. First, the Bureau is proposing rules providing that, to the extent that the Mortgage Servicing Rules apply to successors in interest, the rules apply specifically with respect to successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Depository Institutions Act of 1982 (the Garn-St Germain Act).[24] Second, the Bureau is proposing rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest in the property. Third, the Bureau is proposing to apply all of the Mortgage Servicing Rules to successors in interest whose identity and ownership interest in the property have been confirmed by the servicer ("confirmed successors in interest"). As explained in more detail in the discussion that follows and in the section-by-section analysis of the proposed sections, the Bureau believes that these changes are necessary to address the significant problems successors in interest continue to encounter with respect to the servicing of mortgage loans secured by their property. The Bureau has received information from consumers, consumer advocacy groups, and other stakeholders demonstrating that such problems remain pervasive, despite the Bureau's earlier guidance.

Successors in interest covered by the proposed rule would not necessarily have assumed

servicer's express acknowledgment of the successor in interest as obligor does not constitute an "assumption" as that term is used in Regulation Z. *See* 79 FR 41631 (July 17, 2014). Accordingly, the Regulation Z Ability-to-Repay Rule does not apply when a creditor expressly accepts a successor in interest as obligor on a loan. *See id.* The interpretive rule also noted that the servicer must comply with any ongoing obligations pertaining to consumer credit, such as the ARM notice requirements (12 CFR 1026.20(c) and (d)) and periodic statement requirement (12 CFR 1026.41), after the successor in interest is added as an obligor on the mortgage note.

[23] *See* section-by-section analyses of §§ 1024.30(d), 1024.31, 1024.36(i), 1024.38(b)(1)(vi), 1024.39(b)(1), 1024.41(b), 1026.2(a)(11), 1026.2(a)(27), and 1026.41(a), *infra*.

[24] 12 U.S.C. 1701j-3(d).

the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law. The Bureau understands that whether a successor in interest has assumed a mortgage loan obligation under State law is a fact-specific question. The proposed rule would not affect this question but would apply with respect to a successor in interest regardless of whether that person has assumed the mortgage loan obligation under State law.[25]

Scope of successor in interest rules. The Bureau is proposing changes to the Mortgage Servicing Rules regarding who qualifies as a successor in interest for purposes of relevant provisions of the rules. Current § 1024.38(b)(1)(vi) refers to "the successor in interest of the deceased borrower." As the Bureau noted in the 2013 Mortgage Rule Amendments, the Garn-St Germain Act "generally prohibits the exercise of due-on-sale clauses with respect to certain protected transfers."[26] These protected transfers include certain transfers involving the death of a borrower, specifically "a transfer to a relative resulting from the death of a borrower" and "a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety."[27] In addition to these categories involving the death of a borrower, the Garn-St Germain Act protects other categories of transfers: "a transfer where the spouse or children of the borrower become an owner of the property;" "a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;" "a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not

[25] As noted, the Bureau has also clarified in an interpretive rule that where a successor in interest who has previously acquired a legal interest in a dwelling agrees to be added as obligor on the mortgage loan, the servicer's express acknowledgment of the successor in interest as obligor does not constitute an "assumption" as that term is used in Regulation Z. *See* 79 FR 41631 (July 17, 2014).
[26] 78 FR 60381, 60406 (Oct. 1, 2013).
[27] 12 U.S.C. 1701j-3(d).

relate to a transfer of rights of occupancy in the property;" and "any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board."[28]

The Bureau is proposing that, to the extent that the Mortgage Servicing Rules apply to successors in interest, the rules would apply to all successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act, rather than only successors in interest who acquired an ownership interest upon a borrower's death. Accordingly, for the purposes of Regulation X, the Bureau is proposing to define successor in interest in § 1024.31 as a member of any of the categories of successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act. The Bureau also is proposing to modify current § 1024.38(b)(1)(vi) to account for all transfers to successors in interest meeting this definition. Similarly, for the purposes of Regulation Z, proposed § 1026.2(a)(27) defines successor in interest to cover all categories of successors in interest who acquired an ownership interest in the dwelling securing a mortgage loan in a transfer protected by the Garn-St Germain Act. Successors in interest covered by the proposed definitions would not necessarily have assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law.[29]

When the Bureau issued current § 1024.38(b)(1)(vi), it stated that it had "received information about difficulties faced by surviving spouses, children, or other relatives who succeed in the interest of a deceased borrower to a property that they also occupied as a principal

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[28] *Id.* The Garn-St Germain Act also prohibits exercise of due-on-sale clauses with respect to certain other situations that do not involve transfer of an ownership interest in the property. *See id.* The Bureau's proposed rule would not apply to these situations.

[29] As noted, the Bureau understands that whether a successor in interest has assumed a mortgage loan obligation under State law is a fact-specific question.

residence, when that property is secur[ing] a mortgage loan account solely in the name of the deceased borrower."[30] Since that time, the Bureau has received additional information about difficulties faced by other categories of successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act, such as divorced spouses of prior borrowers.[31] For example, the Bureau has received reports from consumers and consumer advocacy groups that successors in interest who are transferred an ownership interest in property securing a mortgage loan upon divorce or legal separation face similar challenges to those faced by successors in interest in situations involving borrower death.

The Bureau believes that successors in interest in situations other than those involving a borrower's death face the same risk of unnecessary foreclosure and other consumer harm and have the same legal rights with respect to the mortgage loan and property as successors in interest upon death. Further, because the Bureau is proposing to apply all of the Mortgage Servicing Rules to confirmed successors in interest in large part to prevent unnecessary foreclosure, the Bureau believes that it is appropriate to defer to Congress's policy choice about which categories of successors in interest should be protected from foreclosure. Accordingly, the Bureau is proposing that the Mortgage Servicing Rules should apply with respect to all categories of successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act.

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[30] 78 FR 10695, 10781 (Feb. 14, 2013).

[31] The Bureau interprets "spouse" to include married same-sex spouses. *See* Memorandum on Ensuring Equal Treatment for Same-Sex Married Couples (Same-Sex Married Couple Policy) (June 25, 2015), *available at* http://files.consumerfinance.gov/f/201407_cfpb_memo_ensuring-equal-treatment-for-same-sex-married-couples.pdf ("It is the Bureau's policy, to the extent federal law permits and consistent with the legal position announced by the U.S. Department of Justice in interpreting relevant statutes, regulations and policies, to recognize all marriages valid at the time of the marriage in the jurisdiction where the marriage was celebrated. Accordingly, the Bureau will regard a person who is married under the laws of any jurisdiction to be married nationwide for purposes of the federal statutes and regulations under the Bureau's jurisdiction regardless of the person's place of residency.").

Confirming a successor in interest's status. The Bureau is proposing modifications to Regulation X's mortgage servicing rules (subpart C of Regulation X) relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest in the property securing the mortgage loan.[32] Proposed § 1024.36(i) requires a servicer to respond to a written request that indicates that the person making the request may be a successor in interest by providing that person with information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. Proposed § 1024.38(b)(1)(vi) provides several related modifications to the current policies and procedures provision involving successors in interest.

Proposed § 1024.38(b)(1)(vi)(A) requires servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can, upon notification of the death of a borrower or of any transfer of the property securing a mortgage loan, promptly identify and facilitate communication with any potential successors in interest regarding the property. Proposed § 1024.38(b)(1)(vi)(B) requires servicers to maintain policies and procedures reasonably designed to ensure that the servicer can, upon identification of a potential successor in interest, promptly provide to that person a description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and how the person may submit a written request under § 1024.36(i) (including the appropriate address). Proposed § 1024.38(b)(1)(vi)(C) requires servicers to maintain policies and procedures

[32] The Bureau believes that similar modifications to Regulation Z's mortgage servicing rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest in the dwelling are unnecessary. Regulation X's mortgage servicing rules apply to the vast majority of mortgage loans to which Regulation Z's mortgage servicing rules apply. Accordingly, the rules under Regulation X relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest in the property would generally apply to loans to which Regulation Z's mortgage servicing rules apply, making unnecessary similar modifications to Regulation Z.

reasonably designed to ensure that the servicer can confirm promptly, upon the receipt of such documents, the person's status as a successor in interest, where appropriate, and promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest.

The Bureau is proposing these changes because it believes, based on the information it has received from consumers, consumer advocacy groups, and other stakeholders, that successors in interest continue to have difficulty demonstrating their identity and ownership interest in the property to servicers' satisfaction.[33] The October 2013 Servicing Bulletin indicated that servicers should have a practice of "[p]romptly providing to any party claiming to be a successor in interest a list of all documents or other evidence the servicer requires, which should be reasonable in light of the laws of the relevant jurisdiction, for the party to establish (1) the death of the borrower and (2) the identity and legal interest of the successor in interest."[34] Nonetheless, the Bureau has heard numerous reports that some servicers continue to require successors in interest to submit documents that the Bureau believes are unreasonable in light of the particular situation of that successor in interest, or in light of the laws of the relevant jurisdiction. For instance, the Bureau has heard reports that some servicers have required successors in interest to produce probate documents for estates that do not require probate. The Bureau has also heard reports that some servicers have taken a long time to confirm the

[33] *See, e.g.*, California Reinvestment Coalition, Chasm Between Words and Deeds X*: How Ongoing Mortgage Servicing Problems Hurt California Homeowners and Hardest-Hit Communities*, at 20 (May 21, 2014) (noting that majority of housing counselors surveyed reported continuation of previously reported problems regarding successors in interest, such as that "servicers often . . . would require [such homeowners] to go through costly and unnecessary hoops").
[34] CFPB Bulletin 2013-12.

successor in interest's status, even after receipt of appropriate documentation. The Bureau has also heard reports that some servicers have failed to communicate to the successor in interest whether the servicer has confirmed the successor in interest's status.

The Bureau believes that these difficulties present significant problems related to RESPA's purposes and therefore warrant an appropriate response in Regulation X's mortgage servicing rules. When the Bureau issued the 2013 RESPA Servicing Final Rule, the Bureau stated that RESPA, as amended by the Dodd-Frank Act, "reflects at least two significant consumer protection purposes: (1) to establish requirements that ensure that servicers have a reasonable basis for undertaking actions that may harm borrowers and (2) to establish servicers' duties to borrowers with respect to the servicing of federally related mortgage loans."[35] Further, the Bureau stated that the Dodd-Frank Act "provides the Bureau authority to establish prohibitions on servicers of federally related mortgage loans appropriate to carry out the consumer protection purposes of RESPA . . . . [I]n light of the systemic problems in the mortgage servicing industry . . . , the Bureau is exercising this authority in this rulemaking to implement protections for borrowers with respect to mortgage servicing."[36] The Bureau believes that the proposed modifications to Regulation X's mortgage servicing rules regarding confirmation of a successor in interest's identity and ownership interest in the property similarly serve these purposes, in particular with respect to preventing unnecessary foreclosure and other homeowner harms.

Where a successor in interest's property secures a mortgage loan, a foreclosure or

[35] 78 FR 10901, 10914 (Feb. 14, 2013).
[36] *Id.* at 10703.

threatened foreclosure imperils that ownership interest and poses significant risk of consumer harm, even though the successor in interest may not have assumed the mortgage loan obligation under State law. Successors in interest may also have difficulty, beyond that of other homeowners, in avoiding foreclosure. The Bureau believes that such increased risk of harm may arise because successors in interest are more likely than other homeowners to experience an income disruption due to death or divorce, and because successors in interest have more difficulty than other homeowners obtaining information about the status of the mortgage loan, options for modification, and payoff information. Successors in interest may also be more likely than other homeowners to experience difficulty with the prompt crediting of their payments, resulting in unnecessary foreclosure. For all these reasons, the Bureau believes that successors in interest are a particularly vulnerable group at risk of substantial harms.

These potential harms are most likely to occur when a servicer does not promptly confirm a successor in interest's identity and ownership interest in the property. Before confirmation of the successor in interest's identity and ownership interest, the servicer may, in some circumstances, have legitimate concerns about sharing information about the mortgage loan, crediting payments, or evaluating the unconfirmed successor in interest for loss mitigation options. Accordingly, when confirmation is delayed, the potential risk of foreclosure and other harms to the successor in interest increase. For these reasons, the Bureau believes that the difficulties faced by successors in interest with respect to confirmation of their status have caused successors in interest to face unnecessary problems with respect to the mortgage loans secured by the property, which may lead to unnecessary foreclosure on the property.

The Bureau's October 2013 Servicing Bulletin addressed these problems for a subset of successors in interest by requiring servicers to have policies and procedures in place to facilitate the provision of information to successors in interest who had inherited a property securing a deceased borrower’s mortgage loan. Nonetheless, the Bureau has continued to receive reports that all categories of successors in interest, including those who inherit the property upon death of a family member, continue to experience difficulties in having servicers confirm the successor in interest’s legal status. The Bureau believes, therefore, that proposing changes to the rules themselves is appropriate and necessary to clarify servicers’ obligations and to ensure that the requirements are widely understood and enforceable. The Bureau believes that enabling successors in interest to demonstrate efficiently their status to servicers and having servicers promptly confirm this status is particularly important. Such prompt confirmation will reduce the risk of unnecessary foreclosures and other consumer harm. Because the Bureau is proposing to apply all of the Mortgage Servicing Rules to confirmed successors in interest, enabling successors in interest to demonstrate their status to servicers efficiently and requiring servicers to confirm this status promptly would allow successors in interest to access the rules’ protections as quickly as possible. Moreover, as explained in the discussion above of the scope of successor in interest rules, the Bureau also believes that it is appropriate to extend protections to successors in interest in situations beyond a borrower’s death.

Applying Mortgage Servicing Rules to successors in interest. The Bureau is proposing to apply all of the Mortgage Servicing Rules to confirmed successors in interest. Accordingly, proposed § 1024.30(d) provides that a successor in interest shall be considered a borrower for the purposes of Regulation X’s mortgage servicing rules once a servicer confirms the successor in interest’s identity and ownership interest in the property. Similarly, proposed § 1026.2(a)(11) provides that a confirmed successor in interest is a consumer with respect to Regulation Z’s mortgage servicing rules. Under the proposed rule, the Mortgage Servicing Rules would apply with respect to a confirmed successor in interest regardless of whether that person has assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law.

The Bureau believes, based on the information it has received from consumers, consumer advocacy groups, and other stakeholders, that successors in interest face many of the challenges that the Mortgage Servicing Rules were designed to prevent.[37] For example, the Bureau has learned that successors in interest often have difficulty receiving information about the mortgage loan secured by the property or correcting errors regarding the mortgage loan account. The Bureau has also learned that servicers sometimes refuse to accept, or may misapply, payments from successors in interest. The Bureau has also heard numerous reports that successors in interest often encounter difficulties being evaluated for loss mitigation options, including that servicers often require successors in interest to assume the mortgage loan obligation under State law before evaluating the successor in interest for loss mitigation options. This practice appears to contravene Fannie Mae and Freddie Mac requirements that, for loans governed by Fannie Mae or Freddie Mac guidelines, servicers must evaluate successors in interest for loss mitigation options prior to processing an assumption.[38] The problems encountered by successors in interest in correcting servicing errors and obtaining information may persist even after the servicer has confirmed the successor in interest's identity and ownership interest in the property.

The ability of successors in interest to sell, encumber, or make improvements to their

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[37] *See, e.g.*, California Reinvestment Coalition, Chasm Between Words and Deeds X *How Ongoing Mortgage Servicing Problems Hurt California Homeowners and Hardest-Hit Communities*, at 20 (May 21, 2014) (noting that majority of housing counselors surveyed reported continuation of previously reported problems regarding successors in interest, such as that "servicers often would not speak to such homeowners, would require them to go through costly and unnecessary hoops, and would leave them more vulnerable to foreclosure").

[38] *See* Fannie Mae, Servicing Guide Announcement SVC-2013-17 (Aug. 28, 2013), *available at* https://www.fanniemae.com/content/announcement/svc1317.pdf; Freddie Mac, Bulletin 2013-3 (Feb. 15, 2013), *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1303.pdf..

property is limited by the lien securing the mortgage loan. As homeowners of property securing a mortgage loan, successors in interest typically must satisfy the loan's payment obligations to avoid foreclosure, even though a successor in interest will not necessarily have assumed liability for the mortgage debt under State law. Successors in interest, like other homeowners, can face serious adverse consequences from foreclosure. These consumer harms may include loss of the home and accumulated equity, displacement, and damage to credit scores.[39] Successors in interest, however, may have more difficulty preventing or resolving servicing errors than other borrowers.

The Bureau believes that the problems faced by successors in interest are similar to many of the problems that prompted the Bureau to adopt the Mortgage Servicing Rules. When the Bureau issued the 2013 RESPA Servicing Final Rule, it stated that "the consumer protection purposes of RESPA include responding to borrower requests and complaints in a timely manner, maintaining and providing accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options."[40] The Bureau believes that these purposes similarly would be served by providing successors in interest with the protections available to borrowers under Regulation X. Specifically, the Bureau believes that applying Regulation X's mortgage servicing rules to successors in interest would provide these homeowners with access to information about the mortgage, help successors in

[39] Although successors in interest should not face the same credit reporting consequences after a foreclosure as signatories to the debt, inconsistencies in the credit scoring system make uncertain any generalization about the impact of a foreclosure on credit score, and successors in interest may, in some instances, face credit score risks comparable to those of an original signatory. For example, a foreclosure judgment may be reported against the successor in interest and reflected in the credit score as a judgment, regardless of whether the successor in interest has personal liability on the debt.
[40] 78 FR 10695, 10709 (Feb. 14, 2013).

interest avoid unwarranted or unnecessary costs and fees, and prevent unnecessary foreclosure.

The Bureau believes that it is especially important for the loss mitigation procedures in § 1024.41 to apply to successors in interest. When the Bureau issued the 2013 RESPA Servicing Final Rule, the Bureau stated that "establishing national mortgage servicing standards . . . ensure[s] that borrowers have a full and fair opportunity to receive an evaluation for a loss mitigation option before suffering the harms associated with foreclosure."[41] The Bureau also stated that "[t]hese standards are appropriate and necessary to achieve the consumer protection purposes of RESPA, including facilitating borrowers' review for loss mitigation options, and to further the goals of the Dodd-Frank Act to ensure a fair, transparent, and competitive market for mortgage servicing."[42] The Bureau believes that these same consumer protection purposes would be served by applying the loss mitigation procedures in § 1024.41 to successors in interest, who, as homeowners of property securing a mortgage loan, may need to make payments on the loan to avoid foreclosure.

The Bureau believes that successors in interest may represent a particularly vulnerable group of consumers. Because successors in interest can face serious adverse consequences from foreclosure, successors in interest often accede to the responsibilities of the mortgage loan following death or divorce. Further, successors in interest may be more likely than other homeowners to experience a disruption in household income and therefore may be more likely than other homeowners to need loss mitigation to avoid foreclosure. The Bureau therefore believes that requiring servicers to evaluate a complete loss mitigation application received from

[41] *Id.* at 10815.
[42] *Id.*

a confirmed successor in interest under § 1024.41's procedures would serve RESPA's consumer protection purposes.

Further, because a servicer's acknowledgment of a successor in interest's subsequent assumption of the mortgage loan under State law is not subject to the Regulation Z Ability-to-Repay Rule,[43] successors in interest are particularly dependent on a prompt loss mitigation evaluation to assess the mortgage loan's affordability. A servicer's evaluation of a complete loss mitigation application often provides the successor in interest with critical information about the long-term affordability of the loan. The Bureau therefore believes that requiring servicers to evaluate a complete loss mitigation application received from a confirmed successor in interest supports the successor in interest in making a fully informed decision about whether to assume the mortgage loan obligation under State law. The Bureau also believes that requiring servicers to comply with § 1024.41's procedures with respect to confirmed successors in interest would not impose significant costs on servicers.

With respect to Regulation Z, when the Bureau issued the 2013 TILA Servicing Final Rule, the Bureau stated that "[t]he purposes of TILA are to 'assure a meaningful disclosure of credit terms so that the consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit' and to protect consumers against inaccurate and unfair credit billing practices."[44] Additionally, the Bureau noted that the Dodd-Frank Act "empowers the Bureau to prescribe rules regarding the disclosure of the 'features' of consumer financial products and services generally . . . even if other Federal consumer financial laws do

[43] *See* 79 FR 41631 (July 17, 2014).
[44] 78 FR 10901, 10914 (Feb. 14, 2013) (quoting 15 U.S.C. 1601(a)).

not specifically require disclosure of such features,"[45] and that the Dodd-Frank Act "is a broad source of authority to modify or exempt the disclosure requirements of TILA" regarding "residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest."[46] The Bureau believes that these purposes would be served by applying Regulation Z's mortgage servicing rules to successors in interest, who, as homeowners of dwellings securing mortgage loans, may be required to make payments on the loan to avoid foreclosure. Specifically, the Bureau believes that applying Regulation Z's mortgage servicing rules to successors in interest would protect successors in interest against inaccurate and unfair payment crediting practices by the servicer of the mortgage loan on which they may be making payments and which encumbers their property. The Bureau also believes that applying Regulation Z's mortgage servicing rules to successors in interest would benefit consumers and the public because the rules would help prevent unnecessary foreclosure by, for example, keeping successors in interest informed of the status of the mortgage loan and requiring a servicer to credit promptly payments from successors in interest. Moreover, the proposed amendments to Regulation Z would help ensure that successors in interest receive prompt information about the amount necessary to pay off the mortgage loan, as other homeowners do under Regulation Z.

Legal Authority. For the reasons expressed above in this part V.A., the Bureau believes these proposed changes to the Mortgage Servicing Rules carry out the purposes of RESPA and TILA. The Bureau is proposing to exercise its authority under sections 6(j)(3), 6(k)(1)(E) and

[45] *Id.*
[46] *Id.*

19(a) of RESPA to make these amendments relating to successors in interest to Regulation X's mortgage servicing rules. The Bureau is proposing to exercise its authority under section 105(a) of TILA to make these amendments relating to successors in interest to Regulation Z's mortgage servicing rules. The Bureau is also proposing to exercise its authority under section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial laws.

The Bureau believes that it is reasonable to interpret "borrower" under RESPA and "consumer" under TILA to include successors in interest and to apply the Mortgage Servicing Rules to confirmed successors in interest. The Bureau believes that this treatment is consistent with State property law and thus the context in which RESPA and TILA were enacted. At common law, a successor in interest "retains the same rights as the original owner, with no change in substance."[47] As a matter of State law, successors in interest have historically been afforded many of the same rights and responsibilities as the prior borrower. For example, there is a significant amount of State law indicating that a successor in interest, like the prior borrower, possesses the right to redeem following the mortgagee's foreclosure on the property.[48] Moreover, there is significant State law providing that the contractual rights and obligations under the mortgage loan of the prior borrower are freely assignable to successors in interest.[49] Further, before the enactment of the Garn-St Germain Act, several States had longstanding

[47] Successor in interest, Black's Law Dictionary (9th ed. 2009).
[48] "Property sold subject to redemption . . . may be redeemed in the manner hereinafter provided, by the . . . judgment debtor, or his successor in interest in the whole or any part of the property." *Phillips v. Hagart*, 45 P. 843, 843 (Cal. 1896); *see also, e.g., Forty-Four Hundred E. Broadway Co. v. 4400 E. Broadway*, 660 P.2d 866, 868 (Az. Ct. App. 1982) (citing *Call v. Thunderbird Mortg. Co.*, 375 P.2d 169 (Cal. 1962)); *Brastrup v. Ellingson*, 161 N.W. 553, 554 (N.D. 1917); *Tate v. Dinsmore*, 175 S.W. 528, 529 (Ark. 1915).
[49] *See, e.g., Badran v. Household Fin. Corp.*, 2008 WL 4335098, at *4 (Mich. Ct. App. 2008); *Bermes v. Sylling*, 587 P.2d 377 (Mont. 1978); *In re Fogarty's Estate*, 300 N.Y.S. 231 (N.Y. Sur. Ct. 1937).

prohibitions on the exercise of due-on-sale clauses, thereby limiting servicers to the same contractual remedies with respect to successors in interest as were available against the prior borrower, whether or not the successor in interest under State law assumes the legal obligation to pay the mortgage.[50] Additionally, while successors in interest may not be personally liable on the mortgage note, absent their express assumption of such liability under State law, in a significant number of mortgages across the United States, the borrower on the note is also under State law not personally liable for the debt upon foreclosure because a deficiency judgment is not allowed.[51] Accordingly, under State law, a successor in interest is often in virtually the same legal position as the borrower on the note with respect to foreclosure.

The Bureau also believes that this treatment of successors in interest is consistent with other aspects of Federal law. The Garn-St Germain Act, like the Bureau's proposed amendments to the Mortgage Servicing Rules, protects successors in interest from foreclosure after transfer of homeownership to them. Additionally, several bankruptcy courts have held that successors in interest are entitled to the same treatment as prior borrowers, for example with respect to curing an arrearage on a mortgage and reinstating the loan.[52]

The Bureau is aware that some courts have indicated that successors in interest would not

[50] *See, e.g.*, *Continental Fed. Sav. & Loan Ass'n v. Fetter*, 564 P.2d 1013, 1017 n.4 (Okla. 1977) (collecting cases). The Garn-St Germain Act later preempted restrictions on due-on-sale clauses generally, but prohibited exercise of due-on-sale clauses with respect to certain categories of successors in interest. *See* 12 U.S.C. § 1701j-3(b) (preempting restrictions); *id.* § 1701j-3(d) (prohibiting exercise for certain categories).

[51] Deficiency judgments against borrowers upon foreclosure are disallowed with respect to most residential mortgages in several states, including Alaska, Arizona, California, Hawaii, Minnesota, Montana, Nevada, North Dakota, Oklahoma, Oregon, and Washington. *See* Connecticut General Assembly, Office of Legislative Research, OSR Research Report 2010-R-0327, *Comparison of State Laws on Mortgage Deficiencies and Redemption Periods* (Dec. 9, 2011) (citing and updating National Consumer Law Center, Survey of State Foreclosure Laws (2009)), *available at* http://www.cga.ct.gov/2010/rpt/2010-R-0327.htm.

[52] *See, e.g.*, *In re Smith*, 469 B.R. 198, 202 (Bankr. S.D.N.Y. 2012); *In re Curinton*, 300 B.R. 78, 82 (Bankr. M.D. Fla. 2003) (quoting *In re Garcia*, 276 B.R. 627, 631 (Bankr. D. Ariz. 2002)).

ordinarily be considered borrowers under RESPA.[53] Notwithstanding these cases, which were decided without the benefit of regulations such as those that the Bureau is now proposing, the Bureau believes that the term "borrower" may also be interpreted to include successors in interest and that it is reasonable to consider confirmed successors in interest borrowers for the purposes of the Mortgage Servicing Rules. As homeowners of a property securing a mortgage loan, successors in interest typically must satisfy the loan's payment obligations to avoid foreclosure. As described above, successors in interest therefore step into the shoes of the borrower for many legal purposes.

B. Regulation X

Section 1024.30 Scope

30(d) Successors in Interest

As explained in part V.A., the Bureau is proposing that all of the Mortgage Servicing Rules apply to confirmed successors in interest (as defined by the proposed definition of successor in interest, discussed in the section-by-section analysis of § 1024.31). Proposed § 1024.30(d) accordingly provides that a successor in interest must be considered a borrower for the purposes of subpart C of Regulation X (Regulation X's mortgage servicing rules) once a servicer confirms the successor in interest's identity and ownership interest in a property that secures a mortgage loan covered by Regulation X's mortgage servicing rules. Confirmed successors in interest covered by proposed § 1024.30(d) would not necessarily have assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law.[54] The

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[53] *See, e.g., Wilson v. Bank of Am., N.A.*, 2014 WL 4744555, at *8-*10 (E.D. Pa. Sept. 24, 2014).

[54] As indicated in part V.A., *supra*, the Bureau understands that whether a successor in interest has assumed a mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law is a fact-specific question.

Bureau also notes that the exemptions and scope limitations in Regulation X's mortgage servicing rules would also apply to the servicing of a mortgage loan with respect to a successor in interest.[55]

As described in part V.A., the Bureau is proposing this change because the Bureau believes, based on numerous reports from consumers, consumer advocacy groups, and other stakeholders, that successors in interest face many of the challenges that Regulation X's mortgage servicing rules were designed to prevent. The Bureau believes that the same reasons supporting the Bureau's adoption of the 2013 RESPA Servicing Final Rule support proposed § 1024.30(d) because successors in interest are homeowners whose property is subject to foreclosure if the mortgage loan obligation is not satisfied, even though the successor in interest may not have assumed that obligation under State law. The Bureau has considered each section of Regulation X's mortgage servicing rules and believes that each section should apply to confirmed successors in interest.

The Bureau believes that it is appropriate to limit the application of this portion of the proposed rule to successors in interest whom servicers have confirmed have an ownership

[55] Section 1024.30(b) exempts small servicers from §§ 1024.38 through 1024.41 (except § 1024.41(j)). Likewise, § 1024.30(b) provides an exemption from these sections with respect to reverse mortgage transactions and mortgage loan transactions for which the servicer is a qualified lender. Accordingly, except as otherwise provided in § 1024.41(j), §§ 1024.38 through 1024.41 would not apply to successors in interest with respect to small servicers, reverse mortgage transactions, and mortgage loans for which the servicer is a qualified lender. Consistent with 12 CFR 591.5(b)(1), which excludes reverse mortgages from the Garn-St Germain's Act limitation on the exercise of certain due-on-sale clauses, the Bureau is therefore not proposing to apply § 1024.41's foreclosure-related protections with respect to reverse mortgages secured by a property acquired by a successor in interest. Under the proposed rule, however, §§ 1024.30 through 1024.37 would apply with respect to reverse mortgages secured by a property acquired by a successor in interest. Similarly, § 1040.30(c) provides that § 1024.33(a) only applies to mortgage loans that are secured by a first lien and that §§ 1024.39 through 1024.41 only apply to mortgage loans secured by property that is a borrower's principal residence. Accordingly, with respect to successors in interest, § 1024.33(a) would only apply to mortgage loans that are secured by a first lien and §§ 1024.39 through 1024.41 would only apply to mortgage loans secured by property that is a borrower's principal residence.

interest in the property. Because some people representing themselves as successors in interest may not actually have an ownership interest in the property, requiring servicers to apply Regulation X's mortgage servicing rules' communication, disclosure, and loss mitigation requirements to successors in interest before servicers have confirmed the successor in interest's identity and ownership interest in the property may present privacy and other concerns. It would also be inappropriate to require servicers to incur substantial costs before confirming the successor in interest's identity and ownership interest in the property. However, the Bureau believes that applying Regulation X's mortgage servicing rules to confirmed successors in interest does not present privacy concerns. The Bureau believes that a confirmed successor in interest's ownership interest in the property securing the mortgage loan is sufficient to allow the successor in interest to receive information about the mortgage loan.

Specifically, the Bureau believes that §§ 1024.35 and 1024.36 should apply to confirmed successors in interest.[56] When the Bureau issued §§ 1024.35 and 1024.36 in the 2013 RESPA Servicing Final Rule, the Bureau stated that "both borrowers and servicers would be best served if the Bureau were to clearly define a servicer's obligation to correct errors or respond to information requests."[57] The Bureau believes that clearly defining a servicer's obligation with respect to a successor in interest would similarly benefit both servicers and successors in interest. Under current § 1024.38(b)(1)(vi), servicers are required to have policies and procedures reasonably designed to ensure that the servicer can identify and communicate with successors in

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[56] As described in the section-by-section analysis of § 1024.36(i), *infra*, in addition to proposing that Regulation X's mortgage servicing rules, including § 1024.36, apply with respect to confirmed successors in interest, the Bureau is also proposing a new information request requirement in § 1024.36(i) that applies before the servicer has confirmed the successor in interest's status.

[57] 78 FR 10695, 10736 (Feb. 14, 2013).

interest. Because §§ 1024.35 and 1024.36 do not currently necessarily apply to successors in interest, however, the extent of the obligation to communicate with successors in interest, as well as how a successor in interest may obtain information from a servicer, are not clear. The Bureau therefore believes that §§ 1024.35 and 1024.36 would provide important protections to successors in interest. For instance, § 1024.35 would provide successors in interest with important protections regarding a servicer's failure to accept payments conforming to the servicer's written requirements for payments. Additionally, § 1024.36's requirements to provide information about the mortgage loan would prevent unnecessary foreclosure on the successor in interest's property by, for example, allowing a successor in interest to obtain information about the servicer's requirements for payments. Because successors in interest, like prior borrowers, bear the risk of unnecessary foreclosure, the Bureau believes that §§ 1024.35 and 1024.36 should apply to successors in interest, as homeowners of the property, for the same reasons that these rules apply to prior borrowers.

Providing successors in interest with protections under §§ 1024.35 and 1024.36 may cause servicers to incur costs, such as the cost of providing responses to information requests from successors in interest and handling error resolution. The Bureau believes, however, that the resulting consumer protection of this vulnerable group justifies the cost. Further, because servicers are already required to comply with the requirements of §§ 1024.35 and 1024.36 with respect to prior borrowers and may already expend some resources to communicate with successors in interest, the additional cost to servicers to apply these requirements to successors in interest will be minimal.

As noted, the Bureau believes that providing confirmed successors in interest with information about the mortgage loan as required by §§ 1024.35 and 1024.36 does not present privacy concerns. The Bureau solicits comment on whether any information that could be provided to successors in interest under §§ 1024.35 and 1024.36 presents privacy concerns and whether servicers should be permitted to withhold any information from successors in interest out of such privacy concerns.

As explained in part V.A., the Bureau believes that the loss mitigation procedures contained in § 1024.41 should apply to confirmed successors in interest and that servicers should be required to evaluate successors in interest for loss mitigation options to prevent unnecessary foreclosure. The Bureau believes that significant consumer harm flows from a servicer's failure to afford a successor in interest the same access to loss mitigation as other homeowners. As discussed in part V.A., the Bureau also believes that requiring servicers to evaluate successors in interest for loss mitigation prior to the successor in interest's assumption of liability for the mortgage debt under State law is consistent with Fannie Mae and Freddie Mac guidelines and serves RESPA's purposes.[58] Accordingly, under the proposed rule, once a servicer confirms a successor in interest's identity and ownership interest in the property, if the servicer receives a complete loss mitigation application from the successor in interest more than 37 days before a foreclosure sale, for example, the servicer must evaluate the successor in interest for all loss mitigation options available to the successor in interest, as required by § 1024.41(c)(1).

Consistent with § 1024.41's treatment of borrowers generally, the proposal would not require a servicer to offer a successor in interest any particular loss mitigation option. Further, under the proposed rule, a servicer could require a successor in interest to provide the same

[58] *See* Fannie Mae, Servicing Guide Announcement SVC-2013-17 (Aug. 28, 2013); Freddie Mac, Bulletin 2013-3 (Feb. 15, 2013).

information and meet the same criteria for loss mitigation as other borrowers. The proposed rule would also not prevent a servicer from conditioning an offer for a loss mitigation option on the successor in interest's assumption of the mortgage loan obligation under State law or from offering loss mitigation options to the borrower that differ based on whether the borrower would simultaneously assume the mortgage loan obligation. Under the proposed rule, however, a servicer could not condition review and evaluation of a loss mitigation application on the successor in interest's assumption of the mortgage obligation. Once a servicer confirms a successor in interest's identity and ownership interest in the property, a servicer would, for example, be required under § 1024.41(b) to respond to a loss mitigation application from the successor in interest and exercise reasonable diligence in obtaining documents and information to complete the loss mitigation application. The foreclosure prohibitions under § 1024.41(f) and (g) would also apply.

Providing successors in interest with § 1024.41's protections may cause servicers to incur costs. Servicers may have to devote additional resources to responding to and evaluating loss mitigation applications from successors in interest. Further, providing successors in interest with § 1024.41's protections may delay or prevent foreclosure on the property securing the mortgage loan. The Bureau believes, however, that the resulting consumer protection of this vulnerable group justifies the cost. Further, because servicers are already required to comply with § 1024.41's requirements with respect to prior borrowers, the additional cost to servicers to apply these requirements to successors in interest should be minimal.

For similar reasons, the early intervention and continuity of contact requirements contained in §§ 1024.39 and 1024.40 should apply to confirmed successors in interest. In issuing these provisions in the 2013 RESPA Servicing Final Rule, the Bureau stated that §§ 1024.39 and

1024.40 are "appropriate to achieve the consumer protection purposes of RESPA, including to help borrowers avoid unwarranted or unnecessary costs and fees and to facilitate review of borrowers for foreclosure avoidance options."[59] The Bureau further stated that §§ 1024.39 and 1024.40 are "necessary and appropriate to carry out the purpose . . . of the Dodd-Frank Act of ensuring that markets for consumer financial products and services are fair, transparent, and competitive" and that "consumers are provided with timely and understandable information to make responsible decisions about financial transactions, and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."[60] The Bureau believes that these same consumer protection purposes would be served by applying §§ 1024.39 and 1024.40 to successors in interest, who as homeowners of a property securing a mortgage loan may be required to make payments on the loan to avoid foreclosure. In particular, the protections provided by §§ 1024.39 and 1024.40 would serve to prevent unnecessary foreclosure by alerting successors in interest to any delinquency on the mortgage loan secured by their property and assisting with the process of applying for loss mitigation options.

Providing successors in interest with protections under §§ 1024.39 and 1024.40 may cause servicers to incur costs. In particular, servicers may be required to devote additional staffing and personnel to communicating with successors in interest. The Bureau believes, however, that providing consumer protections to this vulnerable group justifies the cost. Further, because servicers are already required to comply with §§ 1024.39's and 1024.40's requirements with respect to prior borrowers, the additional cost to servicers to apply these requirements to

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[59] 78 FR 10695, 10791 (Feb. 14, 2013) (discussing 12 CFR 1024.39); *see also id.* at 10809-10 (discussing 12 CFR 1024.40).
[60] *Id.* at 10791.

successors in interest should be minimal.

Finally, the Bureau believes that the requirements contained in § 1024.33 (regarding mortgage servicing transfers), § 1024.34 (regarding escrow payments and account balances), and § 1024.37 (regarding force-placed insurance) should apply to confirmed successors in interest. The same rationale for applying these rules to prior borrowers applies with respect to successors in interest, who are also homeowners and may be required to make payments on the loan to avoid foreclosure.[61] Further, it would add unnecessary complexity to the rules to apply the rest of Regulation X's mortgage servicing rules to confirmed successors in interest but not to apply §§ 1024.33, 1024.34, and 1024.37 to such successors in interest. The Bureau believes it is preferable to apply all of Regulation X's mortgage servicing rules to confirmed successors in interest, unless there is a compelling reason not to apply a particular rule. The Bureau is aware of no such compelling reason with respect to §§ 1024.33, 1024.34, and 1024.37 but solicits comment as to whether any such compelling reasons exist.

Providing successors in interest with protections under §§ 1024.33, 1024.34, and 1024.37 may cause servicers to incur costs, in particular the costs involved in communicating with successors in interest. The Bureau believes, however, that the resulting consumer protection of this vulnerable group justifies the cost. Further, because servicers are already required to comply with the requirements of §§ 1024.33, 1024.34, and 1024.37 with respect to prior borrowers, the additional cost to servicers to apply these requirements to successors in interest should be minimal.

[61] *See id.* at 10727 (describing 12 CFR 1024.33); *id.* at 10734 (describing 12 CFR 1024.34); *id.* at 10763 (describing 12 CFR 1024.37).

The Bureau solicits comment on whether any particular sections of Regulation X's mortgage servicing rules should apply with respect to successors in interest even if the servicer has not confirmed the successor in interest's identity and ownership interest in the property. Further, the Bureau solicits comment on whether any particular sections of Regulation X's mortgage servicing rules should not apply with respect to confirmed successors in interest.

Proposed commentary. Proposed comment 30(d)-1 clarifies the requirement in proposed § 1024.30(d) that a successor in interest must be considered a borrower for the purposes of Regulation X's mortgage servicing rules once a servicer confirms the successor in interest's identity and ownership interest in the property. The proposed comment provides the example of the application of § 1024.41's loss mitigation procedures to successors in interest: If a servicer receives a loss mitigation application from a successor in interest after confirming the successor in interest's identity and ownership interest in the property, the servicer must review and evaluate the application and notify the successor in interest in accordance with the procedures set forth in § 1024.41.[62] The proposed comment also notes, in contrast, § 1024.36(i)'s requirement that a servicer must respond to written requests for certain information from a potential successor in interest in accordance with the requirements of § 1024.36(c) through (g) before confirming that person's status.

Proposed comment 30(d)-2 clarifies the effect on the prior borrower of a servicer's confirmation of a successor in interest's identity and ownership interest in the property. The proposed comment provides that, even after a servicer's confirmation of a successor in interest's

[62] As described in the section-by-section analysis of § 1024.41(b), *infra*, proposed comment 41(b)-1.ii provides that if a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer is required to review and evaluate that loss mitigation application upon such confirmation in accordance with the procedures set forth in § 1024.41.

identity and ownership interest in the property, the servicer is still required to comply with the requirements of Regulation X's mortgage servicing rules with respect to the prior borrower, unless that borrower also has either died or been released from the obligation on the mortgage loan.[63] Accordingly, once a servicer confirms a successor in interest's identity and ownership interest in the property and the prior borrower has either died or been released from the obligation on the mortgage loan, the servicer would no longer be required to comply with the requirements of Regulation X's mortgage servicing rules with respect to the prior borrower. The proposed comment also provides that the prior borrower retains any rights under Regulation X's mortgage servicing rules that accrued prior to the confirmation of the successor in interest to the extent these rights would otherwise survive the prior borrower's death or release from the obligation. Accordingly, for example, a deceased borrower's estate would still have any claims that accrued prior to the borrower's death.[64] (As described in the section-by-section analysis of § 1026.2(a)(11), the Bureau is proposing similar commentary with respect to Regulation Z's requirements.)

The Bureau is proposing comment 30(d)-2 because the Bureau believes that Regulation X's mortgage servicing rules would generally provide important protections to prior borrowers even after confirmation of a successor in interest. The prior borrower may still be liable on the mortgage note, and so the prior borrower may have significant legal interests at stake with respect to the mortgage loan, including potential credit reporting and any subsequent foreclosure

[63] Under proposed comment 30(d)-2, in the absence of confirmation of a successor in interest, the servicer is still required to comply with Regulation X's mortgage servicing rules with respect to the prior borrower (*i.e.*, the prior borrower's estate) even if the prior borrower has died.

[64] *See, e.g.*, *Wilson*, 2014 WL 4744555, at *8, *10-*18 (describing RESPA claims brought by "Plaintiff as Administratrix of the Estate").

or resulting deficiency. The Bureau believes that these ongoing interests of prior borrowers generally justify the continued application of Regulation X's mortgage servicing rules to prior borrowers after confirmation of a successor in interest. Alternatively, the Bureau seeks comment on whether the prior borrower should not continue to receive Regulation X's mortgage servicing protections once a successor in interest's identity and ownership interest have been confirmed.

The Bureau acknowledges that, under proposed comment 30(d)-2, servicers will sometimes be required to comply with Regulation X's mortgage servicing rules with respect to more than one person—both the prior borrower and the successor in interest, as well as, in some cases, multiple successors in interest who each acquire an ownership interest in a property. The Bureau notes that, under the Mortgage Servicing Rules, it is already the case that the rules may apply with respect to more than one borrower for a particular mortgage loan. It is quite common for more than one borrower (for example, spouses) to be obligated on the mortgage note, and the Mortgage Servicing Rules apply with respect to each borrower in such cases. Accordingly, the Bureau does not believe that applying Regulation X's mortgage servicing rules to successors in interest presents novel challenges for servicers in this regard.

On the other hand, the Bureau does not believe that it often would be useful to the prior borrower or the borrower's estate after the borrower has either died or been released from the obligation on the mortgage loan to continue to receive the protections of Regulation X's mortgage servicing rules once a servicer confirms a successor in interest's identity and ownership interest in the property. When a successor in interest has been confirmed and the prior borrower has died, the borrower's estate would typically have a relatively narrow interest in the mortgage loan. Likewise, when the prior borrower has been released from the obligation on the mortgage loan, that borrower may have interests relating to loan activity prior to the release of the obligation but would have little or no interest in subsequent loan activity. Accordingly, the Bureau believes that prior borrowers should not receive Regulation X's mortgage servicing protections when a successor in interest has been confirmed and the prior borrower has also died or been released from the mortgage obligation, but should retain any rights that accrued previously to the extent such rights would otherwise survive the death of the borrower or the release of the borrower from the obligation.

The Bureau solicits comment on whether other circumstances exist, beyond death and relief of the obligation on the mortgage loan, in which Regulation X's mortgage servicing rules should not apply to the prior borrower once a successor in interest has been confirmed.

Section 1024.31 Definitions

Delinquency

Section 1024.31 contains definitions for various terms that are used throughout the provisions of subpart C of Regulation X. It does not contain a definition of the term "delinquency," although it is defined for purposes of §§ 1024.39(a) and (b) and 1024.40(a). Since the publication of the 2013 RESPA Servicing Final Rule, the Bureau has received numerous inquiries about how servicers should calculate delinquency with respect to those provisions of the Mortgage Servicing Rules that refer to delinquency but do not define delinquency. In particular, stakeholders have asked the Bureau how servicers should calculate the 120-day foreclosure referral waiting period set forth in § 1024.41(f)(1)(i). To provide greater clarity, the Bureau is proposing to add a single definition of "delinquency" that will apply to all provisions in subpart C of Regulation X, and to remove the definitions from the commentary to §§ 1024.39(a) and (b) and 1024.40(a).

Delinquency is currently defined for purposes of §§ 1024.39(a) and (b) and 1024.40(a) as beginning "on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee."[65] Delinquency is not defined for purposes of other sections of subpart C, including § 1024.41(f)(1), which prohibits a servicer from making the first notice or filing for foreclosure unless "[a] borrower's mortgage loan obligation is more than 120 days delinquent."

To address apparent confusion, as well as to ensure that the term "delinquency" is interpreted consistently throughout Regulation X's mortgage servicing rules, the Bureau is proposing to remove the current definition of delinquency applicable to §§ 1024.39(a) and (b) and 1024.40(a) and to add a general definition of delinquency in § 1024.31 that would apply to all sections of subpart C.[66] The Bureau is proposing to define delinquency as a period of time during which a borrower and the borrower's mortgage loan obligation are delinquent, and to clarify within the proposed definition that a borrower and a borrower's mortgage loan obligation are delinquent beginning on the day a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, became due and unpaid, until such time as the payment is made.[67] Delinquency under the proposed definition is not triggered by a borrower's failure to pay a late fee, consistent with current comments 39(a)-1.i and 40(a)-3. As the Bureau explained in the 2012 RESPA Servicing Proposal, the Bureau believes that there is a low risk that borrowers who

[65] Comments 39(a)-1.i and 40(a)-3.
[66] The proposed definition would not affect the interpretation of § 1024.33(c), which prohibits servicers from treating a borrower as "late for any purpose" if a transferee servicer receives a payment from a borrower within the 60-day period beginning on the effective date of a transfer.
[67] All three concepts—delinquency, delinquent borrower, and delinquent mortgage loan obligation—are used interchangeably throughout subpart C. *See*, *e.g.*, 12 CFR 1024.39(a) ("delinquent borrower"; "borrower's delinquency"); 12 CFR 1024.39(b) (same); 12 CFR 1024.41(f)(1)(i) ("A borrower's mortgage loan obligation is more than 120 days delinquent").

are otherwise current with respect to principal, interest, and escrow payments will be pushed into foreclosure solely because of a failure to pay accumulated late charges.[68]

In contrast with the definition of delinquency currently found in comments 39(a)-1.i and 40(a)-3, the proposed definition does not include the phrase "for a given billing cycle." As used in the context of the live contact and continuity of contact requirements under §§ 1024.39 and 1024.40, respectively, that phrase was intended to ensure that the servicer met the respective requirements of those rules during each billing cycle in which the borrower was delinquent. However, such a definition would have created incongruities if applied to the 120-day foreclosure referral waiting period in § 1024.41(f)(1)(i).

By proposing to define "delinquency," the Bureau intends to provide servicers, borrowers, and other stakeholders with clear guidance on how to determine whether a borrower is delinquent for purposes of Regulation X's servicing provisions and when the borrower's delinquency began. Servicers may use different definitions of "delinquency" for operational purposes, and servicers may use different or additional terminology when referring to borrowers who are late or behind on their payments—for example, servicers may refer to borrowers as "past due" or "in default," and may distinguish between borrowers who are "delinquent" and "seriously delinquent." Except as provided in the Mortgage Servicing Rules themselves, the Bureau does not intend the proposed definition of delinquency to affect industry's existing procedures for identifying and dealing with borrowers who are late or behind on their payments. The Bureau therefore seeks comment regarding whether the proposed definition has the potential of interfering with industry's existing policies and procedures. In addition, the Bureau seeks

[68] *See* 77 FR 57199, 57252 (Sept. 17, 2012).

comment on whether there are alternative ways to articulate the proposed definition that may improve uniform interpretation and implementation.

The Bureau is also proposing to add three comments to the proposed definition of delinquency to provide servicers additional guidance in determining whether and for how long a borrower has been delinquent. Proposed comment 31 (Delinquency)-1 essentially restates existing comments 39(a)-1.i and 40(a)-3: that a borrower becomes delinquent beginning the day on which the borrower fails to make a periodic payment, even if the servicer grants the borrower additional time after the due date to pay before charging the borrower a late fee.

Proposed comment 31 (Delinquency)-2 explains how delinquency should be calculated if a servicer applies a borrower's payments to the oldest outstanding periodic payment. The Bureau understands from its outreach that many servicers credit payments made to a delinquent account to the oldest outstanding periodic payment; the model deed of trust provided by the GSEs provides that the servicer will apply payments "in the order in which [they] became due."[69] The Bureau also understands that some servicers that use this method may be concerned about how to calculate the length of a borrower's delinquency without increased certainty from the Bureau.[70] As it stated in the 2012 TILA Servicing Proposal, the Bureau believes that this method of crediting payments provides greater consumer protection, because it advances the date the borrower's delinquency began and therefore shortens the length of a borrower's

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[69] *See, e.g.,* Fannie Mae, *Security Instruments*, https://www.fanniemae.com/singlefamily/security-instruments (security instruments for various states but with a uniform covenant that payments shall be applied to each periodic payment in the order in which it became due); Fannie Mae & Freddie Mac, California Single Family Uniform Instrument, Form 3005-4, *available at* https://www.fanniemae.com/content/legal_form/3005w.doc; Fannie Mae & Freddie Mac, New York Single Family Uniform Instrument, Form 3033, *available at* https://www.fanniemae.com/content/legal_form/3033w.doc.
[70] Am. Bankers Ass'n. Letter to Consumer Fin. Prot. Bureau (Oct. 24, 2014), *available at* http://www.aba.com/Advocacy/commentletters/Documents/ABALetterRollingDelinquencies102414.pdf.

delinquency.[71] Nonetheless, consistent with its decision in the context of the 2013 TILA Servicing Final Rule, the Bureau is not requiring servicers to apply payments to the oldest outstanding periodic payment at this time. The Bureau initially proposed to require servicers to apply payments in this way in the 2012 TILA Servicing Proposal, but it ultimately decided not to adopt the proposed provision, finding that it provided limited consumer benefit and posed a potential conflict with State law.[72] The Bureau is not revisiting that decision in this rulemaking. The Bureau will continue to monitor the market to evaluate servicers' payment crediting practices and those practices' effects on consumers.

At this time, rather than requiring that servicers apply payments to the oldest outstanding periodic payment, the Bureau is proposing comment 31 (Delinquency)-2 to clarify that, *if* a servicer applies payments to the oldest outstanding periodic payment, the date of the borrower's delinquency must advance accordingly. The proposed comment includes an example illustrating this concept. The example assumes a mortgage loan obligation with a periodic payment due on the first of each month. The borrower misses the periodic payment due on January 1, but makes a payment in full on February 1. The servicer credits the payment it received on February 1 to the January deficiency. Pursuant to proposed comment 31 (Delinquency)-2, on February 2, the borrower is one day delinquent. Servicers have indicated to the Bureau that if they apply payments in this manner, this method of calculating delinquency means that, in light of the 120-day foreclosure referral waiting period in § 1024.41(f)(1)(i), servicers will not be able to foreclose on a borrower who misses one or two payments but does not become seriously

[71] *See* 77 FR 57318, 57352-53 (Sept. 17, 2012).
[72] *See* 78 FR 10901, 10955-56 (Feb. 14, 2013).

delinquent—for example, a borrower who misses one payment over the course of a year but makes all other payments in full and on time. The Bureau understands that most servicers would not treat such a borrower as seriously delinquent and would not initiate loss mitigation procedures or seek to foreclose on that borrower. As such, the Bureau believes that the proposed comment will not place a significant additional burden on most servicers. The Bureau will continue to monitor the market to evaluate whether and to what extent servicers are choosing to foreclose on borrowers who are only one or two payments behind, including whether such foreclosure practices raise consumer protection concerns that would be appropriately addressed through formal guidance or rulemaking.

Proposed comment 31 (Delinquency)-3 permits servicers to apply a payment tolerance to partial payments under certain circumstances. The Bureau has learned from its outreach that some servicers elect or are required to treat borrowers as having made a timely payment even if they make payments that are less than the amount due by some small amount (perhaps as a result of a scrivener's error or recent ARM payment adjustment). The Bureau understands that servicers that apply a payment tolerance advance the outstanding payment amount to the borrower's account, such that the account is reflected as current in the servicer's systems. The Bureau understands that the maximum amount these servicers use for a payment tolerance varies from $10 to $50.[73] These servicers would prefer not to initiate early intervention

[73] The variation in the payment tolerance amounts used could relate to whether the servicer is bound by the terms of the National Mortgage Settlement, which includes a mandatory payment tolerance policy: servicers subject to the National Mortgage Settlement must accept and credit up to two payments that come within $50 of the scheduled payment to the borrower's account. The National Mortgage Settlement is *available at*: http://www.nationalmortgagesettlement.com/. The five servicers subject to the National Mortgage Settlement are Bank of America, JP Morgan Chase, Wells Fargo, CitiMortgage, and Ally/GMAC. Ocwen reached a separate

communications, continuity of contact requirements, or loss mitigation procedures with those borrowers for that given billing cycle. Proposed comment 31 (Delinquency)-3 permits servicers that elect to advance outstanding funds to a borrower's mortgage loan account to treat the borrower's insufficient payment as timely, and therefore not delinquent, for purposes of Regulation X's mortgage servicing rules. The comment clarifies, however, that if a servicer chooses not to treat the borrower as delinquent for purposes of subpart C of Regulation X, the borrower is not delinquent as defined in § 1024.31. This clarification is intended to prevent servicers from selectively applying a payment tolerance only where doing so benefits the servicer. Specifically, the clarification is intended to prevent the circumstance under which a servicer treats a borrower as current in order to avoid the early intervention, continuity of contact, or loss mitigation requirements, while treating the same borrower as delinquent for purposes of initiating foreclosure under § 1024.41(f)(1). The Bureau seeks comment on whether it should limit servicers' use of a payment tolerance to a specific dollar amount or percentage of the periodic payment amount, and if so, what the specific amount or percentage should be.

Successors in Interest

As described in part V.A., the Bureau is proposing that, to the extent that the Mortgage Servicing Rules apply to successors in interest, those rules should apply with respect to transfers to all categories of successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act.[74] Accordingly, the Bureau is proposing to add a definition of successor in interest to § 1024.31 that is broader than

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settlement agreement containing an identical provision at a later time, also *available at* http://www.nationalmortgagesettlement.com/.

[74] 12 U.S.C. 1701j-3(d).

the category of successors in interest contemplated by current § 1024.38(b)(1)(vi) and that would cover all categories of successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act. (As discussed in the section-by-section analysis of § 1026.2(a)(27), the Bureau is proposing to add a similar definition to Regulation Z.)

The proposed definition states that a successor in interest is a person to whom an ownership interest in a property securing a mortgage loan is transferred from the borrower, provided that the transfer falls under an exemption specified in the appropriate section of the Garn-St Germain Act. The Bureau intends the proposed definition to apply throughout the relevant proposed rule and commentary. (As discussed in the section-by-section analysis of § 1024.38(b)(1)(vi), the Bureau is also proposing modifying current § 1024.38(b)(1)(vi) to account for all protected transfers under the Garn-St Germain Act.)

The Bureau solicits comment on whether the proposed definition of successor in interest is appropriate for the purposes of the Mortgage Servicing Rules. The Bureau also solicits comment on whether certain categories of successors in interest protected by the Garn-St Germain Act should not be covered by the Bureau's definition of successor in interest. The Bureau further solicits comment on whether additional categories of successors in interest, beyond those protected by the Garn-St Germain Act, should be covered by the Bureau's definition of successor in interest.

The Bureau also solicits comment on whether the Mortgage Servicing Rules should expressly and specifically address the status of persons who possess an ownership interest in the property, have not have assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law, but did not acquire an ownership interest from a prior borrower on the mortgage loan. Such persons would include, for example, persons who purchased the property jointly with the prior borrower but did not undertake the mortgage loan obligation when the loan was originated and may not necessarily have assumed the mortgage loan obligation thereafter. The Bureau is considering, but is not proposing at this time, expressly providing that such persons are borrowers for the purposes of the Mortgage Servicing Rules. The Bureau solicits comment on whether this category of persons are having difficulty with their treatment by mortgage servicers, and if so, the extent and nature of the difficulty.

Section 1024.36 Requests for Information

36(a) Information Request

Section 1463(a) of the Dodd-Frank Act amended RESPA to add section 6(k)(1)(D), which states that a servicer shall not fail to provide information regarding the owner or assignee of a mortgage loan within ten business days of a borrower's request. Currently, when a borrower submits a request for information under § 1024.36(a) asking for the owner or assignee of a mortgage loan held by a trust in connection with a securitization transaction and administered by an appointed trustee, comment 36(a)-2 provides that the servicer complies with § 1024.36(d) by responding by identifying both the name of the trust and the name, address, and appropriate contact information for the trustee. The comment provides that, among other examples, if a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee, the servicer complies with § 1024.36(d) by responding to a request for information regarding the owner or assignee of the mortgage loan by identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee. Proposed amendments to comment 36(a)-2 would change how a servicer must respond to such requests when Fannie Mae or Freddie Mac is the trustee, investor, or guarantor.

The Bureau has received feedback from industry suggesting that providing borrowers with detailed information about the trust when Fannie Mae or Freddie Mac is the trustee, investor, or guarantor is unnecessarily burdensome on servicers. According to industry, servicers' systems do not typically track the name of the trust for each such loan, so a servicer must ask the trustee for this information each time it receives an information request asking for the loan's owner or assignee. Moreover, because the loss mitigation provisions for loans governed by Fannie Mae or Freddie Mac are determined by Fannie Mae or Freddie Mac and not by the trust, the trust-identifying information may be of less value to borrowers when Fannie Mae or Freddie Mac is the trustee, investor, or guarantor. Industry has therefore requested that the Bureau reconsider the requirement for a servicer to provide specific trust-identifying information for loans governed by Fannie Mae's or Freddie Mac's servicing guidelines.

While the Bureau acknowledges industry's concerns, the Bureau continues to believe that a borrower should be able to obtain the identity of the trust by submitting a request for information under § 1024.36(a). Consumer advocacy groups have informed the Bureau that borrowers require trust-identifying information in order to raise certain claims or defenses during litigation, as well as to exercise the extended right of rescission under § 1026.23(a)(3) when applicable. Further, for loans held in a trust for which Fannie Mae or Freddie Mac is not the trustee, investor, or guarantor, a borrower would require the trust-identifying information to determine what loss mitigation options are available.

Nonetheless, the Bureau believes that, with respect to a loan for which Fannie Mae or Freddie Mac is the trustee, investor, or guarantor, it may not be necessary for a servicer to identify both the trustee and the trust in response to all requests for information seeking ownership information. To the extent that borrowers asking for the owner or assignee of a loan are seeking information about loss mitigation options or the requirements imposed on the servicer by the owner of the loan, such information is usually publicly available in Fannie Mae's or Freddie Mac's respective Seller-Servicing Guide without distinction based on the particular trust. If a borrower knows that Fannie Mae or Freddie Mac is the trustee, investor, or guarantor, the borrower can look to those guides and related bulletins to learn what loss mitigation options are available, what foreclosure processes the servicer must follow, how the servicer is compensated, and a wide variety of other information applicable to the loan. Alternatively, borrowers can access the appropriate website to learn more information once they know which entity's guidelines apply; both Fannie Mae and Freddie Mac maintain websites containing a considerable amount of information relating to standards affecting borrowers' mortgage loans. Fannie Mae and Freddie Mac also maintain dedicated telephone lines for borrower inquiries. As such, requiring a servicer to identify Fannie Mae or Freddie Mac as the owner or assignee of the loan (without also identifying the name of the trust) would give most borrowers access to the information they seek.

Given the foregoing considerations, the Bureau is proposing to revise comment 36(a)-2 to provide that, for loans for which Fannie Mae or Freddie Mac is the trustee, investor, or guarantor, a servicer complies with § 1024.36(d) by responding to requests for information asking only for the owner or assignee of the loan by providing only the name and contact information for Fannie Mae or Freddie Mac, as applicable, without also providing the name of the trust. However, proposed comment 36(a)-2 also provides that, if a request for information expressly requests the name or number of the trust or pool, the servicer complies with § 1024.36(d) by providing the name of the trust, and the name, address, and appropriate contact information for the trustee, regardless of whether or not Fannie Mae or Freddie Mac is the trustee, investor, or guarantor.

The Bureau believes that proposed comment 36(a)-2 would preserve a borrower's access to information while reducing burden on servicers by no longer requiring them to obtain trust-identifying information for loans for which Fannie Mae or Freddie Mac is the trustee, investor, or guarantor. Further, the Bureau believes that, by requiring servicers to provide specific trust-identifying information upon a request expressly seeking such information, proposed comment 36(a)-2 would ensure that borrowers who do require specific trust-identifying information can obtain it. For other borrowers, receiving trust-identifying information, which could appear technical or unfamiliar, might be confusing and is unlikely to benefit the borrower.

The proposed amendments also restructure comment 36(a)-2 to improve clarity. The proposed changes would not affect a servicer's existing obligations with respect to loans not held in a trust for which an appointed trustee receives payments on behalf of the trust, or with respect to any loan held in a trust for which neither Fannie Mae nor Freddie Mac is the trustee, investor, or guarantor. For loans that are not held in a trust for which an appointed trustee receives payments on behalf of the trust, proposed amendments to comment 36(a)-2.i would preserve the requirement for servicers to respond to a request for information regarding the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. This proposed revision subsumes the requirement in current comment 36(a)-2.i to identify the servicer or its affiliate as the owner or assignee when a loan is held in portfolio and would therefore eliminate the current comment's explicit reference to portfolio loans.

Proposed comment 36(a)-2.i also clarifies that a servicer is not the owner or assignee for purposes of § 1024.36(d) if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation. This change is intended to bring the commentary to § 1024.36(d) clearly in line with the Regulation Z provisions in § 1026.39 related to transfer of ownership notices. As to loans held in a trust for which Fannie Mae or Freddie Mac is not the investor, guarantor, or trustee, proposed comments 36(a)-2.ii.A and 36(a)-2.ii.B preserve the obligation in existing comment 36(a)-2.ii that servicers would still comply with § 1024.36(d) by identifying both the trust and the trustee of such loans to the borrower, regardless of how the borrower phrased the request for ownership information.

Similarly, the proposed amendments would not change a servicer's requirements for responding to requests for ownership information for loans for which the Government National Mortgage Association (Ginnie Mae) is the guarantor. As noted in both current comment 36(a)-2 and proposed comment 36(a)-2.ii.B, Ginnie Mae is not the owner or assignee of the loan solely as a result of its role as a guarantor. In addition, servicing requirements for those loans are governed by the Federal agency insuring the loan—such as the Federal Housing Association, the Department of Veterans' Affairs, the Rural Housing Services, or the Office of Public and Indian Housing—not by Ginnie Mae itself.

36(i) Successors in Interest

The Bureau is proposing a new request for information requirement regarding the confirmation of a successor in interest's identity and ownership interest in the property. Proposed § 1024.36(i) requires a servicer to respond to a written request that indicates that the person may be a successor in interest and that includes the name of the prior borrower and information that enables the servicer to identify that borrower's mortgage loan account. Under the proposed rule, a servicer must respond to such a request by providing the person with information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. With respect to the written request, the proposed rule requires the servicer to treat the person as a borrower for the purposes of the procedural requirements of § 1024.36(c) through (g)—for instance, the servicer must acknowledge receipt within five days and respond in writing within 30 days without charge. The proposed rule also provides that if a servicer has, under § 1024.36(b), established an address that a borrower must use to request information, a servicer must comply with the requirements of § 1024.36(i) only for requests received at the established address. As with the policies and procedures requirement regarding successors in interest (proposed § 1024.38(b)(1)(vi), discussed in the section-by-section analysis of § 1024.38(b)(1)(vi)), but unlike the application of Regulation X's mortgage servicing rules to successors in interest generally (proposed § 1024.30(d), discussed in the section-by-section analysis of § 1024.30(d)), servicers would be required to comply with proposed § 1024.36(i) before confirming the successor in interest's identity and ownership interest in the property.

As indicated in part V.A., the Bureau is proposing § 1024.36(i) to address problems faced by successors in interest in confirming their identity and ownership interest in the property securing the mortgage loan; the Bureau believes that these problems may lead to unnecessary foreclosure on homeowners' property. The Bureau is proposing § 1024.36(i) in conjunction with proposed § 1024.38(b)(1)(vi)(B) (*see* section-by-section analysis of § 1024.38(b)(1)(vi)), which would require servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can, upon identification of any potential successor in interest—including through any request made by a potential successor in interest under § 1024.36(i) or any loss mitigation application received from a potential successor in interest—promptly provide to the potential successor in interest a description of the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and how the person may submit a written request under § 1024.36(i) (including the appropriate address). The Bureau intends that proposed § 1024.38(b)(1)(vi)(B) would require servicers to have policies and procedures to determine what documents are reasonable to require from successors in interest in particular circumstances, so that the servicer is prepared to provide promptly a description of these documents, while proposed § 1024.36(i) would give potential successors in interest a mechanism to obtain this information from servicers. The Bureau believes that the separate requirement in proposed § 1024.36(i) is appropriate, in addition to the policies and procedures requirement in proposed § 1024.38(b)(1)(vi)(B), because information regarding the documents the servicer requires to confirm a successor in interest's status may be of importance to each individual successor in interest and so each successor in interest should have a mechanism to obtain this information from a servicer.

The Bureau intends that proposed § 1024.36(i) would apply to a broad range of written communication from potential successors in interest. Under the proposed rule, the successor in interest would not need to specifically request information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. As with other requests for information, the successor in interest would also not need to indicate specifically that the request is a written request under § 1024.36 or to make the request in any particular form. Accordingly, servicers would be required to provide the information in response to any written communication indicating that the person may be a successor in interest that is accompanied by the name of the prior borrower and information that enables the servicer to identify that borrower's mortgage loan account. For instance, a servicer would be required to provide the information regarding the documents the servicer requires to confirm a person's identity and ownership interest in the property in response to a written request for loss mitigation from a person other than a known borrower, because such a request suggests that the person may be a successor in interest, or in response to a written statement from a person other than the known borrower that the known borrower has died.

The Bureau is proposing this broad language because the Bureau is concerned that some successors in interest may not be aware that they need to confirm their identity and ownership interest in the property. In the alternative, the Bureau is also considering requiring servicers to respond only to a written communication that actually requests this information. The Bureau solicits comment on each approach. Additionally, the Bureau intends that proposed § 1024.36(i) would apply with respect to the servicer's receipt of written communication from any potential successor in interest unless and until the servicer becomes aware that the transfer to the successor in interest was not protected by the Garn-St Germain Act.[75] The Bureau is proposing that the requirement apply in this manner because the Bureau believes that even though a servicer may be unaware at the time of initial contact with a potential successor in interest whether the transfer was protected, in these situations the servicer should still communicate with the potential successor in interest about confirmation and should not wait until it has reason to believe that the transfer was protected.

The Bureau anticipates that many requests under proposed § 1024.36(i) will indicate the nature of the transfer of the ownership interest from the prior borrower to the successor in

[75] Pursuant to the Bureau's Same-Sex Marriage Couple Policy, *see* note 31, *supra*., a same-sex spouse would be evaluated for confirmation as a successor in interest under proposed § 1024.38(b)(1)(vi)(B) as would any other potential successor in interest. As with any potential successor in interest, confirmation of that person's status as a successor in interest would depend on whether, under State law, the person had acquired an ownership interest in a property securing a mortgage loan in a transfer protected by the Garn-St Germain Act.

interest. In that case, the Bureau anticipates that servicers will respond with information that is specifically relevant to that successor in interest's specific situation. The Bureau anticipates that, if the potential successor in interest does not indicate the nature of the transfer of the ownership interest to the successor in interest and the servicer does not otherwise have that information, servicers will respond with more general information about how successors in interest may confirm their identity and ownership interest in the property in a range of situations.

The Bureau solicits comment on whether a servicer should only be required to respond under proposed § 1024.36(i) when a possible successor in interest expressly requests information regarding how to confirm the successor in interest's identity and ownership interest in the property.

The Bureau believes that it is appropriate for the requirements of § 1024.36(c) through (g) to apply to requests under proposed § 1024.36(i). In particular, the Bureau believes that requiring servicers to state in writing what documents the servicer requires to confirm a successor in interest's status would avoid confusion about what documents are required. The Bureau also believes that applying the timing requirements in § 1024.36(c) through (g) to requests under § 1024.36(i) would ensure that potential successors in interest promptly receive this information from servicers.

The Bureau also believes that it is appropriate to require that requests under § 1024.36(i) be sent to an exclusive address if a servicer has established one under § 1024.36(b), as is required for other requests for information under § 1024.36. It would be unnecessarily burdensome to require servicers to respond to requests for information from potential successors in interest that the servicer receives at other locations. Because servicers are not ordinarily required to respond to requests for information received at other locations, servicers would need to train staff and set up systems at these locations solely to comply with § 1024.36(i). Further, the Bureau believes that successors in interest would be able to send information requests to the designated address because, under § 1024.36(b), a servicer that designates an address for receipt of information requests must post the designated address on any website maintained by the servicer if the website lists any contact address for the servicer and because successors in interest may in some circumstances have access to written communications provided to the prior borrower that identify the address. In the alternative, however, the Bureau is considering requiring servicers to respond to requests for information received from potential successors in interest at any location. The Bureau solicits comment on these two approaches and whether there is another approach that would better facilitate communication between successors in interest and servicers without unnecessarily burdening servicers.

The Bureau notes that, because § 1024.36(c) through (g) apply to requests under proposed § 1024.36(i), § 1024.36(f)(1)(i)'s rule on duplicative information applies to requests under proposed § 1024.36(i). A servicer is therefore not required to respond to a request under proposed § 1024.36(i) if the information requested is substantially the same as information previously requested for which the servicer has previously complied with its obligation to respond. Accordingly, a servicer would not repeatedly need to provide substantially similar information in response to every communication from successors in interest meeting the criteria described in proposed § 1024.36(i). The Bureau solicits comment on whether this limitation is sufficiently clear from the application of § 1024.36(c) through (g) to requests under proposed § 1024.36(i) or whether instead the Bureau should issue appropriate clarifying commentary.

The application of Regulation X's mortgage servicing rules' scope provision (§ 1024.30(b)) to successors in interest means that proposed § 1024.36(i), but not proposed

§ 1024.38(b)(1)(vi), would apply to small servicers, with respect to reverse mortgage transactions, and with respect to mortgage loans for which the servicer is a qualified lender. Accordingly, small servicers, for example, would be required to respond to requests for information under § 1024.36(i) by providing information about the documents the servicer requires to confirm the person's identity and ownership interest in the property, even though small servicers would not be required to maintain policies and procedures to decide promptly what documents the servicer reasonably requires to confirm the successor in interest's identity and ownership interest in the property. The Bureau believes that this approach appropriately balances the burden on small servicers with the need for successors in interest to receive this information. The Bureau solicits comment on alternatives to this approach.

Proposed commentary. Proposed comment 36(i)-1 provides that, for the purposes of requests under § 1024.36(i), a servicer is only required to provide information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property, not any other information that may also be requested by the person. The Bureau is proposing this comment to make clear that, while servicers would need to comply with the procedural requirements of § 1024.36(c) through (g) with respect to providing information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property, servicers are not required to provide any other information about the mortgage loan that the potential successor in interest may request before confirmation of the potential successor in interest's status. The Bureau is proposing this comment because the Bureau believes that it would be inappropriate to require servicers to provide information about the mortgage loan before confirming a successor in interest's identity and ownership interest in the property. As discussed in the section-by-section analysis of § 1024.30(d), based on the application of proposed § 1024.30(d) to current § 1024.36, successors in interest would be able to request information about the mortgage loan more generally once the servicer confirms the successor in interest's identity and ownership interest in the property.

The Bureau is not proposing, but is considering, additional requirements regarding requests for information about the mortgage loan received by servicers from a potential successor in interest before confirmation of that person's status. The Bureau is considering requiring servicers to provide the information requested upon confirmation of the successor in interest's status. A servicer would therefore be required to preserve any information requests received from a potential successor in interest, so that the servicer would be able to respond to the request upon confirmation of that person's status.[76] Alternatively, the Bureau is considering requiring servicers to respond to any such requests from a potential successor in interest by informing the potential successor in interest that the information request must be resubmitted upon confirmation of the person's status. The Bureau seeks comment on these approaches.

Section 1024.37 Force-placed Insurance

37(c) Requirements Before Charging Borrower for Force-placed Insurance

37(c)(2) Content of Notice

37(c)(2)(v)

Under § 1024.37(b), a servicer may not charge a borrower for force-placed insurance "unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan's contract requirement to maintain hazard insurance." Section 1024.37(c)(1)

[76] As described in the section-by-section analysis of § 1024.41(b), *infra,* proposed comment 41(b)-1.ii similarly provides that if a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's status, upon such confirmation, the servicer is required to review and evaluate that loss mitigation application in accordance with the procedures set forth in § 1024.41.

requires a servicer to provide to a borrower an initial notice and a reminder notice before assessing a fee or charge related to force-placed insurance. Sections 1024.37(c)(2) and 1024.37(d)(2) specify the notices' content. Section 1024.37(c)(2)(v) requires the initial and reminder force-placed insurance notices to include a statement that a borrower's hazard insurance has expired or is expiring, as applicable. This provision does not specify what a notice must state if a borrower has insufficient coverage, such as when the borrower's insurance provides coverage in a dollar amount less than that required by the mortgage loan contract. The Bureau is proposing to amend § 1024.37(c)(2)(v) to address situations in which a borrower has insufficient, rather than expiring or expired, hazard insurance. (As discussed in the section-by-section analysis of § 1024.37(d)(2)(ii), the Bureau is proposing a related amendment to § 1024.37(d)(2)(ii)).

Specifically, § 1024.37(c)(2)(v) currently requires the initial notice to include a statement that, among other things, "the borrower's hazard insurance is expiring or has expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date . . . ." Section 1024.37(d)(2)(i)(C) requires the reminder notice to include the same statement if, after providing the initial notice, a servicer does not receive any evidence of hazard insurance.

The Bureau is concerned that the statements required by § 1024.37(c)(2)(v) and (d)(2)(i)(C) may not afford servicers flexibility to address circumstances in which a borrower has insufficient coverage. When a borrower has hazard insurance that is insufficient under the mortgage loan contract's requirements, a statement that coverage has expired or is expiring may not be applicable. Similarly, the notices must state that the servicer does not have evidence that the borrower has hazard insurance past the coverage date, but § 1024.37 does not permit the notice to instead state that the servicer lacks evidence that the borrower's hazard insurance provides sufficient coverage. Moreover, § 1024.37(c)(4) and (d)(4) prohibit a servicer from including in the force-placed insurance notices any information other than that required by § 1024.37(c)(2) or (d)(2). As a result, a servicer cannot explain on the notice itself that the borrower's hazard insurance is insufficient rather than expired or expiring. Although a servicer could include such an explanation on a separate piece of paper in the same transmittal as the force-placed insurance notice,[77] the Bureau believes that servicers and borrowers may benefit if servicers are able to state on the notice itself that the servicer lacks evidence of sufficient coverage.

Accordingly, the Bureau is proposing to amend § 1024.37(c)(2)(v) to provide that the force-placed insurance notices must include a statement that the borrower's hazard insurance is expiring, has expired, or provides insufficient coverage, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date or evidence that the borrower has hazard insurance that provides sufficient coverage, as applicable. The Bureau believes that this amendment may enable servicers to provide borrowers with notices that are more accurately tailored for their precise circumstances and potentially avoid confusing a borrower whose coverage is not expiring but is insufficient under the mortgage loan contract.

The Bureau solicits comments on whether other modifications to the required content of the force-placed insurance notices are necessary or appropriate to address circumstances in which a servicer force-places insurance for reasons other than expired or expiring coverage.

37(c)(4) Additional Information

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[77] *See* 12 CFR 1024.37(c)(2) and (d)(2).

Section 1024.37(c) currently requires servicers to provide a borrower a notice at least 45 days before assessing a fee or charge related to force-placed insurance. Section 1024.37(c)(4) prohibits a servicer from including in the notice any information other than that required by § 1024.37(c)(2), though a servicer may provide a borrower with additional information on separate pieces of paper in the same transmittal. The Bureau is proposing to amend § 1024.37(c)(4) to grant servicers the flexibility to include a borrower's mortgage loan account number in the notice required by § 1024.37(c)(1)(i). (As discussed in the section-by-section analyses of § 1024.37(d)(4) and (e)(4), the Bureau is also proposing to make parallel amendments to § 1024.37(d)(4) and (e)(4) with respect to the notices required by § 1024.37(c)(1)(ii) and (e)(1)(i).)

The Bureau has received questions inquiring whether servicers may include a borrower's mortgage loan account number in the notices required by § 1024.37, including the initial notice required by § 1024.37(c)(1)(i). The Bureau understands that providing a borrower's mortgage loan account number in the notice may facilitate identifying a borrower and locating the borrower's account information when the borrower contacts the servicer in response to the force-placed insurance notice. Under the current rule, however, servicers may not include any additional information on the required notices and therefore may include a borrower's account number only on a separate piece of paper in the same transmittal.

In the 2013 RESPA Servicing Final Rule, the Bureau explained that providing required information along with additional information in the same notice could obscure the most important information or lead to information overload. The Bureau stated that it would be better if servicers have the latitude to provide the additional information on separate pieces of paper in the same transmittal.[78]

Nonetheless, the Bureau believes it may be appropriate to give servicers the flexibility to include a borrower's mortgage loan account number in the notices required by § 1024.37. An account number is a customary disclosure on communications between a servicer and a borrower. The Bureau believes that an account number is unlikely to obscure other information on the notices or lead to information overload. The Bureau also believes that including the borrower's mortgage loan account number may help to facilitate communications between a borrower and a servicer regarding a notice provided under § 1024.37. The Bureau does not believe that servicers should be required to include a separate piece of paper in the transmittal solely to identify the mortgage loan account number. Therefore, the Bureau is proposing to amend § 1024.37(c)(4) to grant servicers the flexibility to include a borrower's mortgage loan account number in the notices required by § 1024.37.

The Bureau seeks comment on this proposal to grant servicers flexibility to include a borrower's mortgage loan account number in the notices required by § 1024.37 and whether there are other types of information that servicers should be allowed to include that would not obscure the required disclosures or create information overload.

37(d) Reminder Notice

37(d)(2) Content of the Reminder Notice

37(d)(2)(ii) Servicer Not Receiving Demonstration of Continuous Coverage

The Bureau is proposing to amend § 1024.37(d)(2)(ii), which specifies the information a

[78] 78 FR 10695, 10770 (Feb. 14, 2013).

force-placed insurance reminder notice must contain if a servicer does not have evidence that the borrower has had hazard insurance in place continuously. This provision does not address the scenario in which a servicer receives evidence that the borrower has had hazard insurance in place continuously, but the servicer lacks evidence that the continued hazard insurance is sufficient under the mortgage loan contract. As discussed in the section-by-section analysis of § 1024.37(c)(2)(v), while a servicer could include on a separate piece of paper a statement clarifying that it is purchasing insurance due to insufficient coverage, the Bureau believes it may be preferable for the notice itself to be clear in this regard.

In order to align the requirements of § 1024.37(d)(2)(ii) with the proposed changes to § 1024.37(c)(2)(v), the Bureau is proposing to amend § 1024.37(d)(2)(ii) to clarify that the provision applies when a servicer has received hazard insurance information after providing the initial notice but has not received evidence demonstrating that the borrower has had sufficient hazard insurance coverage in place continuously. The Bureau believes that this amendment would clarify § 1024.37(d)(2)(ii)'s applicability when a borrower has insufficient hazard insurance.

The Bureau solicits comment on whether other modifications to the required contents of the force-placed insurance notices are necessary or appropriate to address circumstances in which a servicer force-places insurance for reasons other than expired or expiring coverage.

37(d)(2)(ii)(B)

The proposal makes a technical correction to § 1024.37(d)(2)(ii)(B) to correct the statement that the notice must set forth the information required by § 1024.37(c)(2)(ii) through (iv), (x), (xi), and (d)(2)(i)(B) and (D). Section 1024.37(d)(2)(ii)(B) should state that the notice must also set forth information required by § 1024.37(c)(2)(ix).

37(d)(3) Format

Section 1024.37(d)(3) sets forth certain formatting requirements for the reminder notice required by § 1024.41(c)(1)(ii). The reminder notice contains some of the same information as the initial notice provided under § 1024.37(c)(1)(i). The proposal makes a technical correction to § 1024.37(d)(3) to state that the formatting instructions in § 1024.37(c)(3), which apply to information set forth in the initial notice, also apply to the information set forth in the reminder notice provided pursuant to § 1024.37(d). The purpose of this change is to clarify that, when the same information appears in both the initial notice and the reminder notice, that information must be formatted the same way in both notices.

37(d)(4) Additional Information

The Bureau is proposing two amendments with respect to § 1024.37(d)(4). First, the Bureau is proposing to amend § 1024.37(d)(4) to give servicers the flexibility to include a borrower's mortgage loan account number in the notice required by § 1024.37(c)(1)(ii). For the reasons discussed in the section-by-section analysis of § 1024.37(c)(4), the Bureau believes that giving servicers flexibility to include the account number may benefit servicers and borrowers without obscuring other information on the notice or leading to information overload.

The Bureau seeks comment on this proposal to grant servicers flexibility to include a borrower's mortgage loan account number in the notices required by § 1024.37 and whether there are other types of information that servicers should be allowed to include that would not obscure the required disclosures or create information overload.

Second, the proposal makes technical corrections to redesignate comment 37(d)(4)-1 as comment 37(d)(5)-1, and to correct an erroneous reference in that comment to § 1024.37(d)(4), which instead should be a reference to § 1024.37(d)(5).

37(e) Renewing or Replacing Force-placed Insurance

37(e)(4) Additional Information

The Bureau is proposing two amendments with respect to § 1024.37(e)(4). First, the Bureau is proposing to amend § 1024.37(e)(4) to give servicers the flexibility to include a borrower's mortgage loan account number in the notice required by § 1024.37(e)(1)(i). For the reasons discussed in the section-by-section analysis of § 1024.37(c)(4), the Bureau believes that giving servicers flexibility to include the account number may benefit servicers and borrowers without obscuring other information on the notice or leading to information overload.

The Bureau seeks comment on this proposal to grant servicers flexibility to include a borrower's mortgage loan account number in the notices required by § 1024.37 and whether there are other types of information that servicers should be allowed to include that would not obscure the required disclosures or create information overload.

Second, the proposal makes a technical correction to remove the unnecessary words "[a]s applicable" from § 1024.37(e)(4).

Legal Authority

These proposed amendments and clarifications to § 1024.37 implement sections 6(k)(1)(A), 6(k)(2), 6(*l*), and 6(m) of RESPA.

Section 1024.38 General Servicing Policies, Procedures, and Requirements

38(b) Objectives

(38)(b)(1)(vi) Successors in Interest

Current § 1024.38(b)(1)(vi) provides that servicers shall maintain policies and procedures that are reasonably designed to achieve the objective of, upon notification of the death of a borrower, promptly identifying and facilitating communication with the successor in interest of the deceased borrower with respect to the property securing the deceased borrower's mortgage loan. The Bureau is proposing several modifications to this requirement. Like proposed § 1024.36(i) (*see* section-by-section analysis of § 1024.36(i)), proposed § 1024.38(b)(1)(vi) applies with respect to potential successors in interest before the servicer confirms the successor in interest's identity and ownership interest in the property. By contrast, the Mortgage Servicing Rules generally would not apply to successors in interest (*see* section-by-section analysis of § 1024.30(d)) until the servicer has confirmed the person's identify and ownership interest in the property securing the mortgage loan.

Consistent with the proposed definition of successor in interest (*see* section-by-section analysis of § 1024.31), proposed § 1024.38(b)(1)(vi) expands the current policies and procedures requirement regarding identifying and communicating with successors in interest beyond the situation of borrower death. Proposed § 1024.38(b)(1)(vi)(A) requires servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can identify and facilitate communication with any potential successors in interest upon notification either of the death of a borrower or of any transfer of the property securing a mortgage loan. The Bureau expects that a servicer may be notified of the existence of a potential successor in interest in a variety of ways, either directly (by the successor in interest identifying him or herself) or indirectly (such as by receipt of a loss mitigation application from someone other than the prior borrower). The Bureau also notes that, although the proposed rule applies only with respect to transfers to successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act, proposed § 1024.38(b)(1)(vi)(A) applies with respect to the servicer's initial notification of any transfer of the property securing a mortgage loan unless and until the servicer becomes aware that the transfer to the successor in interest was not protected by the Garn-St Germain Act. The Bureau is proposing that the requirement apply in this manner because the Bureau believes that even though a servicer may be unaware at the time of initial contact with a potential successor in interest whether the transfer was protected, the servicer should still identify and facilitate communication with the potential successor in interest; the servicer should not wait until it has reason to believe that the transfer was protected.

Proposed § 1024.38(b)(1)(vi)(B) requires servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can, upon identification of a potential successor in interest—including through any request made by a potential successor in interest under § 1024.36(i) or any loss mitigation application received from a potential successor in interest—provide promptly to the potential successor in interest a description of the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and how the person may submit a written request under § 1024.36(i) (including the appropriate address). The Bureau intends that this rule would require servicers to have policies and procedures in place so that the servicer can determine what documents are reasonable to require from successors in interest in particular circumstances, so that servicers are able to provide a description of these documents promptly. (As explained in the section-by-section analysis of proposed § 1024.38(b)(1)(vi), proposed comment 38(b)(1)(vi)-1 further clarifies the requirement that the documents required by the servicer are reasonable in the particular circumstances of a specific successor in interest.) As explained in the section-by-section analysis of § 1024.36(i), the Bureau is proposing § 1024.38(b)(1)(vi)(B) in conjunction with proposed § 1024.36(i), which requires servicers to respond to information requests indicating that a person may be a successor in interest by providing information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. Accordingly, proposed § 1024.38(b)(1)(vi)(B) requires servicers to have policies and procedures in place to determine what documents to provide to potential successors in interest who contact them. Proposed § 1024.36(i) also provides potential successors in interest a mechanism to prompt servicers to provide this information.

Additionally, proposed § 1024.38(b)(1)(vi)(C) requires servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can, upon the receipt of such documents (*i.e.*, those the servicer reasonably requires to confirm that person's identity and ownership interest in the property), promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. The proposed rule would require servicers to have policies and procedures in place to confirm promptly potential successors in interest's status, so that a servicer can promptly notify the person whether the servicer has confirmed the person's status or if additional documents are required. The Bureau intends to provide servicers with flexibility under this proposed rule regarding the form of notification to a potential successor in interest. The Bureau does not believe that it is appropriate to require servicers to notify the potential successor in interest in writing. Adding an additional written notice requirement could be unnecessarily burdensome on servicers and may delay servicer responses to successors in interest. The Bureau solicits comment, however, on whether servicers should instead be required to notify a potential successor in interest in writing whether the servicer has confirmed the person's status.

As explained in part V.A., the Bureau is proposing these changes to § 1024.38(b)(1)(vi) because the Bureau believes, based on reports from consumers, consumer advocacy groups, and other stakeholders, that successors in interest often have difficulty demonstrating their identity and ownership interest in the property to servicers' satisfaction. The Bureau believes, therefore, that changes to the Bureau's rules are appropriate to clarify servicers' obligations and ensure that the requirements are widely understood and enforceable.

The Bureau also solicits comment on whether other changes to Regulation X's mortgage servicing rules would protect successors in interest from unnecessary foreclosure before a servicer has confirmed the successor in interest's status, and, if so, what these changes would be.

Proposed commentary. Proposed comment 38(b)(1)(vi)-1 clarifies that the documents a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property must be reasonable in light of the laws of the relevant jurisdiction, the successor in interest's specific situation, and the documents already in the servicer's possession. The proposed comment provides that the required documents may, where appropriate, include, for example, a death certificate, an executed will, or a court order.

The Bureau is proposing comment 38(b)(1)(vi)-1 because, as described in part V.A, the Bureau believes, based on repeated reports from consumers, consumer advocacy groups, and other stakeholders, that servicers may request documentation to prove the successor in interest's identity and ownership interest in the property that is unreasonable in the successor in interest's particular situation. For instance, the Bureau has heard reports that servicers may request probate documents for transfers upon death in which probate is not required, such as when spouses own a property in joint tenancy and the ownership interest in the property transfers as a matter of law upon one spouse's death.

Proposed comment 38(b)(1)(vi)-2 provides examples illustrating documents that a servicer may require to confirm a potential successor in interest's identity and ownership interest in the property and that generally would be reasonable, subject to the relevant law governing each situation, in four common situations involving potential successors in interests. These situations are:

(1) *Tenancy by the entirety or joint tenancy.* A potential successor in interest indicates (or the servicer knows from its records or other sources) that the prior borrower and the potential successor in interest owned the property as tenants by the entirety or joint tenants and that the prior borrower has died. To demonstrate that the potential successor in interest has an ownership interest in the property upon the death of the prior borrower, applicable law does not require a probate proceeding, but requires only that there be a prior recorded deed listing both the potential successor in interest and the prior borrower as tenants by the entirety (*e.g.*, married grantees) or joint tenants. The proposed comment provides that it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the recorded instrument, if the servicer does not already have it, and the deceased borrower's death certificate. The proposed comment also provides that, because a probate proceeding is not required under applicable law, requiring documentation of a probate proceeding would be unreasonable.

(2) *Affidavits of heirship.* A potential successor in interest indicates that he or she acquired an ownership interest in the property upon the death of the prior borrower through intestate succession. To demonstrate that the potential successor in interest has an ownership interest in the property upon the death of the prior borrower, applicable law does not require a probate proceeding, but requires only an appropriate affidavit of heirship documenting the chain of title. The proposed comment provides that it would be reasonable for the servicer to require the potential successor in interest to provide the affidavit of heirship and the death certificate of the prior borrower. The proposed comment also provides that, because a probate proceeding is

not required under applicable law, requiring documentation of a probate proceeding would be unreasonable.

(3) *Divorce or legal separation.* A potential successor in interest indicates that he or she acquired an ownership interest in the property from a spouse who is a borrower as a result of a property agreement incident to a divorce proceeding. Under applicable law, transfer from the borrower spouse is demonstrated by a final divorce decree and accompanying separation agreement executed by both spouses. Applicable law does not require a deed conveying the interest in the property. The proposed comment provides that it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the final divorce decree and an executed separation agreement. The proposed comment also provides that because applicable law does not require a deed, requiring documentation of a deed would be unreasonable.

(4) *Living spouses or parents.* A potential successor in interest indicates that he or she acquired an ownership interest in the property from a living spouse or parent who is a borrower by quitclaim deed or act of donation. The proposed comment provides that it would be reasonable for the servicer to require the potential successor in interest to provide the quitclaim deed or act of donation. The proposed comment also provides that it would be unreasonable to require additional documents to establish ownership.

The Bureau is proposing comment 38(b)(1)(vi)-2 because the Bureau believes that it would be helpful to provide more specific guidance about what are reasonable documents to require from a potential successor in interest to confirm the person's status as a successor in interest in very common and straightforward situations. The Bureau recognizes that this proposed comment does not cover all possible situations involving successors in interest and that additional documents may be required in certain less straightforward situations. In particular, the Bureau notes that this proposed comment does not describe situations involving the death of a borrower with a will or trust. The Bureau has not included commentary regarding such situations because the Bureau believes that such situations may not always be as straightforward as the examples provided. For instance, situations involving the death of a borrower with a will may require probate documentation. Additionally, the Bureau believes that servicers may be more familiar with situations where the borrower has a will or trust and that therefore servicers may need less guidance from the Bureau in determining what documents are appropriate in these circumstances.

The Bureau solicits comment on whether proposed comment 38(b)(1)(vi)-2 accurately describes examples of reasonably required documents to confirm a successor in interest's identity and ownership interest in the property. The Bureau also solicits comment on whether it would be reasonable for servicers to require additional documents (such as affidavits or notarized copies) from a potential successor in interest to confirm the validity of documents submitted by the potential successor in interest. The Bureau also solicits comment on whether the Bureau should include other common examples of reasonably required documents to confirm a successor in interest's identity and ownership interest in the property and what those examples should be.

Proposed comment 38(b)(1)(vi)-3 clarifies proposed § 1024.38(b)(1)(vi)(C)'s requirement that servicers maintain policies and procedures reasonably designed to ensure that the servicer can, upon the receipt of the documents that the servicer reasonably requires, promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. The proposed comment provides that, upon the receipt of the documents, the servicer's confirmation must be sufficiently prompt so as not to interfere with the successor in interest's ability to apply for loss mitigation options according to the procedures provided in § 1024.41. The proposed comment also provides that, in general, a servicer's policies and procedures must be reasonably designed to ensure that confirmation of a successor in interest's status occurs at least 30 days before the next applicable milestone provided in proposed comment 41(b)(2)(ii)-2.[79]

The Bureau is proposing comment 38(b)(1)(vi)-3 because the Bureau understands that successors in interest may have difficulty pursuing loss mitigation options to avoid foreclosure when the servicer does not promptly confirm the successor in interest's identity and ownership interest in the property. The Bureau has heard reports that miscommunication and delay in the process of confirming successors in interest's identity and ownership interest in the property sometimes prevent successors in interest from successfully applying for loss mitigation. In general, as each milestone provided in proposed comment 41(b)(2)(ii)-2 passes, a borrower is likely to enjoy fewer protections under § 1024.41 when the application becomes complete.

Proposed comment 38(b)(1)(vi)-3 would help to ensure that servicer delay in confirmation of successor in interest status would not unnecessarily hinder successors in interest's ability to apply for loss mitigation options. The Bureau believes that servicers generally are aware of the progress of each loan in the foreclosure process. Accordingly, the Bureau believes that it would not be particularly burdensome for servicers to design policies and procedures for confirming potential successors in interest's status that take into account the

[79] Proposed comment 41(b)(2)(ii)-2 provides the following milestones: "i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower; ii. The date that is the 120th day of the borrower's delinquency; iii. The date that is 90 days before a foreclosure sale; iv. The date that is 38 days before a foreclosure sale."

foreclosure status of a particular loan, so that the servicer would be able to confirm the successor in interest's status sufficiently promptly for the successor in interest to apply for loss mitigation under § 1024.41. The proposed comment provides that, in general, confirmation of a successor in interest's status at least 30 days before the next applicable milestone would provide the successor in interest sufficient opportunity to pursue loss mitigation.

As with other policies and procedures required by § 1024.38, the policies and procedures required under proposed § 1024.38 (b)(1)(vi) would have to be "reasonably designed" to achieve the stated objective. The Bureau recognizes that, for various reasons (*e.g.*, the timing of the servicer's receipt of documents from the potential successor, the status of pending foreclosure proceedings, etc.), it may not be possible in every case to confirm a successor in interest's status sufficiently promptly so as not to interfere with the successor in interest's ability to apply for loss mitigation options according to the procedures provided in § 1024.41 or to confirm a successor in interest's status 30 days before the next applicable milestone provided in proposed comment 41(b)(2)(ii)-2. However, the Bureau believes that servicers should be able to adopt policies and procedures to ensure that they generally confirm the status of successors in interest sufficiently promptly for successors in interest to apply for loss mitigation options according to the procedures provided in § 1024.41.

The Bureau solicits comment generally on proposed § 1024.38(b)(1)(vi). Further, proposed § 1024.38(b)(1)(vi) uses the word "promptly" in several instances. The Bureau is considering adding commentary clarifying what the Bureau considers "promptly" to mean in the various instances. The Bureau solicits comment on whether it should add this commentary and if so, what should be considered "promptly" for the purposes of § 1024.38(b)(1)(vi).

38(b)(2) Properly Evaluating Loss Mitigation Applications

38(b)(2)(vi)

The Bureau is proposing to add § 1024.38(b)(2)(vi), which requires a servicer to maintain policies and procedures reasonably designed to ensure that the servicer can promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of proposed § 1024.41(c)(4), discussed below.

Under current § 1024.41(c)(1), if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, the servicer shall, within 30 days of receipt, evaluate the borrower for all loss mitigation options available to the borrower and provide the notice required under § 1024.41(c)(1)(ii). Section 1024.41(b)(1) defines a complete loss mitigation application to include information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.[80] Thus, a loss mitigation application becomes complete notwithstanding that a servicer might require additional information that is not in the control of the borrower.[81]

Through outreach efforts, the Bureau has learned that servicers cannot always obtain necessary third-party information in time to evaluate a borrower's complete loss mitigation application within 30 days of receipt as required by § 1024.41(c)(1). Servicers and Federal agencies have informed the Bureau that this can occur because a servicer delays requesting the information or because a third party from whom the servicer requested the information delays providing it. Currently, § 1024.41 does not specifically address this circumstance—when a

[80] 12 CFR 1024.41(b)(1).
[81] *See* comment 41(b)(1)-5.

servicer is unable to obtain information not in the borrower's control within 30 days of receiving a complete application and thus cannot complete the evaluation within that timeframe as required by § 1024.41(c)(1). Proposed § 1024.41(c)(4), discussed in more detail in the section-by-section analysis of § 1024.41(c)(4), addresses these issues by adding requirements with respect to the servicer's obligation to pursue necessary information not in the borrower's control and the servicer's responsibilities if such information is not obtained within 30 days after a complete application is received.

Servicers often need to be able to access information from parties other than the borrower at different points during a loss mitigation application process. The Bureau believes that the policies and procedures requirements in proposed § 1024.38(b)(2)(vi) would facilitate compliance with the requirements for gathering information not in the borrower's control under proposed § 1024.41(c)(4). Maintaining such policies and procedures would ensure that servicers efficiently identify and obtain information not in the borrower's control in accordance with § 1024.41(c)(4). Efficiency in obtaining information not in the borrower's control provides enhanced consumer protection benefits by shortening the loss mitigation evaluation process and facilitating compliance with § 1024.41(c)(1)'s requirement to evaluate complete loss mitigation applications within 30 days.

The Bureau also believes that proposed § 1024.38(b)(2)(vi) would contribute to the goals of § 1024.38(b)(2) more generally. Section 1024.38(b)(2) requires servicers to maintain policies and procedures regarding various aspects of evaluation of loss mitigation applications, including (among others) document collection and proper evaluation. As the Bureau explained in the 2012

RESPA Servicing Proposal, these and other requirements of § 1024.38(b)(2) facilitate servicer compliance with § 1024.41 and lead to loss mitigation processes that better protect consumers.[82] Similarly, the Bureau believes that requiring servicers to maintain policies and procedures regarding the identification and collection of non-borrower information under proposed § 1024.38(b)(2)(vi) would protect borrowers by facilitating compliance with proposed § 1024.41(c)(4) and the evaluation timelines provided under § 1024.41(c)(1).

Legal Authority

The Bureau is proposing these amendments to § 1024.38 pursuant to its authority under section 19(a) of RESPA. As explained above, the Bureau believes that the servicing policies, procedures, and requirements set forth in these proposed amendments are necessary to achieve the purposes of RESPA, including to avoid unwarranted or unnecessary costs and fees, to ensure that servicers are responsive to consumer requests and complaints, to ensure that servicers provide accurate and relevant information about the mortgage loan accounts that they service, and to facilitate the review of borrowers for foreclosure avoidance options. The Bureau believes that, without sound policies and procedures and without achieving certain standard requirements, servicers will not be able to achieve those purposes. The Bureau is also proposing these amendments to § 1024.38 pursuant to its authority under section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial laws. Specifically, the Bureau believes that these proposed amendments to § 1024.38 are necessary and appropriate to carry out the purpose under section 1021(a) of the Dodd-Frank Act of ensuring that markets for consumer financial products and

[82] 77 FR 57199, 57248 (Sept. 17, 2012).

services operate transparently and efficiently to facilitate access and innovation. The Bureau additionally is relying on its authority under section 1032(a) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Section 1024.39 Early Intervention Requirements for Certain Borrowers

39(a) Live Contact

The Bureau is proposing several clarifications, revisions, and amendments to § 1024.39(a) and its commentary. The proposed changes are intended to clarify that a servicer's early intervention live contact obligations recur in each billing cycle while a borrower is delinquent and to provide additional examples illustrating how the live contact requirements apply in certain circumstances, such as when a borrower is unresponsive or is in the process of applying for loss mitigation pursuant to § 1024.41.

Repeated Attempts to Establish Live Contact

Section 1024.39(a) currently requires a servicer to establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency. Current comment 39(a)-1 states that a borrower's 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 . . . ."[83]). The Bureau has always understood these provisions to require servicers to make continual attempts to contact a borrower who remains delinquent for more than one billing cycle. The Bureau is proposing to revise § 1024.39(a) to codify this interpretation. The proposed revision would expressly require servicers to establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day after each payment due date for the duration of the borrower's delinquency.

As it stated in the 2012 RESPA Servicing Proposal, the Bureau intended the live contact provisions to create an ongoing obligation for a servicer to attempt to communicate with a delinquent borrower. In its discussion of the decision to limit a servicer's obligation to provide written notice under § 1024.39(b)(1) to once every 180 days, the Bureau noted that it was not including a similar limitation in § 1024.39(a) because it expected a servicer to contact a borrower during each period of delinquency.[84] In the 2013 RESPA Final Servicing Rule, the Bureau confirmed that it expected servicers to attempt to make live contact on a recurring basis and stated that, "[w]ith respect to the live contact requirement . . . a servicer must establish or make good faith effort to establish live contact, *even with borrowers who are regularly delinquent,* by the 36th day of a borrower's delinquency."[85] In the October 2013 Servicing Bulletin, the Bureau again clarified that servicers have an obligation to make good faith efforts to contact a borrower within 36 days of when a borrower first becomes delinquent, "and for each of any subsequent billing periods for which the borrower's obligation is due and unpaid."

The Bureau continues to believe that borrowers who remain delinquent for more than one

[83] Comment 39(a)-1 (emphasis added).
[84] 77 FR 57199, 57256 (Sept. 17, 2012).
[85] 78 FR 10696, 10795 (Feb. 14, 2013) (emphasis added).

billing cycle benefit from receiving repeated live contact and that relieving a servicer of its obligations to establish live contact after the initial delinquent billing cycle would undermine the intent of § 1024.39(a). Accordingly, the Bureau is proposing to clarify § 1024.39(a) to codify its understanding and require servicers expressly to establish or make good faith efforts to establish live contact with a delinquent borrower no later than 36 days after each payment due date for the duration of the borrower's delinquency.

To provide additional guidance, the Bureau is proposing to revise and re-order comment 39(a)-1 and its subsections. First, the Bureau proposes to remove the language in current comment 39(a)-1.i. As discussed in the section-by-section analysis of § 1024.31, the Bureau is proposing a new definition of delinquency applicable to all of subpart C. If adopted as proposed, the new definition generally would mirror the language in current comment 39(a)-1.i, making that language superfluous. Second, the Bureau is proposing to revise existing comments 39(a)-1 and 39(a)-1.i and add comments 39(a)-1.i.A and 39(a)-1.i.B to illustrate how a servicer may comply with the recurring live contact obligation when a borrower is delinquent for one or more billing cycles. Proposed comment 39(a)-1.i.B gives the example of a borrower with a payment due date on the first of the month who misses three consecutive payments, on January 1, February 1, and March 1. The proposed comment provides that a servicer can meet the requirements of § 1024.39(a) by, for example, attempting to make live contact with the borrower on February 5, and again on March 25. Because a servicer has 36 days from the date a borrower first becomes delinquent to establish or make good faith efforts to establish live contact with the borrower, the proposed comment explains that an attempt to establish live contact with the borrower on February 5 meets the requirements of § 1024.39(a) for both January and February.

The Bureau is also proposing to revise comment 39(a)-2 to codify guidance from the

October 2013 Servicing Bulletin, which clarified that servicers are permitted to combine their live contact attempts with their attempts to contact borrowers for other purposes, including, for example, by providing a borrower with information about available loss mitigation options when contacting the borrower for purposes of collection.[86]

Finally, the Bureau is proposing to add comment 39(a)-3 to clarify that, while the Bureau expects servicers to continue to attempt to make live contact with borrowers who are regularly delinquent, a borrower's failure to respond to such attempts, as well as the length of the borrower's delinquency, are relevant circumstances to consider when evaluating a servicer's good faith. To this end, the Bureau is proposing to add an example it first provided in the October 2013 Servicing Bulletin. The example would provide that, in the case of a borrower with six or more consecutive delinquencies, good faith efforts to establish live contact might include adding a sentence in the borrower's periodic statement or another communication encouraging the borrower to contact the servicer. The Bureau is proposing to re-designate current comments 39(a)-3 and 39(a)-4 as, respectively, comments 39(a)-4 and 39(a)-5 to accommodate the addition of proposed comment 39(a)-3.

Compliance with § 1024.41

The Bureau is also proposing to add comment 39(a)-6 to illustrate how a servicer can meet its early intervention live contact requirements when a delinquent borrower is engaged in various stages of the loss mitigation procedures set forth in § 1024.41. Proposed comment 39(a)-6 codifies guidance the Bureau provided in its October 2013 Servicing Bulletin. In the bulletin, the Bureau reiterated that the live contact requirements are designed to give servicers significant

[86] October 2013 Servicing Bulletin at 5.

flexibility to tailor their procedures to particular circumstances. As explained in comment 39(a)-2, good faith efforts to establish live contact consist of "reasonable steps under the circumstances to reach a borrower . . . ." The Bureau went on to provide several examples of reasonable steps, including the example of a servicer that has established and is maintaining live contact with a borrower "with regard to the borrower's completion of a loss mitigation application and the servicer's evaluation of that borrower for loss mitigation options."[87]

The Bureau is now proposing to codify its guidance from the October 2013 Servicing Bulletin. As the Bureau stated in the 2013 RESPA Servicing Final Rule, the live contact requirements are intended, in part, to ensure that borrowers receive timely information about loss mitigation options at an early stage of delinquency.[88] For borrowers who have already applied or are in the process of applying for loss mitigation, however, repeated or parallel attempts by the servicer to establish live contact pursuant to the requirements of § 1024.39(a) may be confusing or harassing. Therefore, the Bureau is proposing to add commentary codifying the bulletin's guidance and clarifying generally that a servicer working with a borrower pursuant to the procedures of § 1024.41 complies with the requirements of § 1024.39(a). Specifically, proposed comment 39(a)-6 clarifies that a servicer that has established and is maintaining ongoing contact with regard to a borrower's completion of a loss mitigation application, or in connection with the servicer's evaluation of the borrower's complete loss mitigation application, complies with the requirements of § 1024.39(a). In addition, the proposed comment clarifies that a servicer that has evaluated and denied a borrower for all available loss mitigation options has complied with

[87] October 2013 Servicing Bulletin at 5.
[88] *See, e.g.*, 78 FR 10695, 10793 (Feb. 14, 2013).

the requirements of § 1024.39(a). The Bureau believes that, once a servicer has complied with the requirements of § 1024.41 with respect to a specific borrower, and has determined that the borrower does not qualify for any available loss mitigation options, continued live contact between a borrower and a servicer no longer serves the purpose of § 1024.39(a). Indeed, at that point, continued attempts by the servicer to establish live contact may frustrate or even harass a borrower who was recently denied for loss mitigation. Accordingly, the Bureau is proposing to clarify that a servicer complies with § 1024.39(a) if the servicer has sent a notice to a borrower (in compliance with § 1024.41(c)(1)(ii)) notifying the borrower that the borrower is not eligible for any loss mitigation options.

The Bureau believes, however, that a borrower who cures a prior delinquency but subsequently becomes delinquent again would benefit from the servicer resuming compliance with the live contact requirement. Therefore, proposed comment 39(a)-6 also clarifies that a servicer is again subject to the requirements of § 1024.39(a) with respect to a borrower who becomes delinquent after curing a prior delinquency. The Bureau is proposing to add a reference to proposed comment 39(a)-6 in proposed comment 39(a)-3 to indicate that the examples set forth in comment 39(a)-6 represent examples of "good faith efforts."

39(b) Written Notice

39(b)(1)

The Bureau is proposing certain revisions to § 1024.39(b)(1) and its commentary to clarify the frequency with which a servicer must provide the written early intervention notice and to ensure consistency with the proposed revisions to the live contact requirements in § 1024.39(a). Under the proposed revision, a servicer must send a written notice to a delinquent borrower no later than the 45th day of the borrower's delinquency, but a servicer does not have to send such a notice more than once in any 180 day period. If the borrower remains delinquent or becomes 45 days delinquent again after the 180-day period expires, the proposed revision requires the servicer to provide the written notice again.

Current comment 39(b)(1)-1 references the definition of delinquency in current comment 39(a)-1.i. As explained in the section-by-section analysis of § 1024.39(a), the definition of delinquency included in current comment 39(a)-1.i and referenced in comment 39(b)(1)-1 states that a borrower's 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. As with § 1024.39(a), the inclusion of the phrase "for a given billing cycle" in the definition of delinquency for purposes of § 1024.39(b)(1) creates a recurring obligation on the part of servicers to provide a delinquent borrower with a written notice. In contrast with the recurring obligation to make live contact under § 1024.39(a), however, servicers only have to comply with the requirement to send a written notice once in a 180-day period.[89] This is because, as the Bureau explained in the 2012 RESPA Servicing Proposal, the Bureau did not believe "that borrowers who are consistently delinquent would benefit from receiving the same written notice every month."[90]

As discussed in the section-by-section analysis of § 1024.31, the Bureau's proposed new definition of delinquency in § 1024.31 does not use the phrase "for a given billing cycle." The Bureau wishes to clarify that it continues to expect servicers to send a written notice more than once, notwithstanding the revised language in the proposed definition of delinquency. Accordingly, the Bureau is proposing revisions to § 1024.39(b)(1) and comment 39(b)(1)-2 to

[89] 12 CFR 1024.39(b)(1).
[90] 77 FR 57199, 57257 (Sept. 17, 2012).

preserve the recurring nature of the written notice requirement, as well as the limitation that a servicer has to send a written notice only once during any 180-day period. Under the proposed revision, a servicer must send a written notice to a delinquent borrower no later than the 45th day of the borrower's delinquency, but no more than once in any 180-day period. If the borrower either remains delinquent or becomes delinquent again at some point after the 180-day period expires, the proposed revision would require the servicer to provide the borrower with another written notice 45 days from the date of her most recent missed payment.

In addition, the Bureau is proposing to clarify through a revision to comment 39(b)(1)-2 that a servicer is again required to send written notice to a borrower who remains delinquent more than 180 days after the servicer sent the first notice. Current comment 39(b)(1)-2 provides an example of a borrower who fails to make a payment due on March 1. The comment states that the servicer is required to send a written notice within 45 days thereafter—*i.e.*, by April 15; it further provides that, if the borrower fails to make the April 1 payment, the servicer does not need to send a second written notice because it already did so within the previous 180 days. The Bureau is proposing to add a further explanation that, if the borrower misses a payment on October 1, the servicer is again obligated to provide a written notice within 45 days after October 1, since the 45th day (November 15) falls more than 180 days from the date the servicer provided the first written notice. This proposal also makes a minor technical change to comment 39(b)(1)-2 to correct an erroneous reference to § 1024.39(a), which should instead be a reference to § 1024.39(b).

Finally, the Bureau is proposing to add comment 39(b)(1)-6 to clarify the obligation of a transferee servicer to provide the written notice required by § 1024.39(b). Proposed comment 39(b)(1)-6 states that a transferee servicer is not required to provide a second written notice to a borrower who already received a written notice from the transferor servicer on or before the borrower's 45th day of delinquency. The comment further clarifies, however, that a servicer is required to comply with § 1024.39(b) regardless of whether the transferor servicer sent the borrower a written notice in the preceding 180-day period. In other words, if the transferor servicer provided a first written notice after an initial missed payment and, following the transfer, the borrower remains or becomes 45 days delinquent again, the transferee servicer would have to provide a written notice again, regardless of whether or not 180 days had passed since the date the transferor servicer provided the first written notice to the borrower.

The Bureau is proposing this clarification because it believes that the rationale that justified applying the 180-day limitation to mortgage loans serviced by a single servicer may not apply in the case of a loan whose servicing rights are transferred to another servicer. The Bureau explained in the 2013 RESPA Servicing Final Rule that it did not believe that borrowers who are repeatedly delinquent would benefit from receiving essentially the same written notice month after month.[91] Accordingly, it adopted a once-every-180-days limitation on the general requirement to provide a written notice under § 1024.39(b). In the case of a transferred loan, however, the Bureau believes that a transferee servicer may provide additional and different information to a delinquent borrower under § 1024.39(b)(2) and that a borrower would benefit from receiving this information sooner rather than later following a transfer. Accordingly, the Bureau believes it is appropriate to clarify that the 180-day limitation in § 1024.39(b)(1) does not apply where the prior notice triggering the 180-day waiting period was provided by the transferor servicer prior to transfer.

[91] *See* 78 FR 10695, 10800 (Feb. 14, 2013).

Successors in interest. As described in the section-by-section analysis of § 1024.30(d), proposed § 1024.30(d) provides that a confirmed successor in interest must be considered a borrower for the purposes of Regulation X's mortgage ervicing rules. Accordingly, once a servicer confirms a successor in interest's identity and ownership interest in the property, a servicer would be required to make reasonable efforts to establish live contact and to make written contact with the successor in interest regarding a delinquent mortgage loan under § 1024.39's early intervention requirements.

Proposed comment 39(b)(1)-5 clarifies that, where a servicer has already provided a written early intervention notice to a prior borrower under § 1024.39(b) before confirming a successor in interest's status, the servicer is not required also to provide that notice to the confirmed successor in interest, but the servicer must provide the confirmed successor in interest with any additional written early intervention notices required after confirming the successor in interest's status. The Bureau believes that it would be unnecessary and difficult for servicers to provide additional copies of the written early intervention notices that servicers have already provided to the prior borrower. The Bureau also believes that, in many cases, successors in interest may have received the original notice mailed by the servicer to the prior borrower. Further, as described in the section-by-section analysis of § 1026.2(a)(11), servicers would be required to provide confirmed successors in interest with periodic statements under § 1026.41 of Regulation Z, so confirmed successors in interest will generally be kept apprised of the status of the mortgage loan.

39(b)(2) Content of the Written Notice

The Bureau is proposing to clarify when a servicer must include the disclosures under § 1024.39(b)(2)(iii) and (iv) in the written early intervention notice. Section 1024.39(b)(2)(iii) and (iv) currently state that, “if applicable,” the written notice must include a statement providing a brief description of examples of loss mitigation options that may be available and either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer. The Bureau is proposing to add a comment to clarify when such disclosures are “applicable” and when a servicer is therefore required to include them in the written early intervention notice. Specifically, proposed comment 39(b)(2)-4 provides that, if loss mitigation options are available, a servicer must include in the written notice the disclosures set forth in § 1024.39(b)(2)(iii) and (iv). The proposed comment further provides that loss mitigation options are available if the owner or assignee of a borrower’s mortgage loan offers an alternative to foreclosure that is made available through the servicer. Additionally, the proposed comment provides that the availability of loss mitigation options does not depend upon a borrower’s eligibility for those options, but simply depends upon whether the owner or assignee of a borrower’s mortgage loan generally offers loss mitigation options through the servicer. Proposed comment 39(b)(2)-4 is generally intended to assist servicers in determining when they are required to include the § 1024.39(b)(2)(iii) and (iv) disclosures in the written early intervention notice, and whether they are exempt from providing the written notice under proposed § 1024.39(d)(1)(ii) or (d)(2)(ii) as discussed in the section-by-section analyses of § 1024.39(d)(1) and (d)(2).

Legal Authority

The Bureau is proposing the amendments to § 1024.39(a) and (b) pursuant to its authorities under sections 6(j)(3), 6(k)(1)(E), and 19(a) of RESPA. As explained above, the Bureau finds, consistent with section 6(k)(1)(E), that the proposed amendments to § 1024.39(a) and (b) are appropriate to achieve the consumer protection purposes of RESPA, including to help borrowers avoid unwarranted or unnecessary costs and fees and to facilitate review of borrowers for foreclosure avoidance options. For the same reasons, the proposed amendments to § 1024.39(a) and (b) are authorized under section 6(j)(3) of RESPA as necessary to carry out section 6 of RESPA, and under section 19(a) as necessary to achieve the purposes of RESPA, including borrowers' avoidance of unwarranted or unnecessary costs and fees and the facilitation of review of borrowers for foreclosure avoidance options.

The Bureau is also proposing the amendments to § 1024.39(a) and (b) pursuant to its authority under section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial laws, including the purposes and objectives of Title X of the Dodd-Frank Act. Specifically, the Bureau believes that these amendments are necessary and appropriate to carry out the purpose under section 1021(a) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services are fair, transparent, and competitive, and the objectives under section 1021(b) of the Dodd-Frank Act of ensuring that consumers are provided with timely and understandable information to make responsible decisions about financial transactions, and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. The Bureau additionally relies on its authority under section 1032(a) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

39(d) Exemptions

39(d)(1) Borrowers in Bankruptcy

The Bureau is proposing to revise § 1024.39(d)(1) to narrow the scope of the bankruptcy exemption from § 1024.39(a) and (b)'s early intervention requirements. Section 1024.39(d)(1) currently exempts a servicer from the early intervention requirements with respect to a mortgage loan if at least one of the borrowers is a debtor in bankruptcy. The proposed revisions preserve the current exemption from the live contact requirements of § 1024.39(a) as it relates to a borrower in bankruptcy, but they provide that the exemption would no longer apply to a borrower who is jointly liable on the mortgage loan with someone who is a debtor in a Chapter 7 or Chapter 11 bankruptcy case.[92] The proposal partially lifts the exemption from the written notice requirements of § 1024.39(b) and requires a servicer to provide the written notice unless no loss mitigation options are available, the borrower's confirmed plan of reorganization provides for the surrendering of the property or avoidance of the lien securing the mortgage loan, the borrower files a Statement of Intention in the bankruptcy case identifying an intent to surrender the mortgage loan, or a court enters an order avoiding the lien securing the mortgage loan or lifting the automatic stay with respect to the property securing the mortgage loan. That

[92] "Consumer homeowners typically seek relief under either Chapter 7 or Chapter 13 of the Bankruptcy Code. Chapter 7 requires the debtor to surrender all nonexempt property for distribution to creditors. In return, the debtor's debts are discharged, with some exceptions. Chapter 13 permits debtors with regular income to keep their property and to repay creditors in whole or in part by making monthly payments to a Chapter 13 trustee, who then distributes the payments to creditors." Alan M. White & Carolina Reid, *Saving Homes, Bankruptcies and Loan Modifications in the Foreclosure Crisis*, 65 Fla. L. Rev. 1713, 1717 (Dec. 2013) (citing Adam J. Levitin, *Resolving the Foreclosure Crisis: Modification of Mortgages in Bankruptcy*, 2009 Wis. L. Rev. 565, 579, 643 (2009)). Some consumer homeowners seek relief under Chapter 11 of the Bankruptcy Code, usually because their debt levels exceed Chapter 13's limitations, and family farmers and fishermen may file under Chapter 12. *See* 11 U.S.C. § 109(d)-(f) (defining who may be a debtor under Chapter 11, Chapter 12, and Chapter 13). Because relatively few consumer homeowners seek relief under Chapter 11 or Chapter 12 of the Bankruptcy Code, the discussion of early intervention focuses primarily on homeowners in Chapter 7 or Chapter 13 cases. *See* Administrative Office of the U.S. Courts, *U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2013, available at* http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2013/1213_f2.pdf (indicating that in 2013, there were only 1,320 nonbusiness Chapter 11 filings and 495 Chapter 12 filings nationwide).

is, if loss mitigation options are available, the proposal requires that a servicer, with certain exceptions, provide the written early intervention notice required by § 1024.39(b) to borrowers in bankruptcy.

The objectives of the early intervention requirements under § 1024.39 include ensuring that delinquent borrowers have an opportunity to pursue loss mitigation options at the early stages of delinquency, encouraging communication between servicers and delinquent borrowers, and encouraging delinquent borrowers to work with their servicers to identify alternatives to foreclosure.[93] Section 1024.39(a) requires a servicer to establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency and, promptly after establishing live contact, inform the borrower about the availability of loss mitigation options, if appropriate. Section 1024.39(b) requires a servicer to provide to a delinquent borrower a written notice with specific information, including examples of loss mitigation options that may be available and instructions on how to obtain more information about loss mitigation options from the servicer, not later than the 45th day of the borrower's delinquency.

In the 2012 RESPA Servicing Proposal, the Bureau sought comment on "whether servicers may reasonably question how they could comply with [the] Bureau's propos[ed early intervention requirements] in light of other applicable laws," including the Bankruptcy Code.[94] The preamble acknowledged that the Bankruptcy Code's automatic stay generally prohibits, among other things, actions to collect, assess, or recover a claim against the debtor that arose

[93] *See* 77 FR 57199, 57251 (Sept. 17, 2012); 78 FR 10695, 10787 (Feb. 14, 2013).
[94] 77 FR 57199, 57260-61 (Sept. 17, 2012).

before the debtor filed for bankruptcy.[95] In response, industry expressed concerns that the early intervention requirements could conflict with existing law, including the Bankruptcy Code.[96]

In the 2013 RESPA Servicing Final Rule, the Bureau addressed these concerns by adopting § 1024.39(c), which provides that nothing in § 1024.39 requires a servicer to communicate with a borrower in a manner otherwise prohibited under applicable law.[97] The Bureau also added a comment to § 1024.39(c), specifying that servicers are not required to communicate with borrowers in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case, and that servicers could adapt the requirements of § 1024.39 in any manner that would permit them to inform borrowers of loss mitigation options. The Bureau explained that these additions were intended to clarify that servicers could take a flexible approach to complying with § 1024.39 and that the Bureau did not intend for its early intervention requirements to require servicers to take any action that may be prohibited under, among other things, the Bankruptcy Code's automatic stay provisions.[98]

Notwithstanding this flexibility, servicers continued to express concerns to the Bureau about their ability to comply with the early intervention requirements while also avoiding violations of bankruptcy law. Specifically, servicers sought guidance regarding whether § 1024.39 would require some attempt at compliance even if the borrower was protected by the automatic stay, and whether servicers would be subject to claims by private litigants asserting that bankruptcy was not an excuse for a servicer's lack of performance under § 1024.39.

Based on these inquiries, the Bureau determined that the interaction of bankruptcy law

[95] *Id. See also* 11 U.S.C. 362(a).
[96] 78 FR 10695, 10806-07 (Feb. 14, 2013).
[97] *Id.*
[98] *Id*. at 10806.

and the early intervention requirements required further study and that there was insufficient time before the final rule's January 10, 2014 effective date to calibrate the requirements.[99] Accordingly, the Bureau issued the October 2013 IFR, which added current § 1024.39(d)(1), exempting servicers from the early intervention requirements for a mortgage loan when the borrower is a debtor in bankruptcy. The Bureau clarified in comment 39(d)(1)-2 that, when two or more borrowers are joint obligors with primary liability on the mortgage loan, the exemption applies if any of the borrowers is in bankruptcy. The Bureau further clarified in comment 39(d)(1)-3 that a servicer has no obligation to resume compliance with § 1024.39 with respect to any portion of a mortgage loan that is discharged under applicable provisions of the Bankruptcy Code.

In issuing the IFR, the Bureau did not take a position as to whether early intervention efforts might violate the Bankruptcy Code's automatic stay or discharge injunction.[100] The Bureau encouraged servicers that had been communicating with borrowers in bankruptcy about loss mitigation options to continue doing so and expressed the opinion that some borrowers in bankruptcy may benefit from receiving tailored loss mitigation information that is appropriate to their circumstances.[101] The Bureau also solicited comments on the scope of the exemption, the triggers for qualifying for the exemption and when to resume early intervention, and how communications might be tailored to meet the particular needs of borrowers in bankruptcy.[102] Finally, the Bureau stated that it would continue to examine this issue and might reinstate an early intervention requirement with respect to borrowers in bankruptcy, though the Bureau

[99] 78 FR 62993, 62997 (Oct. 23, 2013).
[100] *See id*.
[101] *Id*.
[102] *Id*. at 62998.

indicated that it would not reinstate any such requirement without notice and comment rulemaking and an appropriate implementation period.[103]

During the IFR's official comment period, the Bureau received approximately 30 comments, several of which discussed § 1024.39(d)(1)'s exemption from the early intervention requirements for borrowers in bankruptcy.[104] The Bureau has since continued to engage stakeholders on the scope of this exemption, including by hosting the roundtable discussion on June 16, 2014, among representatives of consumer advocacy groups, bankruptcy attorneys, servicers, trade groups, and bankruptcy trustees. The Bureau has also sought comment from bankruptcy judges and experts and conducted its own analysis of the intersection of the early intervention requirements and bankruptcy law.

Based upon its review of the comments received and its study of the intersection of the early intervention requirements and bankruptcy law, the Bureau believes it may be appropriate to reinstate the early intervention requirements with respect to borrowers in bankruptcy, under certain circumstances. The Bureau is proposing to do so in the present rulemaking because, as noted in the IFR, the Bureau believes that it would be preferable to use notice and comment rulemaking, rather than simply finalizing the IFR with modifications, to reinstate the early intervention requirements with respect to such borrowers.[105] The Bureau believes that this approach will allow stakeholders to more fully consider and comment on the Bureau's specific

[103] *Id*.
[104] The IFR comment period closed on November 22, 2013. Subsequent written and oral presentations to the Bureau imparting information or argument directed to the merits or outcome of the IFR were subject to the Bureau's policy on ex parte presentations. *See* Consumer Fin. Prot. Bureau, CFPB Bulletin 11-3, *Policy on Ex Parte Presentations in Rulemaking Proceedings* (Aug. 16, 2011) (CFPB Bulletin 11-3), *available at* http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExPartePresentationsRulemakingProceedings.pdf.
[105] 78 FR 62993, 62998 (Oct. 23, 2013).

proposal. The Bureau also believes that it is appropriate for the Bureau to address comments it already received in response to the IFR. Accordingly, the following discussion of the proposed revisions to § 1024.39(d)(1) and accompanying commentary includes discussion of the comments received regarding the IFR, as well as ex parte comments received after the IFR's official comment period ended.

Live Contact

Commenters supported almost uniformly the IFR's exemption from § 1024.39(a)'s live contact requirement. Servicers and trade groups urged the Bureau to maintain the exemption in order to avoid conflicts with the Bankruptcy Code. One trade group added that a borrower likely would have received early intervention outreach prior to filing for bankruptcy, such that additional early intervention attempts during bankruptcy would be redundant or unnecessary. Two bankruptcy judges commented that the Bureau should not require servicers to attempt to establish live contact with borrowers because such attempts may violate the automatic stay under certain circumstances. One bankruptcy judge and two industry participants further noted that contacting a borrower represented by bankruptcy counsel might, under certain circumstances, implicate ethics rules or State laws prohibiting direct contact with a party that is represented by counsel.

A consortium of consumer advocacy groups submitted comments generally opposing the exemption from the early intervention requirements, arguing that the flexibility afforded by § 1024.39(c) is sufficient to address any concerns about violating the automatic stay or discharge injunction. In subsequent ex parte comments, however, several of these groups clarified that, with one exception discussed below, they were comfortable with the exemption from the live contact requirements. Finally, during the bankruptcy roundtable discussion, which included representatives from industry and consumer advocacy groups, as well as bankruptcy trustees, no attendees took the position that the Bureau should lift the exemption with respect to live contact.

In light of these comments, the Bureau is proposing to maintain the exemption from the live contact requirements with respect to a borrower who is in bankruptcy, has discharged personal liability for the mortgage loan, or shares liability on a mortgage loan with a person who is a debtor in a Chapter 12 or Chapter 13 bankruptcy case. In addition to the issues identified in the comments, two other factors inform the Bureau's proposal to maintain the exemption. First, the Bureau believes that live contact may be perceived as more intrusive and of less value to a borrower in bankruptcy. As discussed in the section-by-section analysis of § 1024.39(a), the live contact requirements are ongoing and generally require a servicer to make continued efforts to establish live contact with a borrower so long as a borrower remains delinquent. In addition, compliance with § 1024.39(a) is not limited to—and does not in every case require—a discussion of available loss mitigation options. Section 1024.39(a) requires a servicer to inform a borrower of loss mitigation options "if appropriate." More broadly, "[l]ive contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency,"[106] and, based on this discussion, a servicer may determine not to inform a borrower of loss mitigation options. Current comment 39(a)-3.i.B provides an example demonstrating that it is reasonable for a servicer to not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.[107] In that situation, a live contact conversation could

[106] Comment 39(a)-2.
[107] This proposal would redesginate this comment as comment 39(a)-4.i.B.

serve as a reminder to a borrower who inadvertently missed a payment, or it could give the servicer an opportunity to discuss when the borrower would cure a temporary delinquency; it would not necessarily involve a discussion of loss mitigation options. Borrowers who seek protection under the Bankruptcy Code, however, may do so in part to terminate unwelcome creditor communications about outstanding payment obligations. For such borrowers, the Bureau believes that a servicer's repeated attempts to establish live contact, which may not lead to a discussion of available loss mitigation options between the parties, may be of diminished value to the borrower.

Second, while some courts have determined that a creditor may properly contact a borrower in bankruptcy, including by telephone, to inform the borrower about loss mitigation options or to negotiate the terms of a loss mitigation agreement,[108] other courts have found that a creditor violated the automatic stay by making live contact with a borrower to discuss loss mitigation.[109] The Bureau notes that these violations appear to involve extreme facts, such as creditors making dozens of phone calls, some of which threatened legal action, to borrowers who

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[108] *See, e.g.*, *Brown v. Bank of Am. (In re Brown)*, 481 B.R. 351, 360 (Bankr. W.D. Pa. 2012) (holding that creditor did not violate the automatic stay by making telephone calls to a borrower regarding foreclosure alternatives); *In re Silva*, No. 09-02504, 2010 WL 605578, at *1 (Bankr. D. Haw. Feb. 19, 2010) ("Nothing in the Bankruptcy Code prevents or prohibits a chapter 7 or chapter 13 debtor or its secured creditors from entering into communications or negotiations about the possibility of a loan modification."); *In re Medina*, No. 6:12–bk–00066–ABB, 2012 WL 2090419, at *1 (Bankr. M.D. Fla. June 8, 2012) ("The automatic stay and the discharge provisions of the Bankruptcy Code do not prevent the parties from negotiating and entering into a loan modification post-petition.").

[109] *See, e.g.*, *In re Culpepper*, 481 B.R. 650, 659-60 (Bankr. D. Or. 2012) (stating that a creditor's reasonable contacts with a debtor regarding foreclosure alternatives may be permissible, but nonetheless finding a stay violation because the creditor made more than 100 phones calls to a borrower who had requested the creditor stop contacting her and the creditor discussed only loss mitigation options (i) for which the borrower was ineligible, (ii) in which the borrower was not interested, and (iii) which would have revived at least a portion of the borrower's discharged mortgage debt); *In re Whitmarsh*, 383 B.R. 735, 737 (Bankr. D. Neb. 2008) (stating that "[a] phone call or two to follow up a letter regarding loss mitigation efforts is understandable," but finding that the creditor violated the automatic stay by making at least 22 phone calls, some of which threatened legal action, to borrowers who had already decided to surrender the property and had requested in writing on several occasions that the creditor make contact only with the borrowers' attorney).

had requested that the creditor stop contacting them and either had already decided to surrender the property or were not interested in the offered loss mitigation options.[110] Nonetheless, while the Bureau does not believe that compliance with § 1024.39(a)'s live contact requirement would generally violate the stay, the Bureau is concerned that, given the interactive and potentially unscripted nature of live contact, as well as the fact that live contact does not necessarily require a discussion of loss mitigation options, borrowers or courts may view a servicer's attempts to establish live contact as a communication prohibited by the automatic stay under certain circumstances. Accordingly, the Bureau believes it may not be appropriate to require servicers to engage in live contact with borrowers in bankruptcy.

For these reasons, the Bureau is proposing § 1024.39(d)(1)(i), which provides that a servicer is exempt from the early intervention live contact requirements with respect to a borrower who is a debtor in bankruptcy or has discharged personal liability through bankruptcy. Proposed § 1024.39(d)(1)(i) also provides that a servicer is exempt from the live contact requirements with respect to a borrower if any borrower on the mortgage loan is a debtor in a Chapter 12 or Chapter 13 bankruptcy case. When a debtor files for protection under Chapter 12 or Chapter 13, the Bankruptcy Code implements a "co-debtor stay," prohibiting creditors from engaging in collection efforts against certain of the debtor's joint obligors, such as a joint obligor on the debtor's mortgage loan, even though the joint obligor has not filed for bankruptcy.[111]

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[110] *Culpepper*, 481 B.R. at 659-60; *Whitmarsh*, 383 B.R. at 737.

[111] 11 U.S.C. 1201(a) and 1301(a) (both stating that "[e]xcept as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless – (1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or (2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.").

Because contacting a borrower covered by the “co-debtor stay” raises some of the same concerns as contacting a borrower covered by the automatic stay, the Bureau believes it may be appropriate to exempt servicers from compliance with § 1024.39(a) with respect to a borrower who is jointly liable on mortgage loan with someone who is a debtor in a Chapter 12 or Chapter 13 bankruptcy case.

Proposed § 1024.39(d)(1)(i) provides that the exemption from § 1024.39(a)’s live contact requirements applies to only those non-bankrupt borrowers who are jointly liable on a mortgage loan with a debtor in a Chapter 12 or Chapter 13 bankruptcy case; the proposed exemption therefore excludes borrowers who are jointly liable on a mortgage loan with a debtor in a Chapter 7 or Chapter 11 case. This is a departure from current § 1024.39(d)(1), under which the Bureau intentionally crafted a broad exemption from § 1024.39, making the exemption applicable to any joint obligor of a debtor in bankruptcy, irrespective whether the joint obligor was in bankruptcy or protected against collection attempts by the co-obligor stay under 11 U.S.C. 1201(a) or 1301(a). A consortium of consumer advocacy groups commented that this exemption is too broad, as there is no “co-obligor stay” provision in Chapter 7 or Chapter 11 of the Bankruptcy Code. Thus, they argued, there is no prohibition against contacting a joint obligor of a Chapter 7 or Chapter 11 debtor and therefore no reason to exempt a servicer from the live contact requirements in these circumstances. The consumer advocacy groups gave the example of a married couple who jointly own a home. If one spouse filed for protection under Chapter 7, the automatic stay would not apply to the other spouse, and a servicer would not violate the automatic stay by contacting or attempting to negotiate a loss mitigation option with the non-debtor spouse. Under the current broad exemption, however, a servicer has no obligation to make reasonable efforts to establish live contact with the non-debtor spouse, even if the couple were legally separated or living apart for years.

The Bureau believes that it may not be necessary to exempt a servicer from the live contact requirements with respect to a joint obligor of a debtor in a Chapter 7 or Chapter 11 case. As the consumer advocacy groups noted, the Bankruptcy Code does not prevent collection attempts against such joint obligors and servicers do not violate the automatic stay by contacting them.[112] Further, the Bureau believes that these joint obligors may benefit from early intervention in the same way that borrowers who are not in bankruptcy do. Therefore, proposed § 1024.39(d)(i) does not exempt a servicer from the live contact requirement with respect to a joint obligor of a debtor in a Chapter 7 or Chapter 11 case.

Proposed comment 39(d)(1)(i) clarifies when the exemption from the live contact requirements begin. The proposed comment states that the requirements of § 1024.39(a) would not apply once a petition is filed under the Bankruptcy Code, commencing any case in which the borrower is a debtor, or a Chapter 12 or Chapter 13 case in which any borrower on the mortgage loan is a debtor. The proposed comment further clarifies that the requirements of § 1024.39(a) also do not apply if the borrower has discharged personal liability for the mortgage loan under 11 U.S.C. 727, 1141, 1228, or 1328.

Written Notice

The Bureau received several comments regarding the bankruptcy exemption from § 1024.39(b)'s written early intervention notice requirement. Most initial industry comments in

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[112] *In re Chugach Forest Products, Inc.*, 23 F.3d 241, 246 (9th Cir. 1994) ("As a general rule, '[t]he automatic stay of section 362(a) protects only the debtor, property of the debtor or property of the estate. It does not protect non-debtor parties or their property. Thus, section 362(a) does not stay actions against guarantors, sureties, corporate affiliates, or other non-debtor parties liable on the debts of the debtor.'") (quoting *Advanced Ribbons & Office Prods. v. U.S. Interstate Distrib. (In re Advanced Ribbons & Office Prods.)*, 125 B.R. 259, 263 (B.A.P. 9th Cir. 1991)).

response to the IFR did not draw a distinction between the live contact and written notice requirements, arguing broadly in favor of a blanket exemption from early intervention. One servicer commented specifically that the written notice requirements could implicate the automatic stay or raise issues about contacting a borrower represented by counsel. The servicer also stated that it was considering whether it would be more appropriate to send a borrower loss mitigation information immediately upon the filing of a bankruptcy petition, rather than notices only at specific points in a borrower's delinquency.

Most commenters that specifically addressed the written notice requirements, however, stated that servicers could comply with § 1024.39(b) without violating the automatic stay. Consumer advocacy groups argued that borrowers in bankruptcy would benefit from information about loss mitigation options and that there is no case law holding that a written notice describing loss mitigation options violates the automatic stay. The consumer advocacy groups argued further that the written notice required by § 1024.39(b) could not violate the automatic stay because it is purely informational and contains no payment demand. Two bankruptcy judges and a bankruptcy law professor commented that a written notice compliant with § 1024.39(b) and containing a bankruptcy disclaimer would raise fewer concerns about the automatic stay than live contact because the notice does not contain any payment demand and because the nature of the notice is an invitation to apply for debt relief.

During the bankruptcy roundtable, several industry participants stated that it would be appropriate for servicers to provide a borrower in bankruptcy with the written notice containing information related to available loss mitigation options, particularly as § 1024.39(b) does not require a servicer to send the notice more than once in a six-month period. Thus, these participants took the position that the notice is unlikely to harass a borrower. Several roundtable participants further stated that any written notice requirement should be limited to borrowers in Chapter 7 who first become delinquent after filing bankruptcy and borrowers in Chapter 13 who are delinquent on their bankruptcy plan payments (as opposed to delinquent under the mortgage loan contract).

The Bureau continues to believe that borrowers in bankruptcy will benefit from receiving the written notice required under § 1024.39(b). Specifically, the Bureau believes that the content of the notice, including the statement providing a brief description of loss mitigation options that may be available from the servicer and the application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer, may be of particular value to a delinquent borrower in bankruptcy. The Bureau believes that receipt of the written early intervention notice may be critical in educating borrowers about available loss mitigation options. The Bureau further believes that borrowers who have filed for bankruptcy should not be denied an opportunity to obtain information about available loss mitigation options. This information may be uniquely critical for borrowers in bankruptcy as they make decisions about how best to eliminate or reorganize their debts.

Other Federal agencies have similarly recognized that borrowers in bankruptcy are in need of information regarding loss mitigation options and should be considered for available foreclosure alternatives. In 2008, HUD issued FHA loss mitigation guidance requiring mortgagees to provide information to a bankrupt borrower's attorney regarding foreclosure alternatives and instructions on how to apply.[113] HUD further recommended that mortgagees

[113] U.S. Dep't of Housing and Urban Dev., Mortgagee Letter 2008-32, *Use of FHA Loss Mitigation During Bankrutpcy* (Oct. 17, 2008) (HUD Mortgagee Letter 2008-32), *available at* http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/2008ml.cfm.

should provide debtors not represented by counsel with the same loss mitigation information and review debtors' bankruptcy petitions to determine if they are eligible for loss mitigation.[114] The Department of the Treasury does not require HAMP participants to actively solicit borrowers in bankruptcy for loss mitigation options, but it has made clear that such borrowers may be eligible for HAMP.[115]

The Bureau understands that even after a borrower files for bankruptcy, a servicer is not categorically barred from communicating with the borrower.[116] Courts have found that, under appropriate circumstances, servicers may provide periodic statements, notices of change in payments, and other communications without violating the automatic stay.[117] As noted above, several courts have determined that a servicer may properly contact a borrower to inform the borrower about loss mitigation options or to negotiate the terms of a loss mitigation agreement. Consumer advocacy groups and bankruptcy attorneys have also commented that sending a notice

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[114] *Id.*

[115] U.S. Dep't of the Treasury & U.S. Dep't of Housing and Urban Dev., MHA Handbook v. 4.4, Making Home Affordable Program Handbook for Servicers of Non-GSE Loans, at 79, 82 (Mar. 3, 2014) ("Borrowers in active Chapter 7 or Chapter 13 bankruptcy cases are eligible for HAMP at the servicer's discretion in accordance with investor guidelines, but servicers are not required to solicit these borrowers proactively for HAMP . . . . Borrowers who have received a Chapter 7 bankruptcy discharge in a case involving the first lien mortgage who did not reaffirm the mortgage debt under applicable law are eligible for HAMP. . . . [A] servicer is deemed to have made a Reasonable Effort to solicit [those] borrower[s] after sending two written notices to the last address of record in addition to the two required written notices . . . ."), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_44.pdf.

[116] *See, e.g.*, *Zotow v. Johnson (In re Zotow)*, 432 B.R. 252, 258 (B.A.P. 9th Cir. 2010) ("[T]he automatic stay does not prevent all communications between a creditor and the debtor.") (citations omitted); *In re Duke*, 79 F.3d 43, 45 (7th Cir. 1996) (holding that creditor does not violate automatic stay by sending a "nonthreatening and non-coercive" offer to reaffirm a pre-petition debt and stating that "the respite provided by § 362 'is . . . from the threat of immediate action by creditors, such as a foreclosure or a lawsuit'") (quoting *Brown v. Pa. State Emps. Credit Union*, 851 F.2d 81, 86 (3d Cir. 1988)).

[117] *See* section-by-section analysis of 12 CFR 1026.41, *infra*; *see also Zotow*, 432 B.R. at 260 (notice of payment change due to escrow deficiency); *Duke*, 79 F.3d at 45 (offer to reaffirm debt); *Schatz v. Chase Home Fin. (In re Schatz)*, 452 B.R. 544 (Bankr. M.D. Pa. 2011) (periodic statements); *Singh v. U.S. Bank (In re Singh)*, 457 B.R. 790 (Bankr. E.D. Cal. 2011) (notice of payment change); *see also Morgan Guaranty Trust Co. of N.Y. v. Am. Sav. & Loan Ass'n*, 804 F.2d 1487, 1491 (9th Cir. 1986) ("[M]ere requests for payment are not barred absent coercion or harassment by the creditor . . . .").

of potential loss mitigation options, without any accompanying demand for payment, would not implicate the automatic stay.

Accordingly, the Bureau is proposing to revise the exemption set forth in § 1024.39(d)(1). Under the proposal, a servicer would, with certain exceptions, be required to provide the written early intervention notice required by § 1024.39(b) to a delinquent borrower who is in bankruptcy or has discharged personal liability for the mortgage loan. Specifically, proposed § 1024.39(d)(ii) generally limits the exemption to instances where there are no loss mitigation options available or where the borrower is surrendering the property or avoiding the lien securing the mortgage loan. Thus, under the proposal, a servicer would be required to provide the written early intervention notice to a borrower in bankruptcy, except in limited circumstances. As discussed above, the Bureau believes that information in the written early intervention notice is valuable to all borrowers and may be particularly useful to a borrower who is in bankruptcy for the purpose of reducing or reorganizing outstanding debts.

The Bureau notes that servicers have expressed concerns about communicating with a borrower represented by counsel, but the Bureau does not believe that these concerns warrant a blanket exemption from providing the written early intervention notice to borrowers in bankruptcy. Section 1024.39(c) already provides that a servicer is not required to communicate with a borrower in a manner otherwise prohibited by applicable law, which could include State laws regarding communications with a represented party. Moreover, as existing comments 39(a)-4 and 39(b)-3 clarify, a servicer may satisfy the live contact and written notice requirements of § 1024.39 by providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf.[118] To the extent that a servicer is concerned about communicating with a borrower represented by counsel, it may communicate with the borrower's authorized representative instead. As HUD has recognized, communicating with a borrower's bankruptcy counsel about available loss mitigation does not raise concerns about violating the automatic stay.[119]

The Bureau also does not believe that it is appropriate, as some commenters suggested, to limit the written early intervention notice to instances where a borrower in Chapter 7 first becomes delinquent while in bankruptcy or to where a borrower in Chapter 13 fails to make payments due under the bankruptcy plan. Although a borrower in Chapter 7 who was delinquent pre-bankruptcy may have already received early intervention, such a borrower may benefit from updated information related to available loss mitigation options, particularly when determining whether to retain the property. Additionally, a borrower in Chapter 13 making timely plan payments may still be delinquent under the mortgage loan contract and may benefit from receiving timely information about loss mitigation options. The Bureau understands that most

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[118] *See also* 78 FR 10695, 10796 (Feb. 14, 2013) ("[Section] 1024.39 requires that servicers reach out to borrowers . . . . [T]he Bureau believes it would mitigate the burden on the servicer to be able to communicate with either the borrower or the borrower's representative."); *id.* at 10797 ("[C]omment 39(a)-4 [clarifies] that the Bureau's guidance with respect to communicating with a borrower's representative also applies to the written notice provision at § 1024.39(b).").

[119] HUD Mortgagee Letter 2008-32 ("As a result of these discussions [with bankruptcy experts], the Department understands that contact with debtor's counsel or a bankruptcy trustee does not constitute a violation of the automatic stay and that waiting until a bankruptcy is discharged or dismissed before offering loss mitigation may be injurious to the interests of the borrower, the mortgagee and the FHA insurance funds."); *see also Henry v. Assocs. Home Equity Servs., Inc. (In re Henry)*, 266 B.R. 457 (Bankr. C.D. Cal. 2001) ("If a debtor is represented by counsel, any creditor may communicate with counsel for the debtor without violating the automatic stay. Counsel has no need to be shielded from a client's creditors. It is part of the job of counsel for a debtor to deal with the client's creditors."); *United States v. Nelson*, 969 F.2d 626, 628 (8th Cir. 1992) (holding that creditor did not violate the stay by sending a letter to debtor's counsel); *Cash Am. Pawn, L.P. v. Murphy*, 209 B.R. 419, 424 (E.D. Tex. 1997) (similar); *Murray v. Great Valley Sav. Ass'n*, (*In re Murray)*, 89 B.R. 533, 536 (Bankr. E.D. Pa. 1988) (similar); *cf. Duke*, 79 F.3d at 45 (holding that creditor did not violate stay by copying debtor on letter it sent to debtor's counsel).

Chapter 13 cases are unsuccessful, with more than half resulting in dismissal,[120] indicating that a borrower who is temporarily current on bankruptcy plan payments may ultimately need to modify the mortgage loan to enable a successful bankruptcy plan. The Bureau therefore believes that it may be better to provide such borrowers with information about loss mitigation options earlier rather than later.

Nonetheless, as noted above, proposed § 1024.39(d)(1)(ii) retains the exemption from the written early intervention notice in certain circumstances. Proposed § 1024.39(d)(1)(ii)(A) provides that a servicer is exempt from the written notice requirement if no loss mitigation options are available. The Bureau believes that a primary value of the written early intervention notice to a delinquent borrower in bankruptcy is to inform the borrower of potential loss mitigation options to avoid foreclosure. If no loss mitigation options are available, however, the value of the written notice may be significantly diminished for a borrower in bankruptcy.

In addition, proposed § 1024.39(d)(1)(ii)(B) through (D) exempt a servicer from the written early intervention notice requirement in several situations where the borrower in bankruptcy surrenders the property securing the mortgage loan or avoids (*i.e.*, renders unenforceable) the lien securing the mortgage loan. First, proposed § 1024.39(d)(1)(ii)(B) provides that a servicer is exempt if the borrower's confirmed plan of reorganization provides for the borrower to surrender the property, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy

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[120] *See* Ed Flynn, *Chapter 13 Revisited: Can it help Solve the Judiciary's Fiscal Problems?*, 32 Am. Bankr. Inst. J. 20, 20 (Dec. 2013) (stating that over 55% of Chapter 13 cases are dismissed before plan completion); U.S. Dep't of Justice, Office of the U.S. Trustee, Chapter 13 Trustee Data and Statistics, *available at* http://www.justice.gov/ust/eo/private_trustee/data_statistics/ch13.htm (indicating that over 50% of Chapter 13 cases filed since 2004 have been dismissed prior to completion).

arrearage or the maintenance of payments due under the mortgage loan.[121] Second, proposed § 1024.39(d)(1)(ii)(C) provides that a servicer is exempt if the borrower files a statement of intention with the bankruptcy court that identifies an intent to surrender the property securing the mortgage loan.[122] Finally, proposed § 1024.39(d)(1)(ii)(D) provides that a servicer is exempt if the bankruptcy court enters an order providing for the avoidance of the servicer's lien or lifting the automatic stay with respect to the property securing the mortgage loan. In each of these situations, the borrower relinquishes the property or otherwise discontinues making regular payments on the mortgage loan. The Bureau believes that apprising a borrower in bankruptcy of loss mitigation options at that time may be of diminished value. Moreover, in these situations, the borrower may be significantly delinquent and may have already received information about loss mitigation options, either before or during bankruptcy.

The Bureau is also proposing two comments to clarify proposed § 1024.39(d)(1)(ii). First, proposed comment 39(d)(1)(ii)-1 provides that for purposes of § 1024.39(d)(1)(ii), the term "plan of reorganization" refers to a borrower's plan of reorganization filed under the applicable provisions of Chapter 11, Chapter 12, or Chapter 13 of the Bankruptcy Code and confirmed by a court with jurisdiction over the borrower's bankruptcy case. This comment is intended to avoid any confusion about what the term "plan of reorganization" means when used in § 1024.39(d)(1).

Second, proposed comment 39(d)(1)(ii)-2 states that, if the FDCPA applies to a servicer's

[121] In Chapter 13, for example, a borrower who is delinquent on a mortgage loan as of the date of the bankruptcy filing may, subject to certain restrictions, confirm a plan of reorganization that provides for the borrower to make payments that will pay down the pre-bankruptcy arrearage over time while the borrower also continues to make the periodic payments as they come due under the mortgage loan. *See* 11 U.S.C. 1322(b)(5) (stating that the plan of reorganization may "provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due").

[122] *See* 11 U.S.C. 521(a)(2) (requiring a Chapter 7 debtor to file "a statement of intention with respect to the retention or surrender of [secured property of the estate]").

communications with a borrower in bankruptcy and the borrower has sent a notification under FDCPA section 805(c), proposed comment 39(d)(2)(iii)-2 may be applicable. As discussed more fully in the section-by-section analysis of § 1024.39(d)(2), proposed comment 39(d)(2)(iii)-2 would, under certain circumstances, exempt a servicer from the written notice requirements if the borrower has sent a notification pursuant to FDCPA section 805(c) and is unrepresented by a person authorized by the borrower to communicate with the servicer on the borrower's behalf.

Resuming Compliance

The Bureau is also proposing to revise current comment 39(d)(1)-2 and redesignate it as comment 39(d)(1)-1. As revised and redesignated, proposed comment 39(d)(1)-1 addresses a servicer's obligation to resume compliance with the early intervention requirements following a borrower's bankruptcy. The proposed comment provides that, with respect to any borrower who has not discharged the mortgage debt, a servicer must resume compliance with § 1024.39(a) and (b), as applicable, as of the first delinquency that follows the earliest of the following outcomes in the bankruptcy case: (1) the case is dismissed, (2) the case is closed, (3) the borrower reaffirms the mortgage loan under 11 U.S.C. 524, or (4) the borrower receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, proposed comment 39(d)(1)-1 also clarifies that the requirement to resume compliance with § 1024.39 does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. The proposed revisions provide that, to the extent necessary to comply with such law or court order, a servicer may adapt the requirements of § 1024.39 as appropriate. In addition, proposed comment 39(d)(1)-1 provides that compliance with § 1024.39(a) is not required with respect to any borrower who has discharged the mortgage debt under applicable provisions of the Bankruptcy Code. If the borrower's bankruptcy case is revived—for example, if the court reinstates a previously dismissed case or reopens the case—the servicer is again exempt from the requirements of proposed § 1024.39(a).

The Bureau requests comment on proposed § 1024.39(d)(1), including the scope of the exemptions, the triggers for qualifying for the exemptions and resuming early intervention, and how communications may be tailored to meet the particular needs of borrowers in bankruptcy. The Bureau further solicits comment on whether servicers have had difficulties receiving notices regarding the dismissal or closing of a bankruptcy case or of the debtor's discharge, and whether the obligation to resume early intervention should be contingent on receiving such notices. Additionally, the Bureau requests comment on whether the timing of the written early intervention notice should be different for a borrower in bankruptcy, such as whether a servicer should be required to provide the written notice to a borrower in bankruptcy within 45 days after the bankruptcy case commences, rather than by the 45th day of the borrower's delinquency.

Legal Authority

The Bureau is proposing to exercise its authority under sections 6(j)(3) and 19(a) of RESPA to exempt servicers from the early intervention live contact requirements in § 1024.39(a) for a mortgage loan while the borrower is a debtor in bankruptcy, while any borrower on the mortgage loan is a debtor in Chapter 12 or Chapter 13 bankruptcy, or if the borrower has discharged personal liability for the mortgage loan through bankruptcy. For the reasons discussed above, the Bureau does not believe at this time that the consumer protection purposes of RESPA would be furthered by requiring servicers to comply with § 1024.39(a) for a mortgage loan under those bankruptcy-related circumstances.

The Bureau is also proposing to exercise its authority under sections 6(j)(3) and 19(a) of RESPA to exempt a servicer from the written early intervention notice requirements in

§ 1024.39(b) if no loss mitigation options are available and the borrower is a debtor in bankruptcy, any borrower on the mortgage loan is a debtor in Chapter 12 or Chapter 13 bankruptcy, or the borrower has discharged personal liability for the mortgage loan through bankruptcy. The Bureau is also proposing to exercise its authority under sections 6(j)(3) and 19(a) of RESPA to exempt a servicer from the written early intervention notice requirements in § 1024.39(b) if the borrower is a debtor in bankruptcy and any of the three following conditions are met: (1) the borrower's confirmed plan of reorganization provides that the borrower will surrender the property securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan; (2) the borrower files with the court a Statement of Intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the property securing the mortgage loan; or (3) a court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan or lifting the automatic stay pursuant to 11 U.S.C. 362 with respect to the property securing the mortgage loan. For the reasons discussed above, the Bureau believes at this time that the consumer protection purposes of RESPA would not be furthered by requiring compliance with § 1024.39(b) under those circumstances.

39(d)(2) Fair Debt Collection Practices Act

The Bureau is proposing to revise the scope of the current exemption from the early intervention requirements set forth in § 1024.39(d)(2). Section 1024.39(d)(2) currently exempts servicers subject to the FDCPA with respect to a mortgage loan for which a borrower has sent a cease communication notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)) from the early intervention requirements.[123] The proposal maintains the current exemption from the live contact requirements of § 1024.39(a) but partially lifts the exemption from the written early intervention notice requirements of § 1024.39(b). Specifically, the proposal requires that a servicer must provide a modified written early intervention notice if loss mitigation options are available. In addition to the information set forth in § 1024.39(b)(2), the proposal provides that the modified written early intervention notice must include a statement that the servicer may or intends to invoke its specified remedy of foreclosure. Proposed model clause MS–4(D) in appendix MS–4 to this part may be used to comply with this requirement. The proposal provides that the written notice may not contain a request for payment. In addition, it prohibits a servicer from providing the written notice more than once during any 180-day period. To the extent a servicer would be required to provide the modified written notice under § 1024.39(d)(2)(iii), the proposal provides the servicer with a safe harbor from liability under the FDCPA. Consistent with the discussion in this section, the Bureau is proposing to issue an advisory opinion interpreting the FDCPA cease communication requirement in relation to the Mortgage Servicing Rules under FDCPA section 813(e) (15 U.S.C. 1692k(e)). As provided in that section, no liability arises under the FDCPA for an act done or omitted in good faith in conformity with an advisory opinion of the Bureau while that advisory opinion is in effect. For the reasons discussed below, the Bureau is proposing to provide a safe harbor for certain communications

[123] This proposal discusses the impact of a borrower's cease communication notification on a servicer's obligations under the early intervention requirements, and is intended to apply equally to a borrower's notice to the servicer that the borrower refuses to pay a debt. *See* FDCPA section 805(c) ("If 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 . . . .").

between a servicer and a borrower notwithstanding a borrower's invocation of the "cease communication" right.

The objectives of the early intervention requirements under § 1024.39 include ensuring that servicers provide delinquent borrowers with information about their options at the early stages of delinquency, encouraging communication between servicers and delinquent borrowers, and encouraging delinquent borrowers to work with their servicers to identify alternatives to foreclosure.[124] Section 1024.39(a) requires a servicer to establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency and, promptly after establishing live contact, inform the borrower about the availability of loss mitigation options, if appropriate. Section 1024.39(b) requires a servicer to provide to a delinquent borrower a written notice with specific information, including examples of loss mitigation options that may be available and instructions on how to obtain more information about loss mitigation options from the servicer, not later than the 45th day of the borrower's delinquency.

In the Bureau's 2012 RESPA Servicing Proposal, the Bureau sought comment on "whether servicers may reasonably question how they could comply with [the] Bureau's propos[ed early intervention requirements] in light of [other applicable] laws," including the FDCPA.[125] A servicer of a mortgage that was in default at the time the servicer acquired it may be a debt collector under FDCPA section 803(6). The FDCPA generally grants consumers the right to bar debt collectors from communicating with them regarding a debt by sending a written

[124] *See* 77 FR 57199, 57251 (Sept. 17, 2012); 78 FR 10695, 10788-89 (Feb. 14, 2013).
[125] 77 FR 57199, 57260-61 (Sept. 17, 2012).

cease communication notification pursuant to FDCPA section 805(c). However, even after a borrower sends a servicer a cease communication notification, the servicer is not categorically barred under the FDCPA from all communication with the borrower. FDCPA section 805(c) contains specific exceptions that allow further communications with the borrower with respect to a debt for the following reasons: (1) to advise the borrower that the debt collector's further efforts are being terminated; (2) to notify the borrower that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the borrower that the debt collector or creditor intends to invoke a specified remedy.[126]

To address industry concerns about conflicts with existing law, in the 2013 RESPA Servicing Final Rule, the Bureau added § 1024.39(c), which provides that nothing in § 1024.39 requires a servicer to communicate with a borrower in a manner otherwise prohibited under applicable law, including the FDCPA.[127] The Bureau subsequently clarified compliance requirements in relation to the FDCPA in the October 2013 IFR and October 2013 Servicing Bulletin.[128] Under the IFR, a servicer subject to the FDCPA with respect to a borrower is exempt from the requirements of §§ 1024.39 and 1026.20(c) with regard to a mortgage loan for which the borrower has sent a cease communication notification pursuant to FDCPA section 805(c). The Bureau explained that, because the early intervention rule (§ 1024.39) and the adjustable-rate mortgage (ARM) payment adjustment notice rule (§ 1026.20(c)) are neither statutorily mandated by the Dodd-Frank Act nor in response to a borrower-initiated

[126] FDCPA section 805(c)(1) through (3).
[127] 78 FR 10695, 10806-07 (Feb. 14, 2013).
[128] 78 FR 62993 (Oct. 23, 2013); CFPB Bulletin 2013-12.

communication, the interplay between §§ 1024.39 and 1026.20(c) and the cease communication provision of FDCPA section 805(c) was unclear. At that time, the Bureau did not make a determination as to the legal status of early intervention efforts or the ARM payment adjustment notice requirements following the receipt of a borrower's proper cease communication request. The Bureau stated that it would explore, as part of a broader rulemaking on debt collection, the legal issues and practical benefits of requiring: (1) some type of early intervention to notify borrowers of the potential availability of loss mitigation options, balancing the rights of debtors to protect themselves against certain debt collector practices with the consumer protections afforded by servicer-borrower contact that may lead to the resolution of borrower default; and (2) some form of § 1026.20(c) notice, balancing the rights of debtors to prevent debt collectors from communicating with them with the consumer protection afforded by timely notice of interest rate and payment adjustments.[129] The Bureau noted that the future rulemaking on debt collection issues may alter or eliminate the exemptions set forward in the IFR.[130]

The Bureau received a number of comments in response to the IFR during the official comment period and ex parte comments after the close of the official comment period. Accordingly, the following discussion of the proposed rule refers to both sets of comments. The Bureau received comments from various trade associations in support of the FDCPA-related exemptions under the IFR and the safe harbor from liability under the FDCPA that the Bureau granted servicers. One trade association encouraged the Bureau to make a comprehensive determination as to the legal status of communications required under the servicing rules and

[129] 78 FR 62993, 62994 (Oct. 23, 2013).
[130] *Id. at* 62998-99.

their impact on or conflict with the FDCPA before making additional changes. Two commenters stated that the Bureau should address these questions through rulemaking rather than through a subsequent compliance bulletin.

A consumer advocacy group's comment requested that the Bureau not require borrowers to choose between their rights under the FDCPA and the benefits of the servicing rules. The comment described the written early intervention notice as a "form letter" and argued that most borrowers would not view the notice as the type of debt collection that they meant to stop through a cease communication notification. In a follow-up ex parte meeting with the Bureau, the consumer advocacy group stated that servicers that are careful to send only mandated notices in compliance with the Bureau's requirements are unlikely to face litigation risk and suggested that a servicer could include language on a required notice acknowledging that the borrower has exercised cease communication rights.

The Bureau has learned through continued outreach that important consumer protections may be implicated by the current FDCPA-related exemption from the early intervention requirements under § 1024.39(d)(2). Specifically, the Bureau believes that a borrower may send a blanket cease communication notification and thus unwittingly forfeit the opportunity to gain information about potential loss mitigation options under the early intervention rules. Borrowers assisted by counsel or housing counselors may find themselves choosing between their rights to invoke cease communication protections pursuant to FDCPA section 805(c) or the benefits of the early intervention rules under § 1024.39. Therefore, the Bureau is taking the opportunity to revisit the exemption from the early intervention requirements at this time rather than as part of a later and broader rulemaking on debt collection.[131]

The Bureau considers whether it may be appropriate to alter or eliminate the exemption from the early intervention live contact requirements in § 1024.39(a), the written notice requirements in § 1024.39(b), or both. The proposal maintains the current exemption from the live contact requirements of § 1024.39(a), but would partially lift the exemption from the written early intervention notice requirements of § 1024.39(b) if loss mitigation options are available. After careful consideration, the Bureau believes that a modified written early intervention notice is closely linked to the exceptions promulgated to the cease communication rights by FDCPA section 805(c), and that the written notice is more closely linked to those exceptions than the live contact requirements.

Live Contact

The Bureau understands that the nature of live contact and the information conveyed may be highly variable. The information conveyed, the manner for conveying that information, and whether any information is conveyed depends on the borrower's circumstances, the servicer's perception of those circumstances, and the servicer's exercise of reasonable discretion.[132] The servicer may contact the borrower in person, by telephone, or not at all, if the servicer's good faith efforts to reach the borrower fail.[133] By their nature, discussions or conversations resulting

[131] The Bureau is not, however, making a determination as to the legal status of the requirements under § 1026.20(c) following receipt of proper cease communication requests at this time. As noted in the IFR, the Bureau continues to encourage servicers to provide ARM payment adjustment notices to the extent that the FDCPA permits. *See* 78 FR 62993, 62999 (Oct. 23, 2013).
[132] *See* comment 39(a)-3.i. This proposal would redesignate current comment 39(a)-3.i as comment 39(a)-4.i.
[133] *See* comment 39(a)-2 ("Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer."). This proposal would move this language into comment 39(a)-3.

from live contact are not and cannot be closely prescribed.[134] Such variability is inconsistent with the narrow exceptions in FDCPA section 805(c), which permit a debt collector to communicate further with a borrower for extremely limited purposes after a borrower has sent a servicer a cease communication notification. Because the information conveyed and the manner for conveying such information may be highly variable in the context of live contact, the Bureau believes that requiring a servicer to comply with the live contact requirements with regard to a mortgage loan for which a borrower has sent a notification pursuant to FDCPA section 805(c) is inappropriate and may put a servicer subject to the FDCPA with respect to that borrower's loan at risk of violating the FDCPA. The Bureau is proposing no general rule about whether oral versus written communications are more likely to violate the FDCPA, but notes only that the live contact requirements of § 1024.39(a) are less susceptible to standard, uniform delivery in compliance with the cease communication exceptions in FDCPA section 805(c) than are the written early intervention notice requirements.

The Bureau also believes that live contact may be less valuable to a delinquent borrower who has properly invoked the FDCPA's cease communication protections. Compliance with § 1024.39(a) is not limited to—and does not in every case require—a discussion of available loss mitigation options. Section 1024.39(a) requires that a servicer inform the borrower about the availability of loss mitigation options, "if appropriate." More broadly, "[l]ive contact provides servicers an opportunity to discuss the circumstances of a borrowers' delinquency,"[135] and, based on this discussion, a servicer may determine not to inform a borrower of loss mitigation options.

[134] *See* 78 FR 10695, 10793 (Feb. 14, 2013).
[135] Comment 39(a)-2.

As current comment 39(a)-3.i explains, “[i]t is within a servicer’s reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances.”[136] Under certain circumstances, a servicer may determine that promptly informing the borrower about the availability of loss mitigation options is not appropriate under the circumstances. Current comment 39(a)-3.i.B provides an example that demonstrates it is reasonable for a servicer to not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.[137] The purpose of such a conversation could be to remind a borrower who perhaps inadvertently missed a payment of a past due amount, or to give the servicer an opportunity to discuss when the borrower may cure a temporary delinquency, but the conversation may not necessarily involve a discussion of loss mitigation options.

When a delinquent borrower has instructed the servicer to stop communicating with the borrower about the debt, the Bureau believes that repeated attempts to establish live contact with such a borrower that may not lead to a discussion of available loss mitigation options may be unwanted and in contravention to the purposes of the FDCPA’s cease communication protections. The early intervention live contact requirement is a recurring obligation that generally requires servicers to make continued efforts to establish live contact with a borrower so long as a borrower remains delinquent.[138] A borrower who has sent a servicer a cease communication notification may perceive a servicer’s early intervention live contact under

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[136] Comment 39(a)-3.i. This proposal would redesignate current comment 39(a)-3.i as comment 39(a)-4.i.
[137] This proposal would redesginate current comment 39(a)-3.i.B as comment 39(a)-4.i.B.
[138] *See* CFPB Bulletin 2013-12; section-by-section analysis of § 1024.39(a), *supra*.

§ 1024.39(a) as a repeated, intrusive, and unwanted communication. The Bureau is also concerned that, given the recurring and relatively unstructured nature of the live contact requirements, requiring early intervention through live contact may increase the potential for harassment in direct contravention of the FDCPA.[139]

Balancing the considerations discussed above, the Bureau is proposing to maintain the current exemption from the live contact requirements of § 1024.39(a). Specifically, proposed § 1024.39(d)(2)(i) provides that a servicer subject to the FDCPA with respect to a borrower is exempt from the early intervention live contact requirement under § 1024.39(a) with regard to a mortgage loan for which the borrower has sent a notification pursuant to FDCPA section 805(c).

Written Notice

The Bureau believes that the written early intervention notice will generally be closely linked to the invocation of foreclosure. Current § 1024.39(b) requires a servicer to provide a delinquent borrower with the written notice not later than the 45th day of the borrower's delinquency. As a general matter, this written notice must be sent well before the servicer may initiate foreclosure: in most cases, the servicer must wait until a borrower's mortgage loan obligation is more than 120 days delinquent, after the written notice has been sent, to make the first notice or filing to initiate the foreclosure process.[140] As the Bureau explained in the preamble to the 2013 RESPA Servicing Final Rule, the purpose of the written notice is to provide more information to a borrower who has not cured by the 45th day of delinquency. Providing a borrower with notice in writing that includes, for example, the servicer's contact

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[139] *See* FDCPA section 806 ("A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.").
[140] *See* 12 CFR 1024.41(f)(1)(i).

information as well as relevant information regarding loss mitigation options and housing counselors, conveys important information to a borrower that the servicer may not have communicated to the borrower through live contact. Additionally, the written notice generally provides more information than likely would have been provided through live contact and provides the borrower with information that may be reviewed and discussed with a housing counselor or other advisor.[141]

The Bureau understands that in most cases, there may be some loss mitigation options available. Therefore, in most cases, borrowers receiving the written early intervention notice will have an opportunity to respond to the written notice by applying for loss mitigation, should they so choose. Where a borrower responds to the written notice by applying for loss mitigation, the dual tracking restrictions of the 2013 RESPA Servicing Final Rule apply, further limiting the servicer's ability to invoke the remedy of foreclosure. Pursuant to § 1024.41(f)(2) and (g), respectively, a servicer may not make the first notice or filing for foreclosure if a borrower submits a complete loss mitigation application before foreclosure referral, and cannot move for foreclosure judgment or order of sale or conduct a foreclosure sale if a borrower submits a complete loss mitigation application more than 37 days before a foreclosure sale.

The failure to provide a borrower with the written early intervention notice may impede a servicer's ability to invoke foreclosure, particularly if loss mitigation options are available. For example, because failure to provide a borrower with the written early intervention notice may result in borrowers submitting requests for loss mitigation at a later point in time—*e.g.*, closer to the foreclosure sale—failure to provide the written early intervention notice may delay or

[141] *See* 78 FR 10695, 10796-97 (Feb. 14, 2013).

otherwise interfere with the servicer's exercise of its specified remedy of foreclosure. In addition, the Bureau understands that some states require documentation of a servicer's efforts to modify the loan, or require a servicer to provide the borrower with information substantially similar to the written early intervention notice, prior to initiating foreclosure or conducting a foreclosure sale (*e.g.*, California, Illinois). Therefore, the Bureau believes that when loss mitigation options are available, the written early intervention notice is particularly critical to a servicer's ability to invoke its specified remedy of foreclosure, and that the information conveyed through the written notice is closely linked to the exceptions in FDCPA section 805(c)(2) and (3) to permit a servicer to communicate further with a borrower after a borrower has sent a servicer a cease communication notification.

If loss mitigation options are available, as will generally be the case, the Bureau believes that the written early intervention notice may be of significant value to borrowers, as well as tied closely to the servicer's ability to invoke its specified remedy of foreclosure. Indeed, the Bureau has stated that the early intervention notice requirements were designed primarily to encourage delinquent borrowers to work with their servicers to identify options for avoiding foreclosure.[142] Specifically, the Bureau believes that the content of the written early intervention notice, including the statement providing a brief description of examples of loss mitigation options that may be available from the servicer and the application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer,[143] may be of particular value and relevance to a delinquent borrower facing debt collection in informing

[142] *Id.* at 10787.
[143] *See* section-by-section analysis of § 1024.39(b)(2), *supra*.

the borrower of the availability of loss mitigation. The Bureau believes that receipt of the modified written early intervention notice may be critical in educating delinquent borrowers about potentially available loss mitigation options. The Bureau further believes that borrowers who have sent a cease communication notification under the FDCPA may benefit from receiving information about loss mitigation options that may be available, which would be provided to other borrowers who have not sent the servicer a cease communication notification. Given its broad experience with consumers in debt, facing foreclosure, or dealing with other financial difficulties, the Bureau believes that, in invoking the FDCPA's cease communication protections, borrowers are unlikely to have intended to prevent communication about loss mitigation options. Regardless of whether the borrower is in fact eligible for or takes advantage of loss mitigation options that may be available, if the borrower receives the written early intervention notice, the borrower at a minimum has an opportunity to gain information about potential options.

The Bureau has also learned that consumer advocates, in some cases, may advise a borrower to refrain from sending a servicer a cease communication notification pursuant to FDCPA section 805(c) in order to preserve access to information about loss mitigation and continue to receive early intervention communications from a servicer. The Bureau believes that borrowers who have invoked the FDCPA's cease communication protections should not be denied an opportunity to obtain information about potential loss mitigation options; indeed, this information may be even more critical for delinquent borrowers facing debt collection.

In the limited circumstances where no loss mitigation options are available, the Bureau believes that the written early intervention notice will be of significantly less value to a borrower who has exercised cease communication rights under the FDCPA and is not as closely tied to the servicer's right to invoke foreclosure due to the limited impact of the dual-tracking restrictions in the absence of loss mitigation options. Therefore, the Bureau believes that it is not appropriate to require servicers to provide the written early intervention notice to such borrowers who have exercised their FDCPA cease communication rights.

Balancing the considerations discussed above, the Bureau is proposing to partially lift the exemption in current § 1024.39(d)(2) and to require the provision of a modified form of the written early intervention notice to borrowers who have exercised their cease communication rights, while retaining the exemption from § 1024.39(b) if no loss mitigation options are available. Specifically, the Bureau is proposing § 1024.39(d)(2)(ii) to explain that, with regard to a mortgage loan for which the borrower has sent a notification pursuant to section 805(c) of the FDCPA, a servicer subject to the FDCPA with respect to that borrower's loan is exempt from the written early intervention notice requirement under § 1024.39(b) if no loss mitigation options are available. And proposed § 1024.39(d)(2)(iii) provides that a servicer subject to the FDCPA with respect to a borrower must provide a modified written early intervention notice with regard to a mortgage loan for which the borrower has sent a notification pursuant to section 805(c) of the FDCPA if loss mitigation options are available.

In addition to the information required pursuant to § 1024.39(b)(2), proposed § 1024.39(d)(2)(iii) would modify the written early intervention notice to: (1) include a statement that the servicer may or intends to invoke its specified remedy of foreclosure; (2) prohibit that the written notice contain a request for payment; and (3) prohibit a servicer from providing the written notice more than once during any 180-day period. To assist servicers in complying with the requirements of proposed § 1024.39(d)(2)(iii), the Bureau has developed proposed model clause MS–4(D), contained in appendix MS–4 to Part 1024. A more detailed discussion of the proposed model clause is contained in the section-by-section analysis of appendix MS.

The Bureau is also proposing to add comment 39(d)(2)(iii)-1 to offer servicers additional guidance on complying with the modified written early intervention notice required by proposed § 1024.39(d)(2)(iii). First, the proposed comment explains that in requiring servicers to provide a borrower the written early intervention notice under proposed § 1024.39(d)(2)(iii), the Bureau provides servicers a safe harbor from liability under the FDCPA with respect to the written notice. Specifically, proposed comment 39(d)(2)(iii)-1 provides that, to the extent the FDCPA applies to a servicer's communications with a borrower, a servicer does not violate section 805(c) of the FDCPA by providing the modified written notice required by § 1024.39(d)(2)(iii) after a borrower has sent a notification pursuant to section 805(c) of the FDCPA with respect to that borrower's loan. Second, the proposed comment reminds servicers that in providing the written early intervention notice, they must continue to comply with all other applicable provisions of the FDCPA. Specifically, comment 39(d)(2)(iii)-1 provides that, in providing the borrower the written notice, the servicer must continue to comply with all other applicable provisions of the FDCPA, including prohibitions on unfair, deceptive, and abusive practices as contained in sections 805 through 808 of the FDCPA, 15 U.S.C. 1692c through 1692f.

The Bureau is proposing an additional comment to address circumstances in which a borrower has invoked the FDCPA's cease communication protections and is also a borrower in bankruptcy. Specifically, proposed comment 39(d)(2)(iii)-2 provides that, to the extent the FDCPA applies to a servicer's communications with a borrower and the borrower has sent a notification pursuant to section 805(c) of the FDCPA, a servicer is not required to provide the written notice required by § 1024.39(d)(2)(iii) if the borrower is in bankruptcy and is not represented by a person authorized by the borrower to communicate with the servicer on the borrower’s behalf. Proposed comment 39(d)(2)(iii)-2 further provides that if the borrower is represented by a person authorized by the borrower to communicate with the servicer on the borrower’s behalf, however, the servicer must provide the modified written notice required by § 1024.39(d)(2)(iii) to the borrower’s representative. The Bureau requests comment on whether including proposed comment 39(d)(2)(iii)-2 is appropriate. The Bureau also seeks comment on whether there may be a conflict between the language of proposed model clause MS–4(D) and applicable bankruptcy laws when a borrower has exercised cease communication rights under the FDCPA and is also a borrower in bankruptcy and the scope of any conflict. Proposed model clause MS–4(D) is contained in appendix MS–4. A more detailed discussion of the proposed model clause is contained in the section-by-section analysis of appendix MS.

The Bureau intends this proposal to partially lift the current exemption for a servicer subject to the FDCPA with respect to a borrower to be limited to the Bureau’s explicit interpretation. Accordingly, the Bureau intends the proposal to be narrow and based only upon the interplay between two specific federal requirements providing consumer protections—the early intervention requirements of § 1024.39 of Regulation X and the cease communication provision of section 805(c) of the FDCPA. The Bureau believes that, in the limited circumstance where a servicer is subject to the FDCPA with respect to a borrower, and that borrower has sent the servicer a cease communication notification, the strong consumer interest in receiving timely information about potentially available loss mitigation options under § 1024.39(b) may outweigh or at least equal the consumer protection offered by section 805(c) of the FDCPA. Under that limited circumstance, the Bureau also believes that the relationship between the Bureau’s required written early intervention notice and the servicer’s invocation of its specified remedy of foreclosure is closely linked so as to bring a proposed modified written early intervention notice requirement within the statutory exceptions of section 805(c) of the FDCPA. The Bureau seeks comment on whether partially lifting the exemption for the written early intervention notice if loss mitigation options are available is appropriate.

The Bureau reminds servicers that they may only rely on the exemptions in proposed § 1024.39(d)(2)(i) and (ii) if both the servicer is subject to the FDCPA with respect to a borrower, meaning that the servicer of a defaulted mortgage loan is also acting as a debt collector under section 803(6) of the FDCPA (*i.e.*, the servicer acquired the mortgage at the time that it was in default) and the borrower has properly sent the servicer a written cease communication notification under section 805(c) of the FDCPA. Therefore, even if a servicer receives a written cease communication notification from a borrower, if the servicer is not also acting as a debt collector for purposes of the FDCPA with respect to that borrower's mortgage loan, the servicer must continue to comply with all of the early intervention requirements under § 1024.39.

The Bureau has narrowly tailored the proposal to reduce the risk that servicers will circumvent a borrower's cease communication rights. As noted above, the proposed requirement that a servicer subject to the FDCPA with respect to a borrower provide a delinquent borrower with the modified written early intervention notice applies only if the servicer is subject to the FDCPA with respect to that borrower, meaning that the servicer of a mortgage loan that was in default at the time the servicer acquired it is also acting as a debt collector under section 803(6) of the FDCPA, and only if that borrower has properly invoked the FDCPA's cease communication protections. The Bureau believes that the proposal to partially lift the exemption for the written early intervention notice will generally only be relevant in instances where the servicer has received a cease communication notification prior to the 45th day of the borrower's delinquency.[144] Additionally, the proposal relates to only the modified written early intervention notice, while maintaining the exemption for early intervention live contact and the exemption for the written notice if no loss mitigation options are available. If no loss mitigation options are available, *i.e.*, the owner or assignee of a borrower's mortgage loan does not offer an alternative to foreclosure that is made available through the servicer, this proposal leaves the current exemption in place.[145] Furthermore, this proposal requires that the modified written early intervention notice include a statement that the servicer may or intends to invoke its specified remedy of foreclosure, prohibits the servicer from making a request for payment via the written early intervention notice, and prohibits a servicer from providing the written notice more than once during any 180-day period. The Bureau believes that limiting the proposal in this manner reduces the risk that the modified written early intervention notice will be used to circumvent a borrower's cease communication rights under section 805(c) of the FDCPA.

Borrower-Initiated Communications

The Bureau expects that, after the borrower has sent a cease communication notification, any subsequent borrower-initiated communications with a servicer for the purposes of loss mitigation will be limited to a discussion of loss mitigation options that may be available. Therefore, even after a borrower has sent a cease communication notification under the FDCPA, a servicer should respond to a borrower who inquires about loss mitigation with information limited to potentially available loss mitigation options. For example, a servicer may discuss with

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[144] *See* FDCPA section 805(c) ("If such notice from the consumer is made by mail, notification shall be complete upon receipt.").
[145] *See* section-by-section analysis of § 1024.39(b)(2)-4, *supra*.

a borrower available loss mitigation options that the owner or assignee of the borrower's mortgage loan offers, instructions on how the borrower can apply for loss mitigation, what documents and information the borrower would need to provide to complete a loss mitigation application, and the potential terms or details of a loan modification program, including the monthly payment and duration of the program. The Bureau is proposing to issue an advisory opinion interpreting the FDCPA cease communication requirement in relation to the Mortgage Servicing Rules under section 813(e) of the FDCPA. As provided in that section, no liability arises under the FDCPA for an act done or omitted in good faith in conformity with an advisory opinion of the Bureau while that advisory opinion is in effect.

The Bureau believes that a servicer's responding to borrower-initiated communications with specific information about loss mitigation options that may be available does not undermine the protections offered by section 805(c) of the FDCPA, which empowers borrowers to direct debt collectors to cease contacting them to collect a debt and frees borrowers from the burden of being subject to unwanted communications. Borrower-initiated communications are by their nature wanted communications and therefore do not impose such a burden. Such communications benefit borrowers by providing them with valuable information about potentially available loss mitigation options. The Bureau believes that when a servicer communicates with a borrower who has invoked the FDCPA's cease communication protections about potentially available loss mitigation options in the limited manner described in this proposal, the servicer does not violate section 805(c) of the FDCPA. The Bureau believes that a borrower's cease communication notification pursuant to the FDCPA should ordinarily be understood to exclude borrower-initiated communications with a servicer for the purposes of loss mitigation because the borrower has specifically requested the communication at issue. As the

Bureau explained in the October 2013 Servicing Bulletin, even if the borrower sends a cease communication notification while a specific action the borrower requested of the servicer is in process, the borrower usually should be understood to have excluded the specific action from the general request to cease communication. Thus, only if the borrower sends a communication to the servicer specifically withdrawing the request for such action may a servicer cease to carry out the requirements of these provisions. Accordingly, these communications would—under the Bureau's proposed advisory opinion—be consistent with the FDCPA's requirements, and a servicer would not be liable for violating the FDCPA with respect to such communications.

However, the Bureau's proposed advisory opinion would not protect a servicer from using such borrower-initiated communications for the purpose of loss mitigation as a pretext for collection of a debt in circumvention of a borrower's cease communication protections. In any subsequent borrower-initiated communications with a servicer for the purposes of loss mitigation, the servicer may not and is strictly prohibited from making a request for payment, including, for example, initiating conversations with the borrower related to repayment of the debt (through a debt payment plan or otherwise), demanding that the borrower make a payment, requesting that the borrower bring the account current or make a partial payment on the account, or attempting to collect the outstanding balance or arrearage.[146] Only if the borrower, without prompting from the servicer, independently inquires about or requests to make a payment or initiates a discussion of possible payment plans other than as part of loss mitigation, may the servicer engage in a discussion related to payment of the debt. The Bureau reiterates that

[146] *See* 53 FR 50097, 50103 (Dec. 13, 1988) (Section 805(c)-2 of the Federal Trade Commission's (FTC) Official Staff Commentary on FDCPA section 805(c)) ("A debt collector's response to a 'cease communication' notice from a consumer may not include a demand for payment, but is limited to the three statutory exceptions [under FDCPA section 805(c)(1) through (3)].").

servicers may not misuse borrower-initiated communications for the purpose of loss mitigation as an opportunity or pretext to direct or steer borrowers to a discussion of repayment or collection of the debt in circumvention of a borrower's cease communication protections. Additionally, the servicer may not begin or resume contacting the borrower in contravention of the cease communication notification, unless the borrower consents or revokes a prior cease communication request. As discussed above, all other provisions of the FDCPA, including the prohibitions on unfair, deceptive, and abusive practices as contained in sections 805 through 808 of the FDCPA, remain intact notwithstanding the proposed requirement that the servicer provide the modified written early intervention notice if loss mitigation options are available to borrowers who have exercised their FDCPA cease communication rights. The Bureau seeks comment generally on borrower-initiated communications for the purpose of loss mitigation in this context and the scope of the Bureau's proposed advisory opinion.

Legal Authority

The Bureau is proposing to exercise its authority under sections 6(j)(3) and 19(a) of RESPA to exempt a servicer that is a debt collector pursuant to the FDCPA with regard to a mortgage loan from the early intervention live contact requirements in § 1024.39(a) when a borrower has exercised the cease communication right under the FDCPA prohibiting the servicer from communicating with the borrower regarding the debt. For the reasons discussed above, the Bureau believes at this time that the consumer protection purposes of RESPA would not be furthered by requiring compliance with § 1024.39(a) at a time when a borrower has specifically requested that the servicer stop communicating with the borrower about the debt. Accordingly, the Bureau is proposing to implement proposed § 1024.39(d)(2)(i) pursuant to its authority under sections 6(j)(3) and 19(a) of RESPA.

The Bureau is also proposing to exercise its authority under sections 6(j)(3) and 19(a) of RESPA to exempt a servicer that is a debt collector pursuant to the FDCPA with regard to a mortgage loan from the written early intervention notice requirements in § 1024.39(b) when a borrower has exercised the cease communication right under the FDCPA if no loss mitigation options are available. For the reasons discussed above, the Bureau believes at this time that the consumer protection purposes of RESPA would not be furthered by requiring compliance with § 1024.39(b) at a time when a borrower has specifically requested that the servicer stop communicating with the borrower about the debt and when no loss mitigation options are available. Accordingly, the Bureau is proposing to implement proposed § 1024.39(d)(2)(ii) pursuant to its authority under sections 6(j)(3) and 19(a) of RESPA.

The Bureau is proposing to exercise its authority under section 6(k)(1)(E) of RESPA to add proposed § 1024.39(d)(2)(iii). The Bureau has authority to implement requirements for servicers to provide information about borrower options pursuant to section 6(k)(1)(E) of RESPA. As the Bureau has previously determined, providing borrowers with timely information about loss mitigation options and the foreclosure process, disclosures encouraging servicers to work with borrowers to identify any appropriate loss mitigation options, and information about housing counselors and State housing finance authorities are necessary to provide borrowers a meaningful opportunity to avoid foreclosure.[147] The Bureau also exercises its authority to prescribe rules with respect to the collection of debts by debt collectors pursuant to section 814(d) of the FDCPA, 15 U.S.C. 1692l(d). Pursuant to this authority, the Bureau is clarifying a borrower's cease communication protections under the FDCPA. Section 805(c) of the FDCPA

[147] *See* 77 FR 57199, 57260 (Sept. 17, 2012).

sets forth both the cease communication requirement and its exceptions. Under section 805(c)(2) and (3) of the FDCPA, a borrower's cease communication request does not prohibit a debt collector from communicating with the borrower "to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor" or "where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy." For the reasons given above, the Bureau believes that requiring a servicer to provide the written early intervention notice if loss mitigation options are available is a reasonable interpretation of the exceptions under section 805(c)(2) and (3) of the FDCPA. The Bureau believes that because the written early intervention notice will generally be closely linked to the invocation of foreclosure, such a notice informs a borrower that the servicer may invoke or intends to invoke the specified remedy of foreclosure and thus falls within the scope of the exceptions under section 805(c)(2) and (3) of the FDCPA. Accordingly, the Bureau is proposing to implement proposed § 1024.39(d)(2)(iii) pursuant to its authority under section 6(k)(1)(E) of RESPA and section 814(d) of the FDCPA.

Section 1024.41 Loss Mitigation Procedures

41(b) Receipt of a Loss Mitigation Application

Successors in interest. As described in the section-by-section analysis of § 1024.30(d), proposed § 1024.30(d) provides that once a servicer confirms a successor in interest's identity and ownership interest in the property, the successor in interest must be considered a borrower for the purposes of Regulation X's mortgage servicing rules. Accordingly, the servicer must comply with § 1024.41's loss mitigation procedures with respect to a loss mitigation application submitted by a confirmed successor in interest.

Proposed comment 41(b)-1.i clarifies that, if a servicer receives a loss mitigation application, including a complete loss mitigation application, from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but is not required to, review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41. The proposed comment also provides that if a servicer complies with the requirements of § 1024.41 for a complete loss mitigation application submitted by a potential successor in interest before confirming that person's identity and ownership interest in the property, § 1024.41(i)'s limitation on duplicative requests applies with respect to any loss mitigation application subsequently submitted by that person, provided that confirmation of the successor in interest's status would not affect the servicer's evaluation of the application.

The Bureau is proposing comment 41(b)-1.i to make clear that servicers may, but are not required to, review and evaluate loss mitigation applications from successors in interest before confirming a successor in interest's identity and ownership interest in the property, even though servicers would not be required to do so under the proposed rule. The Bureau is proposing this comment to ensure that the proposed requirement to review and evaluate applications from a successor in interest upon confirmation of the successor in interest's status would not imply that the servicer may not do so before confirmation. Further, the Bureau believes that where a servicer complies with the requirements of § 1024.41 for a complete loss mitigation application submitted by a potential successor in interest and confirmation of the successor in interest's status would not affect the outcome of the successor's application for loss mitigation, a subsequent request would be duplicative and thus should be subject to § 1024.41(i)'s limitation.

Proposed comment 41(b)-1.ii provides that if a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's status, upon such confirmation the servicer must review and evaluate that loss mitigation application in accordance with the procedures set forth in § 1024.41. For purposes of § 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. Accordingly, servicers would be required to preserve any loss mitigation application received from a potential successor in interest, so that the servicer can review and evaluate that application upon confirmation of the successor in interest's status and the successor in interest would not have to resubmit the loss mitigation application.

The Bureau is proposing comment 41(b)-1.ii because successors in interest may be confused by having to resubmit identical documents simply because the servicer has confirmed the successor in interest's status. The Bureau believes that it is preferable to require servicers to preserve loss mitigation applications received from potential successors in interest and review and evaluate those loss mitigation applications upon confirming the successor in interest's status.

41(b)(1) Complete Loss Mitigation Application

The Bureau is proposing to revise comment 41(b)(1)-1 to clarify that, in the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information pertaining to a particular loss mitigation option after receiving information confirming that the borrower is ineligible for that option.

Section 1024.41(b)(1) defines a complete application as an application for which a servicer has received all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. Current comment 41(b)(1)-1 explains that a servicer has the flexibility to establish the type and amount of information that it will require from borrowers applying for loss mitigation options, and the Bureau explained in the 2013 RESPA Servicing Final Rule that the servicer may tailor application requirements to each individual borrower.[148] In exercising reasonable diligence to obtain a complete application under § 1024.41(b)(1), therefore, a servicer may determine that an application is complete even when the borrower has not submitted certain information that the servicer regularly requires but is irrelevant with respect to that particular borrower.[149]

The Bureau has learned from servicers and consumer advocacy groups that some servicers have been attempting to collect a large number of documents from borrowers, including some that are irrelevant to determining whether a particular borrower is eligible for any loss mitigation option. To the extent that this practice represents a servicer's good faith effort to exercise reasonable diligence under § 1024.41(b)(1), the Bureau wishes to clarify that § 1024.41(b)(1) does not require it. The Bureau believes that an interpretation that § 1024.41(b)(1) requires a servicer to collect documents or information after the servicer has confirmed that such documents cannot affect the outcome of an evaluation unnecessarily burdens both the servicer and the borrower and hinder efforts to complete the loss mitigation application.

Therefore, the Bureau is proposing to amend comment 41(b)(1)-1 to explain that, in the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents or information for a particular loss mitigation option after receiving information confirming that the borrower is ineligible for that option. As revised, proposed comment 41(b)(1)-1 includes the following example: if a particular

[148] *See* 78 FR 10695, 10824 (Feb. 14, 2013).
[149] *See id.*

loss mitigation option is only available for military servicemembers, once a servicer receives documents or information confirming that the borrower is not a military servicemember, the servicer may stop collecting documents or information from the borrower that the servicer would use to evaluate the borrower for that loss mitigation option. The proposed comment further explains that making such a determination does not affect a servicer's obligation to exercise reasonable diligence in obtaining a complete application; the servicer must continue its efforts to obtain documents and information from the borrower that pertain to all other available loss mitigation options. Finally, the proposed comment provides that a servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference for a different loss mitigation option.

As the Bureau explained in the 2013 RESPA Servicing Final Rule, the Bureau believes that an application process that would impose an obligation on borrowers to select a desired loss mitigation option and permit servicers to evaluate the borrower for only that option would be inappropriate.[150] The Bureau believes that requiring servicers to evaluate loss mitigation applications for all loss mitigation options available to a borrower helps the borrowers make better-informed decisions about the complex options involved in loss mitigation.[151] The Bureau is also concerned that permitting a servicer to stop collecting borrower information based solely upon a borrower's stated preference for one option or another might allow the servicer to inappropriately influence the borrower's preference during communications with the borrower. It also might allow the servicer to otherwise circumvent § 1024.41 by simply choosing to review

[150] *Id*. at 10828.
[151] *See id*.

a borrower for a particular loss mitigation option, as it would be difficult to verify whether a borrower has expressed such a preference. However, the Bureau believes that, where a servicer receives information that conclusively demonstrates that a borrower is not eligible for a particular loss mitigation option, as in the example in proposed comment 41(b)(1)-1, borrowers and servicers will benefit from clarity in the comment that the servicer may stop collecting information from the borrower that the servicer might otherwise need to complete the application. The Bureau believes that proposed comment 41(b)(1)-1 would help ensure that servicers continue to consider borrowers for all loss mitigation options in a single application process notwithstanding the significant flexibility servicers enjoy in establishing application requirements.

The Bureau also notes that pursuant to proposed comment 41(b)(1)-1, a servicer may stop collecting documents and information from a borrower pertaining to a particular loss mitigation option after receiving information confirming that the borrower is ineligible for that option, even if the servicer previously requested such documents and information in the notice sent pursuant to § 1024.41(b)(2)(i)(B).

41(b)(2) Review of a Loss Mitigation Application Submission

41(b)(2)(i) Requirements

The Bureau is proposing to add comment 41(b)(2)(i)-1 to clarify the timelines for when a servicer must review and acknowledge a borrower's loss mitigation application when no foreclosure sale has been scheduled as of the date the loss mitigation application is received. Under § 1024.41(b)(2)(i), if a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, the servicer must: (1) promptly review the application to determine if it is complete, and (2) within five days of receiving the application, notify the borrower that the application was received and is complete or incomplete, and if incomplete, state the additional documents and information needed to complete the application.[152]

Section 1024.41(b)(2)(i) does not expressly address whether this requirement applies when an application is received before a foreclosure sale is scheduled.[153] The Bureau believes that, in that scenario, the application was still received "45 days or more before a foreclosure sale," and that the requirements of § 1024.41(b)(2)(i) still apply. To codify this interpretation, the Bureau is proposing to add new comment 41(b)(2)(i)-1, which provides that for purposes of § 1024.41(b)(2)(i), if a foreclosure sale has not been scheduled as of the date an application is received, the application shall be treated as if it were received at least 45 days before a foreclosure sale. The proposed comment clarifies that servicers must comply with all of the requirements of § 1024.41(b)(2)(i) even when no foreclosure sale has been scheduled as of the date a servicer receives a borrower's loss mitigation application. The Bureau believes that the proposed comment will provide certainty to servicers and borrowers.

41(b)(2)(ii) Time Period Disclosure

The Bureau is proposing to revise commentary discussing a servicer's obligations in setting a reasonable date for the return of documents and information under § 1024.41(b)(2)(ii).

When a borrower submits an incomplete loss mitigation application at least 45 days before a scheduled foreclosure sale, § 1024.41(b)(2)(ii) requires the servicer to select a reasonable date by which the borrower should return documents and information to complete the

[152] 12 CFR 1024.41(b)(2)(i).
[153] In the September 2013 Mortgage Final Rule, the Bureau adopted new § 1024.41(b)(3) and related commentary to address borrowers' rights where no foreclosure sale has been scheduled as of the date a complete loss mitigation application is received. The final rule clarified that if a foreclosure sale has not yet been scheduled as of the date that a complete loss mitigation application is received, the application shall be treated as if it were received at least 90 days before a foreclosure sale. *See* 78 FR 60381, 60397 (Oct. 1, 2013).

application. Current comment 41(b)(2)(ii)-1 clarifies that, in selecting this date, the servicer should consider four specific milestones that implicate borrower protections under § 1024.41: (1) the date by which any document or information that a borrower submitted will be considered stale or invalid pursuant to any requirements applicable to any available loss mitigation option, (2) the date that is the 120th day of the borrower's delinquency, (3) the date that is 90 days before a foreclosure sale, and (4) the date that is 38 days before a foreclosure sale. In general, as each milestone passes, it becomes more likely that a borrower will enjoy fewer protections under § 1024.41 when the application becomes complete. As the Bureau explained in the September 2013 Mortgage Final Rule, § 1024.41(b)(2)(ii) was drafted to afford the servicer sufficient flexibility to set a date for the return of documents that will maximize a borrower's protections in light of the borrower's individual application timeline.[154]

The Bureau has received a number of inquiries from servicers seeking guidance on how they should determine the reasonable date under § 1024.41(b)(2)(ii) when the nearest remaining milestone is not scheduled to take place for a significant amount of time. This might be the case, for example, when the borrower has not submitted any information that can go stale, the loan is more than 120 days delinquent, and the foreclosure sale is scheduled to take place in six months. In this circumstance, the nearest remaining milestone might not occur for three months—the date that is 90 days before the foreclosure sale. Servicers have questioned whether, in similar situations, § 1024.41(b)(2)(ii) requires a servicer to select a reasonable date that allows the borrower months to return the necessary documents, or whether the servicer may select an earlier date in order to encourage the borrower to respond more promptly.

[154] 78 FR 60381, 60395-96 (Oct. 1, 2013).

The Bureau has learned that different servicers use different approaches when the nearest remaining milestone is months away. One servicer informed the Bureau that it selects the nearest remaining milestone as the reasonable date for the return of documents, even when the milestone is many months in the future. Several other servicers indicated that they always select the earlier of 90 days or the nearest remaining milestone.

The Bureau believes that selecting a reasonable date that is months away may ultimately disadvantage some borrowers. As the Bureau explained in the September 2013 Mortgage Final Rule, the reasonable date provision under § 1024.41(b)(2)(ii) was intended, in part, to maximize borrower protections by encouraging the borrower to submit necessary information in time to receive the most protections possible under § 1024.41.[155] The Bureau believes that allowing a borrower 90 days or more to return documents may discourage borrowers from promptly providing documents and information necessary to complete a loss mitigation application, which ultimately may not further the goal of maximizing their protections under § 1024.41. Generally, the longer a borrower waits to submit documentation to complete an application, the greater the risk that a delinquency will grow, which might negatively affect the borrower's eligibility to receive loss mitigation and might make it more difficult for the borrower to perform under a loss mitigation program that the servicer later offers. Several servicers have informed the Bureau that they share these concerns but have been reluctant to set an earlier return date for fear of violating § 1024.41(b)(2)(ii).

In order to encourage servicers to set reasonable dates that will avoid these outcomes, as well as to clarify the contents of comment 41(b)(2)(ii)-1, the Bureau is proposing to revise

[155] *See id*.

comment 41(b)(2)(ii)-1 and add comments 41(b)(2)(ii)-2 and 3. As amended, proposed comment 41(b)(2)(ii)-1 states that, in setting a reasonable date for the return of documents and information under § 1024.41(b)(2)(ii), a servicer must allow a reasonable period of time for the borrower to obtain and submit documents and information necessary to make the loss mitigation application complete. The proposed comment also explains that, generally, a reasonable period of time would not be less than seven days.

Proposed comment 41(b)(2)(ii)-2 also provides, as 41(b)(2)(ii)-1 currently does, that a servicer must preserve maximum borrower rights under § 1024.41 in setting a reasonable date under § 1024.41(b)(2)(ii). However, proposed comment 41(b)(2)(ii)-2 also states that subject to comment 41(b)(2)(ii)'s clarification that the servicer allow the borrower a reasonable period of time to obtain and submit necessary documents, a servicer generally should not set a reasonable date that is further away than the nearest of the remaining milestones, which would be listed in proposed comment 41(b)(2)(ii)-2.

Finally, proposed comment 41(b)(2)(ii)-3 addresses situations where the nearest remaining milestone will not occur for several months based on the timing of a scheduled foreclosure sale and the documents that the borrower had already submitted when the servicer selects a reasonable date for the return of documents or information. The proposed comment states that a servicer has flexibility in selecting a reasonable date, subject to comments 41(b)(2)(ii)-1 and 2, and that a servicer may select any date that it determines both maximizes borrower rights under § 1024.41 and allows the borrower a reasonable period of time to obtain and submit documents and information necessary to make the loss mitigation application complete. The proposed comment also provides the following explanatory example: a servicer may set a reasonable date that is earlier than the nearest remaining milestone listed in comment

41(b)(2)(ii)-2 and does not need to select that milestone as the reasonable date itself.

The Bureau believes that the proposed revisions would clarify servicers' obligations under § 1024.41(b)(2)(ii). The Bureau believes that the proposed revisions would help servicers by clarifying that they have significant flexibility in setting a reasonable date under § 1024.41(b)(2)(ii)—servicers may select any date that they determine preserves maximum borrower protections and allows borrowers a reasonable period of time to submit the requested information. As noted above, the Bureau believes that a flexible standard permits servicers to account for borrowers' individual circumstances and maximize protections for each borrower when selecting a reasonable date under § 1024.41(b)(2)(ii).[156] The proposed revisions should shorten application timelines where appropriate, encourage borrowers to respond more promptly, and increase the likelihood of a successful loss mitigation outcome for the borrower.

The Bureau seeks comment on whether this proposal will provide servicers with sufficient guidance in setting a reasonable date for the return of documents and information under § 1024.41(b)(2)(ii) that will maximize borrower protections. The Bureau also seeks comment on whether to address expressly those situations where the nearest remaining milestone will not occur for several months based on the date of a scheduled foreclosure sale and the documents the borrower had submitted at the time the servicer selects the reasonable date under § 1024.41(b)(2)(ii). The Bureau also seeks comment on whether the Bureau should adopt a less flexible standard that would leave servicers with little or no discretion in setting a reasonable date under § 1024.41(b)(2)(ii), and if so, what would constitute an appropriate standard under such an approach.

[156] *See id*.

41(c) Evaluation of Loss Mitigation Applications

41(c)(1) Complete Loss Mitigation Application

Under § 1024.41(c)(1), a servicer that receives a complete loss mitigation application more than 37 days before a foreclosure sale must, within 30 days of receiving the complete application, evaluate the borrower for all loss mitigation options available to the borrower and provide the borrower with a notice in writing stating, among other things, the servicer's determination of which loss mitigation options, if any, it will offer to the borrower. Furthermore, pursuant to § 1024.41(e)(1), if a complete loss mitigation application is received less than 90 days but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than seven days after the servicer provides the offer to the borrower. In the Bureau's February 2013 RESPA Servicing Final Rule, the Bureau stated that it believes the timing of the loss mitigation procedures, including the appeal process, are clear—"[a]ll such deadlines are based on when information is received by or provided by a servicer."[157]

However, the Bureau has heard some concerns about the scenario where a servicer receives a complete loss mitigation application 38 days before a foreclosure sale, evaluates the borrower for all loss mitigation options available, and 30 days later provides the borrower the written notice stating the servicer's determination of which loss mitigation options it will offer. The borrower has a minimum of seven days to accept or reject the offer, but accounting for the time it takes for the notice to reach the borrower, particularly if provided by mail, the borrower may effectively have less than seven days to accept or reject the offer. Additionally, assuming

[157] 78 FR 10695, 10836 (Feb. 14, 2013).

that the borrower mails an acceptance of a loss mitigation option to the servicer in this scenario, it is possible that the servicer may not receive the borrower’s response until after the date of the foreclosure sale. The Bureau believes that this potential timeline may be problematic and may impact a borrower’s ability to timely respond, especially when a borrower is just days away from a scheduled foreclosure sale. The Bureau understands that a similar situation may arise with respect to the length of time that a borrower has to make an appeal. Section 1024.41(h)(2) provides that a servicer shall permit a borrower to make an appeal within 14 days after the servicer provides the offer of a loss mitigation option to the borrower. Again, accounting for the time it takes for the notice to reach the borrower, particularly if provided by mail, the borrower may effectively have less than 14 days to make an appeal.

The Bureau makes no proposal at this time but seeks comment on whether the timing and method of correspondence of loss mitigation offers and appeals between servicers and borrowers generally is presenting a problem. The Bureau further seeks comment on the specific scenario described above in which a complete loss mitigation application is received on or near the 38th day before a foreclosure sale and whether borrowers are facing particular difficulties timely responding to servicers in this context. The Bureau reminds servicers that under § 1024.38(b)(1)(i), a servicer must maintain policies and procedures that are reasonably designed to ensure that the servicer can provide accurate and timely disclosures to a borrower as required by Regulation X’s mortgage servicing rules, including § 1024.41, or other applicable law.

41(c)(2) Incomplete Loss Mitigation Application Evaluation

41(c)(2)(iii) Payment Forbearance

The Bureau is proposing to revise § 1024.41(c)(2)(iii) to permit servicers to offer short-term repayment plans based upon an evaluation of an incomplete loss mitigation application.

Section 1024.41(c)(2) generally prohibits a servicer from evading the requirement to evaluate a complete loss mitigation application by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete application. However, current § 1024.41(c)(2)(iii) offers an exception to this rule—it permits a servicer to offer a short-term payment forbearance program based upon an incomplete application.

The Bureau has received inquiries seeking clarification of whether § 1024.41(c)(2)(iii) also permits a servicer to offer a short-term repayment plan based upon an evaluation of an incomplete application. For the reasons explained below, the Bureau believes that it is appropriate, under certain conditions, to permit servicers to offer short-term repayment plans based upon an evaluation of an incomplete loss mitigation application.

In the Bureau's September 2013 Mortgage Final Rule, the Bureau explained that permitting a servicer to offer a short-term payment forbearance program based upon an incomplete application was an appropriate exception to § 1024.41(c)(1)'s general requirement that a borrower should be evaluated for all available loss mitigation options at once, and only after a servicer receives a complete application.[158] The Bureau determined that allowing the short-term payment forbearance exception under § 1024.41(c)(2)(iii) would, with appropriate safeguards, benefit borrowers by permitting a relatively efficient solution to a temporary hardship without exhausting a borrower's protections under § 1024.41.[159] The Bureau believes that the same considerations apply to short-term repayment plans and therefore proposes to

[158] 78 FR 60381, 60398-400 (Oct. 1, 2013).
[159] *See id*. at 60399-400 (discussing the rationale for permitting short-term forbearance programs based upon the evaluation of an incomplete application).

expressly include them under § 1024.41(c)(2)(iii).[160]

Therefore, the Bureau is proposing to amend § 1024.41(c)(2)(iii) to permit servicers to offer a short-term payment forbearance program or a short-term repayment plan to a borrower based upon an evaluation of an incomplete loss mitigation application. Proposed § 1024.41(c)(2)(iii) requires that the short-term payment forbearance program or repayment plan must be provided to the borrower in writing before the program or plan begins and must clearly specify the payment terms and duration. As is already the case where a servicer offers a short-term payment forbearance program, proposed § 1024.41(c)(2)(iii) requires that a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program or repayment plan offered under § 1024.41(c)(2)(iii). Finally, proposed § 1024.41(c)(2)(iii) provides that a servicer may offer a short-term forbearance program in conjunction with a short-term repayment plan.

As with short-term payment forbearance programs, the Bureau believes that permitting a servicer to offer a short-term repayment plan based upon an evaluation of an incomplete application affords a servicer flexibility to address a borrower's temporary hardship in a relatively efficient manner.[161] The Bureau further believes that permitting a servicer to offer a short-term repayment plan based on an evaluation of an incomplete application could reduce the

[160] The Bureau appreciates that some industry participants consider repayment plans to be a form of forbearance. In order to avoid confusion regarding the definition of a forbearance program, proposed § 1024.41(c)(2)(iii) explicitly differentiates between the two. *See* note 166, *infra*, (clarifying the primary distinction between the definitions of short-term repayment plans and short-term payment forbearance programs).

[161] *See* 78 FR 60381, 60399-400 (Oct. 1, 2013) (discussing the rationale for permitting short-term forbearance programs based on an evaluation of an incomplete application).

burden on both servicers and some borrowers by eliminating the need to gather many borrower documents that may be necessary to complete an application under § 1024.41(b)(1). Further, the Bureau believes that permitting a servicer to offer a short-term repayment plan based upon an evaluation of an incomplete application provides borrowers a way to address a temporary hardship without exhausting protections provided under § 1024.41 that begin once an application becomes complete.[162]

However, as the Bureau discussed in the September 2013 Mortgage Final Rule, permitting a servicer to offer loss mitigation based upon an evaluation of an incomplete application could potentially have adverse consequences for a borrower.[163] If a servicer were to inappropriately divert a borrower into a loss mitigation program based upon an incomplete application, it could exacerbate a delinquency and put the borrower at risk of losing the opportunity to complete the application and receive the full protections of § 1024.41.[164] Also, a borrower who is offered a short-term payment forbearance program or short-term repayment plan under proposed § 1024.41(c)(2)(iii) may be experiencing a hardship for which other, longer-term loss mitigation solutions might be more appropriate for a particular borrower's circumstance.

To mitigate these concerns, the Bureau is proposing to apply comments 41(c)(2)(iii)-2 and 41(c)(2)(iii)-3, which currently mitigate against such risks for short-term payment forbearance programs, to short-term repayment plans. Proposed comment 41(c)(2)(iii)-2 explains that, where a servicer offers a short-term payment forbearance program or a short-term

[162] *See* 78 FR 39901, 39913 (July 2, 2013) (discussing similar considerations about expending the protections of § 1024.41 in context of short-term paymentforbearance programs).
[163] 78 FR 60381, 60399-400 (Oct. 1, 2013).
[164] *See id*.

repayment plan based on the evaluation of an incomplete application, the application remains subject to the other obligations in § 1024.41. These obligations include reviewing the application for completeness under § 1024.41(b)(2), exercising reasonable diligence under § 1024.41(b)(1), and providing the borrower with the § 1024.41(b)(2)(i)(B) notice acknowledging the servicer's receipt of the application and indicating that the servicer has determined that the application is incomplete. Proposed comment 41(c)(2)(iii)-3 explains that, even if a servicer offers a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application, the servicer must comply with all the requirements in § 1024.41 if the borrower completes the loss mitigation application.

The Bureau believes that the proposed revisions to comments 41(c)(2)(iii)-2 and 3 would help ensure that servicers do not offer short-term repayment plans based on incomplete loss mitigation applications to evade their obligations under § 1024.41. As the Bureau explained in the September 2013 Mortgage Final Rule, these protections help preserve a borrower's option to submit a complete application and be considered for a long-term loss mitigation solution where appropriate.[165]

To further mitigate the risks associated with permitting a servicer to offer a loss mitigation option based upon an evaluation of an incomplete application, the Bureau also is proposing to revise comment 41(b)(1)-4.iii to clarify a servicer's obligation to exercise reasonable diligence during a short-term payment forbearance program or short-term repayment

[165] *Id*. at 603400 (discussing similar considerations in context of short-term payment forbearance programs offered under § 1024.41(c)(2)(iii)).

plan. Proposed comment 41(b)(1)-4.iii provides that reasonable diligence under § 1024.41(b)(1) requires a servicer to notify a borrower when a short-term repayment plan is being offered based on an evaluation of an incomplete application. The servicer must notify the borrower that the borrower has the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower. Proposed comment 41(b)(1)-4.iii. further explains that, if a servicer provides such a notification, the borrower remains in compliance with a payment forbearance program or repayment plan, and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts while the borrower remains in compliance with the short-term repayment plan and does not request further assistance, but that, if the borrower remains delinquent near the end of the program or plan, the servicer should contact the borrower near the end of the forbearance or repayment period to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation. The Bureau believes that permitting the servicer to suspend document collection while a borrower is performing under a short-term repayment plan will limit borrower confusion and avoid unnecessary servicer burden, but that continued servicer engagement at the outset and near the end of the plan will help the borrower make well-informed decisions about the mortgage loan.

As noted above, the Bureau is proposing to amend § 1024.41(c)(2)(iii) to require that a short-term payment forbearance program or a short-term repayment plan must be provided to the borrower in writing before the program or plan begins and must clearly specify the payment terms and duration. The Bureau believes that requiring a servicer to send the borrower the terms of any loss mitigation option offered under proposed § 1024.41(c)(2)(iii) in writing before the program or plan begins will reduce misunderstandings between the servicer and the borrower regarding the terms and existence of a payment forbearance program or repayment plan. The Bureau understands that, in the past, such misunderstandings sometimes resulted in the borrower making incorrect payments, causing the delinquency to grow in size and duration.

The Bureau is also proposing a change to comment 41(c)(2)(iii)-1 to clarify that § 1024.41(c)(2)(iii) no longer applies exclusively to short-term payment forbearance programs. As amended, the first sentence of comment 41(c)(2)(iii)-1 states that the exemption under § 1024.41(c)(2)(iii) applies to, "among other things," short-term payment forbearance programs. The comment would otherwise remain in its current form.

Definition of "short-term repayment plan"

The Bureau is also proposing to add comment 41(c)(2)(iii)-4 to define a repayment plan as a loss mitigation option pursuant to which a servicer allows a borrower to repay past due payments over a specified period of time until the mortgage loan account is current.[166] Under this definition, only those plans that would cure a delinquency would be permitted under § 1024.41(c)(2)(iii). The Bureau believes that this is essential to protect a borrower because a borrower generally remains delinquent during a repayment plan—and the longer a delinquency exists without a complete application, the fewer borrower protections § 1024.41 is likely to provide if the borrower later completes the application. By requiring the plan to cure the borrower's delinquency if successfully completed, the Bureau seeks to prohibit a servicer from offering a repayment plan that would likely leave the borrower in a worse position.

Proposed comment 41(c)(2)(iii)-4 defines short-term repayment plans to include no more

[166] The proposed definition of "short-term repayment plan" would address repayment of already existing arrearage, in contrast to the definition of a payment forbearance program (defined under comment 41(c)(2)(iii)-1), which allows a borrower to forgo making certain payments or portions of payments for a period of time.

than three months of payments due and a repayment period lasting no more than six months. The Bureau believes that the definition of a short-term repayment plan should limit both the maximum amount of the arrearage that may be included in the plan and the maximum time of repayment. The Bureau believes that these limitations will help protect borrowers who accept offers for short-term repayment plans by increasing the likelihood that the borrowers will successfully complete the plans. The Bureau believes that a borrower is less likely to complete a repayment plan that accounts for a larger delinquency; and that longer-term plans may be more difficult for borrowers to complete successfully. The Bureau also believes that borrowers may not be served as well by extended repayment plans—the longer the repayment period lasts, the longer the delinquency remains and the longer negative credit reporting continues.

Additionally, a borrower who accepts a short-term repayment plan based upon an evaluation of an incomplete application risks losing the protections of § 1024.41 depending on whether and when the borrower completes the application. Generally, the longer a borrower's application remains incomplete, the greater the risk that the borrower will enjoy fewer protections under § 1024.41. For example, under § 1024.41(f)(1)(i), a servicer may not make the first notice or filing for any judicial or non-judicial foreclosure process until a borrower's mortgage loan obligation is more than 120 days delinquent. Similarly, several protections under § 1024.41 only apply if a borrower completes the loss mitigation application a certain number of days before a foreclosure sale, including the evaluation timelines under § 1024.41(c)(1), foreclosure protections under § 1024.41(g), and appeal rights under § 1024.41(h), among others. Therefore, the longer a short-term repayment plan offered under § 1024.41(c)(2)(iii) lasts, the greater the risk that a borrower will lose important protections under § 1024.41 if the borrower fails to complete the plan. Consequently, the Bureau is proposing, in the context of incomplete applications, to limit the duration of a short-term repayment plan offered based upon an incomplete application, require that the plan bring the borrower current, and prohibit servicers from proceeding to foreclosure while the borrower is performing on the short-term repayment plan. The Bureau seeks comment on the adequacy of these protections for borrowers.

The Bureau also solicits comment on the appropriate maximum duration for short-term repayment plans offered under § 1024.41(c)(2)(iii). The Bureau notes that proposed comment 41(c)(2)(iii)-2 does not preclude a servicer from offering a longer-term repayment plan; it merely prohibits the servicer from doing so based upon an evaluation of an incomplete application.

41(c)(2)(iv) Facially Complete Application

The Bureau is proposing to revise § 1024.41(c)(2)(iv). First, the Bureau is proposing a minor technical change to § 1024.41(c)(2)(iv) to correct an erroneous reference to § 1026.41(b)(2)(i)(B), which should instead be a reference to § 1024.41(b)(2)(i)(B). Second, the Bureau is proposing to amend § 1024.41(c)(2)(iv) to provide that an application is facially complete if a servicer is required under proposed § 1024.41(c)(3) to send the borrower a notice of complete application.

Currently, § 1024.41(c)(2)(iv) provides that, if a borrower submits all the missing documents and information as stated in the notice required pursuant to § 1024.41(b)(2)(i)(B), or no additional information is requested in such notice, an application shall be considered facially complete. Section 1024.41(c)(2)(iv) provides a series of protections that apply once an application is facially complete. First, if the servicer later discovers that additional information or corrections are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for purposes of the dual tracking protections under § 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, § 1024.41(c)(2)(iv) also requires a servicer to consider the application as complete as of the date it was facially complete for the purposes of § 1024.41(d), (e), (f)(2), (g), and (h),[167] and as of the date the application was actually complete for the purposes of § 1024.41(c).[168]

As explained in the section-by-section analysis of § 1024.41(c)(3), proposed § 1024.41(c)(3)(i) requires a servicer to provide a written notice informing the borrower, among other things, that the application is complete, the date the application became complete, and that the servicer expects to complete its evaluation within 30 days of the date it received the complete application. The Bureau believes that this notice of complete application would ensure that borrowers are informed of the next steps in the loss mitigation evaluation process and enable borrowers to make better-informed decisions about their finances. The Bureau also believes that this notice would limit confusion for both servicers and borrowers in determining which protections apply under § 1024.41, as many of those protections begin when the application becomes complete. However, the Bureau recognizes that, in certain circumstances, servicers might require additional documents or information from a borrower after sending a notice of complete application under proposed § 1024.41(c)(3)(i). For example, a servicer might require additional information after learning that a borrower has a source of income that the servicer first learned about while reviewing the complete application. To clarify the status of an application in

[167] Sections 1024.41(d), (e), (f)(2), (g), and (h) respectively provide borrowers protections relating to a servicer's denial of a loan modification, the amount of time a borrower will have to respond to an offer of a loss mitigation option, dual tracking, and the right to appeal.
[168] Under § 1024.41(c) provides that a servicer's evaluation of a complete application is subject to a specific timeline and various other requirements.

this circumstance, the Bureau is proposing to provide expressly that the facially complete provision applies to an application for which a servicer has provided the notice of complete application under proposed § 1024.41(c)(3)(i).

Proposed § 1024.41(c)(2)(iv) states that a loss mitigation application shall be considered facially complete when a borrower submits all the missing documents and information as stated in the notice required under § 1024.41(b)(2)(i)(B), no additional information is requested in such notice, or when the servicer is required under § 1024.41(c)(3) to send the borrower a notice of complete application. Proposed § 1024.41(c)(iv) provides the identical protections as does current § 1024.41(c)(2)(iv). However, if a borrower timely completes an application after a servicer requests additional information or corrections to a previously submitted document, proposed § 1024.41(c)(iv) requires the application be treated as complete as of as of the date it *first became* facially complete for the purposes of § 1024.41(d), (e), (f)(2), (g), and (h), and as of the date the application was actually complete for the purposes of § 1024.41(c).

The Bureau believes that these proposed amendments would provide both borrowers and servicers with certainty about whether and when various protections apply under § 1024.41 in the circumstance where a servicer requires additional information for an application that the borrower previously completed. The Bureau also believes that these proposed amendments are appropriate to make clear that a borrower who has been informed that the application is complete will not lose protections if the servicer subsequently determines that it needs additional information. Finally, the Bureau believes that ensuring that many of a borrower's protections under § 1024.41 continue to apply will encourage servicers to efficiently process loss mitigation applications, which will reduce unnecessary delay in completing the evaluation.

41(c)(3) Notice of Complete Application

The Bureau is proposing to require a servicer to provide a written notice of complete application under new § 1024.41(c)(3).

The Bureau has learned from consumer advocacy groups that, during the loss mitigation application process, borrowers are frequently uncertain about whether an application is complete. Consumer advocacy groups and servicers inform the Bureau that, after a borrower submits documents and information that a servicer requests to complete an application, servicers often require the borrower to submit additional information or corrected versions of previously submitted documents several times during the application process, both before and after an application becomes complete. However, § 1024.41 currently requires a servicer to notify a borrower that an application is complete only if this is the case when the servicer provides the notice acknowledging receipt of an application under § 1024.41(b)(2)(i)(B). The Bureau understands from outreach efforts that applications are rarely complete at this stage, so many borrowers who complete an application might not receive notice that they have done so.

The Bureau is proposing to add § 1024.41(c)(3)(i) to require a servicer to provide a borrower a written notice, including specific information, promptly upon receiving the borrower’s complete application. The notice must inform the borrower that the application is complete; the date the servicer received the complete application; whether a foreclosure sale was scheduled as of the date the servicer received the complete application and, if so, the date of that scheduled sale; and the date the borrower’s foreclosure protections began under § 1024.41(f)(2) and (g) as applicable, with a concise description of those protections. The notice must also include a statement that the servicer expects to complete its evaluation within 30 days of the date it received the complete application and a statement that, although the application is complete, the borrower may need to submit additional information at a later date if the servicer determines that it is necessary. Finally, the notice must inform the borrower, if applicable, that the borrower will have the opportunity to appeal the servicer's determination to deny the borrower for any trial or permanent loan modification under § 1024.41(h).

Proposed § 1024.41(c)(3)(ii) provides that a servicer is not required to provide the notice of complete application in three circumstances: if the servicer has already notified the borrower under § 1024.41(b)(2)(i)(B) that the application is complete and the servicer has not subsequently requested additional information or a corrected version of a previously submitted document from the borrower to complete the application; the application was not complete or facially complete more than 37 days before a foreclosure sale; or the servicer has already provided a notice approving or denying the application under § 1024.41(c)(1)(ii).

The Bureau is also proposing commentary to explain certain aspects of the notice requirement under proposed § 1024.41(c)(3). Proposed comment 41(c)(3)(i)-1 explains that, generally, a servicer complies with the requirement to provide a borrower with written notice promptly under § 1024.41(c)(3)(i) by providing the written notice within five days of receiving a complete application from the borrower. Proposed comment 41(c)(3)(i)-2 states that the date the borrower's protections began under § 1024.41(f)(2) and (g) must be the date on which the application became either complete or facially complete, as applicable. Finally, proposed comment 41(c)(3)(i)-3 explains that § 1024.41(c)(3)(i) requires a servicer to send a notification, subject to the exceptions under § 1024.41(c)(3)(ii), every time a loss mitigation application becomes complete. That proposed comment further clarifies that if, after providing a notice under § 1024.41(c)(3)(i), a servicer requests additional information or corrections to a previously submitted document required to complete the application in accordance with § 1024.41(c)(2)(iv), the servicer might have to provide an additional notice under § 1024.41(c)(3)(i) if the borrower submits the additional information or corrected documents to complete the application.

The Bureau believes that requiring servicers to provide borrowers with the information in the notice of complete application under proposed § 1024.41(c)(3)(i) would ensure that borrowers are informed of the next steps in the evaluation process. The Bureau believes that receiving notice of when to expect an offer or denial will permit the borrower to make better-informed decisions. Additionally, the Bureau believes requiring, as does proposed § 1024.41(c)(3)(i)(B), that the notice of complete application indicate the date that the servicer received a complete application would limit confusion for both servicers and borrowers in determining which protections apply under § 1024.41. Many of those protections begin when an application becomes complete, and the Bureau believes that borrowers will better understand those protections if the notice provides the date of completion. The Bureau also believes that § 1024.41(c)(3)(i)(F)'s requirement that the notice of complete application inform borrowers that they may need additional or updated information from the borrower after determining that the application was complete will reduce borrower confusion when and if the servicer requests such additional information.

As noted above, proposed § 1024.41(c)(3)(i) requires a servicer to provide the notice of complete application promptly upon receiving a complete application, and proposed comment 41(c)(3)(i)-1 explains that a servicer generally acts promptly by providing the written notice within five days of receiving a complete application. The Bureau believes that, generally, a servicer should be able to provide the notice required under proposed § 1024.41(c)(3)(i) within five days of receiving the complete loss mitigation application from the borrower. However, the Bureau recognizes that servicers might sometimes require more than five days to determine whether a loss mitigation application is complete. The Bureau believes that the proposed comment provides servicers with sufficient flexibility to make an accurate determination but prevents undue delay. The Bureau believes that this approach is preferable to a stricter requirement that the notice must be provided within a specific number of days, without exception. The Bureau seeks comment on whether proposed § 1024.41(c)(3)(i) should provide such a stricter timing requirement and, if so, whether five days is an appropriate general standard of promptness for purposes of § 1024.41(c)(3)(i).

Also as noted above, proposed comment 41(c)(3)(i)-3 clarifies that § 1024.41(c)(3)(i) requires a servicer to send a notification every time a loss mitigation becomes complete during a single loss mitigation application process. The proposed comment includes an example describing a situation in which an application might become complete more than once because the servicer requests additional information or corrected documents after initially determining that the application was complete. Section 1024.41(c)(2)(iv) requires a servicer who has received an application that the servicer must treat as facially complete, and later discovers that additional information or corrections to a previously submitted document are required to complete the application, to request this information promptly. The Bureau believes that requiring a servicer to send an additional notification when the borrower submits additional information or corrected documents requested by the servicer would help ensure that a borrower has accurate and current information about the status of the loan and when to expect a servicer to complete the evaluation, which will help the borrower plan for the future.

The Bureau notes that § 1024.41(c)(2)(iv) was intended to address a limited set of circumstances where a servicer, subsequent to receiving the facially complete application, discovers that it requires additional information that was not previously requested by the servicer or corrections to a previously submitted document. The Bureau believes that repeated requests for additional documents and information by servicers could hamper borrower understanding of the loss mitigation process and impede borrower protections under the rules. To determine whether further rulemaking or guidance is required in this area, the Bureau will continue to monitor the market to evaluate whether and to what extent servicers are complying with § 1024.41(c)(2)(iv) by requesting such additional information or corrected documents only when such information is required.

The Bureau is aware that servicers may incur some costs in providing the notice required under proposed § 1024.41(c)(3). However, the Bureau notes that several servicers informed the Bureau during outreach efforts that they already provide a similar notice informing the borrower that an application is complete. For these servicers, proposed § 1024.41(c)(3) would likely impose relatively little additional burden, limited to ensuring that the notices contain the requisite disclosures. For other servicers, the Bureau believes that the benefits to the borrower outweigh those costs associated with providing the notice, especially in light of the difficulty that borrowers have had in the past in obtaining useful information from servicers during the loss mitigation application process.[169]

Moreover, the Bureau notes that four of the disclosures required under proposed § 1024.41(c)(3)(i) would contain standardized language for every borrower, and servicers currently must be able to identify the information required in the remaining disclosures (the date the application is complete, that a foreclosure sale is scheduled, the date of that sale, and the date on which the borrower's foreclosure protections began) in order to comply with various requirements under §§ 1024.40 and 1024.41. The Bureau believes that servicers may already be

[169] *See* 77 FR 57199, 57204 (Sept. 17, 2012) (discussing servicer failures in the loss mitigation application process).

tracking this information in order to monitor compliance with the Mortgage Servicing Rules. Thus, providing the notice should not significantly burden servicers.

Finally, as described above, the exceptions under proposed § 1024.41(c)(3)(ii) provide that a servicer is not required to provide the notice of complete application in three circumstances. These exceptions are as follows: if the servicer has already notified the borrower under § 1024.41(b)(2)(i)(B) that the application is complete and the servicer has since requested no additional information or a corrected version of a previously submitted document from the borrower; if the application was not complete or facially complete more than 37 days before a foreclosure sale; or if the servicer has already provided a notice approving or denying the application under § 1024.41(c)(1)(ii). These exceptions are intended to avoid unnecessary burden on servicers and prevent borrower confusion due to the receipt of conflicting or redundant information.

The Bureau seeks comment on whether the notice of complete application required under proposed § 1024.41(c)(3) should include additional or different disclosures than those listed above.

41(c)(4) Information Not in the Borrower's Control

The Bureau is proposing to amend § 1024.41(c)(1) and add § 1024.41(c)(4) to address a servicer's obligations with respect to information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer a borrower.

Under current § 1024.41(c)(1), if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, the servicer shall, within 30 days of receipt, evaluate the borrower for all loss mitigation options available to the borrower and provide the notice required under § 1024.41(c)(1)(ii). A complete loss mitigation application includes all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.[170] Thus, a loss mitigation application may be complete notwithstanding that additional information may be required by a servicer that is not in the control of the borrower.[171]

As noted in the section-by-section analysis of § 1024.38(b)(2)(vi), the Bureau has learned through outreach that servicers do not always obtain necessary information not in the borrower's control in time to determine which loss mitigation options, if any, to offer a borrower within 30 days of receiving a complete loss mitigation application, as § 1024.41(c)(1) requires. For example, servicers are occasionally unable to obtain homeowner association payoff information or approval from the loan owner, investor, or mortgage insurance company within 30 days after of receiving a complete application. Servicers and Federal agencies have informed the Bureau that such delay sometimes results from the servicer's failure to request the information promptly, and it sometimes results because the party with the information delays in providing it.

Several servicers have expressed uncertainty about how to proceed in this circumstance. The Bureau understands that servicers have adopted different practices when this occurs. Some servicers have informed the Bureau that they exceed the 30-day evaluation timeframe in § 1024.41(c)(1) and wait to receive the third-party information before making any decision on the application and sending the notice required by § 1024.41(c)(1)(ii). One servicer informed the Bureau that it sends a denial notice to borrowers but also informs them that the servicer will reevaluate the application upon receipt of the third-party information. Although both of these

[170] 12 CFR 1024.41(b)(1).
[171] *See* comment 41(b)(1)-5.

solutions do not appear to preclude a borrower from receiving loss mitigation, neither provides the borrower with clear information about the status of the application or whether the servicer will offer any loss mitigation options to the borrower.

The Bureau is concerned that the absence of clear information about the status of the loss mitigation application may cause borrowers to abandon their pursuit of loss mitigation, or to be confused about their loss mitigation options and how they may pursue their rights under § 1024.41. A delay in the evaluation of a borrower's complete loss mitigation application may cause the borrower's hardship to worsen and thereby reduce the likelihood that the servicer will offer the borrower a loss mitigation option, among other consumer harms.

To address these concerns, the Bureau is proposing amendments to § 1024.41 that would require servicers to exercise reasonable diligence to gather necessary information not in the borrower's control and would provide guidance to servicers to address situations where another party's delay in providing such information prevents a servicer from completing the loss mitigation evaluation within 30 days of receiving a complete application.

First, the Bureau is proposing to amend § 1024.41(c)(1) to provide that proposed § 1024.41(c)(4)(ii) offers an exception to the general requirement that a servicer must evaluate a complete loss mitigation application received more than 37 days before a foreclosure sale within 30 days of receiving it from the borrower.

Second, under proposed § 1024.41(c)(4)(i), if a servicer requires documents or information not in the borrower's control, a servicer must exercise reasonable diligence in obtaining such documents or information. Proposed § 1024.41(c)(4)(ii)(A) prohibits a servicer from denying a borrower's complete application solely because the servicer has not received documents or information not in the borrower's control. In addition, proposed

§ 1024.41(c)(ii)(B) requires that if, 30 days after a complete loss mitigation application is received, a servicer is unable to determine which loss mitigation options, if any, it will offer the borrower because it lacks documents or information from a party other than the borrower or the servicer, the servicer must promptly provide the borrower a written notice stating the following: (1) that the servicer has not received documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, the servicer will offer on behalf of the owner or assignee of the mortgage; (2) the specific documents or information that the servicer lacks; (3) the date on which the servicer first requested that documentation or information during the current loss mitigation application process; and (4) that the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documentation or information.

Finally, proposed § 1024.41(c)(4)(ii)(C) requires that, if a servicer is unable to determine which loss mitigation options, if any, to offer a borrower within 30 days of receiving a complete application due to lack of documents or information from a party other than the borrower or the servicer, upon receiving such documents or information, the servicer must promptly provide the borrower written notice stating the servicer's determination in accordance with § 1024.41(c)(1)(ii). Proposed comment 41(c)(4)(ii)(C)-1 clarifies that, in this circumstance, the servicer should not provide the borrower a written notice stating the servicer's determination until the servicer receives the documentation or information.

The Bureau is also proposing comments to explain a servicer's obligations under proposed § 1024.41(c)(4)(i)'s reasonable diligence standard with respect to gathering information not in the borrower's control. The proposed comments address a servicer's reasonable diligence obligations both upon receipt of a complete loss mitigation application and where a servicer has not received third-party information within 30 days of a complete application. First, proposed comment 41(c)(4)(i)-1 explains that a servicer must act with reasonable diligence to collect information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer the borrower. Proposed comments 41(c)(4)(i)-1.i and ii explain that a servicer must request such information from the appropriate person, at a minimum and without limitation: promptly upon determining that the servicer requires the documents or information to determine which loss mitigation options, if any, to offer the borrower; and, to the extent practicable, by a date that will enable the servicer to complete the evaluation within 30 days of receiving a complete application as set forth under § 1024.41(c)(1).

Second, proposed comment 41(c)(4)(i)-2 explains that, if a servicer has not received documents or information not in the borrower's control within 30 days of receiving a complete loss mitigation application, the servicer acts with reasonable diligence by attempting to obtain the documents or information from the appropriate person as quickly as possible. The Bureau notes that this standard might require a servicer to act with more immediate urgency to obtain the necessary third-party information than would the standard set forth in comment 41(c)(4)(ii)-1. The Bureau believes that this heightened standard is appropriate after the initial 30 days in order to keep the evaluation timeline as close as possible to the 30-day evaluation period under § 1024.41(c)(1). The Bureau believes that these proposed comments will result in shorter evaluation timelines by limiting servicer delay in the evaluation process.

The Bureau believes that proposed § 1024.41(c)(4)(ii)'s exception to the 30-day evaluation timeline should be narrowly tailored to avoid premature denials based solely on the absence of information not in the borrowers control, while requiring servicers to evaluate the complete application promptly upon receipt of such information. Proposed § 1024.41(c)(4)(ii) includes three provisions that would operate together to achieve these objectives.

First, proposed § 1024.41(c)(4)(ii)(A) prohibits a servicer from denying a complete application solely because the servicer has not received documents or information not in the borrower's control. The Bureau understands that third parties sometimes delay providing information that the servicer requires to determine which loss mitigation options, if any, to offer the borrower, notwithstanding a servicer's reasonable diligence in obtaining such information. However, the Bureau believes that a borrower's loss mitigation application should not be denied solely because a party other than the borrower or the servicer does not timely supply information that the servicer requires. Several servicers have informed the Bureau that they do not deny the borrower's application under this circumstance, and at least one industry trade association has encouraged the Bureau to expressly sanction this practice. The Bureau agrees that this standard would be appropriate in order to prevent the borrower from losing the opportunity for loss mitigation due solely to third-party delay.

Second, proposed § 1024.41(c)(4)(ii)(B) provides that if, 30 days after a complete application is received, the servicer is unable to make a determination as to which loss mitigation options, if any, it will offer to the borrower because the servicer lacks documents or information from a party other than the borrower or the servicer, the servicer must promptly provide a written notice to the borrower containing the disclosures listed above. The Bureau believes that the disclosures required by proposed § 1024.41(c)(4)(ii)(B) would help avoid borrower confusion in many cases where the evaluation of a loss mitigation application is delayed under § 1024.41(c)(4)(ii). For example, a borrower who had already received confirmation that the application was complete might be expecting a decision within 30 days, and without the notice required under proposed § 1024.41(c)(4)(ii)(B), the borrower might not receive subsequent notification regarding the status of the application prior to the servicer's decision on the application, even if there was significant delay due to the non-receipt of third-party information.

The Bureau believes that requiring a servicer to provide the disclosures in proposed § 1024.41(c)(4)(ii)(B) would reduce the burden on servicers associated with responding to a borrower's inquiries by providing greater clarity regarding the status of the application in this circumstance. The Bureau also believes that these disclosures would benefit both servicers and borrowers and promote compliance by making it easier for both parties to determine whether the servicer exercised reasonable diligence in obtaining third-party information as proposed § 1024.41(c)(4)(i) provides. Further, the Bureau intends for the disclosures to reduce the number of inquiries borrowers submit to servicers pertaining to application status. This would reduce servicer burden and improve communication between borrowers and servicers.

Third, proposed § 1024.41(c)(4)(ii)(C) provides that if, due to a lack of documents or information from a party other than the borrower or the servicer, a servicer is unable to determine which loss mitigation options, if any, to offer a borrower within 30 days of receiving the complete application, upon receiving such documents or information, the servicer must promptly provide the borrower a written notice stating the servicer's determination in accordance with § 1024.41(c)(1)(ii). The Bureau believes that requiring a servicer to determine promptly which loss mitigation options, if any, to offer the borrower upon receiving delayed documents or information from a party other than the borrower or the servicer and to provide the borrower written notice of the servicer's determination promptly will reduce delay and is consistent with industry practice.

Proposed comment 41(c)(4)(ii)-1 would clarify that the servicer must complete all possible steps in the evaluation process—including by taking all steps mandated by third-parties like mortgage insurance companies, guarantors, owners, or assignees—within 30 days of receiving a complete application, notwithstanding delay in receiving information from any third-party. The proposed comment would include the following clarifying example: if a servicer can determine a borrower's eligibility for all available loss mitigation options based upon the borrower's complete application subject only to approval from the mortgage insurance company, it must do so within 30 days of receiving the complete application notwithstanding the need to obtain such approval before offering any loss mitigation options to the borrower. The proposed comment is intended to prohibit a servicer from unnecessarily delaying the evaluation process because of delayed third-party information. The Bureau is concerned that this type of servicer delay would increase the risk that the borrower's documents would go stale, possibly delaying the evaluation further while the hardship worsens.

The Bureau notes that, while proposed § 1024.41(c)(4)(i) and (ii)(A) refer to "information not in the borrower's control," proposed § 1024.41(c)(4)(ii)(B) and (C) refer only to "information from a party other than the borrower or the servicer." The Bureau believes that this distinction is appropriate given the different requirements that the proposed provisions would impose on servicers. Proposed § 1024.41(c)(4)(i) and (ii)(A), respectively, require a servicer to exercise reasonable diligence in obtaining any non-borrower information, and not deny the borrower solely because the servicer has not received such information. The Bureau believes that these protections are appropriate regardless of whether the missing information is in the control of the servicer or in the control of a third-party in order to ensure fair and efficient evaluation. However, proposed § 1024.41(c)(4)(ii)(B) and (C) offer an exception to the 30-day evaluation timeline provided under § 1024.41(c)(1). The Bureau believes that such an exception should exist only when the servicer itself lacks control over the information and must seek it from a third-party over which the servicer does not have control. The Bureau therefore proposes to limit the extension of the evaluation timeline to circumstances in which neither the servicer nor the borrower is in control of the necessary information. Since a servicer can generally access information in its own control at any time, the Bureau believes that it would be inappropriate to offer an exception to the 30-day evaluation timeline required under § 1024.41(c)(1) based upon a servicer's delay in doing so.

The Bureau seeks comment to better understand the cause of delay in servicers receiving non-borrower information necessary to determine which loss mitigation options, if any, to offer a borrower. Specifically, the Bureau seeks comment on how servicers and third-parties contribute to the delay, as well as which categories of non-borrower information most frequently result in delay. Finally, the Bureau seeks comment on whether to limit the amount of time that a servicer must exercise reasonable diligence in attempting to obtain information not in the borrower's control.

41(f) Prohibition on Foreclosure Referral

41(f)(1) Pre-foreclosure Review Period

The Bureau is proposing to amend § 1024.41(f)(1)(iii) so that the prohibition on referral to foreclosure until after the 120th day of delinquency would not apply when a servicer is joining the foreclosure action of a senior lienholder. Although current § 1024.41(f)(1) generally prohibits a servicer from making the first notice or filing required by applicable law to begin the foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent, the rule includes an exemption allowing a servicer to make a first notice or filing when the servicer is joining the foreclosure action of a subordinate lienholder. The proposed amendment to § 1024.41(f)(1)(iii) would similarly allow a servicer to make the first notice or filing before the loan obligation is 120 days delinquent when the servicer is joining the foreclosure action of a senior lienholder.

In the September 2013 Mortgage Final Rule, the Bureau decided that, if a borrower is current on a mortgage secured by a senior lien but is being foreclosed on by a subordinate lienholder, it would be appropriate for the servicer of the mortgage secured by the senior lien to join the foreclosure action, even though the borrower may not be delinquent on the mortgage secured by the senior lien, because the first notice or filing would not be based upon a borrower's delinquency in this circumstance.[172] The Bureau did not then consider the situation in which the servicer is joining the foreclosure action of a senior lienholder, and servicers have since asked the Bureau why the same rule does not apply in that situation. The Bureau believes that the same rationale makes it appropriate to expand the current exemption to circumstances in which the servicer is joining the foreclosure action of a senior lienholder. The Bureau believes that it would be appropriate for the servicer of the mortgage secured by the subordinate lien to join the foreclosure action, even though the borrower may not be delinquent on the mortgage secured by the subordinate lien, because the first notice or filing would not be based upon a borrower's delinquency with respect to the serviced loan. Further, expanding the exemption seems to present only minimal borrower protection concerns because the borrower would already be facing a foreclosure action on the property.

The Bureau believes that the proposed rule would be helpful to servicers by making clear that the servicer of a subordinate lien may participate in the existing foreclosure action on a

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[172] *See* 78 FR 60381, 60406 (Oct. 1, 2013).

senior lien. The servicer's participation in the foreclosure action of a senior lienholder may allow the servicer to represent the servicer's interests in the existing foreclosure action more fully under some circumstances. Additionally, it may sometimes be necessary, when the same servicer is responsible for both the senior and subordinate lien, for the servicer to initiate foreclosure on the subordinate lien as part of the foreclosure action on the senior lien, in order to clear title on the property for the subsequent owner.[173]

41(g) Prohibition on Foreclosure Sale

The Bureau is proposing to revise comments 41(g)-1 and (g)-3 and add new comment 41(g)-5. Together these changes would clarify servicers' obligations with respect to § 1024.41(g)'s prohibition against moving for foreclosure judgment or order of sale, or conducting a sale, during the evaluation of a complete loss mitigation application received more than 37 days before a foreclosure sale. The Bureau is also proposing to add commentary to clarify the requirements for policies and procedures under § 1024.38(b)(3)(iii) as the requirements relate to the prohibition under § 1024.41(g).

Under § 1024.41(g), if a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing, but more than 37 days before a foreclosure sale, the servicer is prohibited from moving for foreclosure judgment or order of sale, or conducting a foreclosure sale, unless: (1) the servicer has sent the borrower a notice pursuant to

[173] If the servicer in this circumstance does not initiate foreclosure on the subordinate lien, the servicer may be deemed not to have joined the subordinate lienholder in the foreclosure action, causing the subordinate lien to remain on the property after foreclosure. *See, e.g.*, *Deutsche Bank Natl. Trust Co. v. Mark Dill Plumbing Co.*, 903 N.E.2d 166, 169 (Ind. Ct. App. 2009), *aff'd on rehearing*, 908 N.E. 2d 1273 (Ind. Ct. App. 2009) ("Foreclosure by a senior mortgagee does not affect the rights of a junior lienholder who was not made a party to the foreclosure action."); *Portland Mort. Co. v. Creditors Protective Ass'n*, 262 P.2d 918, 922 (Or. 1953) ("The omitted junior lienholder is in the same position as if no foreclosure had ever taken place, and he has the same rights, no more and no less, which he had before the foreclosure suit was commenced.").

§ 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation option and the appeal process under § 1024.41(h) is not applicable, the borrower has not requested an appeal within 14 days, or the servicer has denied the borrower's appeal; (2) the borrower rejects all loss mitigation options offered by the servicer; or (3) the borrower fails to perform under an agreement on a loss mitigation option.

Current comment 41(g)-1 explains that the prohibition on a servicer moving for judgment or order of sale includes making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. The comment further explains that a servicer that has made a dispositive motion before receiving a complete loss mitigation application has not moved for a foreclosure judgment or order of sale if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order prior to completing the procedures required by § 1024.41, notwithstanding whether any such step successfully avoids a ruling on a dispositive motion or issuance of an order of sale. Comment 41(g)-2 provides that § 1024.41(g) does not prevent a servicer from proceeding with any steps in the foreclosure process, so long as any such steps do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of § 1024.41. Comment 41(g)-3 explains that a servicer is responsible for promptly instructing foreclosure counsel retained by the servicer not to proceed with filing for foreclosure judgment or order of sale, or to conduct a foreclosure sale, in violation of § 1024.41(g), when a servicer has a received a complete loss mitigation application. Such instructions may include instructing counsel to move for continuance with respect to the deadline for filing a dispositive motion.[174]

Section 1024.41(g)'s prohibition applies to two distinct types of steps in the foreclosure process: *moving* for judgment or an order of sale and *conducting* a foreclosure sale. A servicer's obligations under § 1024.41(g) will vary depending on whether the foreclosure is judicial or non-judicial. If the applicable foreclosure procedure is non-judicial and does not require any court proceeding or order, then there is only one step in the foreclosure process addressed by § 1024.41(g)—conducting the sale during a pending loss mitigation evaluation. However, in a judicial foreclosure proceeding, a servicer must comply with both the prohibition against making or proceeding on a dispositive motion and the prohibition against conducting the foreclosure sale.

The Bureau proposed § 1024.41(g) in the 2012 RESPA Servicing Proposal, after the mortgage crisis had revealed that servicers often "were ill-equipped to handle the high volumes of delinquent mortgages, loan modification requests, and foreclosures they were required to process."[175] The Bureau noted that evaluations of mortgage servicer practices had found that servicers failed to properly structure and manage third-party vendor relationships and noted that the failures had "manifested in significant harms for borrowers, including imposing unwarranted fees on borrowers and harms relating to so-called 'dual tracking' from miscommunications

[174] Comment 41(g)-4 explains that although a servicer is not required to comply with the requirements in § 1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(2)(v), to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale.
[175] 77 FR 57199, 57203, 57266 (Sept. 17, 2012).

between service providers and servicer loss mitigation personnel."[176] The Bureau also noted that, even before the mortgage crisis, servicers may have had "financial incentives to foreclose rather than engage in loss mitigation."[177] The Bureau stated that one of the main goals in proposing § 1024.41 was prohibiting completion of the foreclosure process during a pending evaluation of a borrower's loss mitigation application and that the prohibition would "eliminate the clearest harms on borrowers resulting from servicers pursuing loss mitigation and foreclosure proceedings concurrently."[178]

In adopting § 1024.41(g) in the 2013 RESPA Servicing Final Rule, the Bureau included moving for judgment or order of sale in the foreclosure prohibition. The Bureau explained that the rule restricted "'dual tracking,' where a servicer is simultaneously evaluating a consumer for loan modifications or other alternatives at the same time that it prepares to foreclose on the property."[179] The Bureau did not believe that § 1024.41(g) would have a substantial impact on expected foreclosure timelines separate and apart from current market practices. However, the Bureau also believed that preventing the worst harms of dual-tracking would justify some disruption of foreclosure timelines.[180]

Since the Mortgage Servicing Rules went into effect, however, consumers have not always received the protections intended by § 1024.41(g). For instance, the Bureau has received reports that counsel retained by servicers to conduct the foreclosure proceeding lack current and

[176] *Id*. at 57249-50 (citing Press Release, Federal Reserve System, Office of the Comptroller of the Currency, and Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices*, at 5 (Apr. 2011), *available at* http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf.)
[177] *Id.* at 57203 (Sept. 17, 2012).
[178] *Id.* at 57271.
[179] 78 FR 10695, 10698 (Feb. 14, 2013).
[180] *Id.* at 10834.

accurate information about the completion of borrowers' loss mitigation applications. As a result, foreclosure counsel may not take adequate steps to avoid a judgment or order of sale and may fail to seek the delay or continuance of a sale when necessary to provide adequate time for the servicer to evaluate the loss mitigation application. In extreme cases, the Bureau has heard, foreclosure counsel may not represent accurately to the court the status of the loss mitigation application. Further, the Bureau has received reports that, even when servicers' foreclosure counsel take some steps to avoid a judgment or sale, they may fail to impress upon courts the significance of § 1024.41(g)'s prohibition. All of these failures to act in accordance with § 1024.41(g)'s requirements may result in the completion of foreclosure sales while the servicer is evaluating a borrower's complete loss mitigation application.

The Bureau has received inquiries concerning what steps a servicer must take to comply with § 1024.41(g) where a court orders a foreclosure sale date that does not afford sufficient time for the servicer to complete the evaluation process required by § 1024.41.[181] The Bureau has learned that some courts are ruling on a pending dispositive motion and setting a date for the foreclosure sale, despite the servicer's attempts through counsel to delay the ruling or order. In many cases, the initially scheduled sale date may not provide the servicer adequate time to complete the loss mitigation evaluation and appeals process. Servicers indicate that in some instances courts are requiring that the foreclosure continue to a completed sale even when review

[181] Many borrower protections under § 1024.41 are determined as of the date a servicer receives a complete loss mitigation application from the borrower. *See* 12 CFR 1024.41(b)(3). Comment 41(b)(3)-1 explains that if a foreclosure sale is not scheduled as of the date a complete loss mitigation application is received the application is considered to have been received 90 days before a foreclosure sale. Thus, a servicer that receives a complete loss mitigation application before a foreclosure sale date is scheduled must provide the full loss mitigation evaluation procedures under § 1024.41, the various steps of which generally provide for a total possible timeline of 88 days to complete.

of a complete loss mitigation application is underway. Media accounts as well as reports from consumer advocacy groups confirm that some courts may be refusing to continue cases when confronted with a motion to do so.[182]

Current comment 41(g)-1 explains that a servicer does not violate § 1024.41(g) where the servicer takes "reasonable steps to avoid" issuance of an order or ruling on a dispositive motion filed prior to receipt of the complete loss mitigation application from the borrower. However, there is no similar commentary explaining what, if any, "reasonable steps" a servicer must take to avoid a violation of the prohibition under § 1024.41(g) against conducting a sale after the servicer receives a complete loss mitigation application.

As the Bureau noted in the 2013 RESPA Servicing Final Rule, § 1024.41(g) "prohibit[s] a servicer from completing the foreclosure process if a borrower has submitted a timely and complete loss mitigation application . . . until the servicer has completed the evaluation of the borrower . . . ."[183] The Bureau believes that, regardless of the applicable foreclosure procedures, § 1024.41(g) does not permit a servicer to stand by while a sale goes forward unless the servicer can satisfy one of the three conditions listed under § 1024.41(g)(1) through (3). Based upon the reports and information received, the Bureau is concerned that the absence of express commentary requiring a servicer to take affirmative steps to delay the sale may have encouraged some servicers to fail to instruct foreclosure counsel appropriately and, further, may lead courts to discount servicer obligations under the rule, depriving borrowers of the important consumer protections against dual tracking that are provided under § 1024.41.

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[182] *See, e.g.*, Alison Fitzgerald, *Homeowners steamrolled as Florida courts clear foreclosure backlog*, The Ctr. for Pub. Integrity, Sept. 10, 2014, *available at* http://www.publicintegrity.org/2014/09/10/15463/homeowners-steamrolled-florida-courts-clear-foreclosure-backlog.

[183] 78 FR 10695, 10834 (Feb. 14, 2013).

Therefore, the Bureau is proposing to revise and add commentary to clarify the operation of § 1024.41(g) in these situations. As revised, proposed comment 41(g)-1 clarifies that if, upon receipt of a complete loss mitigation application, a servicer or its foreclosure counsel fails to take reasonable steps to avoid a ruling on a pending motion for judgment or the issuance of an order of sale, the servicer must dismiss the foreclosure proceeding if necessary to avoid the sale. Proposed comment 41(g)-5 would clarify that § 1024.41(g) prohibits a servicer from conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings, and that servicers must take reasonable steps to delay the sale until one of the conditions under § 1024.41(g)(1) through (3) is met.

The Bureau is also proposing to revise comment 41(g)-3 to clarify servicers' obligations under § 1024.41(g) when acting through foreclosure counsel. Similarly, the Bureau is proposing comment 38(b)(3)(iii)-1 to clarify that policies and procedures required under § 1024.38(b)(3)(iii) to facilitate sharing of information with service provider personnel responsible for handling foreclosure proceedings must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application.

The proposed comments, taken together, would clarify that, once a servicer receives a complete loss mitigation application, a servicer must take reasonable steps to avoid a ruling on a dispositive motion or issuance of a judgment or an order of sale, and also must take reasonable steps to delay a foreclosure sale until after the servicer has completed the loss mitigation evaluation procedures required by § 1024.41. Where a servicer fails to take reasonable steps to avoid a ruling on a dispositive motion, to avoid issuance of a judgment or an order of sale, or to delay the foreclosure sale, or where the servicer's foreclosure counsel fails to take such steps, the servicer would have to dismiss the foreclosure proceeding, if dismissal is necessary to avoid completing the foreclosure during the pendency of the loss mitigation evaluation.

The Bureau believes that the proposed revisions to the commentary will aid servicers in complying with § 1024.41(g)'s prohibition and assist courts in applying the prohibition in foreclosure proceedings. The Bureau also believes that clarifying that a servicer must take affirmative reasonable steps, not only to delay issuance of a judgment or order, but also to delay the sale, will ensure that borrowers are protected from foreclosure during pending evaluations of complete loss mitigation applications. Further, the Bureau believes that it is appropriate to require a servicer to dismiss a foreclosure if necessary to permit completion of the loss mitigation evaluation procedures where the servicer or its foreclosure counsel has failed to take such reasonable steps. The Bureau believes that clarifying that dismissal is required if a servicer has failed to take reasonable steps on its own or through foreclosure counsel to avoid a ruling or to delay a foreclosure sale during a pending loss mitigation evaluation will incentivize servicers to develop more effective procedures to carry out the requirements of § 1024.41(g). The Bureau believes that dismissal should rarely be necessary, given that servicers have it within their power to take all such reasonable steps to avoid a ruling on a dispositive motion, issuance of a judgment or an order of sale, or the conduct of a foreclosure sale.

Under current comment 41(g)-1, a servicer that fails to take reasonable steps to avoid a ruling on a motion pending at the time the servicer receives a complete loss mitigation application violates § 1024.41(g)'s first prohibition against moving for judgment or order of sale. The Bureau believes that where a servicer fails to take reasonable steps to avoid a ruling on or issuance resulting from a dispositive motion, as postulated in current comment 41(g)-1, the servicer must still comply with the prohibition against conducting a sale. The completion of a foreclosure sale during the evaluation of a borrower's complete loss mitigation application is precisely the harm that the Bureau crafted § 1024.41(g) to avoid. The Bureau believes that a servicer's failure to comply with one element of § 1024.41(g), the prohibition against proceeding on a dispositive motion, does not justify disregard for the prohibition against conducting a sale. Consequently, to emphasize the necessity of a servicer's taking reasonable steps to avoid a ruling or issuance of an order for sale when there is a pending loss mitigation evaluation, the Bureau is proposing to revise comment 41(g)-1 to provide explicitly that failure to take such steps requires dismissal if necessary to avoid the foreclosure sale.

Proposed comment 41(g)-5 also clarifies that a servicer must seek to delay a foreclosure sale, notwithstanding the fact that a third-party, such as a sheriff, trustee, or other public official, administers or conducts the sale proceedings, as is the case under foreclosure procedure in many States. The Bureau believes that any interpretation of § 1024.41(g)'s prohibition against conducting a foreclosure sale that relieves servicers of a responsibility to act to prevent a foreclosure simply because the foreclosure procedure does not require the servicer itself to conduct or administer the sale is inconsistent with the purpose of § 1024.41(g). The Bureau believes servicers already have an obligation to prevent a foreclosure sale under § 1024.41(g)'s prohibition against the conduct of a foreclosure sale. The Bureau is proposing comment 41(g)-5 to clarify a servicer's obligations under the prohibition, but is not adding a new requirement or interpretation.

The Bureau recognizes that in some jurisdictions, it may be difficult for a servicer to delay a foreclosure sale after entry of foreclosure judgment or issuance of an order of sale. The Bureau also understands that courts may be reluctant to delay foreclosure proceedings when lengthy backlogs of foreclosure matters create added pressure to expedite dockets. The Bureau believes that, even in these situations, reasonable steps to delay the sale are available to servicers and to courts administering foreclosure proceedings. Proposed comment 41(g)-5 provides a non-exclusive explanation of what reasonable steps might include. For instance, the Bureau believes that in judicial foreclosure proceedings, a servicer, through its counsel, may make a motion to continue the sale, remove it from the docket, or place the proceeding in any administrative status that stays the sale.[184] In non-judicial proceedings, the Bureau believes that servicers may have more control over the conduct of the sale and that analogous steps to those listed in proposed comment 41(g)-5 may apply. The Bureau seeks comment on what reasonable steps may be available to servicers to delay the conduct of a foreclosure sale under different foreclosure procedures.

Proposed comment 41(g)-3 explains that § 1024.41(g)'s prohibitions on moving for judgment or order of sale or conducting a sale may require a servicer to take steps through foreclosure counsel, and that a servicer is not relieved of its obligations because the foreclosure counsel's actions or inaction cause a violation. The proposed revisions to comment 41(g)-3 are consistent with the Bureau's understanding of servicer's responsibilities under the Mortgage Servicing Rules whenever service providers are involved, including the policies and procedures requirements under § 1024.38(b)(3). While the action or inaction of vendors or service providers may cause the violation in the first instance, the action or inaction of vendors or service providers does not change the servicer's responsibility for ensuring its compliance with the Mortgage Servicing Rules, whether directly or through service providers.

[184] As noted above, the maximum timeline for loss mitigation evaluations required by § 1024.41 is 88 days. *See* note 179, *supra*. The Bureau believes that in most judicial foreclosure procedures, a delay of a foreclosure sale often will not require a substantial elongation of the typical time period between an order and a sale.

Proposed comment 41(g)-3 further explains that if a servicer has received a complete loss mitigation application, the servicer must promptly instruct counsel not to make a dispositive motion for foreclosure judgment or order of sale; to take reasonable steps, where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and to take reasonable steps to delay the conduct of a foreclosure sale until the servicer satisfies one of the conditions in § 1024.41(g)(1) through (3). The instructions to counsel may include instructing counsel to move for a continuance with respect to the deadline for filing a dispositive motion or to move for or request that the foreclosure sale be stayed, otherwise delayed, or removed from the docket, or that the foreclosure proceeding be placed in any administrative status that stays the sale. This list is not meant to be exhaustive, and the Bureau seeks comments on whether there are other helpful illustrative examples.

The Bureau believes that the proposed revisions to comment 41(g)-3 provide servicers, their foreclosure counsel, and courts with greater clarity with respect to the operation of § 1024.41(g)'s prohibition. As the Bureau noted in its earlier guidance regarding service providers, the fact that an entity enters into a business relationship with a service provider does not absolve the entity of responsibility for complying with Federal consumer financial law to avoid consumer harm.[185] The Bureau believes that codifying this principal in comment 41(g)-3 would ensure that servicers understand their obligations with respect to instructing foreclosure counsel promptly to take steps required by § 1024.41(g). The Bureau understands that when a servicer receives an application shortly before a court hearing or while a dispositive motion is

[185] Consumer Fin. Prot. Bureau, CFPB Bulletin 2012-03, *Service Providers* (Apr. 13, 2012), *available at* http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

pending, timely communication with foreclosure counsel may necessitate expedited procedures. However, the Bureau believes that timely communication in such situations presents neither a novel challenge to lawyers and their clients, nor an insurmountable one, given modern communication technology.

Proposed comment 38(b)(3)(iii)-1 explains that the policies and procedures must be reasonably designed to ensure that servicer personnel promptly instruct foreclosure counsel to take any step required by § 1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale or conducting a foreclosure sale. The Bureau believes that proposed comment 38(b)(3)(iii)-1 will help to ensure that counsel are timely informed of the status of loss mitigation applications and can more effectively seek delay from a court of the issuance of an order or a foreclosure sale. Having policies and procedures to timely instruct counsel to take the actions required by § 1024.41(g) will help servicers efficiently handle communication with a servicer's foreclosure counsel and ensure that the counsel accurately represents the status of loss mitigation applications and the obligations of servicers under § 1024.41(g) to courts handling foreclosure proceedings.[186]

Though the proposed commentary clarifications do not alter existing requirements under § 1024.41(g), the Bureau has considered the potential burdens for servicers in dismissing a foreclosure proceeding. In jurisdictions where significant foreclosure backlogs exist, dismissal may significantly delay completion of the foreclosure process (assuming no loss mitigation agreement is reached between the borrower and the servicer). In addition, in some jurisdictions a

[186] The Bureau notes that § 1024.38(b)(1)(v) already requires servicers maintain policies and procedures reasonably designed to ensure that the servicer can submit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law.

subsequent foreclosure brought by a servicer may encounter procedural challenges or defenses as a result of the dismissal. Nonetheless, the Bureau believes that dismissal is appropriate in the limited circumstances where a servicer fails to take reasonable steps to avoid a ruling or issuance of an order or delay the sale to protect borrowers from the dual-tracking harms § 1024.41(g) aims to prevent. Moreover, the Bureau notes that dismissal is required only to avoid a violation of § 1024.41(g) or to mitigate the harm to the consumer arising from the servicer's prior violation of § 1024.41(g) in failing to take reasonable steps to delay a foreclosure sale. Thus, only those servicers that fail to act to delay issuance of the order or judgment would incur any costs related to dismissal. The Bureau believes that expressly clarifying that dismissal may be required would ensure that servicers take reasonable steps to avoid foreclosure sales. The Bureau seeks comment on whether the clarification is adequate or whether additional clarification is necessary to protect borrowers from foreclosure.

The Bureau requests comment on whether all of the proposed commentary clarifications are appropriate and whether the commentary provides sufficient clarity to ensure that the prohibition under § 1024.41(g) will effectively prevent foreclosures during a pending loss mitigation evaluation. In addition, the Bureau requests comment on whether there are any specific reasonable steps to comply with § 1024.41(g) that servicers should take, beyond re-scheduling or delaying the sale, removing the sale from the docket, or placing the foreclosure proceeding in any administrative status that stays the sale, where a court has ruled upon a dispositive motion. Finally, the Bureau requests comment on whether there are situations in which a servicer should dismiss a foreclosure proceeding to stop a sale even where the servicer has taken the reasonable steps outlined in § 1024.41(g).

The Bureau requests comment on whether the incorporation into the regulation text of any elements of the proposed commentary would aid servicers in complying with § 1024.41(g). The Bureau believes that the proposed commentary would provide help in interpreting and complying with § 1024.41(g). However, the Bureau also recognizes that incorporation in the regulation text itself may aid servicers, consumers, and courts in applying the prohibition.

41(i) Duplicative Requests

Currently, § 1024.41(i) requires a servicer to comply with the requirements of § 1024.41 for only a single complete loss mitigation application for a borrower's mortgage loan account. Section 1024.38(b)(2)(v) requires a servicer to maintain policies and procedures designed to ensure that the servicer can properly evaluate a borrower for all loss mitigation options "for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan[.]" In effect, therefore, unless investor guidelines require them to do so, servicers are not required to comply with the loss mitigation provisions in § 1024.41 if they previously complied with those requirements with respect to the same borrower's prior complete loss mitigation application.

The Bureau is now proposing to revise § 1024.41(i) to provide that servicers are required to comply with the requirements of § 1024.41 unless the servicer has previously complied with § 1024.41 for a borrower's complete loss mitigation application and the borrower has been delinquent at all times since the borrower submitted that complete application. As further explained below, the Bureau believes that requiring servicers to comply with § 1024.41 again in these circumstances may serve an important consumer protection purpose by extending the protections of § 1024.41 and promoting the use of uniform loss mitigation procedures for all borrowers. At the same time, the Bureau believes the proposed revision preserves servicer and borrower incentives to dedicate appropriate resources to an initial loss mitigation application.

When the Bureau first proposed § 1024.41 in the 2012 RESPA Servicing Proposal, it sought comment on whether a borrower should be entitled to a renewed evaluation for a loss mitigation option if an appropriate time period had passed since the initial evaluation or if there had been a material change in the borrower's financial circumstances. Industry commenters generally supported the Bureau's proposal to limit a servicer's obligation to comply with § 1024.41 to one time over the life of a borrower's loan. Consumer advocacy groups, however, argued that the Bureau should require servicers to review a subsequent loss mitigation submission when a borrower has demonstrated a material change in the borrower's financial circumstances.[187]

In the 2013 RESPA Servicing Final Rule, the Bureau stated that it agreed with consumer advocacy groups that there are circumstances in which it is appropriate to reevaluate borrowers in light of a material change in financial circumstances. Further, it acknowledged that many owners or assignees of mortgage loans already require servicers to consider material changes in a borrower's financial circumstances.[188] However, the Bureau noted that "significant challenges exist to determine whether a material change in financial circumstances has occurred[,]" and that, in contrast with investor or GSE guidelines, § 1024.41 gives borrowers a private right of action to enforce its procedures.[189] In addition, the Bureau stated its belief that limiting the loss mitigation procedures of § 1024.41 to a single complete loss mitigation application provides borrowers with appropriate incentives to submit all relevant information up front and allows servicers to dedicate resources to those applications most likely to qualify for loss mitigation

[187] *See* 78 FR 10695, 10836 (Feb. 14, 2013).
[188] *Id*.
[189] *Id*.

options. Accordingly, the Bureau adopted § 1024.41(i) as proposed and required servicers to comply with the loss mitigation procedures in § 1024.41 only once over the life of a mortgage loan.

Since the publication of the 2013 RESPA Servicing Final Rule, the Bureau has received numerous requests to revise § 1024.41(i) to require servicers to reevaluate borrowers who have experienced a change in financial circumstances and might therefore benefit from subsequent review of a new loss mitigation application under the requirements of § 1024.41. The Bureau continues to have concerns with requiring reevaluations under the Mortgage Servicing Rules when there has been a "material change in financial circumstances," so is not proposing to do so in this rulemaking. However, continued industry monitoring efforts, outreach to stakeholders, and continued reports from consumers and consumer advocacy groups suggests that current § 1024.41(i) may unfairly disadvantage a borrower who experiences multiple hardships over the life of a loan. The Bureau believes that a borrower may greatly benefit from the protections of § 1024.41 for loss mitigation applications submitted in connection with each subsequent hardship. Moreover, the Bureau believes that revising § 1024.41(i) to require servicers to reevaluate borrowers in certain circumstances under the requirements of § 1024.41 would not place a significant additional burden on servicers because many servicers already reevaluate borrowers who reapply for loss mitigation using the procedures set forth in § 1024.41.

Based on this analysis, the Bureau is proposing to revise the current rule to require servicers to reevaluate borrowers under § 1024.41 in certain circumstances. However, as the Bureau explained in the 2013 RESPA Servicing Final Rule, the Bureau believes that a servicer's obligation to reevaluate borrowers under § 1024.41 should be limited in scope. Accordingly, proposed § 1024.41(i) provides that servicers are required to comply with § 1024.41 unless the servicer has previously complied with § 1024.41 for a borrower's complete loss mitigation application and the borrower has been delinquent at all times since the borrower submitted that complete application. That is, under proposed § 1024.41(i), a servicer would be required to comply with § 1024.41, even if it had previously complied with § 1024.41 for a borrower's complete loss mitigation application, for a borrower who has been current on payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application. This revision is intended to preserve borrower and servicer incentives to reach a timely, efficient, and effective resolution to a borrower's hardship the first time a borrower applies for loss mitigation.

In addition, the Bureau believes that proposed § 1024.41(i) bases a servicer's obligation to reevaluate a borrower under § 1024.41 on an objective, bright-line test. One of the Bureau's concerns about the suggestions to require reevaluations under the Mortgage Servicing Rules when there has been a "material change in financial circumstances" is that the standard would be dependent upon a servicer's subjective determination. The Bureau believes that the challenges in implementing and enforcing such a standard would outweigh any intended benefit to borrowers. However, an easy-to-administer standard such as the one proposed may promote servicer compliance and reduce confusion for both servicers and borrowers. The Bureau also believes that this proposal may encourage consistent implementation of the Mortgage Servicing Rules by discouraging servicers from applying different loss mitigation procedures depending on whether a borrower has been previously evaluated under § 1024.41.

For purposes of this proposal, the Bureau assumes that a permanent modification of a borrower's mortgage loan obligation effectively cures the borrower's pre-modification delinquency. In other words, the Bureau assumes that a borrower who is performing under a permanent modification does not meet the definition of delinquency that the Bureau is proposing to add to § 1024.31. The Bureau seeks comment on whether there are types of permanent loan modifications or other circumstances for which this assumption would be inaccurate.

Finally, the Bureau is revising the current commentary to § 1024.41(i), which addresses servicers' obligations following the transfer of servicing rights, to accommodate proposed § 1024.41(k). Specifically, the Bureau is preserving the portion of comment 41(i)-1 that obligates a transferee servicer to comply with § 1024.41 regardless of whether a transferor servicer previously evaluated a borrower's complete loss mitigation application. As set forth in the section-by-section analysis of § 1024.41(k) below, the Bureau is proposing to move the balance of comment 41(i)-1, as revised, as well as comment 41(i)-2, as revised, into proposed § 1024.41(k) and proposed new commentary.

The Bureau seeks comment on the proposed revision to § 1024.41(i) generally. The Bureau specifically seeks comment on whether the borrower's right to a reevaluation should be contingent upon whether the borrower was current for a minimum period of time since the borrower's last-submitted complete loss mitigation application.

41(k) Servicing Transfers

The Bureau is proposing § 1024.41(k) to address the requirements applicable to loss mitigation applications pending at the time of a servicing transfer. Proposed § 1024.41(k) provides that, subject to certain exceptions, a transferee servicer must comply with § 1024.41's requirements within the same timeframes that were applicable to the transferor servicer. The proposed exceptions include a five-day extension of time for a transferee servicer to provide the written notification required by § 1024.41(b)(2)(i)(B), and a provision ensuring that a transferee servicer that acquires servicing through an involuntary transfer has at least 15 days after the transfer date to evaluate a borrower's pending complete loss mitigation application. The proposal also provides that if a borrower's appeal under § 1024.41(h) is pending as of the transfer date, a transferee servicer must evaluate the appeal pursuant to § 1024.41(h) if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal; a transferee servicer that is unable to evaluate an appeal must treat the appeal as a complete loss mitigation application and evaluate the borrower for all loss mitigation options available to the borrower from the transferee servicer.

Currently, § 1024.41 addresses transfers through the commentary. Comment 41(i)-1 provides that, among other things, documents and information transferred to a transferee servicer may constitute a loss mitigation application to the transferee servicer and may cause the transferee servicer to be required to comply with § 1024.41 with respect to a borrower's mortgage loan account. Comment 41(i)-2 states that a transferee servicer must obtain documents and information a borrower submitted in connection with a loss mitigation application, and that a transferee servicer should continue the evaluation of a complete loss mitigation application to the extent practicable. Finally, comment 41(i)-2 also states that, for purposes of specific subsections in § 1024.41, if a loss mitigation application is complete as to a transferee servicer, the transferee servicer is considered to have received the documents and information constituting the complete application as of the date the transferor servicer received the documents and information. The purpose of comment 41(i)-2 is to ensure that a servicing transfer does not deprive a borrower of protections to which a borrower was entitled from the transferor servicer.[190]

The Bureau interprets § 1024.41 and comments 41(i)-1 and 2 as generally requiring a

[190] 78 FR 10695, 10837 (Feb. 14, 2013).

transferee servicer to stand in the shoes of the transferor servicer with respect to a loss mitigation application pending at transfer. A transferee servicer that receives a loss mitigation application as a result of a transfer should comply with § 1024.41 within the timeframes that were applicable to the transferor servicer, and, as comment 41(i)-2 states, a borrower's protections are based upon when the transferor servicer received documents and information constituting a complete application. Nonetheless, by stating that the transferee should continue the review to the extent practicable, comment 41(i)-2 implies that there are times when a transferee servicer may not be able to continue the evaluation of a complete application.

The Bureau is concerned that current § 1024.41 and comments 41(i)-1 and 2 may not provide sufficient clarity to servicers and borrowers regarding a transferee servicer's duties under § 1024.41 in certain circumstances. The Bureau has received questions about the timeframes in which a transferee servicer must act and whether a transferee servicer must provide notices to a borrower if the transferor servicer already provided the same notices. The Bureau has also received questions about a transferee servicer's responsibilities in the event that continuing the evaluation of a complete loss mitigation application is not practicable. Finally, through outreach and industry monitoring efforts, the Bureau has learned from servicers that complying with certain of § 1024.41's requirements, such as the requirement in § 1024.41(b)(2)(i)(B) to provide written notification to a borrower within five days after receiving a loss mitigation application, can be especially difficult in the transfer context.

The Bureau believes that servicers and borrowers will benefit from greater clarity regarding a transferee servicer's obligations and a borrower's protections under § 1024.41, including with respect to certain situations not currently discussed in § 1024.41 and comments 41(i)-1 and 2. For example, the Bureau wishes to provide greater clarity regarding how transferee servicers should handle a pending appeal of a denial of a loan modification option, a pending offer of a loss mitigation option, and pending applications that are facially complete or become complete as of the transfer date. The Bureau also believes that under certain circumstances, it may be appropriate to provide a transferee servicer with an extension of time or flexibility in complying with § 1024.41.

The Bureau is therefore proposing § 1024.41(k) to address the requirements applicable to a transferee servicer with respect to a loss mitigation application pending as of the transfer date. As explained below, proposed § 1024.41(k) provides that, subject to certain exceptions, a transferee servicer must comply with § 1024.41's requirements within the same timeframes that were applicable to the transferor servicer. The proposal also provides that if a borrower's appeal under § 1024.41(h) is pending as of the transfer date, a transferee servicer must evaluate the appeal in accordance with § 1024.41(h) if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal; a transferee servicer that is unable to evaluate an appeal must treat the appeal as a complete loss mitigation application and evaluate the borrower for all loss mitigation options available to the borrower from the transferee servicer.

Proposed comment 41(k)-1 provides that a loss mitigation application is considered pending if it was subject to § 1024.41 and had not been fully resolved before the transfer date. The comment also clarifies that a pending application is considered pending *complete* application if, as of the transfer date, the application was complete under the transferor servicer's criteria. Thus, proposed comment 41(k)-1 is intended to avoid ambiguity about whether a loss mitigation application that was fully resolved by a transferor servicer would cause a transferee servicer to be required to comply with § 1024.41.

While proposed § 1024.41(k) specifies the timeframes in which a transferee servicer must comply with § 1024.41's loss mitigation procedural requirements following a transfer, the Bureau expects that transferor servicers with policies and procedures adopted pursuant to § 1024.38 will help enable transferee servicers' compliance with § 1024.41. Section 1024.38(b)(4) requires a transferor servicer to have policies and procedures reasonably designed to ensure that it can timely transfer all information and documents in its possession or control related to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred. Section 1024.38(b)(4) further specifies that a transferor servicer's policies and procedures must be reasonably designed to ensure that the documents and information are transferred in a form and manner that "enables a transferee servicer to comply with . . . applicable law." The Bureau therefore believes that a transferor servicer shares responsibility for enabling a transferee servicer to comply with § 1024.41(k)'s requirements and ensuring that borrowers will not be adversely impacted by a servicing transfer. Accordingly, the Bureau at this time does not believe it is necessary to impose any specific requirements in § 1024.41(k) with respect to transferor servicers. The Bureau will continue to monitor whether transferor servicers' practices raise consumer protection concerns that should be addressed through formal guidance or rulemaking.

41(k)(1) In General

Proposed § 1024.41(k)(1)(i) largely incorporates and clarifies existing comments 41(i)-1 and 2. It provides that a transferee servicer that acquires the servicing of a mortgage loan for which a loss mitigation application is pending as of the transfer date must comply with § 1024.41's requirements for that application. Proposed § 1024.41(k)(1)(i) further states that subject to the exemptions set forth in § 1024.41(k)(2) through (4), a transferee servicer must comply with § 1024.41's requirements within the timeframes that were applicable to the transferor servicer. Finally, proposed § 1024.41(k)(1)(i) states that any protections under § 1024.41(e) through (h), such as prohibitions on commencing foreclosure or conducting a foreclosure sale, that applied to a borrower before a transfer continue to apply notwithstanding the transfer.

The purpose of proposed § 1024.41(k)(1)(i) is to ensure that a transfer does not adversely affect a borrower who is pursuing loss mitigation options. A borrower generally has no control over whether and when a mortgage loan is transferred to another servicer. As the Bureau has previously observed, there is heightened risk inherent in transferring mortgage loans in loss mitigation.[191] The Bureau believes that generally holding a transferee servicer to the same standards and timelines as a transferor servicer helps mitigate the risk of consumer harm.

Proposed comment 41(k)(1)(i)-1.i incorporates a portion of existing comment 41(i)-2, stating that a transferee servicer must obtain from the transferor servicer documents and information a borrower submitted to a transferor servicer in connection with a loss mitigation application, consistent with policies and procedures adopted pursuant to § 1024.38. The proposed comment also provides that a transferee must comply with the applicable requirements of § 1024.41 with respect to a loss mitigation application received as a result of transfer, even if the transferor servicer was not required to comply with § 1024.41 (because, for example, the transferor servicer was a small servicer or the application was a duplicative request under § 1024.41(i) for the transferor servicer).

Proposed comment 41(k)(1)(i)-1.ii states that a transferee servicer must, in accordance with § 1024.41(b), exercise reasonable diligence to complete a loss mitigation application

[191] *See* 79 FR 63295, 63296 (Oct. 23, 2014).

received as a result of a transfer. The proposed comment further explains that in the transfer context, reasonable diligence includes ensuring that a borrower is informed of any changes to the application process, such as a change in the address to which the borrower should submit documents and information to complete the application, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application. Proposed comments 41(k)(1)(i)-1.i and ii are intended to avoid any ambiguity about whether a transferee servicer is required to comply with § 1024.41 with respect to loss mitigation applications received as a result of a transfer.

Proposed comment 41(k)(1)(i)-2 mirrors the last sentence of current comment 41(i)-2, stating that for purposes of § 1024.41(e) (borrower response), (f) and (g) (foreclosure protections), and (h) (appeal process), a transferee servicer must consider documents and information that constitute a complete application to have been received as of the date the transferor servicer received the documents and information. Proposed comment 41(k)(1)-2 further clarifies that an application that was facially complete with respect to a transferor servicer remains facially complete under § 1024.41(c)(2)(iv) with respect to the transferee servicer as of the date it was facially complete with respect to the transferor servicer. It also clarifies that if an application was complete with respect to the transferor servicer but is not complete with respect to the transferee servicer, the transferee servicer must treat the application as facially complete as of the date the application was complete with respect to the transferor servicer. The purpose of this comment is to ensure that a transfer does not affect the protections to which a borrower is entitled under § 1024.41.

Finally, proposed comment 41(k)(1)(i)-3 provides that a transferee servicer is not required to provide any notice required by § 1024.41 with respect to a particular loss mitigation application if the transferor servicer provided the notice to a borrower before the transfer. This comment is intended to address questions about whether a transferee servicer must resend a notice already provided by the transferor servicer as to a particular application.

Proposed § 1024.41(k)(1)(ii) provides that for purposes of § 1024.41(k), the transfer date is the date on which the transfer of servicing responsibilities from the transferor servicer to the transferee servicer occurs. Proposed comment 41(k)(1)(ii)-1provides that the transfer date corresponds to the date transferee servicer will begin accepting payments relating to the mortgage loan, which already must be disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).[192] Proposed comment 41(k)(1)(ii)-1 further clarifies that the transfer date is not necessarily the sale date for the transaction. As a result, the Bureau believes the proposed definition is consistent with the definition Fannie Mae employs in its servicing guide,[193] and the Bureau believes that it reflects the industry's common understanding of the term.

The Bureau solicits comment on the treatment of loss mitigation applications pending at transfer and whether it is appropriate to require a transferee servicer to comply with § 1024.41 within the timeframes that were applicable to the transferor servicer. Additionally, the Bureau solicits comment on whether, following a transfer, a transferee servicer should be required to provide a borrower a written notice of what documents and information the transferee servicer needs to complete the application, regardless of whether the transferor servicer has provided such

[192] Section 1024.33(b)(4)(iv) requires the notice of transfer to include "The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days."
[193] *See* Fannie Mae, Servicing Guide Announcement SVC-2014-06, at 1 (May 9, 2014), *available at* https://www.fanniemae.com/content/announcement/svc1406.pdf.

a notice.

41(k)(2) Acknowledgement Notices

Proposed § 1024.41(k)(2) provides that if a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the notice required by § 1024.41(b)(2)(i)(B) has not expired as of the transfer date, the transferee servicer must provide the notice within 10 days (excluding legal public holidays, Saturdays, or Sundays) after the date the transferor servicer received the application.

Section 1024.41(b)(2)(i)(B) states that if a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer must notify the borrower in writing within five days (excluding legal public holidays, Saturdays, or Sundays) that the servicer acknowledges receipt of the application and the servicer has determined that the application is complete or incomplete. If the application is incomplete, the notice must, among other things, identify the documents or information necessary to complete the application.

The Bureau is concerned about a transferee servicer's ability to comply with § 1024.41(b)(2)(i)(B) in the scenario where a transferor servicer receives a loss mitigation application and, before the time period in which to provide the notice required by § 1024.41(b)(2)(i)(B) expires, it transfers the mortgage loan to the transferee servicer, without providing the notice. In that situation, a transferee servicer would be required to provide the notice within five days (excluding legal public holidays, Saturdays, or Sundays) of when the transferor servicer received the application. Depending on the timing of the transfer, a transferee servicer might have as little as one day after the transfer date to provide this notice.

Information the Bureau has gathered through its outreach and industry monitoring efforts confirms that a transferee servicer often has difficulty providing the notice required by

§ 1024.41(b)(2)(i)(B) within five days after the transferor servicer received a loss mitigation application. The Bureau understands that a transferee servicer typically requires several days to transition a mortgage loan file and related information onto its systems. A transferee servicer may be unable to transition this information and accurately review a loss mitigation application within the five-day time period specified in § 1024.41(b)(2)(i)(B), particularly for applications received within a few days before transfer. As a result, the Bureau believes that in this situation, a transferee servicer acting diligently and in good faith may still be unable to timely comply with the requirements of § 1024.41(b)(2)(i)(B).

The Bureau is therefore proposing to allow transferee servicers up to an additional five days to comply with § 1024.41(b)(2)(i)(B) with respect to applications pending as of the transfer date. Specifically, proposed § 1024.41(k)(2) requires a transferee servicer to provide the notice required by § 1024.41(b)(2)(i)(B) within 10 days (excluding legal public holidays, Saturdays, or Sundays) after the date the transferor servicer received a borrower's application.

The Bureau believes that establishing a specific deadline for the transferee servicer to provide the notice required by § 1024.41(b)(2)(i)(B) may encourage transferor and transferee servicers to work together to streamline the transfer of documents. In particular, a specific deadline underscores the importance of § 1024.38(b)(4)(i), which requires a transferor servicer to have policies and procedures reasonably designed to ensure that it can timely transfer all information and documents in its possession or control relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred. Thus, the Bureau expects transferor servicers to timely and accurately identify and transfer all loss mitigation applications to transferee servicers. Further, the Bureau believes a firm compliance deadline may avoid unnecessary delays in the loss mitigation application process, while at the same time affording transferee servicers additional time to properly respond to a borrower's application.

The Bureau also believes that this proposed extension would facilitate transferee servicers' compliance with § 1024.41(b)(2)(i)(B) while not materially affecting most borrowers. A borrower's protections under § 1024.41(e) through (h) are determined by the date on which a servicer receives a borrower's *complete* application; extending the time for a transferee servicer to comply with § 1024.41(b)(2)(i)(B) therefore could delay, but in most cases would not prevent, a borrower from obtaining those protections. Moreover, the proposed extension is for a relatively brief period of time, and the Bureau does not believe that a short delay in providing the § 1024.41(b)(2)(i)(B) notice would significantly lengthen the loss mitigation application process. Finally, the Bureau believes that allowing a transferee servicer some additional time to review a borrower's initial loss mitigation application may result in more accurate determinations regarding the documents and information needed to complete an application, which would ultimately benefit borrowers.

Nonetheless, the Bureau recognizes that a delay in providing the § 1024.41(b)(2)(i)(B) notice could impact a borrower in certain circumstances, such as when a servicer receives an incomplete loss mitigation application shortly before the 90th or 38th day before a foreclosure sale. In that instance, a borrower has an interest in completing the application as soon as possible to preserve the maximum protections available under § 1024.41(e) through (h). Allowing a transferee servicer additional time to provide a borrower with a written notification of the documents and information required to complete an application could result in a borrower being asked to obtain and submit the documents in a just a few days, which generally would be considered impracticable.[194]

The Bureau requests comment on whether borrowers currently have difficulty in obtaining and submitting required documents and information to complete an application that the servicer received shortly before the 90th or 38th day before a foreclosure sale, and whether the extension in proposed § 1024.41(k)(2) would exacerbate such difficulties. The Bureau further requests comment on whether a transferee servicer that avails itself of the extension in proposed § 1024.41(k)(2) should be required to give a borrower additional time to complete an application, such that the extension under § 1024.41(k)(2) would also give the a borrower additional time past the 90th or 38th day before a foreclosure sale to submit a complete application and obtain the applicable protections under § 1024.41(e) through (h).

The Bureau further requests comment on whether it is reasonable to require a transferee servicer to provide the written notification required by § 1024.41(b)(2)(i)(B) within 10 days (excluding legal public holidays, Saturdays, or Sundays) from the date a transferor servicer received a loss mitigation application, or whether a shorter or longer period is more appropriate. Finally, if a longer period were appropriate, the Bureau requests comment on whether a transferee servicer that avails itself of such a longer extension should be required to give a borrower additional time to complete an application, such that an extension would also give the a borrower additional time past the 90th or 38th day before a foreclosure sale to submit a complete application and obtain the applicable protections under § 1024.41(e) through (h).

41(k)(3) Complete Loss Mitigation Applications Pending at Transfer

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[194] *See* comment 41(b)(2)(ii)-1.

Proposed § 1024.41(k)(3)(i) provides that, with two exceptions, a transferee servicer that acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date must comply with the applicable requirements of § 1024.41(c)(1) and (4) within 30 days of the date the transferor servicer received the complete application. Thus, unless an exception applies, a transfer does not affect the time in which a borrower should receive a notice of which loss mitigation options, if any, a servicer will offer to the borrower. The Bureau believes that this proposed requirement may be necessary to ensure that a transfer does not adversely affect a borrower.

Proposed comment 41(k)(3)(i)-1 clarifies a transferee servicer's obligations regarding an application that was complete with respect to the transferor servicer but for which the transferee servicer needs additional documentation or corrections to a previously submitted document to evaluate the borrower for all loss mitigation options based upon the transferee servicer's criteria. Specifically, the proposed comment clarifies that in this scenario and consistent with proposed § 1024.41(c)(2)(iv), the application is facially complete as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer, and the borrower is entitled to all of the protections under § 1024.41(c)(2)(iv). Additionally, once the transferee servicer receives the information or corrections necessary to complete the application, § 1024.41(c)(3) requires the transferee servicer to provide a notice of complete application. Finally, the proposed comment clarifies that an application that was complete with respect to the transferor servicer remains complete even if the transferee servicer requests that a borrower resubmit the same information in the transferee servicer's specified format or make clerical corrections to the application. The comment further clarifies that a borrower's failure to resubmit such information or make such clerical corrections does not extend the time in which the transferee servicer must complete the evaluation of the borrower's complete application. The purpose of this comment is to clarify that a borrower does not lose protections under § 1024.41, including foreclosure protections, if a transferee servicer determines that it needs additional documentation or corrections to a previously submitted document, and that a request to resubmit documents in a different format will not extend the time by which a borrower will receive a determination of which loss mitigation options the servicer will offer.

Proposed comment 41(k)(3)(i)-2 addresses the reverse situation in which a borrower's loss mitigation application was incomplete based upon the transferor servicer's criteria prior to transfer but the transferee servicer determines that the application is complete based upon its own criteria. In that case, the proposed comment clarifies that the application is considered a pending loss mitigation application complete as of the transfer date for purposes of § 1024.41(k)(3), but complete as of the date the transferor servicer received the documents and information constituting the complete application for purposes of § 1024.41(e) through (h). This comment is intended to avoid confusion about the timeframe in which the transferee servicer must evaluate a complete application and the date on which the borrower obtained protections under § 1024.41.

Proposed § 1024.41(k)(3)(ii)(A) sets forth the first proposed exception to the requirement to comply with § 1024.41(c)(1) and (4) within 30 days of the date the transferor servicer received the complete application. This proposed exception concerns involuntary transfers of servicing. The Bureau understands that a servicer that acquires servicing as a result of an involuntary transfer is less likely to be able to plan properly for a transfer, such as by engaging in pre-transfer due diligence, coordinating the delivery and onboarding of documents and information, or potentially negotiating contractual provisions requiring the transferor servicer to identify mortgage loans that are in active or pending loss mitigation. Additionally, involuntary transferee servicers may be more likely to receive loans from a failing or bankrupt servicer, which in turn may be more likely to have failed to maintain adequate records regarding borrowers' mortgage loans. As a result, an involuntary transferee servicer may be unable to complete the evaluation within 30 days of when the transferor servicer received the complete application.

Therefore, proposed § 1024.41(k)(3)(ii)(A) would allow a servicer that acquires servicing as a result of an involuntary transfer to comply with the applicable requirements of § 1024.41(c)(1) and (4) within 30 days of the date the transferor received a complete loss mitigation application, or within 15 days of the transfer date, whichever is later. The Bureau believes that allowing an involuntary transferee servicer at least 15 days from the transfer date to comply would give the transferee servicer sufficient opportunity to obtain documents and information from a transferor servicer and complete the evaluation of a borrower's application. The Bureau also believes that this relatively brief proposed extension of time, when applicable, would impose only limited costs on borrowers. A borrower's protections under § 1024.41(e) through (h) are established as of the date a servicer *receives* a complete application, and extending the time to *evaluate* the complete application would not alter those protections. Furthermore, allowing an involuntary transferee servicer a minimum of 15 days after the transfer date to review a complete loss mitigation application may result in a more accurate evaluation, ultimately benefitting a borrower.

Proposed § 1024.41(k)(3)(ii)(B) provides that a transfer is involuntary when an unaffiliated investor or a court or regulator with jurisdiction requires, with less than 30 days advance notice, the transferor servicer to transfer servicing to another servicer and the transferor servicer is in breach of, or default under, its servicing agreement for loss mitigation related-servicing performance deficiencies or is in receivership or bankruptcy. This proposed definition builds on the definition of involuntary transfer used in the Department of the Treasury's HAMP directives, which encompasses transfers that are required by a court or regulator with jurisdiction.[195] The Bureau believes, however, that including every investor-required transfer within the definition of involuntary transfer may be too broad for § 1024.41's purposes, as it could be interpreted as including all investor flow agreements, which could cover transfers for which the transferee servicer is able to plan and conduct reasonable preparation. Accordingly, with respect to investor-required transfers, the Bureau is proposing to limit the definition of involuntary transfer to those transfers that occur while the transferor servicer is in breach of, or in default under, its servicing agreement for loss mitigation related-servicing performance deficiencies. Further, the transferor servicer must have received the direction to transfer the loan thirty days or less before the transfer date. The Bureau believes that this definition will appropriately capture those transfers for which a transferee servicer may have difficulty timely complying with § 1024.41(c)'s loss mitigation requirements.

The second proposed exception concerns instances where a transferee servicer's completion of the evaluation within the timeframes set forth in proposed § 1024.41(k)(3)(i) or (ii)(A), as applicable, is impracticable under the circumstances. The Bureau understands that due to the unique circumstances and complications that may arise in connection with a transfer, there may be times when, despite the transferee servicer's good faith efforts, it may be impracticable to comply with the timing requirements of § 1024.41(k)(3)(i) or (ii)(A). In that situation, proposed § 1024.41(k)(3)(iii) requires a transferee servicer to comply with the applicable

[195] *See* Dep't of Treasury, Supplemental Directive 11-2, *Making Home Affordable Program – Servicing Transfers* (Dec. 27, 2011), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1112.pdf.

requirements of § 1024.41(c)(1) and (4) within a reasonably prompt time after expiration of the applicable time period in § 1024.41(k)(3)(i) or (ii)(A). The Bureau expects that in most circumstances, it will be practicable for a transferee servicer to evaluate a complete application within the prescribed timeframes and that an extension will not be necessary or appropriate.

The Bureau is also proposing comment 41(k)(3)(iii)-1, which clarifies that for purposes of § 1024.41(k)(3)(iii), a servicer that complies with the applicable requirements of § 1024.41(c)(1) and (4) within five days after the expiration of the applicable timeframe in proposed § 1024.41(k)(3)(i) or (ii)(A) would generally be considered to have acted within a "reasonably prompt time." As discussed in the section-by-section analysis of § 1024.41(k)(2), servicing transfers can raise unique circumstances. The Bureau therefore believes that when it is impracticable for a transferee servicer to timely complete the evaluation of a borrower's pending complete loss mitigation application due to unforeseen complications arising from a transfer, a transferee servicer should be afforded additional time to complete the evaluation.

The Bureau seeks comment on the treatment of complete applications pending at transfer. In particular, the Bureau seeks comment on whether it is ever necessary or appropriate to give transferee servicers an extension of time to evaluate complete applications. If an extension is necessary or appropriate, the Bureau seeks comment on which factors and circumstances, including but not limited to involuntary transfers, may require an extension, the appropriate length of any extension, and the burden transferee servicers should have to carry to demonstrate a need for the extension. The Bureau also seeks comment on what obstacles transferee servicers currently face in obtaining and evaluating pending loss mitigation applications and the problems faced by borrower who have applications pending at the time of a servicing transfer, as well as whether an extension of time to comply with § 1024.41 following a transfer would ameliorate or exacerbate those problems.

41(k)(4) Applications Subject to Appeal Process

Proposed § 1024.41(k)(4) provides that if a borrower timely appeals a transferor servicer's denial of a loan modification option under § 1024.41(h), a transferee servicer must evaluate the appeal if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal. A transferee servicer that is unable to evaluate an appeal must treat the borrower's appeal as a pending complete loss mitigation application and comply with the requirements of § 1024.41 for such application. Proposed § 1024.41(k)(4) would apply if a borrower made an appeal before the transfer date and the appeal remains pending as of the transfer date, or if the period for making an appeal under § 1024.41(h) had not expired as of the transfer date and a borrower subsequently made a timely appeal.

The Bureau believes that a transfer should not deprive a borrower of the right to appeal a servicer's denial of a loan modification option. As discussed in the 2013 RESPA Servicing Final Rule, borrowers and consumer advocacy groups dispute in many cases whether servicers have properly applied the requirements of loan modification programs.[196] The terms of loan modification programs are complex, and the Bureau continues to believe that, as with any complex and unique process, servicers may make mistakes in evaluating borrowers' complete applications. Moreover, investors or guarantors may be motivated to transfer servicing to a new servicer based on a determination that the new servicer is better able to evaluate borrowers for loss mitigation options. In that case, the Bureau believes that both a borrower and an investor or guarantor may benefit from the new servicer attempting to determine whether the transferor

[196] 78 FR 10695, 10835 (Feb. 14, 2013).

servicer mistakenly denied the borrower for a loan modification option.

Therefore, proposed § 1024.41(k)(4) provides that if a transferee servicer that acquires the servicing of a mortgage loan for which, as of the transfer date, a borrower's appeal under § 1024.41(h) is pending or a borrower's time period to appeal under § 1024.41(h) has not expired, the transferee servicer must evaluate the appeal if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal. Proposed § 1024.41(k)(4)(i) further provides that, if a servicer is able to evaluate an appeal but it is not practicable under the circumstances to complete the determination within 30 days of when the borrower made the appeal, the transferee servicer must complete the evaluation of the borrower's appeal and provide the notice required by § 1024.41(h)(4) within a reasonably prompt time. Proposed comment 41(k)(4)-2 clarifies that in general, a reasonably prompt time would be within an additional five days after the expiration of the original 30-day evaluation window. Proposed § 1024.41(k)(4)(i) thus imposes the same requirements on a transferee servicer to evaluate a pending appeal as a pending complete loss mitigation application. For the reasons discussed above, the Bureau believes that in some circumstances, a transferee servicer may need to exceed the 30-day evaluation window to complete the evaluation.

The Bureau recognizes, however, that a transferee servicer may not always be able to determine whether a transferor servicer incorrectly denied the borrower for a loan modification option. For example, the transferee servicer may not have sufficient information about the evaluation criteria used by the transferor servicer, in particular when the transferor servicer denied a borrower for a loan modification option that the transferee servicer does not offer, or when the transferee servicer receives the mortgage loan file through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer does not have sufficient information to evaluate the appeal. The Bureau believes that such circumstances will be rare, that transferee servicers will generally be able to evaluate borrowers' appeals, and that borrowers will not be disadvantaged as a result of transfers. In those limited circumstances, however, proposed § 1024.41(k)(4)(ii) requires the transferee servicer to treat the appeal as a pending complete loss mitigation application and evaluate the borrower for all options available to the borrower from the transferee servicer. For purposes of § 1024.41(c) or (k)(2), as applicable, such a pending complete loss mitigation application would be considered received as of the date the appeal was received. For purposes of § 1024.41(e) through (h), such a pending complete loss mitigation application would be considered facially complete as of the date the application was facially complete with respect to the transferor servicer.

The Bureau believes that, in cases where the transferee servicer cannot evaluate the appeal, requiring the transferee servicer to reevaluate the borrower for all loss mitigation options that may be available to the borrower preserves the benefits of the appeal process for borrowers. Furthermore, the Bureau believes that the proposed requirement would not impose substantial burdens on transferee servicers because a transferee servicer is already required to comply with the requirements of § 1024.41 regardless of whether the borrower received an evaluation of a complete loss mitigation application from the transferor servicer.[197]

Proposed comment 41(k)(4)-1 notes that a transferee servicer may be unable to evaluate an appeal when, for example, the transferor servicer denied a borrower for a loan modification option that the transferee servicer does not offer or when the transferee servicer receives the mortgage loan file through an involuntary transfer and the transferor servicer failed to maintain

[197] 12 CFR 1024.41(i); comment 41(i)-1.

proper records such that the transferee servicer lacks sufficient information to evaluate the appeal. The proposed comment also clarifies that if a transferee servicer is required to treat the appeal as a pending complete application, the transferee servicer must permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer, in addition to the loss mitigation options, if any, that the transferee servicer determines to offer the borrower based on its own evaluation of the borrower's complete loss mitigation application. This proposed comment is intended to ensure that a transfer does not have the result of depriving a borrower of any loss mitigation options that were offered by the transferor servicer, and it is consistent with the treatment of pending loss mitigation offers in proposed § 1024.41(k)(5).

The Bureau requests comment on the treatment of appeals pending at transfer, including whether transferee servicers may need additional time to evaluate pending appeals, the extent to which transferee servicers are able to evaluate appeals of a transferor servicer's denial of a loan modification option, and whether a pending appeal should ever or always be treated as a new loss mitigation application such that a transferee servicer must evaluate the borrower for all available loss mitigation options. Additionally, the Bureau is concerned about the appropriate recourse when, if ever, a transferee servicer is unable to evaluate a borrower's appeal. The Bureau believes that treating the appeal as a pending complete application would provide benefits to borrowers, but the Bureau requests comment on whether such treatment would be in the borrower's best interests where, for example, the borrower's application documents may have gone stale or the borrower has little hope of being offered any loss mitigation option, and whether such treatment is inconsistent with applicable investor requirements.

41(k)(5) Pending Loss Mitigation Offers

Proposed § 1024.41(k)(5) provides that a transfer does not affect the borrower's ability to accept or reject a loss mitigation option offered under § 1024.41(c) or (h). Specifically, the proposal states that if a transferor servicer offered the borrower a loss mitigation option and the borrower's time to accept or reject the offer had not expired as of the transfer date, a transferee servicer must allow the borrower to accept or reject the offer.

Proposed comment 41(k)(5)-1 clarifies that a transferee servicer should expect that some borrowers will provide their acceptances to the transferor servicer and, pursuant to the policies and procedures maintained under § 1024.38(b)(4), a transferee servicer should obtain those acceptances from the transferor servicer. For example, a borrower may be able to accept a trial modification agreement by making an initial payment of the modified amount. A borrower may timely send this payment to the transferor servicer instead of to the transferee servicer. In this situation, the Bureau believes that the transferee servicer must honor an acceptance that the borrower timely sent to the transferor servicer.

Legal Authority

The Bureau proposes to rely on its authority under sections 6(j)(3), 6(k)(1)(C), 6(k)(1)(E) and 19(a) of RESPA to propose these amendments to § 1024.41. The proposed loss mitigation procedures are necessary and appropriate to achieve the consumer protection purposes of RESPA, including by requiring servicers to provide borrowers with timely access to accurate and necessary information regarding an evaluation for a foreclosure avoidance option and to facilitate the evaluation of borrowers for foreclosure avoidance options. Further, the proposed loss mitigation procedures implement, in part, a servicer's obligation to take timely action to correct errors relating to avoiding foreclosure under section 6(k)(1)(C) of RESPA by establishing servicer duties and procedures that must be followed where appropriate to avoid errors with respect to foreclosure.

In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purposes and objectives of title X of the Dodd-Frank Act. Specifically, the Bureau believes that the proposed amendments to § 1024.41 are necessary and appropriate to carry out the purpose under section 1021(a) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services are fair, transparent, and competitive, and the objective under section 1021(b) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. The Bureau additionally relies on its authority under section 1032(a) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that features of any consumer financial product or service, both initially and over the terms of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Appendix MS

Appendix MS–3(A) through (D) – Model Forms for Force-Placed Insurance Notices

The Bureau is proposing three sets of changes to the model forms for force-placed insurance notices, located at appendix MS–3(A) through (D). First, the Bureau proposes to amend MS–3(A) and (B) to align the model forms to the proposed amendments to § 1024.37(c)(2)(v). As discussed in the section-by-section analysis of § 1024.37(c)(2)(v), the Bureau is proposing to amend that provision to require the force-placed insurance notice to state, as applicable, that the borrower's hazard insurance provides insufficient coverage and that the servicer does not have evidence that the borrower has hazard insurance that provides sufficient coverage. The Bureau is therefore proposing to make a corresponding change to the language in model forms MS–3(A) and (B), so that the forms include the statement "your [hazard] [Insurance Type] insurance [is expiring] [expired] [provides insufficient coverage], and we do not have evidence that you have obtained new coverage."

Second, the Bureau is proposing a technical change to align the model forms with the requirements of § 1024.37(c)(2)(ix)(A) and (e)(2)(viii)(A). Those provisions require the force-placed insurance initial, reminder, and renewal notices to include a statement that the insurance the servicer has purchased or purchases "may cost significantly more than hazard insurance purchased by the borrower." Current model forms MS–3(A) through (D) omit the word "significantly." The Bureau is proposing to amend model forms MS–3(A) through (D) to add the word significantly, such that each model form would track the language of § 1024.37(c)(2)(ix)(A) and (e)(2)(viii)(A).

Third, the Bureau is proposing a technical change to MS–3(D) to align the model form with the requirements of § 1024.37(e)(3), which requires servicers to provide certain information on the form in bold text.

Legal Authority

The Bureau is proposing to exercise its authority under section 6(k)(1)(E) of RESPA to amend the model forms in appendix MS–3(A) through (D) to Part 1024 of Regulation X. For the reasons given above, the Bureau believes that the amendments to the model forms for the force-placed insurance notices are appropriate to align the text of the model forms with the disclosures required by § 1024.37.

Appendix MS–4—Model Clause for the Written Early Intervention Notice

Proposed model clause MS–4(D) in appendix MS–4 illustrates the disclosures required under proposed § 1024.39(d)(2)(iii)(A). The Bureau has developed proposed model clause MS–4(D) to assist servicers that are subject to the FDCPA with respect to a borrower who has invoked the FDCPA's cease communication protections in complying with the modified written early intervention notice required by § 1024.39(d)(2)(iii). As discussed in the section-by-section analysis of § 1024.39(d)(2), proposed § 1024.39(d)(2)(iii) requires that the written early intervention notice include a statement that the servicer may or intends to invoke its specified remedy of foreclosure pursuant to section 805(c)(2) or (3) of the FDCPA. Proposed model clause MS–4(D) may be used to comply with this requirement. Specifically, proposed model clause MS–4(D) states, "This is a legally required notice sent to borrowers who are at least 45 days delinquent. We have a right to invoke foreclosure. Loss mitigation or other alternatives may be available to help you avoid losing your home." The Bureau seeks comment on whether proposed model clause MS–4(D) is appropriate, and whether alternate or additional model clauses would be helpful to borrowers and servicers in this context.

Legal Authority

The Bureau is proposing to exercise its authority under section 6(k)(1)(E) of RESPA and section 814(d) of the FDCPA to add new model clause MS–4(D) in appendix MS–4 to Part 1024 of Regulation X. For the reasons discussed in the section-by-section analysis of § 1024.39(d)(2), the Bureau believes that requiring a servicer to provide the modified written early intervention notice if loss mitigation options are available is a reasonable interpretation of the exceptions under section 805(c)(2) and (3) of the FDCPA, which permit a debt collector to communicate with a consumer who has invoked the cease communication protections to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked or intends to invoke a specified remedy.

C. Regulation Z

Section 1026.2 Definitions and Rules of Construction

Paragraph (a)(11)

As noted in part V.A., the Bureau is proposing that all of the Mortgage Servicing Rules apply to confirmed successors in interest. Accordingly, similar to proposed § 1024.30(d) with respect to Regulation X's mortgage servicing rules,[198] proposed § 1026.2(a)(11) defines the term consumer to include a successor in interest once a servicer confirms the successor in interest's identity and ownership interest in the dwelling for the purposes of Regulation Z's mortgage servicing rules—§§ 1026.20(c) through (e), 1026.36(c), and 1026.41. Confirmed successors in interest covered by proposed § 1026.2(a)(11) would not necessarily have assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law.[199]

As described in part V.A., the Bureau is proposing this change because the Bureau believes, based on repeated reports from consumers, consumer advocacy groups, and other stakeholders, that successors in interest face many of the challenges that Regulation Z's mortgage servicing rules were designed to prevent. Because a successor in interest is a homeowner whose dwelling is subject to foreclosure if the mortgage loan obligation is not satisfied, the Bureau believes that the same reasons supporting the Bureau's adoption of the 2013 TILA Servicing Final Rule support proposed § 1026.2(a)(11).

The Bureau believes that it is appropriate to limit the application of this portion of the proposed rule to successors in interest whom servicers have confirmed have an ownership

[198] *See* section-by-section analysis of § 1024.30(d), *supra*.
[199] As indicated in part V.A., *supra*, the Bureau understands that whether a successor in interest has assumed a mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law is a fact-specific question.

interest in the dwelling. Because some people representing themselves as successors in interest may not actually have an ownership interest in the dwelling, the Bureau believes that requiring servicers to apply Regulation Z's mortgage servicing rules' communication and disclosure requirements to successors in interest before servicers have confirmed the successor in interest's identity and ownership interest in the dwelling may present privacy and other concerns. For the same reason, the Bureau also believes it is inappropriate to require servicers to incur substantial costs before confirming the successor in interest's identity and ownership interest in the dwelling.

The Bureau has considered each of Regulation Z's mortgage servicing rules and believes that each portion should apply to confirmed successors in interest. The Bureau also generally believes that it would add unnecessary complexity to the rules to require servicers to apply some but not all of Regulation Z's mortgage servicing rules to confirmed successors in interest. The Bureau believes it is preferable to apply all of Regulation Z's mortgage servicing rules to confirmed successors in interest, unless there is a compelling reason not to apply a particular rule.

With respect to § 1026.20(c) through (e), under proposed § 1026.2(a)(11), once a servicer confirms a successor in interest's identity and ownership interest in the dwelling, the servicer would be required to provide successors in interest with ARM disclosures under § 1026.20(c) and (d) and with escrow account cancellation notices under § 1026.20(e).[200] The Bureau

[200] Section 1026.20(e) will become effective on August 1, 2015. *See* Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 78 FR 79730, 79732, 80328–29 (Dec. 31, 2013). Section 1026.20(c) and (d) apply with respect to "a closed-end consumer credit transaction secured by the consumer's principal dwelling," and § 1026.20(e) applies with respect to "a closed-end consumer credit transaction secured by a first lien on real property or a dwelling." Accordingly, with respect to

believes that the disclosures required by § 1026.20(c) through (e) would provide successors in interest with important information to allow the successor in interest to keep the mortgage loan current, which in turn will help the successor in interest avoid foreclosure. Further, because servicers are already required to comply with § 1026.20(c) through (e) with respect to prior consumers, any additional cost to servicers to apply these requirements to successors in interest would be minimal. The Bureau believes that the cost would be limited to updating servicer systems initially, adding individual successors in interest to the system on an ongoing basis, and printing and mailing costs, if any. The Bureau believes that the resulting consumer protection of this vulnerable group justifies the additional cost to servicers.

The Bureau solicits comment on whether § 1026.20(c) through (e) should not apply with respect to successors in interest. The Bureau also solicits comment on whether, in the case of consumer death, the servicer should continue providing disclosures to the consumer's estate until a successor in interest's status has been confirmed.

With respect to § 1026.36(c), under proposed § 1026.2(a)(11), once a servicer confirms a successor in interest's identity and ownership interest in the dwelling, the servicer would be required to comply with § 1026.36(c)'s requirements regarding payment processing, the prohibition on pyramiding of late fees, and payoff statements with respect to the successor in interest.[201] The Bureau believes that § 1026.36(c)'s protections would help successors in interest

successors in interest under proposed § 1026.2(a)(11), § 1026.20(c) and (d) would apply with respect to a mortgage loan secured by the successor in interest's principal dwelling, and § 1026.20(e) would apply in connection with a mortgage loan secured by a first lien on real property or a dwelling.

[201] Section 1026.36(c)(1) and (2) apply in connection with "a consumer credit transaction secured by a consumer's principal dwelling," and § 1026.36(c)(3) applies in connection with "a consumer credit transaction secured by a consumer's dwelling." Accordingly, with respect to successors in interest under proposed § 1026.2(a)(11),

maintain ownership of their homes; successors in interest, as owners of a dwelling securing a mortgage loan, may be required to make payments on the loan to avoid foreclosure. As noted in part V.A., the Bureau has heard from consumers and consumer advocacy groups that some servicers have refused to accept payments from successors in interest, which in turn may lead to delinquency on the mortgage loan and, eventually, foreclosure. The Bureau believes that applying § 1026.36(c)'s prompt crediting requirements to confirmed successors in interest would alleviate this problem. The Bureau also believes that providing successors in interest with access to the loan's payoff balance would serve to keep successors in interest informed about the mortgage loan secured by the dwelling and would help prevent unnecessary foreclosure, as the payoff balance is the amount that ultimately must be paid to prevent the servicer from foreclosing on the dwelling.[202] The Bureau also believes that because successors in interest, as owners of a dwelling securing a mortgage loan, may be required to make payments on the loan to avoid foreclosure, the prohibition on pyramiding of late fees would serve TILA's purpose of "protect[ing] consumers against inaccurate and unfair credit billing practices."[203]

Additionally, because § 1026.36(c) already requires servicers to comply with these requirements with respect to prior consumers, the Bureau believes that the additional cost to servicers to apply these requirements to successors in interest will be relatively minimal. In any event, the Bureau believes that providing these consumer protections to this vulnerable group justifies the additional cost to servicers.

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§ 1026.36(c)(1) and (2) would apply in connection with a mortgage loan secured by a consumer's principal dwelling, and § 1026.36(c)(3) would apply in connection with a mortgage loan secured by a consumer's dwelling.

[202] For the reasons discussed in the section-by-section analysis of § 1024.30(d), *supra*, the Bureau believes that providing confirmed successors in interest with payoff balances does not present privacy concerns.

[203] 78 FR 10901, 10914 (Feb. 14, 2013) (quoting 15 U.S.C. 1601(a)).

The Bureau solicits comment on whether certain parts of § 1026.36(c) should apply with respect to successors in interest even if the servicer has not confirmed the successor in interest's identity and ownership interest in the dwelling. Further, the Bureau solicits comment on whether certain parts of § 1026.36(c) should not apply with respect to confirmed successors in interest.

With respect to § 1026.41, under proposed § 1026.2(a)(11), once a servicer confirms a successor in interest's identity and ownership interest in the dwelling, the servicer would be required to provide the successor in interest with ongoing periodic statements required under § 1026.41.[204] As described in part V.A, the Bureau is proposing this change because the Bureau has received repeated reports from consumers and consumer advocacy groups that successors in interest face many of the challenges that Regulation Z's mortgage servicing rules were designed to prevent. Specifically, when the Bureau issued the periodic statement requirement in the 2013 TILA Servicing Final Rule, the Bureau stated that the periodic statement "serve[s] a variety of important purposes, including informing consumers of their payment obligations, providing information about the mortgage loan, creating a record of transactions that increase or decrease the outstanding balance, providing information needed to identify and assert errors, and providing information when consumers are delinquent."[205] The Bureau believes that receiving periodic statements would serve these same purposes for successors in interest, who as homeowners of a dwelling securing a mortgage loan may be required to make payments on the loan to avoid foreclosure.

Further, because § 1026.41 already requires servicers to send periodic statements to the

[204] Section 1026.41 applies with respect to "a closed-end consumer credit transaction secured by a dwelling." Accordingly, with respect to successors in interest under proposed § 1026.2(a)(11), § 1026.41 would apply with respect to a mortgage loan secured by a dwelling.
[205] 78 FR 10901, 10959 (Feb. 14, 2013).

prior consumer, the Bureau believes that the additional cost to servicers to apply these requirements to successors in interest will be minimal. The Bureau believes that the cost would be limited to updating servicer systems initially, adding individual successors in interest to the system on an ongoing basis, and printing and mailing costs, if any. In any event, the Bureau believes that providing consumers who have an ownership interest in a property with detailed information about the status of the loan secured by the property justifies the additional cost.

The Bureau solicits comment on whether § 1026.41 should provide that, in the case of consumer death, the servicer should continue providing periodic statements to the consumer's estate until a successor in interest's status has been confirmed.

Proposed commentary. Proposed comment 2(a)(11)-1 provides that, even after a servicer confirms a successor in interest's status, the servicer is still generally required to comply with the requirements of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 with respect to the prior consumer. The proposed comment indicates, however, that a servicer is not required to comply with the requirements of §§ 1026.20(c) through (e) and 1026.41 if the prior consumer also has either died or has been released from the obligation on the mortgage loan, and a servicer is not required to comply with the requirements of § 1026.36(c) if the prior consumer also has been released from the obligation on the mortgage loan. The proposed comment also provides that the prior consumer retains any rights under §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 that accrued prior to the confirmation of the successor in interest to the extent these rights would otherwise survive the prior consumer's death or release from the obligation.

The Bureau is proposing this comment because the Bureau believes that §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 would still provide valuable information and protections to prior consumers even after confirmation of a successor in interest. In particular, because the prior consumer may remain liable on the mortgage loan even after a successor in interest is confirmed and so still has significant legal interests at stake, the Bureau believes that it would be appropriate for the prior consumer to continue receiving the information and protections of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41.

The Bureau acknowledges that, under this proposed comment, servicers will sometimes be required to comply with Regulation Z's mortgage servicing rules with respect to more than one person—both the prior consumer and the successor in interest, as well as, in some cases, multiple successors in interest who each acquire an ownership interest in a dwelling. The Bureau notes that, under the Mortgage Servicing Rules, it is already the case that the rules may apply with respect to more than one consumer for a particular mortgage loan. It is quite common for more than one consumer (for example, spouses) to be obligated on the mortgage note, and the Mortgage Servicing Rules apply with respect to each consumer in such cases. Accordingly, the Bureau does not believe that applying Regulation Z's mortgage servicing rules to successors in interest presents novel challenges for servicers in this regard.

On the other hand, with respect to §§ 1026.20(c) through (e) and 1026.41, the Bureau believes that it would not often be useful to the prior consumer's estate to continue receiving ARM disclosures, escrow account cancellation notices, and periodic statements once a servicer confirms a successor in interest's status and the prior consumer has died. When a successor in interest's status has been confirmed and the prior consumer has died, the estate of the prior consumer would have at most a relatively narrow interest in the mortgage loan. Accordingly, the Bureau believes that prior consumers should not receive ARM disclosures, escrow account cancellation notices, or periodic statements after the successor in interest has been confirmed and the prior consumer has died. By contrast, with respect to § 1026.36(c), the Bureau believes that it would not reduce much burden on servicers to relieve them of the prompt crediting, prohibition on pyramiding of late fees, and payoff balance requirements after the successor in interest has been confirmed and the prior consumer has died. The Bureau also believes there may be some circumstances in which, for example, prompt crediting of payments from a deceased consumer's estate would help to prevent foreclosure. Accordingly, the Bureau believes that § 1026.36(c) should still apply to the prior consumer even after the successor in interest has been confirmed and the prior consumer has died. In the alternative, however, the Bureau is considering providing that § 1026.36(c) does not apply to the prior consumer when the servicer has confirmed a successor in interest's status and the prior consumer has died.

Once a successor in interest has been confirmed and the prior consumer has been released from the obligation on the mortgage loan, the prior consumer may have legal interests relating to loan activity prior to the release of the obligation, but would have little or no legal interest in subsequent loan activity. Accordingly, the Bureau believes that servicers should not be required to comply with the requirements of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 once a successor in interest has been confirmed and the prior consumer has been released from the obligation on the mortgage loan.

The Bureau solicits comment on whether a servicer should not be required to comply with §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 with respect to prior consumers after a successor in interest is confirmed. The Bureau also solicits comment on whether other circumstances exist, beyond death and relief of the obligation on the mortgage loan, in which some or all of the requirements of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 should not apply with respect to the prior consumer after a successor in interest is confirmed.

Paragraph (a)(27)

As described in part V.A., the Bureau believes that, to the extent that the Mortgage Servicing Rules apply to successors in interest, the proposed rule should apply with respect to all categories of successors in interest who acquired an ownership interest in the dwelling securing a mortgage loan in a transfer protected by the Garn-St Germain Act.[206] Accordingly, the Bureau is proposing to define successor in interest in § 1026.2(a)(27) to cover all categories of successors in interest who acquired an ownership interest in the dwelling securing a mortgage loan in a transfer protected by the Garn-St Germain Act. (As discussed in the section-by-section analysis of § 1024.31, the Bureau is proposing to add a similar definition to Regulation X.)

The proposed definition states that a successor in interest is a person to whom an ownership interest in a dwelling securing a mortgage loan is transferred from a prior consumer, provided that the transfer falls under an exemption specified in the appropriate section of the Garn-St Germain Act. The Bureau intends the proposed definition to apply throughout the proposed rule and commentary.

The Bureau solicits comment on whether certain categories of successors in interest protected by the Garn-St Germain Act should not be covered by the Bureau's definition of successor in interest. The Bureau also solicits comment on whether additional categories of successors in interest, beyond those protected by the Garn-St Germain Act, should be covered by the Bureau's definition of successor in interest.

Section 1026.36 Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling.

36(c) Servicing Practices

[206] 12 U.S.C. 1701j-3(d).

36(c)(1) Payment Processing

The Bureau is proposing commentary to § 1026.36(c)(1) to clarify how servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications. (As described in the section-by-section analysis of § 1026.41(d), the Bureau is also proposing commentary to § 1026.41 clarifying certain periodic statement disclosures relating to temporary loss mitigation programs and permanent loan modifications.) Proposed comment 36(c)(1)(i)-4 provides that if the loan contract has not been permanently modified but the consumer has agreed to a temporary loss mitigation program, a periodic payment under § 1026.36(c)(1)(i) remains an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, irrespective of the payment due under the temporary loss mitigation program. Accordingly, if a consumer submits a payment under a temporary loss mitigation program that is less than an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, the servicer should generally treat the payment as a partial payment under § 1026.36(c)(1)(i), even though the consumer may have made the payment due under the temporary loss mitigation program.

The Bureau is proposing this comment in response to several inquiries regarding payment processing for payments due under temporary loss mitigation programs, which are quite common and not addressed by the Bureau's existing rules or commentary. The Bureau acknowledges that in the 2013 TILA Final Servicing Rule, it stated that "if a consumer makes a payment sufficient to cover the principal, interest and escrow due under a trial modification plan, these funds should be applied."[207] This statement may have suggested that a periodic payment under a temporary loss mitigation program is the payment due under the temporary loss mitigation program, rather than the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract. However, the Bureau believes that this suggestion, which was not accompanied by any further explanation, is inaccurate. A temporary loss mitigation program is only a temporary or trial program, during which the consumer may be accumulating a delinquency according to the loan contract. The Bureau believes that it is appropriate to require servicers to credit payments in a way that reflects the continuing contractual obligation between the parties and that reflects any delinquency accumulating during the program. Further, if a consumer fails to comply with the terms of a temporary loss mitigation program, the servicer and consumer will typically revert back to the terms of the loan contract, treating payments submitted during the temporary loss mitigation program as if the program had not existed. Accordingly, the Bureau believes that it would be unnecessarily burdensome for servicers to treat the payment due under a temporary loss mitigation program as a periodic payment, and then to have to undo that treatment if the consumer later fails to comply with the terms of the temporary loss mitigation program. The Bureau also understands that consumers are not assessed a late fee for such payments so long as the payment is the payment due under the temporary loss mitigation program. Accordingly, the Bureau does not believe that consumers would be harmed by treating payments that are less than the amount due under the loan contract, but that are the payments due under a temporary loss mitigation program, as partial payments.

By contrast, proposed comment 36(c)(1)(i)-5 provides that if the loan contract has been

[207] 78 FR 10901, 10954 (Feb. 14, 2013).

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

The Bureau believes that if the loan contract has been permanently modified, it is appropriate for the periodic payment to be an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract. The Bureau believes that once a loan has been permanently modified, the obligation under the previous loan contract is not relevant to the periodic payment because only the modified loan contract, and not the original contract, now binds the consumer and the servicer.

The Bureau is also proposing a technical change to § 1026.36(c)(1). Section 1026.36(b) provides that § 1026.36(c)(1) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. However, current § 1026.36(c)(1) refers to consumer credit transactions secured by a consumer's principal dwelling, without referring to closed-end transactions. Consistent with § 1026.36(b), proposed § 1026.36(c)(1) modifies the existing language to refer directly to closed-end consumer credit transactions secured by a consumer's principal dwelling.

36(c)(2) No Pyramiding of Late Fees

The Bureau is also proposing a technical change to § 1026.36(c)(2). Section 1026.36(b) provides that § 1026.36(c)(2) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. However, current § 1026.36(c)(2) refers to consumer credit transactions secured by a consumer's principal dwelling, without referring to closed-end transactions. Consistent with § 1026.36(b), proposed § 1026.36(c)(2) modifies the existing language to refer directly to closed-end consumer credit transactions secured by a consumer's principal dwelling.

Section 1026.41 Periodic Statements for Residential Mortgage Loans

41(a) In General

As described above, proposed § 1026.2(a)(11) provides that a successor in interest is a consumer for purposes of § 1026.41 once a servicer confirms the successor in interest's status. Accordingly, the servicer would be required to provide the confirmed successor in interest with ongoing periodic statements.

Proposed comment 41(a)(1)-5.i. reiterates for clarity that a servicer must provide a confirmed successor in interest with a periodic statement meeting the requirements of § 1026.41. The Bureau is proposing this comment to ensure that the effect of proposed § 1026.2(a)(11) with respect to providing periodic statements to confirmed successors in interest is clear.

Proposed comment 41(a)(1)-5.ii provides that if a servicer sends a periodic statement meeting the requirements of § 1026.41 to another consumer, the servicer need not also send a periodic statement to a successor in interest; a single statement may be sent. The proposed comment also provides that if a servicer confirms more than one successor in interest's identity and ownership interest in the dwelling, the servicer need not send periodic statements to more than one of the confirmed successors in interest. This proposed comment is consistent with current comment 41(a)(1)-1, which provides that, when two consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling, the periodic statement may be sent to either one of them. The Bureau is proposing comment 41(a)(1)-5.ii because the Bureau believes that it is appropriate to treat periodic statements sent to successors in interest consistently with how periodic statements for multiple obligors are treated. Servicers should not be required to send more than one periodic statement with respect to a mortgage loan.

Alternatively, the Bureau is also considering the contrary rule that each successor in interest must receive a periodic statement.

The Bureau solicits comment on whether only one successor in interest should receive a periodic statement or whether instead each successor in interest should receive a periodic statement. The Bureau also solicits comment on whether other circumstances exist, beyond death orrelief of the obligation on the mortgage loan, in which the requirement to send periodic statements should not apply with respect to the prior consumer.

41(d) Content and Layout of the Periodic Statement

The Bureau is proposing to amend comment 41(d)-1, which addresses the requirement in § 1026.41(d) that several disclosures on the periodic statement be provided in close proximity to one another. Current comment 41(d)-1 states that items in close proximity may not have any intervening text between them. The close proximity standard is found in other parts of Regulation Z, including §§ 1026.24(b) and 1026.48. The proposed amendment would relax this requirement for purposes of § 1026.41(d) and instead provide that items in close proximity may not have any unrelated text between them. This proposal mirrors the standard for open-end credit plans secured by a consumer’s dwelling found in § 1026.40(a) and its corresponding comment 40(a)(1)-3, which explain that while most of the disclosures required by § 1026.40(d) must be grouped together and segregated from all unrelated information, a creditor is permitted to include information that explains or expands upon the required disclosures.

Specifically, the proposed amendment to comment 41(d)-1 provides that items in close proximity may not have any unrelated text between them and explains that text is unrelated if it does not explain or expand upon the required disclosures. Text that explains or expands upon the required disclosures may include, for example, an additional explanation of the amount due when: a fee has been charged to the consumer but will not be collected until payoff (*e.g.*, attorney's fees); the consumer has agreed to a temporary loss mitigation program (as discussed further in the section-by-section analysis of § 1026.41(d)(2)); the consumer makes an advance payment; or the servicer reverses a fee. The Bureau believes that the proposed amendment to comment 41(d)-1 may provide servicers with additional flexibility to clarify or explain information on the periodic statement and may enable servicers to address circumstances not expressly provided for in § 1026.41(d). The Bureau seeks comment generally on this proposal to amend comment 41(d)-1 to relax the prohibition on intervening text to include only related text that explains or expands upon the required disclosures.

The Bureau is proposing additional commentary to § 1026.41(d) clarifying certain periodic statement disclosure requirements relating to temporary loss mitigation programs. (As described in the section-by-section analysis of § 1026.36(c), the Bureau is also proposing commentary to § 1026.36(c) relating to the periodic payment under temporary loss mitigation programs.) Proposed comment 41(d)-4 provides that, if the consumer has agreed to a temporary loss mitigation program, the disclosures required by § 1026.41(d)(2), (3), and (5) regarding how payments will be and were applied should nonetheless identify how payments are applied according to the loan contract, irrespective of the payment due under the temporary loss mitigation program.

The Bureau is proposing this commentary in response to several inquiries regarding how temporary loss mitigation programs affect certain disclosures on the periodic statement. Currently, the Bureau's rules and commentary do not address this issue. As described in the section-by-section analysis of § 1024.36(c)(1), proposed comment 36(c)(1)(i)-4 provides that if the consumer has agreed to a temporary loss mitigation program, a periodic payment under

§ 1026.36(c)(1)(i) remains an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, irrespective of the payment due under the temporary loss mitigation program. Accordingly, the Bureau believes that it is appropriate for the disclosures on the periodic statement required by § 1026.41(d)(2), (3), and (5) to identify how payments will be and are applied according to the loan contract, irrespective of the payment due under the temporary loss mitigation program, because this is how servicers would actually be applying the payments under proposed comment 36(c)(1)(i)-4. The Bureau believes that the periodic statement should reflect how payments are actually being applied. The Bureau believes that this treatment is appropriate so that the consumer is kept apprised of how payments are being applied, including being notified of any delinquency that may be accumulating during a temporary loss mitigation program.

The Bureau is also proposing comment 41(d)-5 to address the disclosures that servicers must make on the first periodic statement provided to a consumer after an exemption under § 1026.41(e) terminates. The proposal clarifies that the first post-exemption periodic statement may be limited to disclosing the fees and charges imposed, payments received and applied, and transaction activity since the last payment due date that occurred while the exemption was in effect.

Section 1026.41(d) requires that a periodic statement include three disclosures concerning account activity that occurred "since the last statement." First, § 1026.41(d)(2)(ii) requires the explanation of amount due to identify "[t]he total sum of any fees or charges imposed since the last statement." Second, § 1026.41(d)(3)(i) requires the past payment breakdown to disclose "all payments received since the last statement, including a breakdown showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, sent to any suspense or unapplied funds account." Finally, § 1026.41(d)(4) requires the transaction activity to include "[a] list of all transaction activity that occurred since the last statement."

The Bureau has received inquiries regarding a servicer's disclosure obligations under § 1026.41(d)(2)(ii), (3)(i), and (4) for purposes of the first periodic statement provided after an exemption under § 1026.41(e) terminates. The Bureau understands that such circumstances may arise when a servicer provided periodic statements, became exempt from the requirements for one of the reasons under § 1026.41(e), and the exemption subsequently terminated, thereby requiring the servicer to resume providing statements. For example, a servicer may have been exempt from providing periodic statements for the duration of a consumer's bankruptcy case, may have provided coupon books but has now decided to begin providing periodic statements, or may have been exempt from the periodic statement requirement as a small servicer but no longer qualifies for that exemption. Alternatively, a mortgage loan might be transferred from a servicer that provides coupon books or was an exempt small servicer to a servicer that provides periodic statements.

Sections 1026.41(d)(2)(ii), (3)(i), and (4) could be interpreted as requiring the periodic statement to include information about account activity for the duration of the exemption period—literally "since the last statement." However, the § 1026.41(d)(2)(ii), (3)(i), and (4) disclosures generally cover a time period equivalent to a billing cycle and the first post-exemption periodic statement should arguably cover a similar time period. Accordingly, the Bureau believes that it may be necessary to clarify the requirements of § 1026.41(d)(2)(ii), (3)(i), and (4) with respect to the first post-exemption periodic statement.

The Bureau recognizes that there may be benefits to providing a consumer with information regarding all fees and charges imposed, all payments received and applied, and all transaction activity that occurred during the exemption period. A consumer could review this information to determine if a servicer imposed any erroneous fees, failed to properly credit payments, or made other mistakes with respect to the consumer's mortgage loan while the exemption applied.

Nonetheless, the Bureau believes that consumers and servicers may be better served if the first post-exemption periodic statement includes account activity only since the final payment due date that occurred while the exemption was in effect. First, requiring the disclosure of all fees and charges imposed, payments received, and transaction activity during an exemption period—which could have spanned several months or years—may place an undue burden on servicers. The Bureau understands that servicers' systems are generally not equipped to provide months' or years' worth of account activity on a single periodic statement. The Bureau does not believe that servicers should incur the costs associated with providing a potentially lengthy first post-exemption periodic statement.

Second, including account activity for the duration of the exemption period, such as the total of all fees and charges imposed, could overwhelm or mislead consumers to believe that those fees and charges are presently due, even though the consumer may have previously paid many or all of them.

Third, including account activity for the duration of the exemption period undermines, in part, the rationale for the exemptions. For example, § 1026.41(e)(3) recognizes the value of a coupon book as striking a balance between ensuring consumers receive important information, and providing a low-burden method for servicers to comply with the periodic statement requirements.[208] Requiring the first post-exemption periodic statement to include the disclosures required under § 1026.41(d)(2)(ii), (3)(i), and (4) for the duration of the exemption arguably upsets the balance struck by the coupon book exemption. Similarly, the Bureau has recognized that servicers qualifying for the small servicer exemption have incentives to maintain “high-touch,” customer-centric customer servicer models and that consumers generally have easy access to these small, community-based servicers to obtain any information they desire.[209] In light of this ability to access information, in the circumstance in which a servicer begins sending periodic statements because it was previously but is no longer a small servicer, it may be unnecessary for the first post-exemption periodic statement to include disclosures related to the entire duration of the exemption period.

Finally, consumers will receive, or have alternative methods of obtaining, much of the account information that under this proposal would not be included in the first post-exemption periodic statement. Consumers who receive coupon books have a right to request the information set forth in § 1026.41(d)(2)(ii), (3)(i), and (4). Similarly, for servicers subject to Regulation X’s servicing requirements, a consumer may obtain this information by submitting a written information request. In addition, even if the first post-exemption periodic statement does not include the past payment breakdown since the last pre-exemption periodic statement, § 1026.41(d) requires the statement to identify “[t]he total of all payments received since the beginning of the current calendar year . . . .” This year-to-date information, while not covering

[208] 78 FR 10901, 10973 (Feb. 14, 2013).
[209] *Id.* at 10975.

the entire exemption period, provides consumers with a broad overview of the costs of their mortgage loan and how their payments are being allocated to interest or fees as opposed to principal.[210]

Accordingly, the Bureau is proposing comment 41(d)-5, which provides that for purposes of the first periodic statement following termination of an exemption under § 1026.41(e), the disclosures required by § 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) may be limited to the period since the final payment due date that occurred while the exemption was in effect. Proposed comment 41(d)-5 provides the following example: if a borrower's payments are due on the first of each month and a servicer's exemption under § 1026.41(e) terminated on January 15, the first statement provided to the consumer after January 15 may be limited to the total sum of any fees or charges imposed, the total of all payments received, and a list of all transaction activity only since January 1.

The Bureau seeks comment on proposed comment 41(d)-5, including whether to disclose account activity since a date other than the final payment due date that occurred while the exemption was in effect.

41(d)(1)

The Bureau is proposing commentary to § 1026.41(d)(1) clarifying certain periodic statement disclosure requirements relating to acceleration, temporary loss mitigation programs, and permanent loan modifications. The Bureau is proposing this commentary in response to several inquiries regarding how acceleration, temporary loss mitigation programs, and permanent loan modification affect disclosure of the amount due on the periodic statement. Currently, the

[210] *Id.* at 10966.

Bureau's rules and commentary do not address this issue.

Section 1026.41(d)(1)(iii) provides that the periodic statement required by § 1026.41(d) must include the amount due, shown more prominently than other disclosures on the page. Proposed comment 41(d)(1)-1 provides that if the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due disclosed on the periodic statement under § 1026.41(d)(1) should identify only the lesser amount that will be accepted to reinstate the loan, not the entire accelerated balance.

The Bureau is aware that after accelerating a mortgage loan, a servicer may be willing to accept a lesser amount to reinstate the loan, sometimes because doing so may be required by State law. The Bureau believes that it would be counterproductive in these circumstances for the borrower to receive a periodic statement disclosing the amount due as the full accelerated balance, which may be quite large. Because the borrower is much more likely to be able to pay a reinstatement amount than the full accelerated balance, the Bureau believes that receiving a periodic statement indicating that the amount due is the reinstatement amount would make the borrower more likely to actually pay the reinstatement amount, thereby possibly preventing foreclosure. The Bureau also believes it may confuse borrowers to receive a periodic statement indicating that the amount due is the full accelerated balanced when, in fact, the borrower is informed elsewhere that the borrower may pay only the reinstatement amount. Furthermore, the borrower may be deterred from reading other disclosures or documents if the borrower sees the full accelerated balance as the amount due, so the borrower may not actually become aware that reinstatement is possible, possibly leading to unnecessary foreclosure.

Proposed comment 41(d)(1)-2 provides that if the consumer has agreed to a temporary loss mitigation program, the amount due under § 1026.41(d)(1) may identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract. The Bureau believes that it may be confusing for borrowers who have agreed to a loss mitigation program to receive a periodic statement identifying the amount due under the loan contract when that amount is different from the payment due under the temporary loss mitigation program. Accordingly, the Bureau is proposing that servicers may, but are not required to, identify the payment due under the temporary loss mitigation program, instead of the amount due according to the loan contract.

The Bureau is not proposing to require that the payment due under the temporary loss mitigation program must be identified as the amount due because the Bureau is concerned about the consequences of requiring servicers to modify periodic statements whenever a borrower agrees to a temporary loss mitigation program. The Bureau understands that temporary loss mitigation programs are common and may be entered into for very short durations, so requiring servicers to modify periodic statements whenever a borrower agrees to a temporary loss mitigation program may be unduly burdensome for servicers. Furthermore, the Bureau is concerned that imposing additional requirements on servicers when a borrower agrees to a temporary loss mitigation program may deter servicers from offering temporary loss mitigation programs. In the alternative, however, the Bureau is considering requiring that if the consumer has agreed to a temporary loss mitigation program, the amount due under § 1026.41(d)(1) must identify the amount that the consumer has agreed to pay under the temporary loss mitigation program, rather than the amount due according to the loan contract.

The Bureau solicits comment on whether, if the consumer has agreed to a temporary loss mitigation program, servicers should be required, rather than permitted, to identify the amount due under § 1026.41(d)(1) as the payment due under the temporary loss mitigation program, rather than the amount due according to the loan contract.

Proposed comment 41(d)(1)-3 provides that if the loan contract has been permanently modified, the amount due under § 1026.41(d)(1) should identify only the amount due under the modified loan contract. The Bureau believes that once a loan has been permanently modified, the obligation under the previous loan contract is not relevant to the periodic statement because only the modified loan contract, and not the original contract, now binds the consumer and the servicer.

41(d)(2)

The Bureau is proposing commentary to § 1026.41(d)(2) clarifying certain periodic statement disclosure requirements relating to acceleration and temporary loss mitigation programs. The Bureau is proposing this commentary because, as noted in the section-by-section analysis of § 1026.41(d), the Bureau has received several inquiries regarding how acceleration and temporary loss mitigation programs affect disclosure of the explanation of amount due on the periodic statement and the Bureau's rules and commentary do not currently address this issue.

Section 1026.41(d)(2)(i) provides that the explanation of amount due on periodic statements required by § 1026.41 must include the monthly payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow (if applicable) and, if a mortgage loan has multiple payment options, a breakdown of each of the payment options along with information on whether the principal balance will increase, decrease, or stay the same for each option listed. Proposed comment 41(d)(2)-1 provides that if the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due under § 1026.41(d)(2) should omit the monthly payment amount that would generally be required under § 1026.41(d)(2)(i) and should include both the reinstatement amount and the accelerated amount. The proposed comment provides that the statement must also include an explanation that the reinstatement amount will be accepted to reinstate the loan. The proposed comment provides that this explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

The Bureau is proposing this comment in conjunction with proposed comment 41(d)(1)-1 (discussed in the section-by-section analysis of § 1026.41(d)(1)), which provides that if the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due disclosed on the periodic statement under § 1026.41(d)(1) should identify only the lesser amount that will be accepted to reinstate the loan. The Bureau is proposing comment 41(d)(2)-1 because, given that the amount due will reflect the reinstatement amount, the Bureau believes that the periodic statement should elsewhere identify the accelerated balance, which is the amount that the borrower technically owes under the loan contract and is significant information that the borrower should have. The Bureau believes that the explanation of amount due is where this disclosure is most appropriate. The Bureau is proposing that the monthly payment amount be omitted from the explanation of amount due after acceleration because the Bureau believes that once a loan has been accelerated, the monthly payment obligation is not relevant to the borrower, as the servicer will no longer accept this amount.

Because identification of both the reinstatement amount and the accelerated amount in the explanation of amount due may present some possibility of borrower confusion, the Bureau believes that the periodic statement should also include an explanation indicating that the reinstatement amount will be accepted to reinstate the loan. Consistent with the requirement under § 1026.41(d)(5) that partial payment information must be on the front page of the periodic statement or, alternatively, may be included on a separate page enclosed with the statement or in a separate letter, the Bureau believes it is appropriate that this explanation should be on the front page of the periodic statement or, alternatively, may be included on a separate page enclosed with the statement or in a separate letter.

Proposed comment 41(d)(2)-2 provides that if the consumer has agreed to a temporary loss mitigation program and the amount due on the periodic statement identifies the payment due under the temporary loss mitigation program, the explanation of amount due under § 1026.41(d)(2) should include both the amount due according to the loan contract and the payment due under the temporary loss mitigation program. The proposed comment provides that the statement should also include an explanation that the amount due is being disclosed as a different amount because of the temporary loss mitigation program. The proposed comment provides that this explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

The Bureau is proposing this comment in conjunction with proposed comment 41(d)(1)-2 regarding amount due, which provides that if the consumer has agreed to a temporary loss mitigation program, the amount due under § 1026.41(d)(1) may identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract. The Bureau believes that when the amount due is disclosed on the periodic statement as the payment due under the temporary loss mitigation program, the periodic statement should elsewhere identify the amount due according to the loan contract, as this amount is significant information that the borrower should have. For example, under proposed comment 36(c)(1)(i)-4, the amount due according to the loan contract would be the amount promptly credited by the servicer. The Bureau believes that the explanation of amount due under § 1026.41(d)(2) is where this disclosure is most appropriate.

Because identification of both the payment due under the temporary loss mitigation program and the amount due according to the loan contract may present some possibility of borrower confusion, the Bureau believes that the statement should also include an explanation indicating that the amount due is being disclosed as a different amount than the amount due under the loan contract because of the temporary loss mitigation program. Consistent with the requirement under § 1026.41(d)(5) that partial payment information must be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter, the Bureau believes it is appropriate that this explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

41(d)(8)

Section 1026.41(d)(8) requires a servicer to include a so-called "delinquency box" containing certain prescribed information in periodic statements sent to consumers who are more than 45 days delinquent. [211] The Bureau is proposing certain revisions to § 1026.41(d)(8) to align the requirements of that section with the proposed definition of delinquency under Regulation X § 1024.31. Specifically, the Bureau is proposing to revise § 1026.41(d)(8) and add commentary to mirror the language in proposed § 1024.31 (Delinquency) and its related comments.

Current § 1026.41(d)(8) requires a servicer to include in each periodic statement certain

[211] 12 CFR 1026.41(d)(8).

information about a consumer's delinquency when the consumer is more than 45 days delinquent, including the date on which the consumer became delinquent. However, Regulation Z does not include an explanation of how a servicer must determine the length of a consumer's delinquency. The Bureau believes that it may confuse consumers if a servicer calculates the length of delinquency pursuant to § 1026.41(d)(8)(i) differently from the length of delinquency for purposes of the servicing requirements in subpart C of Regulation X. As such, the Bureau is proposing Regulation Z comment 41(d)(8)-1, which mirrors the proposed Regulation X definition of delinquency and accompanying comment 31 (Delinquency)-1. Specifically, proposed Regulation Z comment 41(d)(8)-1 clarifies that delinquency begins on the date a consumer misses a payment of principal, interest, and escrow (if applicable), notwithstanding any grace period the servicer affords the consumer.

In addition, the Bureau is proposing to add comment 41(d)(8)-2 to address how a creditor should disclose the length of a consumer's delinquency as required by § 1026.41(d)(8) if a servicer applies a borrower's payment to the oldest outstanding delinquency first. As discussed in the section-by-section analysis of § 1024.31, the Bureau is proposing a comment to the definition of delinquency to clarify that, if a servicer applies a consumer's payment to the oldest outstanding delinquency, the servicer must advance the date of the consumer's delinquency for purposes of calculating the length of a borrower's delinquency under the various applicable provisions of Regulation X's mortgage servicing rules. To ensure that a servicer's method of calculating the length of the consumer's delinquency for purposes of Regulation Z § 1026.41(d)(8)(i) is consistent with the method for doing the same under the proposed definition of delinquency in Regulation X, the Bureau proposes to include the same commentary in proposed Regulation Z comment 41(d)(8)-2.

Finally, the Bureau is proposing to revise § 1026.41(d)(8)(i) to harmonize its language with the notion that the date a borrower's delinquency begins advances as payments are applied to the oldest outstanding delinquency. Section 1026.41(d)(8)(i) requires servicers to include "[t]he date on which the consumer became delinquent" on a delinquent consumer's periodic statement. If comment 41(d)(8)-2 is adopted as proposed, "the date on which a consumer became delinquent" would advance as the consumer's payments are applied to prior missed payments, which may confuse consumers. Accordingly, the Bureau is proposing to revise § 1026.41(d)(8)(i) to require servicers to disclose the length of a consumer's delinquency as of the date of the periodic statement.

Legal Authority

The proposed amendments to § 1026.41(d) implement section 128(f)(1)(H) of TILA, which requires inclusion in periodic statements of any information that the Bureau may prescribe by regulation.

41(e) Exemptions

41(e)(4) Small Servicers

41(e)(4)(iii) Small Servicer Determination

41(e)(4)(iii)(A)

The Bureau is proposing to amend certain criteria for determining whether a servicer qualifies for the small servicer exemption under § 1026.41(e)(4). In determining whether a servicer qualifies for the small servicer exemption, § 1026.41(e)(4)(iii)(A) currently excludes from consideration mortgage loans voluntarily serviced by a servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees. The proposed amendment would remove the requirement that the non-affiliate must be a creditor or assignee, while continuing to exclude from consideration mortgage loans voluntarily serviced by a servicer for a non-affiliate for which the servicer does not receive any compensation or fees.

The Bureau's Mortgage Servicing Rules exempt small servicers from certain mortgage servicing requirements. Specifically, Regulation Z exempts small servicers, defined in § 1026.41(e)(4)(ii), from the requirement to provide periodic statements for residential mortgage loans.[212] Regulation X incorporates this same definition by reference to § 1026.41(e)(4) and thereby exempts small servicers from: (1) certain requirements relating to obtaining force-placed insurance,[213] (2) the general servicing policies, procedures, and requirements,[214] and (3) certain requirements and restrictions relating to communicating with borrowers about, and evaluation of applications for, loss mitigation options.[215]

Section 1026.41(e)(4)(ii) defines the term "small servicer" as a servicer that: (1) services, together with any affiliates,[216] 5,000 or fewer mortgage loans, for all of which the servicer (or an

[212] 12 CFR 1026.41(e) (requiring delivery each billing cycle of a periodic statement, with specific content and form). For loans serviced by a small servicer, a creditor or assignee is also exempt from the Regulation Z periodic statement requirements. *See* 12 CFR 1026.41(e)(4)(i).

[213] 12 CFR 1024.17(k)(5) (prohibiting purchase of force-placed insurance in certain circumstances).

[214] 12 CFR 1024.30(b)(1) (exempting small servicers from §§ 1024.38 through 41, except as otherwise provided under § 1024.41(j), as discussed in note 215, *infra*). Sections 1024.38 through 40 respectively impose general servicing policies, procedures, and requirements; early intervention requirements for delinquent borrowers; and policies and procedures to maintain continuity of contact with delinquent borrowers.

[215] *See* 12 CFR 1024.41 (loss mitigation procedures). Though exempt from most of the rule, small servicers are subject to the prohibition of foreclosure referral before the loan obligation is more than 120 days delinquent and may not make the first notice or filing for foreclosure if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option. 12 CFR 1024.41(j).

[216] "Affiliate" is defined in § 1026.32(b)(5) as any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.* (BHCA). Under the BHCA, a company has "control" over another company if it (i) "directly or indirectly . . . owns, controls, or has power to vote 25 per centum or more of any class of voting securities" of the other company; (ii) "controls . . . the election of a majority of the directors or trustees" of the other company; or (iii) "directly or indirectly exercises a controlling influence over the management or policies" of the other company (based on a determination by the Board). 12 U.S.C. 1841(a)(2).

affiliate) is the creditor or assignee; (2) is a Housing Finance Agency, as defined in 24 CFR 266.5; or (3) is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. Generally, under § 1026.41(e)(4)(ii)(A), a servicer cannot be a small servicer if it services any loan for which the servicer or its affiliate is not the creditor or assignee.

However, current § 1026.41(e)(4)(iii) excludes from consideration certain types of mortgage loans for purposes of determining whether a servicer qualifies as a small servicer: (1) mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees; (2) reverse mortgage transactions; and (3) mortgage loans secured by consumers' interests in timeshare plans.

In the May 2013 Mortgage Servicing Proposal, the Bureau proposed the exclusion for voluntarily serviced mortgage loans codified at current § 1026.41(e)(4)(iii)(A).[217] At that time, the Bureau had received feedback that certain servicers that would otherwise be considered small servicers voluntarily service mortgage loans for unaffiliated non-profit entities for charitable purposes and do not receive compensation or fees from engaging in that servicing.[218] Except for one comment received from a national trade association, *see* section-by-section analysis of § 1026.41(e)(4)(iii)(D), the Bureau received comments with respect to the voluntarily serviced

[217] 78 FR 25638, 25644 (May 2, 2013).
[218] *Id.*

proposal that focused only on charitable servicing for nonprofit organizations.[219] The language of current § 1026.41(e)(4)(iii)(A), however, does not require that the mortgage loan must have been made by a nonprofit organization to qualify for the voluntarily serviced exception. And as the Bureau explained, "volunteer servicing is not limited to the servicing of mortgage loans owned or originated by nonprofit organizations . . . ."[220] Current § 1026.41(e)(4)(iii)(A) applies to any mortgage loan voluntarily serviced by a servicer for a non-affiliate creditor or assignee and for which the servicer does not receive any compensation or fees.

The Bureau has learned that certain depository institutions, which may qualify for the small servicer exemption, service for their depository customers seller-financed sales of residential real estate.[221] The Bureau understands that typically under these arrangements, the depository institution receives scheduled periodic payments from the purchaser of the property pursuant to the terms of the sale and deposits into the account of the seller (the depository institution's customer) the payments of principal and interest and such other payments with respect to the amounts received from the purchaser as may be required pursuant to the terms of the sale.[222] The Bureau understands that in some cases, the depository institution may elect to voluntarily service seller-financed sales of residential real estate on behalf of its depository customers without receiving any compensation or fees. The Bureau further understands that under these arrangements, although the depository customer is not an affiliate of the servicer,

[219] 78 FR 44685, 44697 (July 24, 2013). Since that time, the Bureau has finalized its proposal to add an alternative definition of small servicer that applies to certain nonprofit entities that service, for a fee, only loans for which the servicer or an associated nonprofit entity is the creditor. 79 FR 65300, 65304 (Nov. 3, 2014).
[220] 78 FR 44685, 44697 (July 24, 2013).
[221] Seller financer is a defined term under § 1026.36(a)(5). This analysis generally refers to the practice of seller-financed sales of residential real estate unless specifically referring to the defined term.
[222] *See* 12 U.S.C. 2605(i)(3) (definition of servicing applicable to TILA, as amended by section 1401 of the Dodd-Frank Act).

typically, the customer is neither a creditor[223] nor an assignee as required by current § 1026.41(e)(4)(iii)(A). Therefore, a depository institution that would otherwise qualify for the small servicer exemption and that voluntarily services seller-financed sales of residential real estate without receiving any compensation or fees would likely no longer qualify for the small servicer exemption.

The Bureau understands that certain depository institutions engage in this practice to provide their depository customers this service when, particularly in small or remote communities, there may not be an alternative service provider in the state. The Bureau believes that such seller-financed sales of residential real estate generally are limited and not widespread. For the reasons discussed in this section, the Bureau believes that, to the extent servicing cost savings are passed on to consumers, it may be beneficial to consumers for a depository institution that otherwise qualifies for the small servicer exemption to be able to voluntarily service transactions for a non-affiliate, who is neither a creditor nor an assignee, without losing its small servicer status, and that these benefits may outweigh the consumer protections provided by the servicing rules.

Accordingly, the Bureau is proposing to amend the voluntarily serviced exception under current § 1026.41(e)(4)(iii)(A) to exclude mortgage loans voluntarily serviced by a servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees from consideration in determining whether a servicer qualifies as a small servicer, while no longer requiring that the non-affiliate be a creditor or assignee. Specifically, proposed § 1026.41(e)(4)(iii)(A) provides that mortgage loans voluntarily serviced by the servicer for a

[223] *See* 12 CFR 1026.2(a)(17).

non-affiliate of the servicer and for which the servicer does not receive any compensation or fees would not be considered in determining whether a servicer qualifies as a small servicer.

Under the existing rule, mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees are not considered in determining whether a servicer qualifies as a small servicer. Because depository customers who seller-finance sales of residential real estate typically are neither creditors nor assignees, a depository institution that voluntarily services even a single such transaction likely would not qualify as a small servicer under the current rule. The Bureau is proposing to amend the current voluntarily serviced exception to exclude from consideration mortgage loans voluntarily serviced by a servicer for a non-affiliate for which the servicer does not receive any compensation or fees, while removing the requirement that the non-affiliate be a creditor or assignee. The Bureau is concerned that if a depository institution that would otherwise qualify for the small servicer exemption voluntarily services even a single transaction for which the non-affiliate is neither a creditor nor an assignee and does not receive any compensation or fees, it would be subject to all of the servicing rules for all of the mortgage loans that it services, including those that would otherwise be exempt for being owned or originated by the servicer. Although the Bureau believes the servicing rules provide important protections for consumers, the Bureau is concerned that these protections may not outweigh the potential for increased costs to consumers served by depository institutions that qualify for the small servicer exemption.

The Bureau has narrowly tailored the proposed amendment to the voluntarily serviced exception. The Bureau believes that continuing to limit the voluntarily serviced exception to mortgage loans voluntarily serviced by a servicer and for which the servicer does not receive any compensation or fees reduces the risk that the proposed amendment to § 1026.41(e)(4)(iii)(A) will be used to circumvent the servicing rules. The Bureau also believes that removing the requirement that the non-affiliate be a creditor or assignee does not unduly expand the existing exception. Rather, the Bureau believes that the rationale for the exception applies equally well to those non-affiliates who seller-finance sales of residential real estate and do not meet the definition of creditor under § 1026.2(a)(17) because they extend five or fewer mortgage loans in a year. The Bureau seeks comment on whether amending the voluntarily serviced exception to exclude from consideration mortgage loans voluntarily serviced by the servicer for a non-affiliate, without requiring that the non-affiliate be a creditor or assignee, is appropriate. The Bureau also seeks comment on whether it should grandfather existing mortgage loans voluntarily serviced by the servicer for a servicer's non-affiliate, which is not a creditor or assignee, and for which the servicer does not receive any compensation or fees.

Legal Authority

The Bureau is proposing to amend the voluntarily serviced exception under current § 1026.41(e)(4)(iii)(A) and exempt mortgage loans voluntarily serviced by a servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees from the periodic statement requirement under section 128(f) of TILA pursuant to its authority under section 105(a) and (f) of TILA and section 1405(b) of the Dodd-Frank Act.

For the reasons discussed above, the Bureau believes that the proposed amendment is necessary and proper under section 105(a) of TILA to facilitate TILA compliance. As discussed above, the Bureau believes that if a depository institution that would otherwise qualify for the small servicer exemption voluntarily services a transaction for a non-affiliate that does not meet the definition of creditor or assignee, it would likely no longer qualify for the small servicer exemption. Accordingly, the current rule may result in depository institutions that would otherwise qualify for the small servicer exemption being unable to provide high-contact servicing or to comply with other applicable regulatory requirements due to the costs that would be imposed to comply with all of the servicing rules for all of the mortgage loans they service, including those mortgage loans that would otherwise be exempt for being owned or originated by the servicer. Accordingly, the Bureau believes that the proposal to amend the voluntarily serviced exception to no longer require that the non-affiliate be a creditor or assignee facilitates compliance with TILA by allowing depository institutions to voluntarily service seller-financed sales of residential real estate, without losing status as a small servicer, in order to cost-effectively service loans in compliance with applicable regulatory requirements.

In addition, consistent with section 105(f) of TILA and in light of the factors in that provision, for servicers that voluntarily service mortgage loans for a non-affiliate and for which the servicer does not receive any compensation or fees, the Bureau believes that requiring them to comply with the periodic statement requirement in section 128(f) of TILA would not provide a meaningful benefit to consumers in the form of useful information or protection. The Bureau believes, as noted above, that requiring provision of periodic statements would impose significant costs and burden. Specifically, the Bureau believes that the proposal will not complicate, hinder, or make more expensive the credit process. In addition, consistent with section 1405(b) of the Dodd-Frank Act, for the reasons discussed above, the Bureau believes that exempting transactions voluntarily serviced by a servicer for a non-affiliate, without requiring the non-affiliate to be a creditor or assignee, from the requirements of section 128(f) of TILA would be in the interest of consumers and in the public interest.

In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-

Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purposes and objectives of Title X of the Dodd-Frank Act. Specifically, the Bureau believes that the proposed rule is necessary and appropriate to carry out the purpose under section 1021(a) of the Dodd-Frank Act of ensuring that all consumers have access to markets for consumer financial products and services that are fair, transparent, and competitive, and the objective under section 1021(b) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

41(e)(4)(iii)(D)

The Bureau is proposing to amend certain criteria for determining whether a servicer qualifies for the small servicer exemption set forth under § 1026.41(e)(4). The proposal adds a new category of transactions that would not be considered in determining whether a servicer qualifies as a small servicer. Specifically, the proposal excludes transactions serviced by the servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5).

As explained in the section-by-section analysis of § 1026.41(e)(4)(iii)(A), the Bureau's Mortgage Servicing Rules exempt small servicers from certain mortgage servicing requirements. In May 2013, along with other proposed amendments to Regulations X and Z, the Bureau proposed the exclusion for voluntarily serviced mortgage loans and requested comment on whether other mortgage loans serviced through similar limited arrangements should not be considered in determining whether a servicer is a small servicer.[224] The Bureau did not receive comments recommending that any other servicing arrangements be excluded from consideration

[224] 78 FR 25638, 25644 (May 2, 2013).

for purposes of determining small servicer status. The Bureau received one comment from a national trade association requesting guidance regarding certain depository services some of its bank members provide for depositors who "owner-finance" the sale of residential real estate. The Bureau determined in the July 2013 Mortgage Final Rule that the comment was outside the scope of the proposal and that the commenter did not provide sufficient information about the service described for the Bureau to be able to provide guidance at that time.[225]

Since that time, the Bureau has learned more about the depository service described in the national trade association's comments. Specifically, the Bureau understands that certain depository institutions that may otherwise qualify for the small servicer exemption service, for a fee, seller-financed sales of residential real estate for their depository customers. However, because the depository institution is neither the creditor nor the assignee, the depository institution that engages in this practice likely would not qualify for the small servicer exemption because it is servicing, for a fee, a mortgage loan it does not own or did not originate.[226]

As explained in the section-by-section analysis of § 1026.41(e)(4)(iii)(A), the Bureau understands that certain depository institutions engage in this practice to provide their depository customers this service when, particularly in small or remote communities, there may not be an alternative service provider in the state. The Bureau believes that such seller-financed sales of residential real estate generally are limited and not widespread. The Bureau further understands that purchasers of seller-financed residential real estate, who may be unable to secure credit through traditional means, may benefit from a depository institution receiving their scheduled

[225] 78 FR 44685, 44697-98 (July 24, 2013).
[226] The Bureau further understands that, in some cases, the depository institution provides periodic payment receipts as well as annual tax reporting (for example, Internal Revenue Service Form 1098) and may assess late fees to the purchaser when the payment is late.

periodic payments and providing an independent accounting as a third party to the transaction. The Bureau believes that the Dodd-Frank Act and Mortgage Servicing Rules were intended to address systemic problems in the mortgage servicing industry and may not have contemplated the practice described here. For the reasons discussed in this section, the Bureau believes that, to the extent servicing cost savings are passed on to consumers, it may be beneficial to consumers for a depository institution that otherwise qualifies for the small servicer exemption to be able to service transactions for a seller financer that meet all of the criteria identified in § 1026.36(a)(5), without losing its small servicer status, and that these benefits may outweigh the consumer protections provided by the servicing rules.

Accordingly, the Bureau is proposing to add a new category of transactions that would not be considered in determining whether a servicer qualifies as a small servicer for transactions serviced by the servicer for a seller financer. Specifically, proposed § 1026.41(e)(4)(iii)(D) provides that transactions serviced by the servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5) are not considered in determining whether a servicer qualifies as a small servicer. Section 1026.36(a)(5) identifies a seller financer as a natural person, estate, or trust that provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing.[227] The natural person, estate, or trust cannot have constructed, or acted as a contractor for the construction of, a residence on the property in its ordinary course of business.[228] The financing must have a repayment schedule that does not result in negative

[227] 12 CFR 1026.36(a)(5)(i).
[228] 12 CFR 1026.36(a)(5)(ii).

amortization and must have a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or the London Interbank Offered Rate (LIBOR).[229]

The Bureau has narrowly tailored the proposed new category of transactions that are not considered in determining whether a servicer qualifies as a small servicer. For example, the proposal relates only to transactions serviced by the servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5). In contrast to the seller financer criteria identified in § 1026.36(a)(4), which permits seller financing for the sale of up to three properties in any 12-month period, the seller financer criteria identified in § 1026.36(a)(5) permits seller financing for the sale of only one property in any 12-month period. The Bureau believes that limiting the seller financer criteria to the sale of only one property in any 12-month period reduces the risk that this proposed new category of transactions not considered in determining whether a servicer qualifies as a small servicer will be used to circumvent the servicing rules.

Under the existing rule, a servicer qualifies for the small servicer exemption if it services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee. Because seller-financed transactions are not typically structured to meet this definition, a depository institution that services, for a fee, even a single seller-financed transaction likely would not qualify as a small servicer under the current rule.

[229] 12 CFR 1026.36(a)(5)(iii).

The Bureau is proposing to add a new category of transactions that would be excluded from consideration in determining whether a servicer qualifies as a small servicer to permit a depository institution that would otherwise qualify for the small servicer exemption to enter into servicing arrangements for seller-financed transactions without losing its small servicer status. The Bureau understands that, in some cases, the seller financer is not a "creditor" under the relevant definition[230] and that such seller-financed transactions are therefore not federally related mortgage loans, and likely would not be subject to Regulation X.[231] The Bureau is concerned that if a depository institution that would otherwise qualify for the small servicer exemption services even a single seller-financed transaction, it would be subject to all of the servicing rules for all of the mortgage loans that it services, including those that would otherwise be exempt for being owned or originated by the servicer. Although the Bureau believes that the servicing rules provide important protections for consumers, the Bureau is concerned that these protections may not outweigh the potential for increased costs to consumers served by depository institutions that would otherwise qualify for the small servicer exemption.

The Bureau seeks comment on whether excluding transactions serviced by a servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5) in determining small servicer status is appropriate. The Bureau also seeks comment on whether it should grandfather existing transactions serviced by a servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5).

Legal Authority

[230] 12 CFR 1024.2(b) (definition of federally related mortgage loan requires that the loan be made in whole or in part by a creditor, as defined in 15 U.S.C. 1602(g), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year).
[231] 12 CFR 1024.5(a).

The Bureau is proposing to exempt transactions serviced by a servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5) from the periodic statement requirement under section 128(f) of TILA pursuant to its authority under section 105(a) and (f) of TILA and section 1405(b) of the Dodd-Frank Act.

For the reasons discussed above, the Bureau believes that the proposed exemption is necessary and proper under section 105(a) of TILA to facilitate TILA compliance. As discussed above, the Bureau believes that if a depository institution that would otherwise qualify for the small servicer exemption services a transaction for a seller financer, it would likely no longer qualify for the small servicer exemption. Accordingly, the current rule may result in depository institutions that would otherwise qualify for the small servicer exemption being unable to provide high-contact servicing or to comply with other applicable regulatory requirements due to the costs that would be imposed to comply with all of the servicing rules for all of the mortgage loans they service, including those mortgage loans that would otherwise be exempt for being owned or originated by the servicer. Accordingly, the Bureau believes that the proposal to exempt transactions serviced by a servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5) facilitates compliance with TILA by allowing depository institutions to service seller-financed transactions, without losing status as a small servicer, in order to cost-effectively service loans in compliance with applicable regulatory requirements.

In addition, consistent with section 105(f) of TILA and in light of the factors in that provision, for small servicers that service transactions for a seller financer that meet all of the criteria identified in § 1026.36(a)(5), the Bureau believes that requiring them to comply with the periodic statement requirement in section 128(f) of TILA would not provide a meaningful benefit to consumers in the form of useful information or protection. The Bureau believes, as noted above, that requiring provision of periodic statements would impose significant costs and burden. Specifically, the Bureau believes that the proposal will not complicate, hinder, or make more expensive the credit process. In addition, consistent with section 1405(b) of the Dodd-Frank Act, for the reasons discussed above, the Bureau believes that exempting transactions serviced by a servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5) from the requirements of section 128(f) of TILA would be in the interest of consumers and in the public interest.

In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purposes and objectives of Title X of the Dodd-Frank Act. Specifically, the Bureau believes that the proposed rule is necessary and appropriate to carry out the purpose under section 1021(a) of the Dodd-Frank Act of ensuring that all consumers have access to markets for consumer financial products and services that are fair, transparent, and competitive, and the objective under section 1021(b) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

41(e)(5) Certain Consumers in Bankruptcy

The Bureau is proposing to revise § 1026.41(e)(5) to limit the circumstances in which a servicer is exempt from the periodic statement requirements with respect to a consumer who is a debtor in bankruptcy. Current § 1026.41(e)(5) provides that a servicer is exempt from the requirement to provide periodic statements for a mortgage loan while the consumer is a debtor in bankruptcy. Comment 41(e)(5)-3 states that if there are multiple obligors on the mortgage loan, the exemption applies if any of the obligors is in bankruptcy, and comment 41(e)(5)-2.ii explains that a servicer has no obligation to resume providing periodic statements with respect to any portion of the mortgage debt that is discharged in bankruptcy. In general, the proposed revisions to § 1026.41(e)(5) limit the exemption to consumers in bankruptcy who are surrendering the property or avoiding the lien securing the mortgage loan and to consumers who have requested that a servicer cease providing periodic statements (or coupon books, as applicable). In cases where a mortgage loan has multiple obligors and not all of them are in bankruptcy, the exemption would apply to a non-bankrupt obligor only when (i) one of the obligors is in Chapter 12 or Chapter 13 bankruptcy, and (ii) the non-bankrupt obligor requests that a servicer cease providing periodic statements or coupon books.

Specifically, proposed § 1026.41(e)(5)(i) limits the exemption to when two conditions are satisfied. First, the consumer must be a debtor in a bankruptcy case, must have discharged personal liability for the mortgage loan through bankruptcy, or must be a primary obligor on a mortgage loan for which another primary obligor is a debtor in a Chapter 12 or Chapter 13 bankruptcy case. Second, one of the following circumstances must apply: (1) the consumer requests in writing that the servicer cease providing periodic statements or coupon books; (2) the consumer's confirmed plan of reorganization provides that the consumer will surrender the property securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearages or the maintenance of payments due under the mortgage loan; (3) a court enters an order in the consumer's bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with respect to the property securing the mortgage loan, or requiring the servicer to cease providing periodic statements or coupon books; or (4) the consumer files with the bankruptcy court a Statement of Intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the property securing the mortgage loan.

The proposal also provides that the exemption terminates and a servicer must resume providing periodic statements or coupon books in two general circumstances. First, notwithstanding meeting the above conditions for an exemption, the proposal requires servicers to provide periodic statements or coupon books if the consumer requests them in writing (unless a court has entered an order requiring otherwise). Second, with respect to any portion of the mortgage debt that is not discharged through bankruptcy, a servicer must resume providing periodic statements or coupon books within a reasonably prompt time after the next payment due date that follows the earliest of the following outcomes in either the consumer's or the joint obligor's bankruptcy case, as applicable: the case is dismissed, the case is closed, the consumer reaffirms the mortgage loan under 11 U.S.C. 524, or the consumer receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328.

Section 1420 of the Dodd-Frank Act amended section 128(f) of TILA to require periodic statements for residential mortgage loans. On January 17, 2013, the Bureau issued the 2013 TILA Servicing Final Rule implementing the periodic statement requirements and related exemptions in § 1026.41. (In certain circumstances, servicers may provide borrowers with a coupon book in place of periodic statements.) In the preamble to the final rule, the Bureau acknowledged industry's concern that the Bankruptcy Code's automatic stay prevents attempts to collect a debt from a consumer in bankruptcy, but the Bureau explained that it did not believe the Bankruptcy Code would prevent a servicer from sending a consumer a statement on the status of the mortgage loan.[232] The Bureau further explained that the final rule allowed servicers to make changes to the periodic statement that they believe are necessary when a consumer is in bankruptcy, such as including a message about the bankruptcy and presenting the amount due to reflect payment obligations determined by the individual bankruptcy proceeding.[233]

After publication of the final rule, industry stakeholders expressed more detailed concerns about the requirement to provide periodic statements to consumers under bankruptcy protection. Industry commenters expressed continued concerns about potential conflicts with bankruptcy law and many indicated that the periodic statement would need to be redesigned for consumers in bankruptcy. The Bureau received numerous inquiries and requests for clarification regarding how to reconcile the periodic statement requirement with various bankruptcy law requirements. Industry stakeholders expressed concern that bankruptcy courts, under certain circumstances, may find that a periodic statement violates the automatic stay or discharge injunction, even if a disclaimer were included. They requested guidance regarding whether and how servicers could permit consumers to opt-out of receiving statements. Bankruptcy trustees raised similar concerns and explained that sending a periodic statement that fails to recognize the unique character of Chapter 13's treatment of a mortgage in default arguably violates the Bankruptcy Code's automatic stay. Servicers and trustees further questioned how periodic statements could be adapted to the specific circumstances that may arise depending on the type of bankruptcy proceeding (*i.e.*, liquidation under Chapter 7, or reorganization under Chapter 11, Chapter 12, or Chapter 13).

[232] 78 FR 10901, 10966 (Feb. 14, 2013).
[233] *Id*. at 10966 n.125.

Based on these inquiries, the Bureau determined that the interaction of bankruptcy law and the periodic statement requirement necessitated further study and that there was insufficient time before the rule's January 10, 2014 effective date to provide further calibration of the requirements. Accordingly, the Bureau issued the October 2013 IFR, which added current § 1026.41(e)(5) to exempt servicers from the periodic statement requirement with respect to consumers in bankruptcy.[234] The Bureau explained in commentary that the exemption in § 1024.41(e)(5) applies with respect to any person sharing primary liability on a mortgage loan with a debtor in bankruptcy,[235] and that a servicer has no obligation to resume compliance with § 1024.41 with respect to any portion of a mortgage loan that is discharged under applicable provisions of the Bankruptcy Code.[236]

In issuing the IFR, the Bureau did not take a position as to whether providing periodic statements to a consumer in bankruptcy violates the automatic stay or discharge injunction. The Bureau also did not discourage servicers that send tailored periodic statements to consumers in bankruptcy from continuing to do so. The Bureau further expressed its belief that some consumers facing the complexities of bankruptcy may benefit from receiving a periodic statement, tailored to their circumstances.[237]

In the IFR, the Bureau stated that it would continue to examine this issue and might reinstate the requirement to provide a consumer in bankruptcy with a periodic statement. However, the Bureau explained that it would not reinstate any such requirement without notice and comment rulemaking and an appropriate implementation period. The Bureau solicited

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[234] 78 FR 62993, 63000-02 (Oct. 23, 2013).
[235] Comment 41(e)(5)-3.
[236] Comment 41(e)(5)-2.ii.
[237] 78 FR 62993, 63001 (Oct. 23, 2013).

comment on the scope of the exemption, when a servicer qualifies for the exemption and when it must resume sending statements, and how the content of the periodic statement might be tailored to meet the particular needs of consumers in bankruptcy.[238]

Since issuing the IFR, the Bureau has continued to engage various stakeholders on the scope of this exemption, including hosting the roundtable discussion on June 16, 2014, among representatives of consumer advocacy groups, bankruptcy attorneys, servicers, trade groups, bankruptcy trustees, and the U.S. Trustee's Office. The Bureau has also sought comment from bankruptcy judges and experts and conducted its own further analysis of the intersection of the periodic statement requirement and bankruptcy law.[239]

Based upon its review of the comments received and its study of the intersection of the periodic statement requirements and bankruptcy law, the Bureau believes it may be appropriate to reinstate the periodic statement requirements with respect to consumers in bankruptcy under certain circumstances. The Bureau is proposing to do so in the present rulemaking because, as noted in the IFR, the Bureau believes that it would be preferable to use notice and comment rulemaking, rather than simply finalizing the IFR with modifications, to reinstate the periodic statement requirements with respect to such consumers. The Bureau believes that this approach will provide stakeholders the opportunity to more fully consider and comment on the Bureau's specific proposal. The Bureau also believes that it is appropriate to address comments it already received in response to the IFR. Accordingly, the following discussion of the proposal with respect to the periodic statement requirements also contains discussion of the comments received

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[238] *Id.* at 63002.
[239] Written or oral presentations to the Bureau imparting information or argument directed to the merits or outcome of the IFR were subject to the Bureau's policy on ex parte presentations. *See* CFPB Bulletin 11-3.

on the IFR, as well comments received after the IFR's official comment period ended.

Comments on the Scope of the Exemption

Comments on the scope of the exemption addressed two broad issues: (1) whether to maintain the current exemption; and (2) if a more limited exemption is appropriate, under what circumstances should a consumer in bankruptcy receive periodic statements.

On the first issue, several servicers and trade groups requested that the Bureau maintain the exemption without any adjustments. Some trade groups argued that the exemption provides a clear rule to servicers that periodic statements are not required for consumers in bankruptcy, whereas the original 2013 TILA Servicing Final Rule was unclear about the information periodic statements should contain and when it may be permissible to not provide periodic statements to a consumer in bankruptcy. These trade groups also commented that the amount due and other disclosures mandated by § 1026.41 could be confusing to consumers who are making payments according to a bankruptcy plan. During the bankruptcy roundtable discussion, a credit union and a community bank stated that their systems are not equipped to produce periodic statements that reflect Chapter 13's unique accounting practices and that tracking payments in a Chapter 13 case requires a significant amount of time and effort. These participants maintained that the cost of upgrading their systems outweighed any benefit to the relatively few bankrupt consumers in their portfolios. The credit union suggested that, at a minimum, the Bureau adopt a modified exemption from any future periodic statement requirement for entities with a limited number of consumers in bankruptcy or a limited percentage of their mortgage loans subject to bankruptcy proceedings.

Consumer advocacy groups strongly objected to the exemptions set forth in the IFR. They argued that consumers in bankruptcy need information about their mortgage loan accounts in order to make timely payments, determine whether the servicer correctly calculated and applied payments, and object to any account errors. The consumer advocacy groups stated that, in the past, such consumers have suffered improper fees and charges because servicers have avoided implementing protocols to account for payments made during bankruptcy. Moreover, the consumer advocacy groups argued that servicers' concerns that providing periodic statements would violate the automatic stay are exaggerated because court decisions finding stay violations have generally involved extreme facts—for example, servicers overtly attempting to collect payments outside of the bankruptcy process or ignoring a consumer's request to cease receiving statements.

An association of Chapter 13 trustees commented that periodic statements are necessary in Chapter 13 cases to determine whether servicers are correctly applying payments. The trustees echoed the consumer advocacy groups' concerns that servicers have not established systems to properly track and apply payments and that consumers are often subject to erroneous fees and charges. They argued that requiring servicers to disclose bankruptcy accounting practices would likely force servicers to improve their practices.

A bankruptcy law professor commented that in light of consumers' in bankruptcy demonstrated difficulty in paying their debts, such consumers need periodic statements to remind them of their payment obligations and that depriving them of statements is antithetical to bankruptcy's purpose of financial rehabilitation. One bankruptcy judge commented that requiring periodic statements in Chapter 13 cases may force servicers to improve their systems and more accurately apply consumer payments. Another bankruptcy judge suggested that, in lieu of monthly statements, the Bureau could require servicers to send initial notices acknowledging a consumer's bankruptcy case and identifying the monthly payment amount, followed by semi-annual or annual statements disclosing how the servicer has applied payments and the amount of outstanding fees.

Several servicers and trade groups, while supporting a temporary exemption, commented that a narrower exemption would be appropriate depending on whether the consumer intends to retain the property, as discussed more below.

The Bureau also received comments regarding which consumers should receive periodic statements if the exemption did not apply to all consumers in bankruptcy. Commenters were generally in agreement that periodic statements would be appropriate for some consumers but not others. Some industry commenters drew a distinction between consumers who intend to retain their property and those who intend to surrender it or cease making payments on the mortgage loan. Specifically, these commenters took the position that periodic statements are not appropriate when a consumer intends to surrender the property or avoid (*i.e.*, render unenforceable) the lien securing the mortgage loan, when a consumer requests that a servicer cease providing periodic statements, when a court order or local rule prohibits providing statements, or after a court enters an order lifting the automatic stay to permit a servicer to pursue foreclosure. However, these commenters suggested that consumers in Chapter 11, Chapter 12, and Chapter 13 bankruptcy should receive statements when the plan of reorganization provides that the consumer will retain the property and continue making payments on the mortgage loan. In cases where a consumer retains the property, commenters noted, the consumer can benefit from information about the payments they must make to keep the property. Similarly, certain industry commenters suggested that consumers in Chapter 7 bankruptcy should receive statements if they file a Statement of Intention with the bankruptcy court stating that they intend to retain the property.

With some distinctions discussed below, consumer advocacy groups and trustees agreed that it may be appropriate to distinguish between consumers retaining the property and those surrendering it through bankruptcy. However, consumer advocacy groups also argued that comments 41(e)(5)-2.ii and 3 are unnecessarily broad in stating that the exemption applies to all joint obligors of a consumer in bankruptcy and that servicers have no obligation to resume providing periodic statements with respect to any portion of a mortgage loan that is discharged in bankruptcy. These groups maintained that joint obligors and consumers who have discharged a mortgage loan should be able to receive periodic statements in appropriate circumstances.

Despite general agreement on when periodic statements may be appropriate, commenters disagreed on three points. First, they disagreed on whether Chapter 7 consumers should be required to opt-in to receive periodic statements. Consumer advocacy groups argued that, as a default rule, a consumer in Chapter 7 bankruptcy should receive periodic statements. A law professor and bankruptcy judge generally agreed with this approach. On the other hand, servicers and trade groups favored an opt-in method, in which consumers would receive periodic statements only if their Statement of Intention filed with the court pursuant to 11 U.S.C. 521(a) identified an intent to retain the property or if they otherwise affirmatively requested statements. One servicer added that bankruptcy courts might not agree that checking the box to retain property on the Statement of Intention suffices as an affirmative request to receive periodic statements and that a court might therefore view the statement as an unwanted collection attempt.

Second, two trade groups initially maintained that periodic statements are unnecessary when a consumer is making all payments on the mortgage loan through a Chapter 13 trustee (and not directly to the servicer), though one of the groups stated in subsequent comments that all consumers in Chapter 13 should receive statements. Chapter 13 trustees strenuously argued that statements are necessary in all cases to determine whether servicers are correctly applying plan payments. Several servicers took the position that there should be a uniform approach in all Chapter 13 cases so that servicers do not have to implement different protocols depending on the procedures governing a particular Chapter 13 case.

Third, commenters were divided on whether a trustee overseeing a consumer’s Chapter 13 case should receive periodic statements. Bankruptcy trustees argued that a trustee’s access to periodic statements is vital because it would enable the trustee to monitor how servicers are applying payments and engage servicers to correct payment application errors early on. Some trustees suggested that servicers be required to provide statements upon a trustee’s request. Similarly, a law professor commented that there are compelling reasons to provide statements to trustees, particularly in those cases where a consumer is required to send periodic payments to a trustee and the trustee acts as a disbursing agent by remitting the payments to the servicer.

Industry participants objected on several grounds to providing statements to trustees. First, they maintained that trustees do not need statements because they receive all the information they need pursuant to the Federal Rules of Bankruptcy Procedure. Two trade groups argued that in the event that a trustee needs a periodic statement during the bankruptcy case, a trustee may simply request a copy from the consumer. Second, industry participants objected to the burden imposed by providing additional statements to trustees, either on a regular or as-needed basis. Finally, industry participants argued that privacy concerns are implicated by sending statements to a trustee who is not a fiduciary of the consumer. For example, some servicers that are also banks use combined statements that provide information not only related to the mortgage loan, but also related to other accounts a consumer has with the bank. Industry participants argued that, in those circumstances, the bank would need to redact the information pertaining to the consumer's other accounts, leading to further burden and costs to produce the statements.

Benefits to Consumers in Bankruptcy of Receiving Periodic Statements

Based upon the comments outlined above, continued outreach and monitoring efforts, and further analysis, the Bureau believes that certain consumers in bankruptcy will benefit from receiving periodic statements (or coupon books, in the case of servicers that provide them instead of periodic statements under § 1026.41(e)(3)). Since the January 10, 2014 effective date, the Bureau has received complaints from consumers who are debtors in bankruptcy and have requested to receive periodic statements or other written information regarding upcoming payments, but have had their requests denied by servicers. Consumers have complained that, as a result, they may inadvertently fall behind on payments or at a minimum lack basic information about the status of their loans. Case law indicates that bankruptcy courts have heard similar complaints and that consumers are often frustrated by the lack of payment information provided to them.[240] To that end, the Bureau understands that nearly 30 bankruptcy courts have adopted local rules permitting or requiring servicers to provide periodic statements or coupon books under certain circumstances.[241]

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[240] *See, e.g., Henry v. Assocs. Home Equity Servs., Inc. (In re Henry)*, 266 B.R. 457, 471 (Bankr. C.D. Cal. 2001) ("A secured creditor should be encouraged to send out payment coupons, envelopes and periodic statements if a debtor has filed a statement that the debtor plans to keep property subject to secured debt and to make payments. Debtors frequently complain to the court that they want to make their payments, but their creditors do not cooperate by providing payment coupons."); *In re Freeman*, 352 B.R. 628 (Bankr. N.D. W. Va. 2006) (overruling creditor's objection to the debtor's request for periodic statements that were normally required by State law); *cf. Payne v. Mortg. Elec. Registration Sys., Inc. (In re Payne)*, 387 B.R. 614, 626 (Bankr. D. Kan. 2008) ("[The servicer]'s representative testified [that the servicer] does not send payments books to mortgagors in bankruptcy because [the servicer] cannot present a true and accurate accounting of the loan payments [the servicer] is receiving from the Trustee as opposed to debtors' payments history.").

[241] *See, e.g.*, LBR 4001-2, Bankr. M.D. Ala.; LBR 4072-1, Bankr. N.D. Ala.; Model Chapter 13 Plan, Bankr. S.D. Ala.; Bankr. D. Colo. LBR 4001-4; Bankr. S.D. Ill. Model Chapter 13 Plan; Bankr. E.D. La. General Order 2012-1

The Bureau does not believe that a consumer's status in bankruptcy should act as a bar to receiving fundamental information about the mortgage loan account. The Bureau believes that, like all consumers, those in bankruptcy may benefit from information regarding the application of their payments to principal, interest, escrow, and fees. As the Bureau noted in the 2013 TILA Servicing Final Rule, the explanation of amount due, transaction activity, and past payment breakdown give consumers the information they need to identify possible errors on the account and enable consumers to understand the costs of their mortgage loan.[242]

The Bureau understands that in the absence of a requirement that servicers provide periodic statements, however, consumers in bankruptcy often lack such crucial information about their mortgage loan account. The Bureau understands that, for example, consumers in Chapter 7 bankruptcy or those who have discharged personal liability for a mortgage loan often do not receive written information regarding their mortgage payments. This lack of information is particularly troubling for consumers in Chapter 7 bankruptcy who use the so-called "ride-through" option—that is, consumers who discharge personal liability for the mortgage loan through bankruptcy but continue making mortgage payments to forestall foreclosure, which enables them to remain in their home. In that instance, the lien is unaffected by bankruptcy, such

(adopting model Chapter 13 plan); Bankr. D. Md. L.R. 4001-5; Bankr. D. Mass. L.R. 4001-3; Bankr. E.D. Mich. Model Chapter 13 Plan; Bankr. E.D. Mo. L.R. 3021; Bankr. W.D. Mo. L.R. 4001-4; Mont. LBR 4001-3; D. Kan. Bk. S.O. 08-4; District of New Jersey Local Bankruptcy Rules, D.N.J LBR 4001-3; Bankr. N.D.N.Y. Model Chapter 13 Plan; E.D.N.C. LBR 4001-2; Bankr. M.D.N.C Standing Order, *In re Terms and Provisions Available for Incorporation into Chapter 13 Confirmation Orders;* W.D.N.C. LBR 4001-1; Bankr. D.N.H. L. Form 3015-1A, Model Chapter 13 Plan; Bankr. N.D. Ohio Admin. Order 13-02, *In re Form Chapter 13 Plan*; Bankr. D. Or. L.R. 3015-1; R.I. LBR 4001-1; SC LBR 3015-1 (adopting model Chapter 13 plan); Bankr. N.D. TX General Order 2010-1, *In re Amended Standing Order Concerning All Chapter 13 Cases*; Bankr. S.D. TX Uniform Plan and Motion for Valuation of Collateral; Bankr. W.D. TX (Austin Div.), *Consolidated Standing Order for Chapter 13 Case Administration for Austin Division* (adopting model Chapter 13 plan); Bankr. W.D. TX (San Antonio Div.), Model Chapter 13 Plan; Vt. LBR 3071-1; Bankr. W.D. Wash. L. Form 13-4; Bankr. E.D. Wis. Model Chapter 13 Plan.

[242] 78 FR 10901, 10964-67 (Feb. 14, 2013).

that a consumer's post-bankruptcy failure to stay current on the mortgage would enable a servicer to foreclose on the property, but the servicer could not pursue collection efforts or a deficiency judgment against the consumer personally.[243] The Bureau understands that in many cases, using this option may be a strategic decision by a consumer to avoid a future deficiency judgment, but that, in some instances, courts will not permit consumers to reaffirm a mortgage loan, forcing them to use the ride-through option despite a willingness to reaffirm. Because the ride-through option discharges a consumer's personal liability, current § 1026.41(e)(5) exempts a servicer from providing periodic statements for the life of the mortgage loan—even if the maturity date is years away. The Bureau does not believe that this is an optimal result for consumers, nor is it the result Congress may have intended when it amended the Bankruptcy Code in 2005 to expressly provide that a mortgage creditor does not violate the discharge injunction by seeking to obtain periodic payments on a discharged mortgage loan in the ordinary course of its relationship with a debtor in lieu of pursuing foreclosure.[244] In light of a Bankruptcy Code provision apparently contemplating that consumers will use the ride-through option with respect to their principal residence,[245] as well as the fact that in some circumstances

[243] *See Henry*, 266 B.R. at 476 (discussing the ride-through option and disagreement among courts as to whether the Bankruptcy Code permits it); *In re Covel*, 474 B.R. 702, 708 (Bankr. W.D. Ark. 2012) (holding that Congress eliminated the ride-through option for personal property in 2005, but "[b]y not making corresponding changes concerning real property, Congress appears to tacitly recognize a ride through option for real property."); *Kibler v. WFS Fin., Inc. (In re Kibler)*, No. 00-2604, 2001 WL 388764, at *5 (Bankr. E.D. Cal. Mar. 19, 2001) ("In jurisdictions that recognize the 'ride-though' option, debtors may want to preserve their property, yet not incur the potential personal liability imposed by a reaffirmation agreement. These debtors . . . need to receive normal monthly billings to avoid a contract default and potential foreclosure.").

[244] 11 U.S.C. 524(j) ("Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—(1) such creditor retains a security interest in real property that is the principal residence of the debtor; (2) such act is in the ordinary course of business between the creditor and the debtor; and (3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.").

[245] *See* 4 *Collier on Bankruptcy* ¶ 524.09 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014) ("Section 524(j) clarifies that when a debtor does not reaffirm a mortgage debt secured by real estate that is the debtor's principal

courts will not permit a consumer to reaffirm a mortgage loan, the Bureau believes that consumers who continue making payments after discharging a mortgage loan should not be denied periodic statements or coupon books. The Bureau therefore declines to follow the suggestion that periodic statements or coupon books be conditioned on a consumer reaffirming the mortgage loan.

The Bureau also believes that consumers in Chapter 13 would benefit from receiving the information set forth in periodic statements or coupon books provided under § 1026.41. The Bureau understands that, effective December 1, 2011, the Federal Rules of Bankruptcy Procedure require servicers to disclose certain mortgage loan information to consumers whose Chapter 13 plans provide that the consumer will cure pre-bankruptcy arrearages and maintain regular periodic payments.[246] Thus, a consumer with a Chapter 13 plan may receive more information and greater protections than a consumer in a Chapter 7 case. The Bureau understands, however, that these disclosure requirements were motivated by pervasive and documented servicer failures to make accurate filings or disclose fees during Chapter 13 cases.[247]

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residence, the creditor may continue to send statements to the debtor in the ordinary course of business and collect payments made voluntarily by the debtor. The provision makes clear that debtors do not have to reaffirm such debts in order to keep paying them. In fact, it has long been the practice that mortgage debts are not reaffirmed.”).

[246] Fed. R. Bankr. P. 3002.1 (requiring, among other things, servicers to provide 21-day advance notice of a change in payment amount and notice within 180 days after a servicer incurs a fees or expense for which the consumer is liable, and also providing for a reconciliation process at the end of the case to determine if a servicer disputes whether the consumer is current on the mortgage loan).

[247] Fed. R. Bankr. P. 3002.1 Advisory Committee’s Notes (2011) (“[Rule 3002.1] is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor’s plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments. In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, *see* Rule 3001(c)(2), and the amount of the postpetition payment obligations.”); *In re Sheppard*, No. 10-33959-KRH, 2012 WL 1344112, at *2 (Bankr. E.D. Va. Apr. 18, 2012) (“Bankruptcy Rule 3002.1 was adopted to resolve significant and often hidden problems encountered by Chapter 13 debtors who utilized § 1322(b)(5) of the Bankruptcy Code to cure mortgage defaults in their confirmed plans. While debtors could cure an arrearage on their principal residence under § 1322(b)(5), they often incurred significant fees and other costs as a result of postpetition defaults or from

Consumers would often successfully make all payments required under their Chapter 13 plan, only to find that the servicer claimed substantial additional amounts were still owed.[248]

The Bureau understands from its outreach that some servicers have a long history of misapplying payments in Chapter 13 cases and that consumers often lack information about how servicers are applying payments during bankruptcy. With respect to mortgage loans, Chapter 13 contains unique provisions that allow a consumer to repay pre-bankruptcy arrearages over a reasonable period of time while also making the regular periodic payments as they come due under the mortgage loan.[249] Under Chapter 13, servicers may need to adopt special accounting practices for consumers with these "cure and maintain" plans and separately track payments made on the pre-bankruptcy arrearages and the regular periodic payments.[250] These accounting

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interest or escrow fluctuations under the terms of the original loan documents. Fearful that any attempt to address these fees and charges could be construed as a violation of the automatic stay, many creditors would not inform debtors that these charges had been incurred until after the Chapter 13 case was closed. As the fees and charges were postpetition obligations not included in the plan and thus not discharged at the conclusion of the case, these debtors would emerge from bankruptcy only to face a substantial and previously undisclosed arrearage. This outcome was inconsistent with the goal of providing debtors with a fresh start."); *In re Thongta*, 480 B.R. 317, 319 (Bankr. E.D. Wis. 2012) (similar).

[248] *See, e.g.*, *Sheppard*, 2012 WL 1344112, at *2; *Thongta*, 480 B.R. at 319.

[249] 11 U.S.C. 1322(b)(5).

[250] *See, e.g.*, *Boday v. Franklin Credit Mgmt. Corp. (In re Boday)*, 397 B.R. 846, 850-51 (Bankr. N.D. Ohio 2008) ("Section 1322(b)(5), by splitting a claim, means that a creditor is no longer permitted to allocate payments according to the terms of its contract. Instead, its effect is to require that any prepetition arrearage claim must be paid separately, according to the terms of the debtor's confirmed plan, based upon the creditor's allowed claim. The remaining debt, consisting of those payments which become due after the petition is filed, is then paid according to the terms of the parties' contract and original loan amortization as if no default ever existed . . . . From an accounting standpoint, this requires that a creditor allocate a debtor's loan payments in the following manner: First, the creditor must apply the arrearage payments it receives during the plan's duration in accordance with the terms of the plan, so that upon completion of the plan the debtor is deemed current on the prepetition amortization schedule. Second, payments received from the debtor to service those payments which contractually accrue postpetition[] must be allocated according to the terms of the parties' contract as if no default had occurred."); *In re Wines*, 239 B.R. 703, 708 (Bankr. D.N.J. 1999) ("Crediting payments outside the plan to the installments due contemporaneously according to the original schedule is the only way to put the debtors in the same position as if default had never occurred."); *In re Collins*, No. 07-30454, 2007 WL 2116416, at *13 (Bankr. E.D. Tenn. July 19, 2007) (holding that Chapter 13 cure and maintain plan can include provisions requiring servicer to apply payments separately and stating that such a provision "is not only reasonable but required"); *see also* Fannie Mae, *Fannie Mae Single Family 2012 Servicing Guide*, at 705-35 through 705-36 (Mar. 14, 2012), *available at* https://www.fanniemae.com/content/guide/svc031412.pdf ("The servicer must maintain detailed records of any

practices differ from a servicer's usual practice because, so long as a consumer is timely making all the payments due under the plan, a servicer should not treat a consumer as delinquent by, among other things, assessing late fees.

Courts have detailed some servicers' failure to properly credit payments made pursuant to Chapter 13 plans, noting that servicers' systems and accounting practices often fail to adjust to the needs of Chapter 13, and courts have sanctioned servicers or disallowed fees.[251] These difficulties were also documented in and formed the basis of part of the National Mortgage Settlement, which required, among other things, that the subject servicers properly account for

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payments it receives during the confirmation process—the type of payment (pre-petition or post-petition), the amount received, the receipt date, the source of the payment, and the allocation of the payment (principal, interest, late charges, etc.). The servicer should generally hold any pre-petition payments it receives as 'unapplied' funds until an amount equal to the full monthly (or biweekly) payment that is due under the mortgage note is available for application to the mortgage loan balance. However, if the court requires the payments to be applied under the terms of the repayment plan, the servicer must apply the payments in its records as required.").

[251] *See, e.g., In re Jones*, 366 B.R. 584, 594-98 (Bankr. E.D. La. 2007) (sanctioning servicer that applied all amounts received to pre- and post-petition charges, interest, and non-interest bearing debt, resulting "in such a tangled mess" that neither the CPA debtor nor the servicer could explain the accounting, and stating that "[i]n this Court's experience, few, if any, lenders make the adjustments necessary to properly account for a reorganized debt repayment plan."); *In re Hudak*, No. 08-10478-SBB, 2008 WL 4850196, at *5 (Bankr. D. Colo. Oct. 24, 2008) ("Many courts have noted that mortgage lenders simply do not accommodate for the accounting intricacies created by Chapter 13."); *Payne v. Mortg. Elec. Registration Sys., Inc. (In re Payne)*, 387 B.R. 614, 627 (Bankr. D. Kan. 2008) ("[The servicer] admitted their computer system does not allow debtors who make all their payments in a timely manner to exit bankruptcy current on their mortgage obligation."); *In re Myles*, 395 B.R. 599, 606 (Bankr. M.D. La. 2008) (holding that debtors stated claim for stay violation where creditor allegedly treated a Chapter 13 debtor as in default due to improper payment application and applied payments to improper fees as a result); *Boday*, 397 B.R. at 850-51 (holding that creditor violated plan and § 1322(b)(5) by applying plan payments to interest rather than principal under daily simply interest loan); *In re Rathe*, 114 B.R. 253, 256-57 (Bankr. D. Idaho 1990) ("[The servicer]'s accounting procedure applied payments to the earliest payments due and not to the payments due and owing during the pendency of the plan. The purpose of a Chapter 13 plan is to allow a debtor to pay arrearages during the pendency of the plan while continuing to make payments at the contract rate. Payments made during the pendency of the Chapter 13 plan should have been applied by [the servicer] to the current payments due and owing with the arrearage amounts to be applied to the back payments. [The servicer] cannot utilize its accounting procedures to contravene the terms of a confirmed Chapter 13 plan and the Bankruptcy Code."); *In re Stewart*, 391 B.R. 327 (Bankr. E.D. La. 2008) (sanctioning servicer for misapplying payments and noting that "[t]he reconciliation of Debtor's account took [the servicer] four months to research and three hearings before this Court to explain," that "[a]n account history was not produced until two months after the filing of the Objection," and that "[a]n additional two months were spent obtaining the necessary information to explain or establish the substantial charges, costs, and fees reflected on the account"), *vacated in part*, 647 F.3d 553 (5th Cir. 2011).

payments received in bankruptcy.[252]

In light of these documented concerns about servicers not properly applying payments in Chapter 13 cases, the Bureau agrees with consumer advocacy groups and Chapter 13 trustees that periodic statements would benefit consumers in Chapter 13 cases. The Bureau believes that, as with all consumers, those in bankruptcy may be able to use the information set forth in the explanation of amount due, transaction activity, and past payment breakdown to understand their payments obligations and identify possible servicer errors.[253] This information may be particularly valuable to a consumer in Chapter 13, given the greater risk of payment application errors. The Bureau also agrees with commenters that in cases where a consumer was current as of the date of the bankruptcy petition or is making periodic payments directly to a servicer, a monthly reminder of amounts due may help a consumer make timely payments.

The Bureau understands and appreciates the concerns expressed by many servicers that their systems are not currently set up to easily track how payments are applied in Chapter 13 cases and that, in order to be able to disclose this information on a periodic statement, they may need to incur significant costs to upgrade their systems. Servicers and trade groups also argued that consumers may not understand the complexities of accounting for payments made under a Chapter 13 plan. As the Bureau noted in the 2013 TILA Servicing Final Rule, however, it is precisely this complexity that necessitates providing a consumer with a periodic statement. The

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[252] *See, e.g.*, Exhibit A at 9, *United States v. Bank of Am.*, (2014) (No. 12-361 (RMC), 2014 WL 1016286 (National Mortgage Settlement)), *available at* https://d9klfgibkcquc.cloudfront.net/Ocwen-Consent-Judgment-Ex-A.pdf (providing that, among other things, "[i]n active chapter 13 cases, Servicer shall ensure that: a. prompt and proper application of payments is made on account of (a) pre-petition arrearage amounts and (b) postpetition payment amounts and posting thereof as of the successful consummation of the effective confirmed plan; b. the debtor is treated as being current so long as the debtor is making payments in accordance with the terms of the then effective confirmed plan and any later effective payment change notices").

[253] 78 FR 10901, 10964-67 (Feb. 14, 2013).

Bureau believes that providing this information will enable consumers to make payments, detect errant payment application, and understand the costs of their mortgage loans. In addition, the Bureau notes that while the Bankruptcy Rules provide for a reconciliation procedure once the consumer completes all payments under a Chapter 13 plan, most Chapter 13 cases are dismissed prior to completion.[254] As a result, most consumers in Chapter 13 bankruptcy will not have a trustee or court oversee and ultimately determine whether a servicer correctly applied payments. For these consumers, having a record of payments made and applied may help resolve disputes once the bankruptcy case is over.[255] Accordingly, the Bureau believes that all consumers in Chapter 13 cases who intend to retain the property, including those making payments through a trustee, would benefit from receiving periodic statements (or coupon books in the case of servicers that provide them instead of periodic statements under § 1026.41(e)(3)).

Scope of Exemption

The Bureau is proposing to limit the scope of the exemption in § 1026.41(e)(5) to consumers in bankruptcy who have made a determination to surrender the property or avoid the lien securing the mortgage loan or who have requested that a servicer cease providing periodic statements or coupon books. The Bureau believes that drawing a distinction between consumers who intend to retain the property and those who intend to surrender the property may strike an appropriate balance between consumers' need for information about their mortgage loans and the burden on servicers to provide information to such consumers while also avoiding violations of

[254] *See* Ed Flynn, *Chapter 13 Revisited: Can it help Solve the Judiciary's Fiscal Problems?*, 32 Am. Bankr. Inst. J. 20, 20 (Dec. 2013).

[255] The Bureau further notes that in instances where bankruptcy courts have local rules expressly permitting periodic statements or coupon books, the rules predominantly apply when the consumer is a debtor under Chapter 13. *See supra*, note 241.

bankruptcy law.

The Bureau believes that this approach, favored by many commenters, also is consistent with bankruptcy case law. Courts have observed that whether periodic statements are appropriate in bankruptcy typically depends on whether "the debtor needed the information contained in the statements when the statements were sent" and that debtors need information about their mortgage loan when they intend to retain property, not when they intend to surrender it.[256] Indeed, some courts have found that a periodic statement was permissible when the debtor planned to retain the property, but that the same form of periodic statement violated the automatic stay after the same debtor changed his mind and decided to surrender his home.[257]

Using this framework, courts have held that periodic statements are appropriate for Chapter 7 debtors if the Statement of Intention identifies an intent to retain the property[258] or if a consumer otherwise continues to make voluntary payments after the bankruptcy case.[259] Similarly, courts have found that Chapter 13 debtors who have not yet proposed a plan of

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[256] *Connor v. Countrywide Bank NA (In re Connor)*, 366 B.R. 133, 136, 138 (Bankr. D. Haw. 2007)); *see also Henry*, 266 B.R. at 471 (collecting cases).

[257] *Connor*, 366 B.R. at 138 (debtor failed to state a claim for stay violation related to periodic statements received prior to Chapter 13 plan confirmation, but debtor did state a claim related to statements received after conversation to Chapter 7 because debtor had indicated his intent to surrender the property); *In re Joens*, No. 03-02077, 2003 WL 22839822, at *2-3 (Bankr. N.D. Iowa Nov. 21, 2003) (creditor violated automatic stay by sending collection letters and periodic statements to Chapter 7 debtor who intended to surrender, but noting that it would have been proper to send statements if the debtor had intended to retain).

[258] *Henry*, 266 B.R. at 471 (holding that creditor did not violate the automatic stay by sending periodic statements and notice of default to debtors who retain their property by continuing to make payments without reaffirming the mortgage loan); *Kibler v. WFS Fin., Inc. (In re Kibler)*, No. 00-2604, 2001 WL 388764 (Bankr. E.D. Cal. Mar. 19, 2001) (noting that borrowers who retain their property by continuing to make payments without reaffirming the mortgage loan "need to receive normal billings to avoid a contract default and potential foreclosure").

[259] *See* 4 Collier on Bankruptcy ¶ 524.04 ("Section 524(j) clarifies that when a debtor does not reaffirm a mortgage debt secured by real estate that is the debtor's principal residence, the creditor may continue to send statements to the debtor in the ordinary course of business and collect payments made voluntarily by the debtor.") (citing *Jones v. Bac Home Loans Servicing, LP (In re Jones)*, No. 09-50281, 2009 WL 5842122, at *3 (Bankr. S.D. Ind. Nov. 25, 2009)); *cf. Ramirez v. Gen. Motors Acceptance Corp. (In re Ramirez)*, 280 B.R. 252, 257-58 (C.D. Cal. 2002) (holding that creditor did not violate discharge injunction by sending periodic statements and a "summary of voluntary payments" to a debtor who his vehicle without reaffirming the loan).

reorganization may benefit from periodic statements because they need information about the amount of their mortgage loan debt in order to formulate a plan of reorganization[260] and that Chapter 13 debtors also benefit from periodic statements if their proposed or confirmed plan provides that they will retain the property and continue making payments.[261]

Conversely, bankruptcy courts have determined that periodic statements can constitute impermissible collection attempts in violation of the automatic stay when a consumer has indicated an intent to surrender the property, either through the Statement of Intention in a Chapter 7 case or a plan of reorganization in a Chapter 13 case.[262] Similarly, courts have held that a Chapter 13 consumer with a plan of reorganization that provides for "avoiding" a junior lien—that is, rendering the lien unenforceable and treating the mortgage debt as an unsecured claim—has no need for statements regarding the amounts due under the mortgage loan.[263] Finally, courts have found that consumers do not need statements when they have actually

[260] *Connor*, 366 B.R. at 138 (holding that debtor failed to state a claim for stay violation related to periodic statements received prior to Chapter 13 plan confirmation); *Pultz v. NovaStar Mortg., Inc. (In re Pultz)*, 400 B.R. 185, 190-92 (Bankr. D. Md. 2008) (noting that sending of single loan statement was useful to the debtor for forecasting the amount of the unsecured debt she could pay through her Chapter 13 plan); *Schatz v. Chase Home Fin. (In re Schatz)*, 452 B.R. 544 (Bankr. M.D. Pa. 2011) ("I also recognize that such information could assist a Chapter 13 debtor in drafting his Chapter 13 plan.").

[261] *Henry*, 266 B.R. at 471 ("A secured creditor should be encouraged to send out payment coupons, envelopes and periodic statements if a debtor has filed a statement that the debtor plans to keep property subject to secured debt and to make payments."); *Cousins v. CitiFinancial Mortg. Co. (In re Cousins)*, 404 B.R. 281, 286-87 (Bankr. S.D. Ohio 2009) (stating in dicta that periodic statements can be helpful to Chapter 13 debtors making direct payments to understand amounts due).

[262] *Joens*, 2003 WL 22839822, at *2-3 (holding that creditor violated automatic stay by sending several collection letters and periodic statements to Chapter 7 debtor who had indicated an intent to surrender); *Connor*, 366 B.R. at 138 (holding that debtor stated a claim related to periodic statements and demand letter received after conversion to Chapter 7 because he had indicated his intent to surrender the property).

[263] *Curtis v. LaSalle Nat'l Bank (In re Curtis)*, 322 B.R. 470, 484-85 (Bankr. D. Mass. 2005) (holding that wholly unsecured junior lienholder violated automatic stay by, among other things, sending a RESPA transfer letter demanding payment to a Chapter 13 debtor whose plan provided for avoiding the lien).

surrendered or vacated the property,[264] or requested that the servicer not send periodic statements.[265]

Therefore, the Bureau is proposing to revise the scope of the exemption in § 1026.41(e)(5). Consistent with most comments the Bureau received and the case law discussed above, proposed § 1026.41(e)(5) limits the scope of the exemption to those consumers who no longer need the information in the periodic statement. Specifically, proposed § 1026.41(e)(5)(i) limits the exemption to when two conditions are satisfied. First, the consumer must be a debtor in a bankruptcy case, must have discharged personal liability for the mortgage loan through bankruptcy, or must be a primary obligor on a mortgage loan for which another primary obligor is a debtor in a Chapter 12 or Chapter 13 case. The purpose of this requirement is to limit the exemption to consumers who may be protected by the Bankruptcy Code's automatic stay or discharge injunction provisions.

Second, one of the following circumstances must also apply: (1) the consumer requests in writing that the servicer cease providing periodic statements or coupon books;[266] (2) the consumer's confirmed plan of reorganization provides that the consumer will surrender the property securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy

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[264] *In re Roush*, 88 B.R. 163, 164-65 (Bankr. S.D. Ohio 1988) (holding that creditor violated the discharge injunction when it sent a collection letter to debtor three years after debtor surrendered property); *In re Bruce*, No. 00–50556 C–7, 2000 WL 33673773, at *4 (Bankr. M.D.N.C. Nov. 7, 2000) (holding that creditor violated the discharge injunction by sending periodic statements and calling the debtor at his place of employment after receiving notice that the debtor had vacated the property).

[265] *In re Draper*, 237 B.R. 502, 505-06 (Bankr. M.D. Fla. 1999) (holding that creditor violated the stay by sending periodic statements to Chapter 13 debtor who had asked not to receive them).

[266] The Bureau understands from its outreach that at least one large national bank that provides periodic statements to all of its consumers in bankruptcy, except those who opt-out, has not encountered problems with the automatic stay.

arrearages or the maintenance of payments due under the mortgage loan; (3) a court enters an order in the consumer's bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with respect to the property securing the mortgage loan, or requiring the servicer to cease providing periodic statements or coupon books; or (4) the consumer files with the overseeing bankruptcy court a Statement of Intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the property securing the mortgage loan. As commenters noted, in each of these situations, a consumer is no longer retaining the property, is no longer making regular periodic payments on the mortgage loan, or has affirmatively requested not to receive statements or coupon books. As a result, the Bureau believes that the statement's value is diminished and may be outweighed by a correspondingly increased risk of a court finding that a servicer violated the automatic stay by sending periodic statements or coupon books in this circumstance.

With respect to joint obligors who are not in bankruptcy, proposed § 1026.41(e)(5)(i) effectively limits the exemption to those joint obligors who (i) share primary liability with a consumer who is a debtor in a Chapter 12 or Chapter 13 case, and (ii) have requested that a servicer cease providing periodic statements or coupon books. As discussed in the section-by-section analysis of § 1024.39(d)(1), a non-debtor joint obligor is protected by the Bankruptcy Code's automatic stay provisions only in Chapter 12 or Chapter 13 cases.[267] The Bureau understands from outreach that these joint obligors generally have a need to continue receiving periodic statements or coupon books. Moreover, these joint obligors are not bound by a debtor's decision to surrender the property securing the mortgage loan. Accordingly, the Bureau believes

[267] *See* 11 U.S.C. 1201, 1301.

that it is appropriate for the non-debtor joint obligors to continue receiving periodic statements or coupon books unless non-debtor joint obligors have requested that the servicer cease providing them.

Proposed comment 41(e)(5)(i)-1 clarifies the exemption's applicability with respect to joint obligors. The proposed comment states that when two or more consumers are primarily liable on a mortgage loan, an exemption under § 1026.41(e)(5)(i) with respect to one of the primary obligors does not affect the servicer's obligations to comply with § 1026.41 with respect to the other primary obligors. The Bureau believes that the proposed comment will serve to eliminate ambiguity concerning whether a servicer must continue to provide statements or coupon books to joint obligors when an exemption under § 1026.41(e)(5)(i) applies to one of the obligors. The proposed comment also references § 1026.41(f), explaining that if one of the joint obligors is in bankruptcy and no exemption under § 1026.41(e)(5)(i) applies, the servicer would be required to provide periodic statements or coupon books with certain bankruptcy-specific modifications set forth in § 1026.41(f). In that instance, the servicer could provide the periodic statements or coupon books with the bankruptcy-specific modifications to any of the primary obligors on the mortgage loan, even if not all of them are in bankruptcy.

Proposed comment 41(e)(5)(i)-2 also clarifies that, for purposes of § 1026.41(e)(5), the term "plan of reorganization" refers to a consumer's plan of reorganization filed under applicable provisions of the Bankruptcy Code and confirmed by a court with jurisdiction over a consumer's bankruptcy case. The proposed comment is intended to avoid confusion about the meaning of the term "plan of reorganization" and whether the term refers to a proposed plan or one that has been confirmed by a court.

Finally, proposed comment 41(e)(5)(i)(B)(*4*)-1 further clarifies that, for purposes of determining whether a servicer is exempt under § 1026.41(e)(5)(i) based on a consumer's Statement of Intention filed in the consumer's bankruptcy case, a servicer must rely on a consumer's most recently filed Statement of Intention. Thus, under the proposed rule, if a consumer originally filed a Statement of Intention identifying an intent to retain the property, but the consumer then files an amended Statement of Intention identifying an intent to surrender the property, a servicer must rely on the amended filing to determine that the exemption applies. The Bureau believes that the proposed comment will avoid uncertainty about whether the exemption applies when a consumer has filed multiple or amended Statements of Intention.

Proposed § 1026.41(e)(5)(ii) states when a servicer must resume providing periodic statements or coupon books in compliance with § 1024.41. First, proposed § 1026.41(e)(5)(ii)(A) provides that a servicer is not exempt from the requirements of § 1024.41 with respect to a consumer who submits a written request to continue receiving periodic statements or coupon books, unless a court enters an order requiring otherwise. The Bureau believes that consumers should have the right to receive information regarding their mortgage loan. Further, allowing consumers to opt-in will enable consumers to receive statements or coupon books when their intent with regard to retaining the property changes. The Bureau understands that, for example, some Chapter 7 debtors will file a Statement of Intention that initially discloses an intent to surrender the property but subsequently decide to keep the property. In that case, the Bureau believes a consumer should be able to receive periodic statements or coupon books. Proposed comment 41(e)(5)(ii)-1 clarifies that a servicer must comply with a consumer's most recent written request to cease or to continue, as applicable, providing periodic statements or coupon books.

Second, proposed § 1026.41(e)(5)(ii)(B) provides that a servicer must resume compliance with § 1026.41 within a reasonably prompt time after the next payment due date that follows the earliest of the following outcomes in either the consumer's or the joint obligor's bankruptcy case, as applicable: (1) the case is dismissed; (2) the case is closed; (3) the consumer reaffirms the mortgage loan under 11 U.S.C. 524; or (4) the consumer receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. Proposed § 1026.41(e)(5)(ii)(B) largely tracks current comment 41(e)(5)-2.i, and the Bureau believes that a bankruptcy exemption is no longer necessary once the borrower has exited bankruptcy or reaffirmed personal liability for the mortgage loan. One commenter requested that the obligation to resume providing periodic statements should be triggered only upon a servicer's receipt of a proper notice indicating that the case has been dismissed, closed, or discharged. The Bureau understands that servicers ordinarily receive notice of the dismissal, closing, or discharge, as applicable, and it has not received comments indicating that servicers often fail to receive the required notices. The Bureau also believes that the "reasonably prompt" standard is flexible enough to account for instances in which a servicer had no reason to know that the consumer's bankruptcy case was terminated. Additionally, reaffirmation agreements require a creditor's consent, and the Bureau understands that a servicer should be aware of when such an agreement is entered into and approved.

In combination, proposed § 1026.41(e)(5)(ii)(A) and (B) require a servicer to resume providing periodic statements or coupon books within a reasonably prompt time after the next payment due date following receipt of a consumer's written request, the case closing or dismissal, the consumer's reaffirmation of the mortgage loan, or the consumer receiving a discharge. Proposed comment 41(e)(5)(ii)-2 clarifies that delivering, emailing or placing the periodic statement or coupon book in the mail within four days after the next payment due date, or within four days of the close of any applicable courtesy period, generally would be considered reasonably prompt. (With respect to coupon books, resuming compliance requires providing a new coupon book only to the extent the servicer has not previously provided the consumer with a coupon book that covers the upcoming billing cycle(s); duplicate coupon books are not required.) This interpretation of "reasonably prompt" is consistent with the Bureau's interpretation currently set forth in comment 41(b)-1.

Finally, proposed comment 41(e)(5)-1 clarifies that, if an agent of a consumer submits a request to cease or to continue providing periodic statements or coupon books, the request is deemed submitted by the consumer. The Bureau understands that attorneys or housing counselors often communicate with a servicer on a consumer's behalf, and the Bureau believes that it is important to clarify that a servicer must comply with a request to cease or commence providing periodic statements or coupon books by such an agent of a consumer.

The Bureau has also considered, but declines to propose at this time, four suggestions regarding the scope of § 1026.41(e)(5). First, the Bureau declines to propose to require a consumer in Chapter 7 bankruptcy to opt-in affirmatively to receiving periodic statements or coupon books. As explained above, the Bureau believes that servicers should provide statements or coupon books to consumers in Chapter 7 unless one or more of the specified exceptions applies. The Bureau is concerned that requiring a consumer to affirmatively opt-in may disrupt the flow of periodic statements or coupon books shortly after the bankruptcy filing and may cause a consumer to fail to make a timely mortgage loan payment. Additionally, the Bureau is concerned that consumers, particularly those not represented by counsel, may not be aware of the right to request periodic statements or coupon books.

Second, the Bureau declines to adopt a consumer advocacy group's suggestion that a consumer should continue receiving periodic statements unless the consumer discloses an intent to surrender the property, is in default, *and* has been denied for all loss mitigation options. The Bureau appreciates that this approach would ensure that a consumer would receive statements until all retention options have been exhausted, but the Bureau is concerned that it may unduly burden servicers. The Bureau believes that a more simple test based on the consumer’s intent to retain or surrender the property may provide a less ambiguous standard and assist servicers in determining whether the exemption applies.

Third, the Bureau does not believe that it would be appropriate to create a special exemption from the periodic statement requirement for servicers with a limited number of consumers in bankruptcy or a limited percentage of their portfolio subject to bankruptcy proceedings. The Bureau believes that the existing small servicer exemption in § 1026.41(e)(4) sufficiently balances the potential costs of providing periodic statements with the potential burden on smaller servicers. Furthermore, the Bureau notes that an exemption based upon the number of customers a servicer has in bankruptcy (rather than total number of loans in a servicer’s portfolio) would lead to uncertainty, as factors outside of the servicer’s control—for example, regional economic conditions—may cause a servicer to lose the exemption for a given year.

Finally, at this time, the Bureau does not believe that servicers should be required to provide Chapter 13 trustees with periodic statements, either as a matter of course or upon a trustee’s request. The Bureau is concerned that requiring a servicer to send statements to a trustee may unduly increase the burden on servicers. The Bureau also recognizes the privacy concerns raised by servicers. If servicers were in some cases required to redact certain information based on privacy concerns, this could further increase costs to servicers.

Additionally, the Bureau understands that there may be other ways for trustees to obtain copies of periodic statements, such as requesting them from a consumer or obtaining a court order requiring them in a particular case. The Bureau seeks comment on whether a servicer should be required to provide periodic statements to a Chapter 13 trustee overseeing a consumer's case and, if so, under what circumstances. The Bureau also seeks comment on whether trustees have sufficient alternative means of obtaining periodic statements or similar information from consumers or servicers.

In addition, the Bureau seeks comment on the scope of the proposed exemption, the requirements for qualifying for the exemption, and when servicers must resume sending periodic statements or coupon books. In particular, the Bureau solicits comment on whether consumers in bankruptcy should be required to opt-in to receive periodic statements or coupon books and, if so, whether documents filed with the bankruptcy court, such as a Statement of Intention or plan of reorganization, are sufficient to qualify as a request to receive periodic statements or coupon books. The Bureau further requests comment on how consumers in bankruptcy may be made aware of their ability to opt-in or opt-out of receiving periodic statements or coupon books, whether such requests must be made in writing, whether oral requests should be sufficient, and whether servicers should be able to designate an exclusive mailing address for receiving written requests. With respect to resuming compliance after the case closing or dismissal or borrower's discharge, as applicable, the Bureau solicits comment on whether servicers ordinarily receive sufficient notice of these events.

Legal Authority

The Bureau is proposing to exercise its authority under sections 105(a) and (f) of TILA and section 1405(b) of the Dodd-Frank Act to exempt servicers from the requirement in section

128(f) of TILA to provide periodic statements for a mortgage loan in certain bankruptcy-related circumstances. For the reasons discussed above, the Bureau believes this exemption is necessary and proper under section 105(a) of TILA to facilitate compliance. In addition, consistent with section 105(f) of TILA and in light of the factors in that provision, the Bureau believes that imposing the periodic statement requirement for certain consumers in bankruptcy may not currently provide a meaningful benefit to those consumers in the form of useful information. Consistent with section 1405(b) of the Dodd-Frank Act, the Bureau also believes that the modification of the requirements in section 128(f) of TILA to provide this exemption is in the interest of consumers and in the public interest.

41(e)(6) Charged-off Loans

The Bureau is proposing to add a new exemption from the requirement to provide periodic statements under § 1026.41. The proposed exemption would apply to a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account, provided that the servicer must provide the consumer a final periodic statement within 30 days of charge off or the most recent periodic statement.

The periodic statement rule set forth in § 1026.41 requires the creditor, assignee, or servicer of a closed-end consumer credit transaction secured by a dwelling (a mortgage loan) to provide the consumer, for each billing cycle, a periodic statement meeting certain time, form, and content requirements.[268] The Bureau's February 2013 TILA Servicing Final Rule and

[268] For purposes of § 1026.41, "servicer" includes the creditor, assignee, or servicer, as applicable. 12 CFR 1026.41(a)(2).

October 2013 IFR provide certain exemptions from the periodic statement rule. Specifically, the current exemptions apply to reverse mortgage transactions, timeshare plans, fixed-rate loans if the servicer provides the consumer a coupon book, small servicers, and mortgage loans while the consumer is a debtor in bankruptcy under Title 11.[269]

The Bureau understands that a servicer, pursuant to certain accounting standards and at a creditor's direction, may be required to charge off a delinquent mortgage loan in accordance with applicable loan-loss provisions. Charge off is an accounting practice that indicates that the creditor or servicer no longer considers the mortgage loan to be an asset. However, charge off does not release the consumer from liability for the mortgage loan. In some cases, although the mortgage loan has been charged off, the underlying lien secured by the dwelling remains in place. Therefore, even after charge off, the credit transaction is still secured by a dwelling. It is the Bureau's position that under the current rule, unless the lien is released, the periodic statement is required for all charged-off mortgage loans, regardless of whether the mortgage loan was charged off prior to the effective date of the rule (January 10, 2014).

The Bureau has learned that the manner in which charged-off mortgage loans are serviced may differ from the manner in which non-charged-off mortgage loans are serviced. The Bureau understands that a servicer's software, systems, and platforms may treat charged-off mortgage loans distinctly, such that providing a periodic statement for a charged-off mortgage loan may be more burdensome, and therefore more costly, than providing a periodic statement for a non-charged-off mortgage loan. The Bureau also understands, however, that even after

[269] 12 CFR 1026.41(e)(1) through (5). For loans serviced by a small servicer, a creditor or assignee is also exempt from the Regulation Z periodic statement requirements. 12 CFR 1026.41(e)(4)(i). The proposal provides amendments to the periodic statement exemption for a consumer that is a debtor in bankruptcy. *See* section-by-section analysis of § 1026.41(e)(5).

charge off, a servicer may pass along various fees to the consumer, such as attorney's fees, court costs, filing fees, garnishment fees, property maintenance fees, taxes, insurance, and fees for maintaining the lien. The Bureau believes that where a servicer continues to charge a consumer fees and interest, the periodic statement may provide significant value to a consumer. As the Bureau stated in the February 2013 TILA Servicing Final Rule, the Bureau carefully considered concerns expressed about circumstances in which the periodic statement should not be required (*e.g.*, after acceleration), and acknowledged that some circumstances could make providing a periodic statement more complicated. However, the Bureau noted that "such circumstances are often precisely when a consumer most needs the periodic statement," as the Bureau "believes an important role of the periodic statement is to document fees and charges to the consumer; as long as such charges may be assessed, the consumer is entitled to receive a periodic statement."[270]

The Bureau has considered the competing concerns posed by the costs to a servicer to provide periodic statements for charged-off mortgage loans and the benefits to a consumer to continue to be informed of fees and charges that a servicer may assess after charge off. Although the periodic statement rule provides important consumer protections, the Bureau believes that if a servicer will not charge any additional fees or interest on the account, the benefit to a consumer of receiving a periodic statement may be outweighed by the potential for increased costs passed on to consumers. Therefore, when the servicer will assess no further fees or interest, the Bureau believes that it may be appropriate to exempt a servicer from the requirements of § 1026.41 for a mortgage loan that a servicer has charged off in accordance with loan-loss provisions.

Accordingly, the Bureau is proposing to add a new exemption from the periodic

[270] 78 FR 10901, 10960 (Feb. 14, 2013).

statement requirement for certain mortgage loans that a servicer has charged off. Specifically, proposed § 1026.41(e)(6) provides that a servicer is exempt from the requirements of § 1026.41 for a mortgage loan if the servicer has charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, provided that the servicer must, within 30 days of charge off or the most recent periodic statement, provide a final periodic statement, clearly and conspicuously labeled "Final Statement—Retain This Copy for Your Records." The Bureau is also proposing that the final periodic statement convey, in simple and clear terms, additional information to the consumer. The Bureau believes that providing this final periodic statement with the additional consumer information may provide important consumer protections that outweigh any potential burden on servicers associated with providing this one-time, final statement.

The proposed exemption is similar to existing § 1026.5(b)(2)(i), which provides an exemption for certain charged-off accounts from the periodic statement requirement in § 1026.7 for open-end credit transactions. Section 1026.5(b)(2)(i) states, in relevant part, that "[a] periodic statement need not be sent for an account . . . if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account . . . ."[271] In finalizing this exemption under § 1026.5(b)(2)(i), the Board weighed the costs and benefits and determined that "the value of a periodic statement does not justify the cost of providing the disclosure because the amount of a consumer's obligation will not be increasing," while reiterating that "this provision does not apply if a creditor has charged off the

[271] 12 CFR 1026.5(b)(2)(i).

account but continues to accrue new interest or charge new fees."[272] The Bureau agrees with the Board's reasoning and believes that a similar analysis may apply with respect to the proposed exemption from the periodic statement requirement in § 1026.41 for a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account.

However, because closed-end consumer credit transactions secured by a dwelling are distinct from unsecured, open-end credit transactions by virtue of the underlying lien, the Bureau believes that it is appropriate to impose additional requirements in this context. Specifically, proposed § 1026.41(e)(6) provides that for a servicer to take advantage of the exemption, the servicer must, within 30 days of charge off or the most recent periodic statement,[273] provide a final periodic statement, clearly and conspicuously labeled "Final Statement—Retain This Copy for Your Records." Under proposed § 1026.41(e)(6), the final periodic statement may be the last piece of information or documentation that a consumer receives with respect to the charged-off mortgage loan. Consumers may need this information for further tax-reporting and other financial accounting purposes. Additionally, the Bureau believes that consumers may need to later demonstrate the status of the loan to the servicer or a subsequent purchaser, assignee, or transferee. Consequently, the Bureau believes that a consumer should be advised to retain the final periodic statement for record-keeping purposes.

Further, the Bureau is concerned that consumers may misconstrue the charge off to mean that the mortgage loan obligation or lien has been released, or the debt forgiven, when in fact this

[272] 74 FR 5244, 5276 (Jan. 29, 2009).
[273] The proposal provides that a servicer may provide the final periodic statement within 30 days of the most recent periodic statement. This would allow servicers that appropriately complied with the periodic statement requirement for previously charged-off mortgage loans to now take advantage of the proposed exemption.

is generally not the case. Therefore, the Bureau believes that the proposed final periodic statement must also convey, in simple and clear terms, important information to the consumer about what it means for a mortgage loan to be charged off. Proposed § 1026.41(e)(6) provides that the final periodic statement must explain in simple and clear terms that: the mortgage loan has been charged off and the servicer will not charge any additional fees or interest on the account; the lien on the property remains in place and the consumer remains liable for the mortgage loan obligation; the consumer may be required to pay the balance on the account in the future, for example, upon sale of the property; the balance on the account is not being cancelled or forgiven; and the loan may be purchased, assigned, or transferred.

The Bureau is aware that mortgage loans may be purchased, assigned, or transferred after charge off. The Bureau recognizes that such situations may pose special accounting challenges for both servicers and consumers. The Bureau notes that nothing in this proposal is intended to impact a debt collector's obligations under the FDCPA, including, for example, the requirement to send a consumer a written notice validating the debt under section 809 of the FDCPA. Additionally, the Bureau is proposing comment 41(e)(6)-1 to explicate the relationship between proposed § 1026.41(e)(6) and § 1026.39, which requires certain disclosures upon the purchase, assignment, or transfer of a mortgage loan. First, the proposed comment reiterates that if a charged-off mortgage loan is subsequently purchased, assigned, or transferred, a covered person, as defined in § 1026.39(a)(1), must provide the transfer disclosure required by § 1026.39. Second, the proposed comment provides that a covered person, as defined in § 1026.39(a)(1), who would otherwise be subject to the requirements of § 1026.41, may take advantage of the exemption in § 1026.41(e)(6) as long as it treats the mortgage loan as charged off and will not charge any additional fees or interest on the account. Third, the proposed comment further explains that if the consumer previously received a final periodic statement, a covered person (the purchaser, assignee, or transferee) is not also required to provide a final periodic statement, unless it began sending the consumer periodic statements and then later met the criteria under proposed § 1026.41(e)(6). The Bureau seeks comment on whether proposed comment 41(e)(6)-1 appropriately addresses circumstances under which a charged-off mortgage loan may be purchased, assigned, or transferred, and whether there are additional considerations related to purchase, assignment, or transfer of a charged-off mortgage loan for which the Bureau should account.

The Bureau is also proposing comment 41(e)(6)-2 to clarify that the obligation to provide a periodic statement for a charged-off mortgage loan resumes if a servicer or a covered person, as defined in § 1026.39(a)(1), who would otherwise be subject to the requirements of § 1026.41, fails to treat the mortgage loan as charged off at any time or charges any additional fees or interest on the account. Proposed comment 41(e)(6)-2 further provides that the servicer or covered person may not retroactively assess fees or interest on the account for the period of time during which the exemption in § 1026.41(e)(6) applied. If the servicer or covered person were to at any time no longer treat the mortgage loan as charged off, begin charging fees or interest on the account, or retroactively assess fees or interest on the account, such conduct would contravene the purpose of the proposed exemption from the otherwise applicable periodic statement requirement for charged-off mortgage loans.

The Bureau has narrowly tailored the proposed new exemption from the requirements of § 1026.41. The proposed exemption applies only to mortgage loans that have been charged off in accordance with loan-loss provisions and only if the servicer will not charge any additional fees or interest on the account. Additionally, the proposed exemption requires that the servicer provide the consumer a final periodic statement within 30 days of charge off or the most recent periodic statement, that such statement includes basic consumer information about the nature of the charge off, and that the obligation to make periodic statements resumes if a servicer or covered person charges fees or interest on the account in the future. The Bureau believes that limiting the proposed exemption in this fashion reduces the risk that this proposed exemption will be used to circumvent the servicing rules. The Bureau seeks comment on whether limiting the proposed exemption for charged-off mortgage loans as described above is appropriate. Additionally, the Bureau seeks comment on whether mortgage loans that were charged off prior to the rule's effective date (January 10, 2014) should be granted a grandfather period to provide servicers additional time to comply with either the proposed exemption for charged-off mortgage loans or the otherwise applicable periodic statement rule. Finally, the Bureau seeks comment on whether there are alternatives to periodic statements for charged-off mortgage loans, such as an annual reminder to the consumer of a loan's status, including what might be the associated benefits to consumers and costs to servicers of such alternatives.

Legal Authority

The Bureau is proposing to exempt from the periodic statement requirement under section 128(f) of TILA a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account, provided that the servicer must provide the consumer a final periodic statement within 30 days of charge off or the most recent periodic statement. The Bureau is proposing this exemption pursuant to its authority under section 105(a) and (f) of TILA and section 1405(b) of the Dodd-Frank Act.

For the reasons discussed above, the Bureau believes that the proposed exemption is necessary and proper under section 105(a) of TILA to facilitate TILA compliance. As discussed above, the Bureau believes that the proposal to exempt certain mortgage loans that a servicer has charged off facilitates compliance with TILA by allowing servicers to service loans cost effectively in compliance with applicable regulatory requirements.

In addition, consistent with section 105(f) of TILA and in light of the factors in that provision, for servicers that are required to charge off mortgage loans in accordance with loan-loss provisions, the Bureau believes that requiring them to comply with the periodic statement requirement in section 128(f) of TILA would not provide a meaningful benefit to consumers in the form of useful information or protection. The Bureau believes, as noted above, that requiring provision of periodic statements would impose significant costs and burden. Specifically, the Bureau believes that the proposal will not complicate, hinder, or make more expensive the credit process. In addition, consistent with section 1405(b) of the Dodd-Frank Act, for the reasons discussed above, the Bureau believes that exempting a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account, provided that the servicer must provide the consumer a final periodic statement within 30 days of charge off or the most recent periodic statement, from the requirements of section 128(f) of TILA would be in the interest of consumers and in the public interest.

In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purposes and objectives of Title X of the Dodd-Frank Act. Specifically, the Bureau believes that the proposed rule is necessary and appropriate to carry out the purpose under section 1021(a) of the Dodd-Frank Act of ensuring that all consumers have access to markets for consumer financial products and services that are fair, transparent, and competitive, and the objective under section 1021(b) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

41(f) Modified Periodic Statements and Coupon Books for Certain Consumers in Bankruptcy

The Bureau is proposing § 1026.41(f) to modify the periodic statement and coupon book requirements with respect to certain consumers who are in bankruptcy or have discharged personal liability for a mortgage loan through bankruptcy. As discussed in the section-by-section analysis of § 1026.41(e)(5), proposed § 1026.41(e)(5) exempts servicers from the requirement to provide periodic statements or coupon books to such consumers in some but not all circumstances. When no exemption under proposed § 1026.41(e)(5) applies, proposed § 1026.41(f) specifies various clarifications and modifications to the periodic statements or coupon books provided to such consumers. The following discussion first addresses the proposed clarifications and modifications to the periodic statement requirements. It then addresses proposed changes with respect to coupon books provided instead of periodic statements under § 1026.41(e)(3).

The Bureau is proposing two sets of modifications to the required layout and content for periodic statements provided to consumers in bankruptcy. The first set of modifications, in proposed § 1026.41(f)(1) and (2), applies to periodic statements provided to any consumer who is a debtor in a case under any chapter of the Bankruptcy Code, as well to a consumer who has discharged personal liability for a mortgage loan through bankruptcy. Proposed § 1026.41(f)(1) provides that servicers may exclude from the periodic statement the amount of any late fee and the date on which that fee will be imposed if payment has not been received. Proposed

§ 1026.41(f)(1) also provides that servicers may exclude the delinquency-related disclosures set forth in § 1024.41(d)(8)(i), (ii), and (v)—that is, the date on which the consumer became delinquent; a notification of possible risks, such as foreclosure and expenses, that may be incurred if the delinquency is not cured; and a notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable. Proposed § 1026.41(f)(2) requires the periodic statement to include on the first page a statement acknowledging the consumer's bankruptcy case or the discharged nature of the mortgage loan and a statement that the periodic statement is for informational purposes only.

The second set of modifications, in proposed § 1026.41(f)(3), applies specifically to periodic statements provided to a consumer who is a debtor in a case under Chapter 12 or Chapter 13 of the Bankruptcy Code. Proposed § 1026.41(f)(3)(i) provides that, in addition to the information identified in proposed § 1026.41(f)(1), a servicer may also omit the remainder of the delinquency information normally required by § 1026.41(d)(8). Proposed § 1026.41(f)(3)(ii) through (v) clarify and modify certain disclosures required by § 1026.41(d), including the amount due, explanation of amount due, past payment breakdown, and transaction activity. The changes are intended to ensure that these disclosures accurately portray the consumer's payment obligations while in bankruptcy. Proposed § 1026.41(f)(3)(vi) and (vii) require a servicer to include new disclosures related to a consumer's pre-bankruptcy arrearage (if any), as well as disclaimers related to the consumer's status in bankruptcy and the accuracy of the information provided in the periodic statement.

Proposed § 1026.41(f)(4) addresses the situation where more than one consumer is primarily obligated on a mortgage loan and a servicer is required to provide at least one of the primary obligors with a modified periodic statement pursuant to § 1026.41(f). Proposed

§ 1026.41(f)(4) provides that a servicer may provide the modified version of the periodic statement to any or all of the primary obligors instead of periodic statements not including the bankruptcy-specific modifications, even if not all primary obligors are debtors in bankruptcy. On the other hand, as proposed comment 41(e)(5)(i)-1 and the section-by-section analysis of § 1026.41(e)(5) explain, if a servicer were exempt under proposed § 1026.41(e)(5)(i) from providing periodic statements to the obligor in bankruptcy, the servicer would continue to provide regular periodic statements, without any of the bankruptcy-specific modifications, to the obligors who are not in bankruptcy.

Proposed § 1026.41(f)(5) provides that the modifications set forth above also apply to coupon books provided instead of periodic statements under § 1026.41(e)(3). Specifically, proposed § 1026.41(f)(5) provides that the modifications set forth in proposed § 1026.41(f)(1) and (3)(i) through (v) and (vii) apply to coupon books and other information a servicer provides to the consumer under § 1026.41(e)(3). Proposed § 1026.41(f)(5) permits the servicer to put the disclosures required under proposed § 1026.41(f)(2) and (3)(vii) anywhere in the coupon book or give them on a separate page enclosed with the coupon book provided to the consumer. The servicer must also make available upon request the pre-petition arrearage information set forth in proposed § 1026.41(f)(3)(vi).

As discussed in the section-by-section analysis of § 1026.41(e)(5), the Bureau sought comment in the October 2013 IFR as to how the content of periodic statements might be tailored to meet the particular needs of consumers in bankruptcy. The Bureau received written comments in response to that solicitation during the official comment period. Since then, the Bureau has continued to receive comments and, as part of its Implementation Plan, has consulted with servicers, trade groups, consumer advocacy groups, bankruptcy attorneys, bankruptcy trustees, and bankruptcy judges regarding how periodic statements may be tailored for purposes of bankruptcy, including hosting the roundtable discussion on June 16, 2014. Accordingly, the following discussion of proposed § 1026.41(f) contains discussion of the comments received during the official comment period, as well as discussion of ex parte comments received after that period ended. The following discussion first addresses the proposed clarifications and modifications to the periodic statement requirements; it then addresses proposed changes with respect to coupon books provided instead of periodic statements under § 1026.41(e)(3). The clarifications and modifications proposed for periodic statements generally apply to coupon books as well.

Modified Statements for Consumers in Bankruptcy

Commenters agreed that the required content and layout of the periodic statement, which is governed by § 1026.41(d), would need to be clarified or modified for at least some consumers in bankruptcy. Commenters suggested different modifications depending on whether a consumer is a debtor in a liquidation case under Chapter 7 or a reorganization case under Chapter 13 of the Bankruptcy Code. Most commenters did not specifically address how the § 1026.41(d) disclosures should be modified with respect to a consumer in a Chapter 11 or Chapter 12 case.[274] As discussed in more detail below, comments focused on whether certain language or disclosures—such as past due amounts or delinquency information—could be construed as an

[274] The lack of comments about Chapter 11 and Chapter 12 is consistent with the fact that relatively few consumers seek to reorganize their debts under those chapters. In 2013, for example, only 1,320 nonbusiness cases were filed under Chapter 11, and just 495 cases were filed under Chapter 12. By comparison, in the same year, approximately 705,000 nonbusiness cases were filed under Chapter 7 and another 330,000 under chapter 13. *See* Administrative Office of the U.S. Courts, *U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2013*, available at http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2013/1213_f2.pdf.

impermissible attempt to collect a debt in violation of the Bankruptcy Code's automatic stay, as well as whether other disclosures—such as the amount due and past payment breakdown—could be adjusted to reflect the payment terms of a consumer's bankruptcy plan. Commenters were also concerned about whether periodic statements could accurately reflect amounts due and paid under a bankruptcy plan or whether the disclosures would be unavoidably confusing or inaccurate. Finally, industry commenters expressed concern about the potential operational challenges and costs associated with providing periodic statements to consumers in bankruptcy.

Based on the comments received, the Bureau's outreach, and the Bureau's understanding of periodic statements that some servicers use for consumers in bankruptcy, the Bureau believes that it is appropriate to modify or omit certain of the disclosures required by § 1026.41(d) with respect to periodic statements provided to consumers in bankruptcy. As explained in more detail in the section-by-section analyses of § 1026.41(f)(1) through (3), the Bureau believes that the modifications and omissions are necessary to ensure that servicers do not violate the Bankruptcy Code's automatic stay by providing periodic statements and to ensure that periodic statements accurately reflect the payments made by consumers in bankruptcy. The Bureau further believes that it is appropriate to require certain modifications to the periodic statement specifically for consumers who have filed under Chapter 12 or Chapter 13. The Bureau believes different forms may be appropriate in part because of the special treatment of mortgage loans secured by a consumer's principal residence under Chapter 12 and Chapter 13, which permit a consumer to repay pre-bankruptcy arrearages over a reasonable time while continuing to make monthly periodic payments due under the loan.[275]

Accordingly, proposed § 1024.41(f) provides that unless a servicer is exempt under § 1026.41(e), a servicer must comply with the requirements of § 1024.41 with respect to a consumer who is a debtor in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy, subject to certain modifications set forth in § 1026.41(f)(1) through (3), as applicable. Briefly stated, proposed § 1026.41(f)(1) permits servicers to exclude from periodic statements certain of the disclosures ordinarily required by § 1026.41(d), and proposed § 1026.41(f)(2) requires servicers to include statements identifying the consumer's status in bankruptcy and advising that the periodic statement is for informational purposes. While the modifications sets forth in proposed § 1026.41(f)(1) and (2) apply to any periodic statement provided to a consumer in bankruptcy (or who has discharged personal liability for a mortgage loan through bankruptcy), proposed § 1026.41(f)(3) specifies additional modifications required for consumers in Chapter 12 or Chapter 13 bankruptcy.

Proposed comment 41(f)-1 clarifies that a servicer must resume providing regular periodic statements in accordance with § 1026.41 if the consumer's bankruptcy case is closed or dismissed. The comment also clarifies that the requirements of § 1026.41(f) continue to apply, however, if the consumer has discharged personal liability for the mortgage loan. The purpose of this comment is to clarify when a servicer is no longer required to provide periodic statements with the modifications set forth in proposed § 1026.41(f)(1) through (3).

Terminology and Other Modifications

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[275] *See* 11 U.S.C. 1222(b)(5), 1322(b)(5) (both stating that a plan "may provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due."). Under Chapter 12, moreover, a court may modify the terms of a mortgage loan secured by a principal residence. 11 U.S.C. 1222(b)(2).

Commenters agreed on the need to allow servicers to use alternative terminology on periodic statements for consumers in bankruptcy. Two trade groups stated that bankruptcy courts sometimes disfavor language such as "amount due," "payment due date," and "overdue" or "past due payments," as those terms call to mind an attempt to collect a debt. These groups suggested that servicers be allowed to use alternatives, such as "payment amount," "payment date," or "unpaid past payments." Servicers, trustees, and consumer advocacy groups had similar suggestions, noting that terms like "voluntary payment amount" or "contractual payment date" are more consistent with the notion that the periodic statements would be informational in nature.

Commenters also agreed that alternative terminology is necessary in Chapter 13 cases, in which a borrower may make two streams of payments. Commenters suggested that servicers be able to refer to the payments as "pre-petition payments" (to describe pre-bankruptcy arrearages) or "post-petition payments" (to describe periodic payments), or use other terms that reflect that dual stream of payments. A consumer advocacy group noted that such terminology is pervasive in bankruptcy and that, while a normal consumer may not be familiar such terms, a consumer in bankruptcy usually would be.

The Bureau agrees with the comments that servicers may need to use alternative terminology in periodic statements provided to consumers in bankruptcy. Commenters' concerns about collection language appear to be borne out by court decisions that have occasionally focused on the precise language of the terms used on periodic statements.[276]

[276] *See, e.g., In re Draper*, 237 B.R. 502, 505-06 (Bankr. M.D. Fla. 1999) (statement listed the "total amount due"); *Butz v. People First Fed. Credit Union (In re Butz)*, 444 B.R. 301 (Bankr. M.D. Pa. 2011) (statement requested

Similarly, the Bureau believes that the need to distinguish between pre-petition and post-petition payments in a Chapter 13 case may require different terminology than that used on other periodic statements. The Bureau further notes that it intends to conduct consumer testing on sample forms and will attempt to discern whether any particular terminology is more or less understandable for consumers.

Accordingly, the Bureau is proposing comment 41(f)-2, which provides that servicers may use terminology other than that found on the sample periodic statement in appendix H-30, so long as the new terminology is commonly understood. Current comment 41(d)-3 provides similar flexibility with respect to, for example, regional differences, but the Bureau believes that it is important to clarify that, for purposes of § 1026.41(f)(1) through (3), servicers may use terminology specific to the circumstances of bankruptcy.

Commenters, particularly servicers and trade groups, also emphasized the need for general flexibility in the periodic statement requirements for consumers in bankruptcy. They stated that many bankruptcy courts and trustees have their own local rules and procedures, and industry commenters argued that servicers need to be able to modify statements to reflect these local practices or the unique circumstances of a consumer's individual bankruptcy case. Two trade groups further argued that servicers should be permitted to craft disclosures they believe are necessary to convey to consumers that a servicer is not attempting to collect a debt or to explain how a consumer can request to not receive further statements and that the Bureau should not prescribe a "one size fits all" disclosure regime.

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immediate payment of an "amount due"); *Harris v. Mem'l Hosp. (In re Harris)*, 374 B.R. 611, 614 (Bankr. N.D. Ohio 2007) (statement advised that the "account is past due").

The Bureau agrees with the commenters that servicers may need flexibility to modify the periodic statement's content to comply with applicable rules and guidelines. The Bureau understands that many local bankruptcy rules already have certain requirements in place regarding periodic statements, and the Bureau believes that servicers should be able to comply with both those rules and Regulation Z. The Bureau further believes that giving servicers the flexibility to include disclosures related to a consumer's status in bankruptcy is important and necessary to permit servicers to comply with local practice or rules.

Accordingly, the Bureau is proposing comment 41(f)-3, which states that a periodic statement provided under § 1026.41(f) may be modified as necessary to facilitate compliance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, court orders, and local rules, guidelines, and standing orders. Proposed comment 41(f)-3 further provides that servicers may include additional disclaimers related to a borrower's status in bankruptcy or that advise a consumer how to submit a written request to cease receiving periodic statements. The Bureau seeks comment on proposed comment 41(f)-3, including whether it may afford servicers too little or too much flexibility with respect to the required content of periodic statements.

41(f)(1) Requirements Not Applicable

Section 1026.41(d) requires periodic statements to disclose information related to a consumer's failure to make timely payments. Section 1026.41(d)(1)(ii) sets forth one such disclosure, requiring a periodic statement to include the amount of any late fee and the date on which the fee will be imposed if payment has not been received. Section 1026.41(d)(8) requires that a periodic statement include certain information for consumers who are 45 days or more delinquent on a mortgage loan. Specifically, § 1024.41(d)(8)(i), (ii), and (v) require the disclosure of the date on which the consumer became delinquent; a notification of possible risks, such as foreclosure and expenses, that may be incurred if the delinquency is not cured; and a notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable. Section 1026.41(d) also contains certain layout requirements, including the requirement in § 1026.41(d)(1)(iii) that the amount due be displayed more prominently than other disclosures on the page.

Proposed § 1026.41(f)(1) provides that certain of § 1026.41(d)'s disclosures and layout requirements do not apply to periodic statements provided to consumers in bankruptcy under proposed § 1026.41(f). Servicers may exclude the disclosures set forth in § 1026.41(d)(1)(ii) and (8)(i), (ii), and (v), and servicers do not need to comply with § 1026.41(d)(1)(iii)'s requirement to display the amount due more prominently than other disclosures on the page.

Industry commenters maintained that certain disclosures required by § 1026.41(d) could be interpreted as a violation of the Bankruptcy Code's automatic stay because they threaten consequences for non-payment or emphasize past due amounts. Specifically, some industry participants commented that the notice of potential late fees required by § 1026.41(d)(1)(ii) and the delinquency information required by § 1026.41(d)(8) could be viewed as collection attempts. Additionally, two trade groups objected to the amount due being the most prominent disclosure on the page, as required by § 1026.41(d)(1)(iii), arguing that servicers should be allowed to make bankruptcy disclaimers the most prominent disclosures on the page. Consumer advocacy groups objected to removing the delinquency information, stating that it is valuable information for consumers to receive and that a court would not find that a servicer violated the automatic stay by including this on a statement that also contained appropriate bankruptcy disclaimers.

Proposed § 1026.41(f)(1) addresses these concerns by modifying the required content and layout of periodic statements for consumers in bankruptcy. The proposal provides that the requirement set forth in § 1026.41(d)(1)(iii) that the amount due be the most prominent disclosure on the page would not apply when a consumer is in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy. Consistent with the flexibility the Bureau would afford servicers in modifying the periodic statement as necessary, discussed above, the Bureau believes it is appropriate for other disclosures, such as a disclaimer acknowledging the consumer's bankruptcy case and advising that the statement is for informational purposes only, to be the most prominent disclosures on the page.[277] The Bureau notes that the amount due disclosures required by § 1026.41(d)(1) would still be required to be located at the top of the first page of the statement.[278]

The Bureau believes that receiving information regarding the consequences of late payments or continued delinquencies, such as disclosures regarding potential fees and possible foreclosure, provides tangible benefits to consumers.[279] Nonetheless, the Bureau understands that, in certain instances, bankruptcy courts have found that statements regarding potential late fees or foreclosure and other language that could be construed as threatening consequences for a failure to make payments could violate the automatic stay.[280] Furthermore, the Bureau believes

[277] *Compare Pearson v. Bank of Am.*, No. 3:12-cv-00013, 2012 WL 2804826, *5-6 (W.D. Va. July 10, 2012) (holding that creditor did not violate discharge injunction because, among other things, the periodic statements included a prominent bankruptcy disclaimer noting that creditor could not collect debt or pressure debtor for payment) *with Harlan v. Rosenberg & Assocs. (In re Harlan)*, 402 B.R. 703, 716 (Bankr. W.D. Va. 2009) (holding that Chapter 7 debtors stated a plausible claim for violation of the discharge injunction where, among other things, creditor's letters stated that "this is an attempt to collect a debt" and had bankruptcy disclaimers in regular-sized font in the middle of the page).
[278] 12 CFR 1026.41(d)(1) (stating that the (d)(1) disclosures must be "[g]rouped together in close proximity to each other and located at the top of the first page of the statement").
[279] 78 FR 10901, 10971-72 (Feb. 14, 2013).
[280] *Compare Brown v. Bank of Am. (In re Brown)*, 481 B.R. 351, 360 (Bankr. W.D. Pa. 2012) *with Schatz*, 452 B.R. at 550 (no stay violation where among other things, creditor did not threaten any late fees); *see also Duke*, 79 F.3d at 45 ("[T]he respite provided by § 362 'is not from communication with creditors, but from the threat of immediate action by creditors, such as a foreclosure or a lawsuit.'") (*quoting Brown v. Pa. State Emps. Credit Union*, 851 F.2d 81, 86 (3d Cir. 1988)).

that a consumer in bankruptcy may already be aware of the consequences of non-payment and may have filed for bankruptcy precisely to avoid those consequences. The Bureau therefore believes that it may be appropriate to permit servicers to exclude from the periodic statement certain information regarding consequences of late payment or continued non-payment.

As such, for consumers in bankruptcy or who have discharged personal liability for a mortgage loan through bankruptcy, proposed § 1026.41(f)(1) permits servicers to exclude from the periodic statement the amount of any late payment fee that will be imposed and the date on which that fee will be imposed if payment has not been received.[281] Proposed § 1026.41(f)(1) also permits servicers to exclude the delinquency-related disclosures set forth in § 1024.41(d)(8)(i), (ii), and (v)—that is, the date on which the consumer became delinquent; a notification of possible risks, such as foreclosure and expenses, that may be incurred if the delinquency is not cured; and a notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable. While the Bureau believes that this is valuable information for any consumer, including a consumer in bankruptcy, the Bureau is concerned that courts or consumers may interpret a periodic statement containing such disclosures as attempting to compel payment of a debt, rather than simply providing information to a consumer.

On the other hand, the Bureau believes that the remainder of the delinquency disclosures required by § 1026.41(d)(8) may be appropriate for consumers in a Chapter 7 or Chapter 11 case, and for consumers who have discharged personal liability for a mortgage loan. For example,

[281] 12 CFR 1026.41(d)(1)(ii).

references to any loss mitigation program to which the consumer has agreed[282] or to homeownership counselor information[283] do not relate to amounts owed, nor do they threaten consequences for non-payment. No commenter specifically identified this information as problematic and none cited case law indicating that providing it would cause a servicer to violate the automatic stay.

Additionally, the Bureau believes that consumers in Chapter 7 or Chapter 11 bankruptcy (or those who have discharged personal liability for a mortgage loan through bankruptcy) who are intending to retain their homes have a need for information regarding recent account activity[284] and the amount needed to bring the loan current.[285] As the Bureau stated in the 2013 TILA Servicing Final Rule, the accounting associated with mortgage loan payments is complicated and can be even more so in delinquency situations.[286] The account history helps a consumer better understand the exact amount owed on the loan and how that total was calculated and it enables a consumer to better identify errors in payment application. Moreover, the Bureau understands that many housing counselors believe that this information is vital when trying to assist a consumer to pursue home retention options and cure prior defaults because it enables the counselor to understand the circumstances of a consumer's delinquency. The Bureau believes that this information may have unique benefits for a consumer in bankruptcy because such a consumer may be facing an immediate decision whether to retain or surrender a home and in that situation the consumer needs accurate information about the amounts they owe.

[282] 12 CFR 1026.41(d)(8)(iv).
[283] 12 CFR 1026.41(d)(8)(vii).
[284] 12 CFR 1026.41(d)(8)(iii).
[285] 12 CFR 1026.41(d)(8)(vi).
[286] 78 FR 10901, 10971 (Feb. 14, 2013).

The Bureau further notes that the disclosures in § 1026.41(d)(8) do not require a servicer to use any specific language.[287] A servicer is therefore permitted to describe those disclosures in any numbers of ways to avoid concerns about the account history appearing to be a collection attempt rather than simply providing useful information.

The Bureau solicits comment on the modifications to the periodic statement set forth in proposed § 1026.41(f)(1). Specifically, the Bureau solicits comment on whether the proposed modifications are appropriate and whether additional modifications are necessary. Further, the Bureau solicits comment on whether the proposed modifications or additional modifications would be necessary if the Bureau required a consumer in Chapter 7 or Chapter 11 (or a consumer who has discharged personal liability for the mortgage loan through bankruptcy) to opt-in to receiving periodic statements by submitting a written request to a servicer.

41(f)(2) Bankruptcy Notices

All commenters suggested that a periodic statement provided to a consumer in bankruptcy should contain a disclaimer acknowledging, at a minimum, that the consumer is in bankruptcy and that the statement is for informational purposes only. As noted above, two trade groups commented that this should be the most prominent disclosure on the page. Bankruptcy courts have frequently cited servicers' inclusion, or failure to include, this type of disclaimer as a factor in determining whether servicer has violated the automatic stay,[288] and some bankruptcy

[287] *Id*. at 10972 ("[T]he Bureau notes that specific language is not required by the regulation . . . .").

[288] *Compare Jones v. Bac Home Loans Servicing, LP (In re Jones)*, No. 09-50281, 2009 WL 5842122, at *3 (Bankr. S.D. Ind. Nov. 25, 2009) (no discharge violation where letter acknowledged the discharge and uncollectability of the debt); *Pearson v. Bank of Am.*, No. 3:12-cv-00013, 2012 WL 2804826, at *5-6 (W.D. Va. July 10, 2012) (holding that creditor did not violate discharge injunction for debtor who had intent to surrender by sending a statement asking for payment and noting late charge because the statement included prominent bankruptcy disclaimer noting that creditor could not collect debt or pressure debtor for payment and an opt-out clause); *Schatz v. Chase Home Fin.*

courts have adopted local rules permitting or requiring periodic statements so long as they clearly identify that they are for informational purposes and are not attempts to collect a debt.[289]

The Bureau therefore believes it may be appropriate to require servicers to include a similar disclaimer on periodic statements provided to consumers in bankruptcy or who have discharged personal liability for a mortgage loan through bankruptcy. Proposed § 1026.41(f)(2) requires the periodic statement to include on the first page a statement acknowledging the consumer's bankruptcy case or the discharged nature of the mortgage loan and a statement that the periodic statement is for informational purposes only. The Bureau understands that this requirement is consistent with the practice of servicers that currently provide periodic statements to consumers in bankruptcy. The Bureau seeks comment on whether servicers should be permitted to include the disclosures under proposed § 1026.41(f)(2) on a separate page enclosed with the periodic statement, whether the disclosures under proposed § 1026.41(f)(2) should be permissive rather than mandatory, and whether there are other appropriate disclosures that should be permitted or required.

(In re Schatz), 452 B.R. 544, 550 (Bankr. M.D. Pa. 2011) (holding that creditor did not violate the stay where the disclaimer was located in the center of the first page, "not buried in boilerplate language, nor hidden on the backside of the document") *with Brown v. Bank of Am. (In re Brown)*, 481 B.R. 351, 360 (Bankr. W.D. Pa. 2012) (holding that the creditor violated the discharge injunction by sending periodic statements that lacked any bankruptcy disclaimers, threatened late fees, and listed amounts past due); *Harlan v. Rosenberg & Assocs., LLC (In re Harlan)*, 402 B.R. 703, 716 (Bankr. W.D. Va. 2009) (finding stay violation where bankruptcy disclaimer was in regular-sized font in the middle of the page rather than more prominent than other disclosures); *Sipe v. Conseco Fin. Servicing Corp. f/k/a Green Tree Fin. Servicing Corp. (In re Sipe)*, No. 99-40166, 2001 WL 35672616, at *4 (Bankr. W.D.N.C. July 18, 2001) (finding a stay violation in part because "[t]here is nothing in 'bold letters' across the front of the statements to indicate that their sole purpose is to advise the debtor of the receipt of funds from the Chapter 13 Trustee"); *Curtis v. LaSalle Nat'l Bank (In re Curtis)*, 322 B.R. 470, 484 n.18 (Bankr. D. Mass. 2005) (finding a stay violation where the bankruptcy disclaimers were "[o]n the backside of the first page of the . . . letter, and without the capital letters and bold print employed for other sections of the letter").

[289] *See, e.g.*, Bankr. D. Colo. L.B.R. 4001-4(a)(1) ("In order for communication to be protected under this [local rule], the communication must indicate it is provided for information purposes and does not constitute a demand for payment."); D. Kan. Bk. S.O. 08-4, ¶ (c)(2) ("In order for communication to be protected under this provision, the communication must indicate it is provided for information purposes and does not constitute a demand for payment.").

41(f)(3) Chapter 12 and Chapter 13 Consumers

Proposed § 1026.41(f)(3) sets forth additional modifications for periodic statements provided to consumers in Chapter 12 or Chapter 13 cases. Proposed § 1026.41(f)(3)(i) provides that, in addition to the information identified in proposed § 1026.41(f)(1), a servicer may also omit the remainder of the delinquency information normally required by § 1026.41(d)(8). Proposed § 1026.41(f)(3)(ii) through (v) clarify and modify certain disclosures required by § 1026.41(d), including the amount due, explanation of amount due, past payment breakdown, and transaction activity. Finally, proposed § 1026.41(f)(3)(vi) and (vii) require a servicer to include new disclosures related to the pre-petition arrearage (if any), as well as disclaimers related to the consumer's status in bankruptcy and the accuracy of the information provided in the statement.

The Bureau is proposing three comments to clarify the meaning of certain terms used in proposed § 1026.41(f)(3) and related commentary. First, proposed comment 41(f)(3)-1 clarifies that for purposes of § 1026.41(f)(3), the term "plan of reorganization" refers to a consumer's plan of reorganization filed under the applicable provisions of Chapter 12 or Chapter 13 of the Bankruptcy Code and confirmed by a court with jurisdiction over the consumer's bankruptcy case. The Bureau believes that this comment will help avoid any confusion about the meaning of the term "plan of reorganization" and whether the term refers to a proposed plan or one that has been confirmed by a court.

Second, proposed comment 41(f)(3)-2 clarifies that for purposes of § 1026.41(f)(3), "pre-petition payments" are payments made under a plan of reorganization to cure the consumer's pre-bankruptcy defaults, if any, and that "post-petition payments" are payments made under a plan of reorganization to satisfy the mortgage loan's periodic payments as they come due after the bankruptcy case is filed. The Bureau believes that these terms are appropriate because the Bureau understands that they are commonly used to describe these two primary types of payments made under a plan of reorganization.

Third, proposed comment 41(f)(3)-3 clarifies that for purposes of § 1026.41(f)(3), post-petition fees and charges are those fees and charges incurred after the bankruptcy case is filed. In light of proposed § 1026.41(f)(3)'s requirement (discussed below) that servicers make certain disclosures about the amount of post-petition fees and charges, this proposed comment is intended to clarify the distinction between fees and charges imposed before the bankruptcy case was filed and those imposed after filing.

In addition, the Bureau is also proposing comment 41(f)(3)-4 to address the disclosures that must be made on the first periodic statement provided to a consumer under proposed § 1024.41(f)(3) after an exemption under § 1026.41(e) expires. Section 1026.41(f)(3)(iii) through (vi) require the disclosure of the total sum of any post-petition fees or charges imposed, the total of all post-petition payments received and how they were applied, the total of all payments applied to post-petition fees or charges imposed, a list of all transaction activity, and the total of all pre-petition payments received "since the last statement." For purposes of the first periodic statement provided to the consumer following termination of an exemption under § 1026.41(e), proposed comment 41(f)(3)-4 clarifies that the disclosures required by § 1026.41(f)(3)(iii) through (vi) may be limited to account activity since the last payment due date that occurred while the exemption was in effect. Proposed comment 41(f)(3)-4 tracks proposed comment 41(d)-5, discussed in the section-by-section analysis of § 1026.41(d), and is intended to ensure that the disclosures required under § 1026.41(f)(3)(iii) through (vi) cover the same time period as the disclosures normally required by § 1026.41(d).

41(f)(3)(i) Requirements Not Applicable

Proposed § 1026.41(f)(3)(i) provides that, in addition to the information a servicer may omit from the periodic statement under proposed § 1026.41(f)(1), a servicer may also omit the remainder of the delinquency information required by § 1026.41(d)(8) (*i.e.*, a servicer may also omit the information required by § 1026.41(d)(8)(iii), (iv), (vi) and (vii)). Several servicers and trade groups argued that delinquency information is particularly inappropriate for Chapter 13 consumers because these consumers can be contractually delinquent but still have made all payments due under the plan of reorganization. Those commenters suggested that reminding these consumers about their contractual delinquency could be confusing and provide limited value. Several industry commenters also argued that delinquency information related to failures to make plan payments is unnecessary, as the bankruptcy court is in a position to resolve matters related to post-petition defaults. Two consumer advocacy groups and other industry participants agreed that delinquency information may be confusing or provide little value to consumers in Chapter 13 bankruptcy. The two consumer advocacy groups recommended, in lieu of delinquency information, that the periodic statement should contain statements indicating that the consumer had not made all of the required payments and encouraging the consumer to contact an attorney or the trustee. Finally, an industry participant favored requiring a periodic statement to include a more general disclosure that the consumer must continue to make payment in order to retain the property.

The Bureau agrees with commenters that the delinquency information may be confusing or of little value to consumers in a Chapter 13 case. As commenters noted, information related to pre-bankruptcy defaults may not be helpful, and in fact may be confusing, to a consumer whose plan of reorganization is designed to repay those defaults over time. Further, the Bureau understands that a consumer who fails to make several plan payments will likely face immediate consequences in bankruptcy, such as a trustee's motion to dismiss or a servicer's motion for relief from the automatic stay, and the delinquency information may serve less value in that scenario. Accordingly, proposed § 1026.41(f)(3)(i) provides that a servicer may omit the delinquency information required by current § 1026.41(d)(8).

41(f)(3)(ii) and (iii) Amount Due and Explanation of Amount Due

Under § 1026.41(d)(1), a periodic statement must disclose, among other things, the payment due date and the amount due. Section 1026.41(d)(2) requires disclosure of an explanation of amount due, including (a) the monthly payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow; (b) the total sum of any fees or charges imposed since the last statement; and (c) any payment amount past due.

Proposed § 1026.41(f)(3)(ii) and (iii) modify the requirements of § 1026.41(d)(1) and (2) for purposes of periodic statements provided to consumers in Chapter 12 or Chapter 13 bankruptcy. The proposal states that the amount due and explanation of amount due disclosures may be limited to the monthly post-petition payments due under the mortgage loan and any post-petition fees or charges imposed since the last periodic statement. Proposed comments 41(f)(3)(ii)-1 and (iii)-1 further clarify that these disclosures would not be required to include the amounts of any payments on account of a consumer's pre-petition arrearages or that are due under a court order.

Commenters raised three concerns about the amount due, payment due date, and explanation of amount due disclosures required by § 1026.41(d)(1) and (2) in the bankruptcy context. First, industry participants and bankruptcy trustees requested clarification about what payments and due dates should be included in these disclosures. These commenters stated that listing the amount owed under the contract, including all pre-petition arrearages, would conflict with the terms of a bankruptcy plan, which allows the consumer to repay those arrearages over time. They also noted that in Chapter 13 cases, consumers may be making two sets of payments that may be due on two different dates (and potentially due to two different parties), and they requested clarification about whether the amount due must include one or both of these payments. These commenters further noted that additional amounts may be due pursuant to specific court orders and they inquired whether those additional amounts must be included in the amount due and explanation of amount due.

Industry, consumer advocacy groups, and bankruptcy trustees agreed that the amount due should reflect the post-petition payments—that is, the periodic payments due after the bankruptcy filing—and should not include amounts attributable to the pre-petition arrearage or amounts due under individual court orders. Commenters noted that the amount of the post-petition payments is determined by the mortgage loan contract and thus is information within a servicer's control, while the pre-petition payments and amounts owed under a court order are determined by the plan of reorganization or the court order. Industry commenters further stated that that it would be difficult to accurately capture these additional amounts and argued that they are unnecessary in a periodic statement, given that the plan or court order identifies the payment schedule and amount. During the bankruptcy roundtable discussion that the Bureau held on June 16, 2014, participants agreed that the amount due and explanation of amount due could be limited to post-petition payments and that a servicer should include a disclaimer advising that the plan may require the consumer to make additional payments.

As the Bureau stated in the 2013 TILA Servicing Final Rule, the Bureau believes that it may be appropriate to tailor the amount due disclosures to the amounts due under a consumer's plan of reorganization.[290] Additionally, in light of the comments received, the Bureau believes that it is appropriate to allow servicers to limit the amount due and explanation of amount due disclosures to include only post-petition payments. In addition to the reasons provided by commenters, the Bureau understands that some local rules adopted by bankruptcy courts that address periodic statements provide that the statements should reflect the post-petition payments, and that these local rules would not require a servicer to include pre-petition payments or amounts due under a court order in the amount due field.[291] Accordingly, proposed § 1026.41(f)(2)(ii) and (iii) require a servicer to include post-petition payments in the amount due and explanation of amount due, including any past due post-petition payments, but do not require a servicer to include pre-petition payments that may be due under the plan of reorganization.

The second concern that commenters raised pertained to the explanation of amount due. Specifically, industry requested that the explanation of amount due not include a breakdown of how much, if any, of the post-petition payment will be applied to principal, interest, and escrow, as would normally be required under § 1026.41(d)(2)(i). Two trade groups argued that this breakdown would confuse a consumer because a servicer must apply the post-petition payment to the oldest outstanding unpaid periodic payment, which often has a different breakdown of principal and interest than the current month's payment. The trade groups commented that consumers would not understand why the allocation under the explanation of amount due would

[290] 78 FR 10901, 10966 (Feb. 14, 2013).
[291] *See, e.g.*, Mont. LBR 4001-3 (stating that if a mortgage creditor provides periodic statements to a Chapter 13 debtor, the "statements shall contain at least the following information concerning postpetition mortgage payments to be made directly to the mortgagee . . . (A) the date of the statement and the date the next payment is due; (B) the amount of the current monthly payment"); Vt. LBR 3071-1 (similar).

not correspond to how the servicer actually applied the payment. The trade groups and a servicer further commented that servicers cannot always discern how a trustee may allocate payments to principal, interest, and escrow, so the breakdown on the periodic statement may not match the trustee's records, which could foster further confusion.

Comments from bankruptcy trustees and consumer advocacy groups took the opposing view, arguing that disclosing how payments will be allocated (and how they were applied, as discussed below) is vital to ensuring that servicers are correctly applying payments. These commenters stated that servicers have particular difficulty accounting for escrow payments in bankruptcy and that disclosing the amount to be applied to escrow is crucial to ensuring compliance with the bankruptcy plan. Bankruptcy trustees noted that a breakdown of principal and interest is helpful for determining whether servicers correctly applied payments due under a daily simple interest loan. The trustees and consumer advocacy groups also strongly disagreed with industry's legal premise, arguing that Chapter 13 plans can in fact require a servicer to apply a post-petition payment to the current month rather than to the oldest outstanding debt.

Although the Bureau understands industry commenters' concerns about the potential for consumer confusion, the Bureau believes that this concern may be outweighed by the benefits of disclosing the breakdown of the post-petition payments by principal, interest, and escrow. This breakdown is intended to give a consumer a snapshot of why the consumer is being asked to pay the amount due.[292] Without an explanation of, for example, the amount attributable to escrow, a consumer and the consumer's attorney may be unable to discern how a servicer calculated the amount due. Furthermore, as described in the section-by-section analysis of § 1026.41(f)(3)(vii),

[292] *See* 78 FR 10901, 10965 (Feb. 14, 2013).

to address the potential for borrower confusion, proposed § 1026.41(f)(3)(vii) requires a servicer to include a statement that the application of payments on the periodic statement may not reflect the trustee's allocations and a statement encouraging the consumer to contact the consumer's attorney or trustee with any questions. Moreover, the Bureau notes that it intends to conduct consumer testing on a proposed sample statement for Chapter 13 consumers and that it will test whether consumers are in fact confused by any discrepancy between the allocation in the amount due and the allocation in the past payment breakdown. Accordingly, proposed § 1026.41(f)(3)(iii) leaves in place § 1026.41(d)(2)(i)'s requirement to include a breakdown of the amount of the monthly payment, if any, that will be applied to principal, interest and escrow.

Finally, commenters inquired about whether post-petition fees and charges—that is, fees and charges imposed after the bankruptcy filing—are required or permitted to be included in the amount due and explanation of amount due. Two consumer advocacy groups maintained that no law prevents servicers from advising consumers of fees or charges that have been assessed during a bankruptcy case and that consumers would benefit from being informed of these fees and charges when they are imposed, rather than later in the bankruptcy case. One large servicer agreed that consumers would benefit from learning about fees as they are incurred. A trade group, two large servicers, and an industry representative stated in joint comments that most servicers would prefer to include fees and charges on a periodic statement so that they could collect the fees shortly after assessing them and that operationally it would be easier to include fees and charges on a periodic statement than to not include them. These commenters noted, however, that a minority of servicers are concerned that they should first disclose any post-petition fees and charges to the bankruptcy court through the procedures outlined in Federal Rule of Bankruptcy Procedure 3002.1.

The Bureau agrees with the comments that consumers, including those in bankruptcy, benefit from learning of fees and charges that have been imposed on their account. The Bureau believes that this would assist consumers' efforts to budget their finances and timely pay fees and charges. The Bureau further believes that a servicer also benefits from fees or charges being disclosed on the periodic statement because it enables the servicer to quickly collect the fees or charges. The Bureau appreciates the concern of some servicers that they would prefer to first disclose the fees and charges to a bankruptcy court through the procedures set forth in Federal Rule of Bankruptcy Procedure 3002.1. In the bankruptcy context, however, a servicer that defers collecting a fee or charge until after complying with the Federal Rule of Bankruptcy Procedure 3002.1 procedures, and thus after a potential court determination on the allowability of the fee or charge, is not required to disclose the fee or charge until complying with such procedures. For these reasons, proposed § 1026.41(f)(2)(ii)(A) and (B) require a servicer to include in the explanation of amount due the total sum of any post-petition fees or charges imposed since the last periodic statement. A servicer that defers collecting a fee or charge until after complying with the Federal Rule of Bankruptcy Procedure 3002.1 procedures, and thus after a potential court determination on the allowability of the fee or charge, is not required to disclose the fee or charge until complying with such procedures.

Proposed comment 41(f)(3)(ii)-1 is intended to clarify the amounts that must be included in the amount due and the amounts that may be included in the amount due at a servicer's discretion. The proposed comment clarifies that, for a consumer in Chapter 12 or Chapter 13 bankruptcy, the amount due is not required to include any amounts other than the post-petition payments or post-petition fees and charges that a servicer has imposed. Additionally, the proposed comment explains that a servicer has not imposed a fee or charge if it will comply with

Federal Rule of Bankruptcy Procedure 3002.1 before attempting to collect a fee or charge. The comment further explains that while only post-petition payments and post-petition fees and charges are required to be included in the amount due, a servicer has the flexibility to include other amounts, such as the amount owed under an agreed court order, in the amount due, so long as those other amounts are also disclosed in the explanation of amount due and transaction activity.

Proposed comment 41(f)(3)(iii)-1 provides similar clarification with respect to the explanation of amount due. It states that the explanation of amount due is not required to include any amounts other than the post-petition payments and post-petition fees and charges that a servicer has imposed. A servicer nonetheless has the flexibility to include other amounts, such as amounts payable under an agreed court order, in the explanation of amount due, so long as those other amounts are disclosed in the amount due and transaction activity. The Bureau believes that proposed comments 41(f)(3)(ii)-1 and (iii)-1 will assist servicers in understanding what amounts must be, and are permitted to be, included in the amount due and explanation of amount due.

The Bureau solicits comment on whether the explanation of amount due should include a breakdown of the amount of the monthly payment that will be applied to principal, interest and escrow, or whether a more limited disclosure is appropriate, such as listing the monthly payment as a lump sum or listing the principal and interest as a combined figure with the escrow amount disclosed separately. Additionally, the Bureau requests comment on whether a servicer should be permitted or required to include post-petition fees and charges in the amount due disclosure.

41(f)(3)(iv) Past Payment Breakdown

Proposed § 1026.41(f)(3)(iv) is intended to provide a consumer with a snapshot of how their payments have been applied, much the same as § 1026.41(d)(3). Specifically, proposed § 1026.41(f)(3)(iv) requires the periodic statement to include the total of all post-petition payments received since the last statement and a breakdown of the amounts, if any, applied to principal, interest, and escrow, as well as the amount, if any, currently held in any suspense or unapplied funds account and a total of all payments applied to post-petition fees or charges since the last statement. Proposed § 1026.41(f)(3)(iv) also requires the periodic statement to include the total of all post-petition payments received since the beginning of the calendar year and a breakdown of the amounts, if any, applied to principal, interest, and escrow, as well as a the amount, if any, currently held in any suspense or unapplied funds account and total of all payments applied to post-petitions fees or charges since the beginning of the calendar year.

Industry commenters objected to the requirement that a periodic statement must contain a past payment breakdown including a breakdown of payments by the amount applied to principal, interest, and escrow, maintaining that this could confuse consumers because it may not be consistent with the trustee's records. Industry commenters requested that the post-petition payments received be disclosed as a lump sum total. A credit union commented that, although it tracks the amounts applied to post-petition fees and charges, its systems are not currently configured to display that total on a periodic statement. The credit union further commented that similar smaller entities would need to upgrade their systems to disclose this information.

Consumer advocacy groups and bankruptcy trustees commented that receiving a breakdown of how post-petition payments were applied to principal, interest, and escrow is vital to determining whether a servicer is correctly applying payments due under a plan of reorganization. These commenters stated that a lump sum disclosure would be of significantly less value.

The Bureau understands servicers' concerns about borrower confusion, but as discussed in the section-by-section analysis of 41(f)(3)(ii) with respect to the explanation of amount due, the Bureau believes that these concerns may be outweighed by the benefits of disclosing the breakdown of the post-petition payments by principal, interest, and escrow. This breakdown allows a consumer to identify potential errors in payment application, including any misapplication of payments to escrow or fees. The Bureau believes that this breakdown also plays an important role in educating a consumer. The Bureau also believes that the information pertaining to payments received since the last statement inform consumers of how much their outstanding principal has decreased, while the year-to-date information educates consumers about the costs of their mortgage loan.[293] Furthermore, as set forth below, to address the potential for borrower confusion, proposed § 1026.41(f)(3)(vii) requires a servicer to include a statement that the application of payments on the periodic statement may not reflect the trustee's allocations, as well as a statement encouraging the consumer to contact the consumer's attorney or trustee with any questions. Therefore, the Bureau is proposing § 1026.41(f)(3)(iv) to require a servicer to include a breakdown of the amount of the post-petition payments that was applied to principal, interest and escrow.

The Bureau solicits comment on whether the past payment breakdown should include a breakdown of the amount of the post-petition payments that were applied to principal, interest and escrow, or whether a more limited disclosure is appropriate, such as listing the amounts applied as a lump sum or listing the principal and interest as a combined figure with the escrow amount broken out separately.

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[293] *Id.* at 10966 (Feb. 14, 2013).

41(f)(3)(v) Transaction Activity

Proposed § 1026.41(f)(3)(v) provides that the transaction activity information required to be disclosed on a periodic statement under § 1026.41(d)(4) must include any post-petition payments, pre-petition payments, and payments of post-petition fees or charges the servicer has received since the last statement.

Consumer advocacy groups and bankruptcy trustees commented that the transaction activity should include both pre-petition payments and post-petition payments received by the servicer so that a consumer and the trustee have a record of which payments a servicer has received and when. Industry commenters did not object to disclosing these amounts, though they commented that it would be extremely difficult for a servicer to identify the source of any payments—whether a payment came from a trustee, a consumer, or a third-party–and that the source of payment is not important to the consumer. During the bankruptcy roundtable that the Bureau held on June 16, 2014, representatives from consumer advocacy groups and bankruptcy trustees agreed that the source of payments is not as important as simply identifying the amount of the payment received. Additionally, consumer advocacy groups stated that there is no prohibition on disclosing post-petition fees or charges that have been imposed on a consumer, and that a consumer would benefit from having those fees disclosed on a periodic statement. Several servicers stated that their preference would be to disclose fees and charges as they are imposed so that they can be collected on a real-time basis.

As discussed in the 2013 TILA Servicing Final Rule, the Bureau believes that it is important for consumers to understand account activity that credits or debits the amount due, including any fees or charges that have been assessed.[294] The Bureau believes that consumers in bankruptcy would similarly benefit from these disclosures. Additionally, the Bureau believes that consumers in bankruptcy may benefit if the transaction activity includes pre-petition payments. Although those payments would not affect the amount due (which would be limited to post-petition payments and fees), the pre-petition payments do reduce a consumer's pre-petition arrearage and thus serve to reduce a consumer's delinquency. Generally, the Bureau believes that having an accurate picture of a delinquency is essential for consumers to engage in financial planning. Moreover, the Bureau understands that there may be a significant delay between when a consumer sends a pre-petition payment to a trustee and when a servicer ultimately receives that payment, and the Bureau believes it may benefit consumers to have a record of when such payments are received. Accordingly, proposed § 1026.41(f)(3)(v) provides that the transaction activity information set forth in § 1026.41(d)(4) must include any post-petition payments, pre-petition payments, and payments of post-petition fees or charges the servicer has received since the last statement.

Proposed comment 41(f)(3)(v)-1 clarifies that the brief description of the transaction activity required by § 1026.41(d)(4) does not need to identify the source of the payments received by the servicer. The Bureau believes that this clarification is necessary in light of servicers' comments that they are not able to provide this information on a periodic statement.

The Bureau solicits comment on whether the transaction activity should including post-petition payments, pre-petition payments, and post-petition fees and charges, or whether it should disclosure different or additional types of activity.

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[294] 78 FR 10901, 10967 (Feb. 14, 2013).

41(f)(3)(vi) Pre-petition Arrearage

For consumers in Chapter 12 or Chapter 13 bankruptcy, proposed § 1026.41(f)(3)(vi) requires a servicer to disclose, if applicable, the total of all pre-petition payments received by the servicer since the last periodic statement, the total of all pre-petition payments received by the servicer since the beginning of the current calendar year, and the current balance of the consumer's pre-petition arrearage.

As discussed in the section-by-section analyses of § 1026.41(f)(3)(ii) through (iv), some industry representatives submitted ex parte comments objecting to a requirement to break down payment application by principal, interest, and escrow, and industry commenters voiced a stronger objection to doing so for pre-petition payments. Industry commenters stated that the pre-petition arrearage is treated essentially as a lump sum claim in bankruptcy, and that each payment received goes to reduce the amount of that claim. They maintained that, as a result, it is unnecessary to disclose whether a portion of a payment is being applied to principal or pre-petition escrow shortages, and that it is equally unnecessary and unhelpful to advise the consumer if any portion of the payment is being held in suspense. These commenters further stated that a Chapter 13 trustee and a servicer may allocate a different portion of the pre-petition payments to, for example, principal or fees, and that the differing allocations would be extremely difficult to reconcile. Several servicers stated that they could disclose the amount of any pre-petition payments received as well as the current balance the pre-petition arrearage. A credit union commented that it and other smaller-sized entities currently lack the capacity to export information about pre-petition payments onto a periodic statement, however, and that any requirement to do so would require them to modify their systems.

Consumer advocacy groups and bankruptcy trustees commented that breaking down pre-petition payments by principal, interest, and escrow would be unnecessary for purposes of periodic statements because the arrearage is treated as a lump sum claim in bankruptcy. They expressed comfort with the idea of servicers disclosing the amount of pre-petition payments received and the current balance of pre-petition arrearage.

The Bureau believes that consumers need a record of payments received by a servicer, including pre-petition payments, in order to better understand the status of their mortgage loans and any delinquencies. The Bureau also believes that, in light of the comments from industry, consumer advocacy groups, and bankruptcy trustees, servicers should not be required to break down pre-petition payments by principal, interest, and escrow and that consumers would benefit from disclosure of the aggregate amounts of these payments. Although the Bureau understands that some servicers may not be currently equipped to identify the amount of the pre-petition arrearage on a periodic statement, the Bureau understands that servicers keep records of this information and believes that, with an appropriate implementation period, servicers would be able to provide it on a periodic statement. Accordingly, proposed § 1026.41(f)(3)(vi) requires a servicer to disclose, if applicable, the total of all pre-petition payments received since the last periodic statement, the total of all pre-petition payments received since the beginning of the current calendar year, and the current balance of the consumer’s pre-petition arrearage.

The Bureau understands that, in some instances, such as before a servicer files a proof of claim in a consumer’s bankruptcy case or if a consumer or trustee objects to a servicer’s claim, the amount of the pre-petition arrearage may not be determined or may be in dispute. In that instance, the Bureau believes that it may be appropriate for the periodic statement to reflect the unresolved nature of the arrearage. Accordingly, proposed comment 41(f)(3)(vi)-1 provides that to the extent the amount of a consumer’s pre-petition arrearage is subject to dispute or has not yet been determined, the periodic statement may include a statement acknowledging the unresolved nature of the pre-petition arrearage.

The Bureau solicits comment on whether periodic statements should be required to disclose the pre-petition payments received and applied and the balance of the pre-petition arrearage, and whether there are alternative avenues for apprising consumers of this information.

41(f)(3)(vii) Additional Disclosures

Proposed § 1026.41(f)(3)(vii) requires a servicer to include four additional statements on the periodic statement, as applicable, when a consumer is in Chapter 12 or Chapter 13 bankruptcy. First, § 1026.41(f)(3)(vii)(A) requires a statement that the amount due includes only post-petition payments and does not include other payments that may be due under the terms of the consumer's bankruptcy plan. The purpose of this disclosure is to ensure that a consumer understands that there may be additional amounts due under the plan that relate to the mortgage debt. Several industry participants and consumer advocacy groups recommended that periodic statements include such a disclaimer, and the Bureau believes that it may be appropriate to avoid consumer confusion.

Second, proposed § 1026.41(f)(3)(vii)(B) requires a statement that if the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, the consumer should send the payment to the trustee and not to the servicer. This proposed disclosure is intended to avoid consumer confusion about whether to send a post-petition payment to the trustee or servicer. Several industry participants and consumer advocacy groups stated that such a disclosure would be helpful to avoid confusion and that some servicers already include such a disclosure on their periodic statement. The Bureau believes that such a disclosure is appropriate.

Third, proposed § 1026.41(f)(3)(vii)(C) requires a statement that the information disclosed on the periodic statement may not reflect payments the consumer has made to the trustee and may not be consistent with the trustee's records. Finally, proposed § 1026.41(f)(3)(vii)(D) requires a statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments. Several industry participants stated that these disclosures would be helpful because there can be a delay between when a trustee receives a payment from a consumer and when the trustee remits that payment to a servicer, and a consumer may wonder why the statement does not reflect all payments the consumer has made. For pre-petition payments, in particular, the Bureau understands that the delay can be weeks or even months as a trustee may not distribute payments on pre-petition claims until the creditor files a proof of claim or until higher priority claims have been paid in full. Additionally, the Bureau understands that a trustee may allocate payments differently than a servicer, and until the allocations are reconciled, a periodic statement provided by a servicer may reflect different allocations than a trustee's records. Based on these timing and allocation issues, the Bureau believes that it is appropriate to advise consumers of the differences between a servicer's records and a trustee's records and that encouraging consumers to contact their attorney of the trustee may be a helpful disclosure.

The Bureau solicits comment on whether servicers should be permitted to include the disclosures under proposed § 1026.41(f)(3)(vii) on a separate page enclosed with the periodic statement, whether the disclosures under proposed § 1026.41(f)(3)(vii) should be permissive or mandatory when applicable, and whether there are other disclosures that a servicer should be required to include in a periodic statement under proposed § 1026.41(f).

41(f)(4) Multiple Obligors

Proposed § 1026.41(f)(4) addresses the situation where more than one consumer is primarily obligated on a mortgage loan and a servicer is required to provide at least one of the primary obligors with a modified periodic statement pursuant to § 1026.41(f). Proposed § 1026.41(f)(4) provides that the servicer may provide the modified version of the periodic statement to any or all of the primary obligors instead of any statements not including the bankruptcy-specific modifications, even if not all primary obligors are debtors in bankruptcy. On the other hand, as proposed comment 41(e)(5)(i)-5 and the section-by-section analysis of § 1026.41(e)(5) explain, if a servicer were exempt under proposed § 1026.41(e)(5)(i) from providing periodic statements to the obligor in bankruptcy, the servicer would continue to provide regular periodic statements, without any of the bankruptcy-specific modifications, to the obligors who are not in bankruptcy.

During the bankruptcy roundtable discussion, representatives from industry and consumer advocacy groups agreed that if a servicer is required to provide a periodic statement with bankruptcy-specific information to a consumer, the servicer should be permitted to send the same modified form of statement to any or all of the consumer's co-obligors on the mortgage loan, even if not all the obligors are debtors in bankruptcy. One large servicer noted that sending one type of statement to all joint obligors on a mortgage loan reflects its current practice when one or more obligors is a debtor in bankruptcy. Industry representatives stated that sending one type of statement per mortgage loan account would be less burdensome and would be easier to administer than sending different types of statements to different obligors on the same account.

The Bureau agrees with the bankruptcy roundtable participants that a servicer should be permitted to provide only one type of periodic statement per mortgage loan account. The Bureau believes that it would impose an undue burden on servicers to have to send one version of the periodic statement to a consumer in bankruptcy and a different version to the consumer's non-bankrupt co-obligors. Moreover, the Bureau believes such a result would be inconsistent with comment 41(a)-1, which clarifies that when more than one consumer is primarily obligated on a mortgage loan, a servicer may send the periodic statement to any one of the primary obligors; the servicer is not required to provide periodic statements to all primary obligors, let alone different versions of the periodic statement.

Accordingly, proposed § 1026.41(f)(4) provides that if a servicer is required to provide periodic statements with the modifications set forth in proposed § 1026.41(f) in connection with a mortgage loan for which more than one consumer is primarily obligated, the servicer may provide the modified statements to any or all of the primary obligors instead of any statements not including the bankruptcy-specific modifications, even if not all of the primary obligors are debtors in bankruptcy.

Proposed comment 41(f)(4)-1 provides an illustration of a servicer's obligations with respect to a mortgage loan where two spouses are obligors on a mortgage loan, and only one spouse files for Chapter 13 bankruptcy. In this example, the plan of reorganization for the spouse in bankruptcy provides for the retention of the property securing the mortgage loan by making pre-petition and post-petition payments, thus requiring the servicer to provide a periodic statement with the modifications set forth in proposed § 1026.41(f)(1) through (3). Proposed comment 41(f)(4)-1 clarifies that the servicer can provide the periodic statements with the modifications set forth in proposed § 1026.41(f)(1) through (3) to either spouse, even though one spouse is not in bankruptcy.

41(f)(5) Coupon Books

Proposed § 1026.41(f)(5) provides that certain modifications in proposed § 1026.41(f)(1) and (3) apply to coupon books provided instead of periodic statements under § 1026.41(e)(3). Proposed § 1026.41(f)(5) permits the servicer to put the disclosures required under proposed § 1026.41(f)(2) and (3)(vii) anywhere in the coupon book or provide them on a separate page enclosed with the coupon book provided to the consumer. The servicer also must make available upon request to the consumer by telephone, in writing, in person, or electronically, if the consumer consents, the pre-petition arrearage information listed in proposed § 1026.41(f)(3)(vi), as applicable. Lastly, proposed § 1026.41(f)(5) provides that the modifications set forth in proposed § 1026.41(f)(1) and (3)(i) through (v) and (vii) apply to coupon books and other information a servicer provides to the consumer under § 1026.41(e)(3).

The Bureau believes that proposed § 1026.41(f)(5) will not impose significant burdens on servicers that use coupon books. The statements set forth in proposed § 1026.41(f)(1) and (3)(vii) are the only new, bankruptcy-specific disclosures that a servicer must include in a coupon book. These are standardized statements—servicers will not need to craft language for individual borrowers. Additionally, the Bureau is proposing to allow servicers to include these statements anywhere in the coupon book or on a separate page enclosed with the coupon book. The remainder of the modifications set forth in proposed § 1026.41(f)(1) and (3)(i) through (v) and (vii) do not require a servicer to modify any of the disclosures in the coupon book or provide new information to a consumer. Rather, these modifications provide that certain disclosures (such as a description of late payment fees) are not required when a consumer is in bankruptcy and clarify the requirements for certain other disclosures (such as amount due) in a manner that is consistent with the information already provided in a coupon book. Thus, while a servicer has the option to modify its coupon books to omit certain disclosures that are not required when a consumer is in bankruptcy, the proposal does not require servicers to redesign their coupon books specifically for consumers in bankruptcy, and servicers can determine the most cost-efficient method of providing the required information. Moreover, proposed § 1026.41(f)(5) permits a servicer to provide modified coupon books according to its normal schedule. For example, if a servicer provided a 12-month coupon book to a consumer in January and the consumer filed for bankruptcy in March, the servicer would not need to issue a new, modified coupon book accompanied by the proposed § 1026.41(f)(1) and (3)(vii) disclosures until the following January.

Providers of coupon books will also, at the consumer's request, have to provide the pre-petition arrearage information set forth in proposed § 1026.41(f)(3)(vi). The Bureau understands, however, that servicers already maintain internal records regarding pre-petition payments and the balance of the pre-petition arrearage; therefore, the Bureau does not believe that the cost of providing this information upon a consumer's request will impose significant new burdens.

The Bureau solicits comment on applying the modifications set forth in proposed § 1026.41(f)(1) and (3)(i) through (v) and (vii) when a servicer provides coupon books under § 1026.41(e)(3). In particular, the Bureau solicits comment on whether there may be alternative means to providing consumers with substantially the same information regarding the mortgage loan account while they are in bankruptcy. Additionally, the Bureau solicits comment on whether servicers should be required to issue a new coupon book or other disclosures immediately upon a consumer's bankruptcy filing. Finally, the Bureau solicits comment on servicers' current practices with respect to providing coupon books to consumers in bankruptcy.

Sample Forms

Proposed sample forms for periodic statements are provided in proposed appendices H-

30(E) and (F). Section 1026.41(c) specifies that sample forms for periodic statements are provided in appendix H-30 and that proper use of these forms complies with the form and layout requirements of § 1026.41(c) and (d). The Bureau believes that sample forms are appropriate to provide servicers with guidance for complying with the requirements of § 1026.41(c) and (d) as modified by proposed § 1026.41(f). The Bureau therefore exercises its authority under, among other things, section 128(f) of TILA to propose sample forms for § 1026.41(c) and 1026.41(d), as modified by § 1026.41(f). Proposed appendix H-30(E) provides a sample form for complying with the requirements of § 1026.41(f) with respect to a consumer in a Chapter 7 or Chapter 11 bankruptcy case or a consumer who has discharged personal liability for a mortgage loan. This form includes the delinquency information required by § 1026.41(d)(8) as an example; a servicer is not required to include this information if it is not applicable to a consumer. Proposed appendix H-30(F) provides a sample form for complying with the requirements of proposed § 1026.41(f) with respect to a consumer in a Chapter 12 or Chapter 13 bankruptcy case. The Bureau notes that these are not required forms and that any arrangements of the information that meet the requirements of § 1026.41 would be considered in compliance with the section.

The Bureau intends to conduct consumer testing on the sample forms in proposed appendices H-30(E) and H-30(F) following publication of this proposed rule. Prior to finalizing any such sample forms, the Bureau will publish and seek comment on a report summarizing the methods and results of the consumer testing.

Legal Authority

The Bureau is proposing § 1026.41(f)—which contains content and layout requirements for periodic statements in bankruptcy—to implement section 128(f) of TILA as well as section 105(a) of TILA and section 1032(a) of the Dodd-Frank Act. Section 128(f)(1)(e) of TILA requires the periodic statement to include a description of any late payment fees. For the reasons discussed above, the Bureau is proposing to use its authority under section 105(a) and (f) of TILA to exempt servicers from having to include this information in periodic statements provided to consumers who are in bankruptcy or have discharged personal liability for a mortgage loan. This proposed exemption is additionally authorized under section 1405(b) of the Dodd-Frank Act.

Appendix H—Closed-End Model Forms and Clauses

Appendix H—4(C) to Part 1026

The 2013 TILA Servicing Final Rule revised the commentary to § 1026.19(b) to reflect the revised § 1026.20(c) and revised § 1026.20(d) ARM notices. This proposal modifies the Variable-Rate Model Clauses in appendix H—4(C) to reflect the language in the revised commentary. No change to the table of contents of appendix H is necessary.

Appendix H—14 to Part 1026

The 2013 TILA Servicing Final Rule changed the commentary to § 1026.19(b) to reflect the revised § 1026.20(c) and revised § 1026.20(d) ARM notices. This proposal modifies the Variable-Rate Mortgage Sample form in appendix H—14 to reflect the language in the revised commentary. No change to the table of contents of appendix H is necessary.

Appendix H—30(C) to Part 1026

This proposal makes a minor technical revision to the entry for H—30(C) in the table of contents at the beginning of this appendix and republishes sample form H—30(C). The technical change amends “Sample Form of Periodic Statement for a Payment-Options Loan (§ 1026.41)” to “Sample Form of Periodic Statement for a Payment-Option Loan (§ 1026.41).”

Appendices H—30(E) and H—30(F) to Part 1026

This proposal provides proposed sample forms for periodic statements for certain consumers in bankruptcy in proposed appendices H—30(E) and H—30(F) and makes corresponding additions to the table of contents for appendix H. Section 1026.41(c) specifies that sample forms for periodic statements are provided in appendix H—30 and that proper use of these forms complies with the form and layout requirements of § 1026.41(c) and (d). The Bureau believes that sample forms may be appropriate to provide servicers with guidance for complying with the requirements of § 1026.41(c) and (d) as modified by proposed § 1026.41(f). The Bureau therefore exercises its authority under, among other things, section 128(f) of TILA to provide sample forms for § 1026.41(c) and (d), as modified by § 1026.41(f). Appendix H—30(E) provides a sample form for complying with the requirements of § 1026.41(f) with respect to a consumer in a Chapter 7 or Chapter 11 bankruptcy case or a consumer who has discharged personal liability for a mortgage loan. Appendix H—30(F) provides a sample form for complying with the requirements of § 1026.41(f) with respect to a consumer in a Chapter 12 or Chapter 13 bankruptcy case. They would not be required forms, however, and any arrangements of the information that meet the requirements of § 1026.41 would be considered in compliance with the section.

The Bureau intends to conduct consumer testing on the sample forms in proposed appendices H—30(E) and H—30(F) following publication of this proposed rule. Prior to finalizing any such sample forms, the Bureau will publish and seek comment on a report summarizing the methods and results of the consumer testing.

VI. Dodd-Frank Act Section 1022(b)

A. Overview

In developing the proposed rule, the Bureau has considered the proposed rule's potential benefits, costs, and impacts.[295] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. In developing the proposed rule, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, HUD, the Federal Housing Finance Agency, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau is now proposing several additional amendments to the Mortgage Servicing Rules to revise regulatory provisions and official interpretations relating to the Regulation X and Z mortgage servicing rules. The proposals cover nine major topics, summarized below generally in the order they appear in the proposed rule. More details can be found in the proposed rule.

1. Successors in interest. The Bureau is proposing three sets of rule changes relating to successors in interest. First, the Bureau is proposing to apply all of the Mortgage Servicing Rules to successors in interest once a servicer confirms the successor in interest's identity and ownership interest in the property. Second, the Bureau is proposing rules relating to how a mortgage servicer confirms a successor in interest's status. Third, the Bureau is proposing that, to the extent that the Mortgage Servicing Rules apply to successors in interest, the rules apply with respect to all successors in interest who acquire an ownership interest in a transfer protected from acceleration, and therefore foreclosure, under Federal law.

[295] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of proposed rule on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

2. Definition of delinquency. The Bureau is proposing to add a general definition of delinquency that would apply to all of the servicing provisions of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. Under the proposed definition, a borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid.

3. Requests for information. The Bureau is proposing amendments that would change how a servicer must respond to requests for information asking for ownership information for loans in trust for which Fannie Mae or Freddie Mac is the trustee, investor, or guarantor.

4. Force-placed insurance. The Bureau is proposing to amend the required disclosures to account for when a servicer wishes to force-place insurance when the borrower has insufficient, rather than expiring or expired, hazard insurance coverage on the property. Additionally, the Bureau is proposing to give servicers the option to include a borrower's mortgage loan account number on the notices required under § 1024.37. The Bureau is also proposing several technical edits to correct discrepancies between the model forms and the text of § 1024.37.

5. Early intervention. The Bureau is proposing to clarify generally the early intervention live contact obligations and written early intervention notice obligations. The Bureau is also proposing to require servicers to provide written early intervention notices to certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the FDCPA.

6. Loss mitigation. The Bureau is proposing to: (1) Require servicers to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current after a delinquency; (2) Modify the existing exception to the 120-day prohibition on foreclosure filing to allow a servicer to join the foreclosure action of a senior lienholder; (3) Clarify that servicers have significant flexibility in setting a reasonable date by which a borrower must return documents and information to complete an application, so long as the date maximizes borrower protections and allows borrowers a reasonable period of time to return documents and information; (4) Clarify that servicers must take affirmative steps to delay a foreclosure sale, even where the sale is conducted by a third party; clarify the servicer's duty to instruct foreclosure counsel to take steps to comply with the dual-tracking prohibitions; and indicate that a servicer who has not taken, or caused counsel to take, all reasonable affirmative steps to delay the sale, is required to dismiss the foreclosure action if necessary to avoid the sale; (5) Require that servicers promptly provide a written notice once they receive a complete loss mitigation application; require that the notice indicate that the servicer has received a complete application but clarify that the servicer might later request additional information if needed; require that the notice provide the date of completion and a disclosure indicating whether a foreclosure sale was scheduled as of that date, the date foreclosure protections began, a statement informing the borrower of applicable appeal rights, and a statement that the servicer will complete its evaluation within 30 days from the date of the complete application; (6) Address and clarify how servicers obtain information not in the borrower's control and evaluate a loss mitigation application while waiting for such third party information; prohibit servicers from denying borrowers based upon delay in receiving such third party information; require that servicers promptly provide a written notice to the borrower if the servicer lacks third party information 30 days after receiving the borrower's complete application; and require servicers to notify borrowers of their determination in writing promptly upon receipt of the third party information; (7) Permit servicers to offer a short-term repayment plan based upon an evaluation of an incomplete application; (8) Clarify that servicers may stop collecting documents and information from a borrower pertaining to a loss mitigation option after receiving information confirming that the borrower is ineligible for that option; and (9) Address and clarify how loss mitigation procedures and timelines apply to a transferee servicer that receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer.

7. Prompt payment crediting. The Bureau is proposing to clarify how servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications. Under the Bureau's proposal, periodic payments made pursuant to temporary loss mitigation programs would continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments, while periodic payments made pursuant to a permanent loan modification would be credited under the terms of the permanent loan agreement.

8. Periodic statements. The Bureau is proposing to: (1) Clarify certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in temporary loss mitigation programs, or have been permanently modified, to conform generally the disclosure of the amount due with the Bureau's understanding of the legal obligation in each of those circumstances; (2) Require servicers to send modified periodic statements to consumers who have filed for bankruptcy, subject to certain exceptions, with content varying depending on whether the consumer is a debtor in a Chapter 7 or Chapter 13 bankruptcy case; and to conduct consumer testing on proposed sample periodic statement forms that servicers could use for consumers in bankruptcy to ensure compliance with § 1026.41; and (3) Exempt servicers from the periodic statement requirement for charged-off mortgage loans if the servicer will not charge any additional fees or interest on the account and provides a final periodic statement.

9. Small servicer. The proposal would make certain changes to the small servicer definition. The small servicer definition generally applies to servicers who service 5,000 or fewer mortgage loans for all of which the servicer is the creditor or assignee. The proposal would exclude certain seller-financed transactions from being counted toward the 5,000 loan limit, allowing servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

The proposed rule also makes technical corrections to several provisions of Regulations X and Z.

B. Provisions to Be Analyzed

The analysis below considers the potential benefits, costs, and impacts to consumers and covered persons of key provisions of the proposed rule (proposed provisions), which include:

1. Requirements related to successors in interest.

2. A new definition of "delinquency" for purposes of Regulation X's mortgage servicing rules.

3. Early intervention written notice requirements for certain consumers.

4. Changes to loss mitigation procedures, including:

   - Requiring a notice of complete application for loss mitigation applications;
   - Requirements applicable when determination of what loss mitigation options to offer a borrower is delayed because information outside the borrower's control is missing;
   - Clarifications to the Mortgage Servicing Rules' dual-tracking protections;
   - Requiring review of multiple loss mitigation applications from the same borrower in some circumstances;
   - Clarification of how loss mitigation timelines apply in the case of servicing

transfers; and

- Permitting evaluation for short-term repayment plans based on incomplete applications.

5. Periodic statement requirements applicable to consumers in bankruptcy.

6. An exemption from the servicing rule's periodic statement requirement for loans that have been charged off.

7. Revisions to the small servicer definition.

In addition to the proposed changes listed above, the Bureau is proposing to modify or clarify other provisions of the Mortgage Servicing Rules. These other changes include: proposed commentary relaxing certain information provision requirements under § 1024.36(a) when a borrower requests information about the owner of a GSE loan; a proposed amendment to the force-placed insurance notice described in § 1024.37(c) through (e) to require the notice to state that coverage is insufficient (rather than expiring), when applicable, and to allow inclusion of the account number on the notice; a proposed policies and procedures requirement under § 1024.38(b)(2)(vi) regarding identifying and obtaining documents not in the borrower's control that a servicer requires to determine what loss mitigation options, if any, to offer a borrower; proposed commentary regarding a servicer's flexibility in collecting documents and information to complete a loss mitigation application under § 1024.41(b)(1); proposed commentary relevant to the reasonable date for return of documents under § 1024.41(b)(2)(ii); proposed amendments to § 1024.41(c)(2)(iv) clarifying when a loss mitigation application is considered facially complete; a proposed exception to § 1024.41(f)(1)'s 120-day pause for circumstances in which a subordinate lienholder joins the foreclosure action of a senior lienholder; proposed commentary clarifying the effect of § 1026.36(c)'s and § 1026.41(d)'s prompt crediting and periodic statement requirements with regard to loan modifications; proposed commentary to clarify the information that must be included in a periodic statement pursuant to § 1026.41(d) following a period when the servicer was exempt from sending periodic statements; a proposal to remove the phrase "creditor or assignee" from the description of voluntarily serviced loans that may be excluded in applying the small servicer exemption under § 1026.41(e)(4), and certain other minor changes. The Bureau believes these proposed modifications and clarifications would generally benefit consumers and/or covered persons and impose minimal new costs on consumers or covered persons.

C. Data Limitations and Quantification of Benefits, Costs and Impacts

The discussion in this part relies on data that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources. The Bureau has done extensive outreach on many of the issues addressed by the proposed rule, including discussions with several servicers of different sizes, consultations with other stakeholders, and convening a roundtable on the application of the Mortgage Servicing Rules in the case of bankrupt borrowers. However, as discussed further below, the data are generally limited with which to quantify the potential costs, benefits, and impacts of the proposed rule.

Quantifying the benefits of the rule for consumers presents particular challenges. As discussed further below, certain proposed provisions may directly save consumers time and money while others may benefit consumers by, for example, facilitating household budgeting, supporting the consumer's ability to obtain credit, and reducing default and avoidable foreclosure. Many of these benefits are qualitative in nature, while others are quantifiable but would require a wide range of data that is not currently available to the Bureau. The Bureau continues to seek data from available sources regarding the benefits to consumers of the proposed rule.

In addition, the Bureau believes, based on industry outreach, that many servicers already follow procedures that comply with at least some provisions of the proposed rule. However, the Bureau does not have representative data on the extent to which servicer operations currently comply with the proposed rule, which means the Bureau is unable to quantify the benefits to consumers or the costs to servicers of the proposed rule. The Bureau continues to seek data from available sources regarding the extent to which servicer operations currently comply with the proposed rule. Even with this data, the Bureau would need information on the cost of changing current servicer practices in order to quantify the cost of closing any gaps between current practices and those mandated by the proposed rule. The Bureau continues to seek data from available sources regarding the costs of improving servicer operations, as specified by the proposed rule, in order to quantify the costs to covered persons of the proposed rule.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts. The Bureau requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the proposed rule.

D. Small Servicer Exemption

Small servicers—generally, those that service 5,000 or fewer mortgage loans, all of which the servicer or affiliates own or originated—are exempt from many of the provisions of the Mortgage Servicing Rules, including most of the provisions affected by the proposed rule.[296] Therefore, most of the discussion of potential benefits and costs below generally does not apply to small servicers or to consumers whose mortgage loans are serviced by small servicers. The two exceptions among the provisions discussed in this part are (1) the proposed provisions related to successors in interest, which would extend the protections of the Mortgage Servicing Rules, including certain provisions from which small servicers are not exempt, to successors in interest and (2) the proposed definition of delinquency in § 1024.31, which may affect the scope of the 2013 RESPA Servicing Final Rule's prohibition on initiating foreclosure proceedings unless a borrower's mortgage loan obligation is more than 120 days delinquent.

E. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau believes that, compared to the baseline established by the Mortgage Servicing Final Rules, an important benefit of many of the proposed provisions to both consumers and covered persons is an increase in clarity and precision of the servicing rules and an accompanying reduction in compliance costs. Other benefits and costs are considered below.

1. Successors in Interest

The Bureau is proposing new requirements on mortgage servicers with respect to successors in interest. For purposes of the proposed provisions, successors in interest include individuals who receive an ownership interest in a property securing a mortgage loan in a transfer protected by the Garn-St Germain Act, including individuals who acquired an ownership interest in the property securing a mortgage loan in transfers resulting from the death of the

[296] Section 1026.41(e)(4)(ii) defines the term "small servicer" as a servicer that either: (1) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or (2) is a Housing Finance Agency, as defined in 24 CFR 266.5.

borrower or through transfers to the borrower's spouse or children, transfers incident to divorce, and certain other transfers. As described in more detail below, the proposed provisions would relate to how mortgage servicers confirm a successor in interest's identity and ownership interest in the property, and would apply the Mortgage Servicing Rules to successors in interest whose identity and ownership interest in the property have been confirmed by the servicer.

Proposed § 1024.36(i) requires a servicer to respond to a written request that indicates that the person making the request may be a successor in interest by providing that person with information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. Proposed § 1024.38(b)(1)(vi) requires servicers to maintain certain policies and procedures with respect to successors in interest, which are generally intended to facilitate the process of confirming a person's status as a successor in interest and communicating with the person about the status.

Proposed § 1024.30(d) provides that a successor in interest shall be considered a borrower for the purposes of Regulation X's mortgage servicing rules once a servicer confirms the successor in interest's identity and ownership interest in the property. Similarly, proposed § 1026.2(a)(11) provides that a confirmed successor in interest is a consumer with respect to Regulation Z's mortgage servicing rules. Under the proposed rule, the Mortgage Servicing Rules apply with respect to a confirmed successor in interest regardless of whether that person has assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law.

Potential benefits and costs to consumers. As described in more detail below, the proposal would benefit successors in interest by permitting them to protect and manage their interest in the property, and to make key decisions about that interest, without unnecessary delays and associated costs.

The Bureau understands, based on discussions with certain large servicers, that only a small number of properties for which they service mortgage loans are transferred to successors in interest in any given year.[297] The Bureau does not have representative data on current servicer policies toward such successors in interest. Because the Garn-St Germain Act prevents foreclosure solely on the basis that a home was transferred to a successor in interest, the Bureau expects that servicers currently are servicing loans for successors in interest, even before such successors in interest assume the mortgage loan. The Bureau does not have representative information on the standards servicers use in servicing loans for successors in interest; however, as discussed below, the Bureau believes, based on information it has received from consumers and other stakeholders, that in many cases successors in interest would benefit from additional protections.

The proposed revisions to the "policies and procedures" requirements in § 1024.38(b)(1)(vi), together with the requirement in proposed § 1024.36(i) that servicers respond to written requests regarding what documents the servicer requires to confirm the person's identity as a successor in interest, would benefit consumers that succeed to ownership of a home that is subject to a mortgage by reducing the time and effort required to establish their

[297] One large servicer indicated that in recent years the number of successors in interest applying to assume a mortgage loan each year represented less than 0.03 percent of the total loans it services. However, this number does not include successors in interest that did not apply to assume the loan but nonetheless might have benefitted from the proposed rule (for example, because they would have been able to obtain more information about the loan before deciding whether to apply to assume the loan). Data from the American Housing Survey indicate that in 2011, 239,000 homeowners (approximately 0.5 percent of those with a mortgage) had assumed the mortgage loan on their home; however, these data do not indicate whether the homeowner was a successor in interest as defined in the proposed rule at the time the loan was assumed. HUD Office of Policy Dev. and Research and U.S. Census Bureau, *American Housing Survey for the United States: 2011*, at 79 (Sept. 2013), *available at* http://www.census.gov/content/dam/Census/programs-surveys/ahs/data/2011/h150-11.pdf.

status in the eyes of the servicer. The Bureau believes, based on information it has received from consumers, consumer advocacy groups, and other stakeholders, that successors in interest often have difficulty demonstrating their identity and ownership interest in the property to servicers' satisfaction, and that some servicers currently require successors in interest to submit documents that are unreasonable in light of the particular situation of that successor in interest or in light of the laws of the relevant jurisdiction. The Bureau has also heard repeated reports that some servicers have taken a long time to confirm the successor in interest's status, even after receipt of appropriate documentation. The Bureau has also heard reports that servicers may fail to communicate to the successor in interest whether the servicer has confirmed the successor in interest's status. Unnecessary delays and other difficulties can harm successors in interest because successors in interest that have not been confirmed by the servicer may not be able to obtain information about the mortgage, and in some instances servicers may be unwilling to accept payment from the unconfirmed successor in interest. These problems may lead the successor in interest to incur unnecessary costs related to the mortgage or deprive the person of rights to which he or she would otherwise be entitled, and may even lead to unnecessary foreclosure on the property.

The Bureau's proposal extends the protections of the Mortgage Servicing Rules to confirmed successors in interest, even prior to such time as they may assume the obligations of the mortgage loan under State law. The benefits of the Mortgage Servicing Rules to consumers generally are discussed in the 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, in which the Bureau noted that the need for the Mortgage Servicing Rules arises in part from the fact that, because borrowers generally do not choose their servicers, it is difficult for consumers to protect themselves from shoddy service or harmful practices.[298] This reasoning is particularly applicable to successors in interest because they may not be parties to the mortgage loan. In addition, successors in interest may find that they have a particular need for access to information about the mortgage loan secured by the property that they now own, which may help them avoid unwarranted or unnecessary costs and fees on the mortgage loan and prevent unnecessary foreclosure.

Furthermore, successors in interest may benefit in particular from Regulation X's rules relating to loss mitigation procedures, particularly when deciding whether to assume the obligations of the mortgage loan. Successors in interest may often experience a disruption in household income due to death or divorce and therefore may be more likely than other homeowners to need loss mitigation to avoid foreclosure. If the servicer does not evaluate the successor in interest promptly for loss mitigation options, or if the servicer requires the successor in interest to assume the mortgage obligation before evaluating the successor in interest for loss mitigation options, the successor in interest will be required to decide whether to assume the mortgage obligation without knowing whether a loan modification will be available and, if so, what terms will be offered. The proposal would allow the successor in interest to make a fully informed decision about whether to accept the mortgage obligation.

Potential benefits and costs to covered persons. The costs of complying with the proposed provisions related to successors in interest depend on servicers' current policies and procedures. Because the Garn-St Germain Act protects successors in interest from foreclosure

[298] See 78 FR 10695, 10842-61 (Feb. 14, 2013); 78 FR 10901, 10978-94 (Feb. 14, 2013).

after transfer of homeownership to them, servicers are effectively required to continue servicing loans following their transfer to successors in interest. Thus, the Bureau believes that servicers likely already have some policies and procedures in place for confirming a successor in interest's identity and ownership interest in the property (and thereby determining whether the Garn-St Germain Act is applicable) and for servicing a loan secured by property that has been transferred to a successor in interest. The proposed provisions establish certain standards for the performance of these activities. To the extent to which some servicers are meeting these standards already, the costs for these servicers may be minimal. However, many servicers may need to significantly alter certain of their policies and procedures to comply with the proposed provisions.

The proposed revisions to § 1024.38(b)(1)(vi) and proposed § 1024.36(i) may require servicers to develop and implement new policies and procedures for confirming a successor's interest in a property and communicating with potential successors in interest about documents the servicer requires to confirm the person's status. Under current § 1024.38(b)(1)(vi), servicers must maintain policies and procedures designed to identify and facilitate communication promptly with the successor in interest of a deceased borrower. As discussed above, the Bureau believes that, because the Garn-St Germain Act protects successors in interest from foreclosure, servicers likely already have some policies and procedures in place for confirming the identity and ownership interest in the property of a successor in interest following transfers covered by the proposed rule. However, the Bureau does not have data on the extent to which servicers' current policies and procedures may comply with the proposed provisions or the extent of the changes that would be required to bring policies and procedures into compliance with the proposed provisions. The Bureau requests additional information about servicers' current policies and procedures for confirming a successor in interest's status and the incremental cost to servicers of complying with the proposed requirements.

Proposed §§ 1024.30(d) and 1026.2(a)(11), which extend the protections of the Regulation X and Z mortgage servicing rules to confirmed successors in interest, would not require servicers to develop new policies and procedures, but rather to continue to apply existing policies and procedures to a set of loans that were subject to the Mortgage Servicing Rules prior to being transferred to the successor in interest. As discussed above, the Bureau expects that such loans make up a small fraction of the total loans serviced by any particular servicer. For these reasons, the Bureau expects that the cost to servicers of complying with the Mortgage Servicing Rules with respect to confirmed successors in interest will be small.

The Bureau acknowledges that, due to the unique circumstances of a successor in interest who has recently obtained an interest in the property, there may be additional costs associated with complying with the Mortgage Servicing Rules with respect to successors in interest. For example, successors in interest may have experienced a disruption in household income due to death or divorce and therefore may be more likely to seek loss mitigation to avoid foreclosure, thereby possibly delaying the foreclosure process. Successors in interest may also be more likely to seek information regarding the loan that is secured by the property in which they now hold an interest. Nonetheless, because the Bureau believes that the number of successors in interest serviced at any given time is small and that many servicers are already performing servicing tasks with respect to successors in interest, the Bureau expects that servicers would not incur significant additional costs as a result of the proposed provisions. The Bureau requests additional information about the benefits to successors in interest of the proposed requirements and the incremental cost to servicers of applying the Mortgage Servicing Rules to these loans.

2. Definition of "Delinquency"

The Bureau is proposing to add a general definition of delinquency in § 1024.31 that would apply to all sections of subpart C of Regulation X, replacing the existing definition of delinquency for purposes of §§ 1024.39 and 1024.40(a). Under the proposal, delinquency is defined as a period of time during which a borrower and the borrower's mortgage loan obligation are delinquent, and a borrower and a borrower's mortgage loan obligation are delinquent beginning on the day a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, became due and unpaid, until such time as the payment is made. Proposed comment 31 (Delinquency)-2 clarifies that, if a servicer applies payments to the oldest outstanding periodic payment, the date of the borrower's delinquency must advance accordingly. The Bureau understands from its outreach that the majority of servicers credit payments made to a delinquent account to the oldest outstanding periodic payment. The Bureau also understands that some servicers that use this method may be concerned about how to calculate the length of a borrower's delinquency without increased certainty from the Bureau.[299]

The Bureau believes that the proposed provision will clarify the application of the servicing rules without imposing significant new burdens on servicers. The Bureau recognizes that, in principle, the proposed provision could affect the circumstances under which a servicer may initiate foreclosure proceedings, because the definition of "delinquency" affects the application of § 1024.41(f)(1)'s prohibition on initiating foreclosure proceedings unless "a borrower's mortgage loan obligation is more than 120 days delinquent." In particular, the

[299] See Am. Bankers Ass'n. Letter to Consumer Fin. Prot. Bureau (Oct. 24, 2014), *available at* http://www.aba.com/Advocacy/commentletters/Documents/ABALetterRollingDelinquencies102414.pdf.

proposed commentary clarifies that a servicer that otherwise applies payments to the oldest outstanding periodic payment may not initiate foreclosure proceedings unless the borrower has missed the equivalent of four monthly payments. Absent this clarification, § 1024.41(f)(1) could be interpreted to permit the servicer to commence foreclosure even if the borrower has missed only one payment, so long as the payment was missed at least 120 days ago and the borrower has not become current since. However, information gathered in industry outreach indicates that servicers generally would not treat borrowers who are behind by three or fewer payments as seriously delinquent. More specifically, servicers contacted by the Bureau during outreach, when asked about policies for referring a loan for foreclosure, uniformly told the Bureau that they generally would not initiate foreclosure in cases where a borrower is making regular payments, even if such a borrower has a long-standing delinquency of up to three months' payments. In addition, Fannie Mae and Freddie Mac guidelines generally prevent servicers from initiating foreclosure if a loan is delinquent by fewer than four monthly payments. Therefore, the Bureau expects that the proposed provision will not impose meaningful new constraints on servicers.

3. Early Intervention Written Notices

The Bureau is proposing to revise the scope of the exemptions from the "early intervention" requirements in § 1024.39(d) for two groups of borrowers: those who are debtors in bankruptcy and those who have exercised their "cease communication" rights under the FDCPA. Servicers are currently exempt from each of § 1024.39's early intervention requirements with respect to these two groups of borrowers. Under the proposed provisions, servicers would generally remain exempt from the "live contact" requirement of § 1024.39(a) with respect to these borrowers. However, if loss mitigation options are available to borrowers who are debtors in bankruptcy or who have exercised cease communication rights under the FDCPA, the proposed provisions require that a servicer, with certain exceptions, provide them with the written early intervention notice that is generally required by § 1024.39(b). With respect to consumers that have exercised their cease communication rights under the FDCPA, the proposal provides that servicers must provide a modified written notice that may not contain a request for payment and prohibits a servicer from providing the modified written notice more than once during any 180-day period.

Potential benefits and costs to consumers. As discussed in more detail below, the proposed provision may benefit borrowers who are in bankruptcy or who have exercised their cease communication rights under the FDCPA by providing them with information about loss mitigation options that could enable them to remain in their homes or avoid other costs associated with default on their mortgages.

The Bureau recognizes that many borrowers affected by this provision will have already received early intervention communications prior to filing for bankruptcy or invoking FDCPA protections. Most homeowners that file for bankruptcy have become delinquent on their mortgage payments prior to filing for bankruptcy, in which case their servicers frequently will have been required to send early intervention communications prior to the filing.[300] However, many borrowers filing for bankruptcy are not delinquent on their mortgages at the time of filing, and so under the current rule will not receive required communications about loss mitigation

[300] One study found that among homeowners that file for bankruptcy, more than 60 percent of homeowners with prime mortgages and more than 75 percent of homeowners with subprime mortgages became delinquent on their mortgages prior to filing for bankruptcy. Wenli Li and Michelle White, *Mortgage Default, Foreclosure, and Bankruptcy* (Nat'l Bureau of Economic Research, Working Paper No. 15472, Nov. 2009), *available at* http://www.nber.org/papers/w15472.

options if they become delinquent while in bankruptcy. Even borrowers who do receive an early intervention written notice prior to their bankruptcy filing may benefit from information about available loss mitigation options after filing for bankruptcy, given that the borrower's servicer may have changed or new options may have otherwise become available since the borrower initially became delinquent. Information regarding loss mitigation may have unique value for borrowers in bankruptcy as they make decisions about how best to eliminate or reorganize their debts.

Borrowers have FDCPA protections only with respect to debt collectors, and a servicer generally is considered a debt collector for purposes of the FDCPA only if the servicer acquires servicing rights to a mortgage loan after the mortgage loan is in default. Therefore, at the time borrowers first become delinquent on a mortgage loan they do not have rights under the FDCPA and their servicers are thus generally obligated to provide early intervention communications. When servicing of borrowers' loans is subsequently transferred while the loans are in default, the borrowers have FDCPA protections with respect to the new servicer and may exercise cease communication rights. Because the initial early intervention communications came from a different servicer that may have offered different loss mitigation options, such borrowers may still benefit from information about loss mitigation options available from the new servicer. Because borrowers who have FDCPA protections will generally have a longer history of delinquency, they may be more likely to face difficulty making mortgage payments and therefore to benefit from information about loss mitigation options.

The proposal also may impose costs on some borrowers in both groups who would prefer not to receive any servicer communications regarding their mortgage loan. Both the Bankruptcy Code's automatic stay and the FDCPA's cease communication right are intended to protect borrowers from being harassed by creditors while the borrowers are attempting to work through difficult financial circumstances. By requiring servicers to send early intervention written notices to such borrowers, the proposal may cause some borrowers to receive unwanted communications. However, the Bureau notes that the proposed provision limits the content and frequency of such communications so as to reduce any perceived harassment. Specifically, the written notice is required to be sent only once in any 180 day period, and in the case of borrowers who have exercised cease communications rights under the FDCPA, the written notice may not contain a request for payment. Furthermore, the written notice is not required to be sent to consumers in bankruptcy if they indicate that they intend to surrender the property.

Potential benefits and costs to covered persons. The proposal to require servicers to send notices to borrowers who are in bankruptcy or who have sent a cease communication request under the FDCPA will result in certain compliance costs for non-exempt servicers. These servicers will incur one-time costs from changing their systems to provide early intervention notices to these groups of borrowers and will incur ongoing costs from distributing these notices to an additional population. The Bureau believes that most if not all servicers are likely to service at least some mortgages for homeowners in bankruptcy. Fewer servicers are likely to service mortgage loans for borrowers who have FDCPA rights with respect to the mortgage loan, because these rights are triggered only if the servicer acquired the servicing rights at a time when the mortgage loan was delinquent. Servicers that do not have a practice of acquiring servicing rights from others would therefore never become subject to the FDCPA and are not affected by the proposed changes.

The Bureau expects that the one-time costs of the proposed provision will be small with respect to borrowers in bankruptcy. Servicers currently are required to identify borrowers in bankruptcy, and under the proposal servicers may send the same written early intervention notice to borrowers in bankruptcy that they send to any other borrower. Therefore, the Bureau expects that servicers will need to make only minor changes to their procedures to begin sending early intervention written notices to borrowers in bankruptcy. For servicers that are subject to the FDCPA with respect to some borrowers, up-front costs may be somewhat greater, because the modified written notice for such borrowers includes additional disclosures that are not required for other borrowers. These servicers would need to develop a separate form of notice that complies with the proposed provision and change their systems to insure that this form is sent to borrowers who have exercised their cease communication rights. The Bureau notes that the proposal would mitigate these costs by providing a model clause for the specific disclosures required in the modified written notice.

Servicers will also incur ongoing costs from the requirement to distribute notices to these additional groups of borrowers. However, the Bureau believes that the number of additional notices that would be required as a result of the proposal is relatively small. With respect to borrowers in bankruptcy, FHFA data indicate that for homeowners with GSE loans, between 0.4 percent and 0.5 percent of borrowers were in bankruptcy during 2013.[301] Based on information from industry and other Federal agencies, the Bureau believes that the percentage of homeowners with non-GSE loans in bankruptcy may be higher, but that the overall percentage of homeowners with mortgage loans in bankruptcy is less than 1 percent. The Bureau expects that the share of borrowers who have exercised the FDCPA cease communication right is likely

[301] Fed. Housing Fin. Agency, Foreclosure Prevention Report, at 6 (January 2014), *available at* http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/ForeclosurePreventionReportJan2014FINAL.pdf.

relatively small, since the right is available only to borrowers for whom the servicer acquired servicing rights after the loan is in default.

4. Loss Mitigation Procedures

Notice of complete loss mitigation application

Proposed § 1024.41(c)(3) requires a servicer to provide a borrower a written notice promptly upon receiving the borrower's complete loss mitigation application, subject to certain limitations discussed below. The required notice would inform the borrower that the application is complete; the date the servicer received the complete application; whether a foreclosure sale was scheduled as of the date the servicer received the complete application and, if so, the date of that scheduled sale; the date the borrower's foreclosure protections began under § 1024.41(f)(2) and (g); and certain other information regarding the borrower's rights under the servicing rules. Under the proposal, a notice is not required if the application was not complete or facially complete more than 37 days before a scheduled foreclosure sale; the servicer has already notified the borrower under § 1024.41(b)(2)(i)(B) that the application is complete and the servicer has not subsequently requested additional documents or information from the borrower to complete the application; or the servicer has already provided a notice approving or denying the application.

Potential benefits and costs to consumers. Under the existing rule, servicers are not required to notify a borrower that a loss mitigation application is complete unless it is complete at the time the servicer provides the notice acknowledging receipt of an application under § 1024.41(b)(2)(i)(B). The Bureau understands based on its outreach that many servicers currently notify borrowers in writing once their applications are complete. However, such notices may not include all the information borrowers need to determine when the application was considered complete for purposes of determining their protections under Regulation X's mortgage servicing rules. The proposed provision is intended to benefit borrowers by providing them with more information about their application status, thereby allowing them to better protect their interests during the loss mitigation application process. Borrowers who have not yet received a notice will be able to infer that their applications are not yet complete and, if necessary, to follow up with the servicer to determine what remains missing. Once borrowers have received the notice, they will know that the servicer is prohibited from completing the foreclosure process until the application has been evaluated and will be able to plan based on the expectation that a decision will be reached within 30 days (unless the servicer determines that more information is needed). The notice will also provide the borrower, the servicer's compliance function, regulators, and courts with a written record that can help them evaluate a servicer's compliance with § 1024.41(c)(1)'s 30-day evaluation requirement.

The Bureau notes that several servicers informed the Bureau during outreach efforts that they already provide a notice informing the borrower that an application is complete. To the extent that servicers are already providing a notice that includes some of the information required by the proposed notice, the incremental benefit to borrowers of the proposed provision may be reduced.

Potential benefits and costs to covered persons. Servicers will incur costs associated with changing their policies and procedures to ensure that they are sending notices in compliance with the proposed provision, and in addition will incur distribution costs associated with sending notices to borrowers. However, the Bureau expects that these costs may be less than those associated with some other disclosure requirements, for two reasons. First, the existing rules already require servicers to determine the time at which an application is complete; thus, servicers will not be required to make any new determinations in order to comply with the requirement. Second, based on industry outreach, the Bureau understands that many servicers are already sending a written notification informing applicants that their applications are complete, so the costs of the proposed provision will be limited for these servicers.

In addition, the Bureau notes that certain provisions of the proposal are intended to prevent servicers from incurring unnecessary costs in connection with the proposed requirement. The proposal provides that the notice be sent "promptly" rather than within a prescribed timeframe (and states in commentary that five days would generally be considered reasonably prompt), thereby allowing servicers some flexibility in cases where it would be particularly burdensome to send the notice immediately. Furthermore, the notice is not required under certain circumstances in which a borrower would not benefit from the notice, including when the servicer is able to notify the borrower of the outcome of its evaluation before the notice is sent.

The Bureau requests data and other information regarding servicers' current practices for informing borrowers that a loss mitigation application is complete and the incremental cost to servicers of complying with the proposed requirement.

Information outside of the borrower's control

The Bureau is proposing to amend § 1024.41(c)(1) and add § 1024.41(c)(4) to address a servicer's obligations with respect to information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer the borrower. The proposed provision requires a servicer to exercise reasonable diligence in obtaining such information. The proposed provision also prohibits a servicer from denying a borrower's complete application due to a lack of information not in the borrower's control; requires that a servicer inform a borrower in writing if the servicer is unable to complete its evaluation within 30 days of receiving a complete application because it lacks information from a party other than the borrower or the servicer; and requires that a servicer promptly provide the borrower written notice stating the servicer's determination upon receipt of missing information from a party other than the borrower or the servicer.

Potential benefits and costs to consumers. Under the existing rule, if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, the servicer must, within 30 days of receipt, determine what loss mitigation options, if any, it will offer a borrower, regardless of whether it has received required information not in the borrower's control. The proposed provision would benefit borrowers applying for loss mitigation in situations in which the servicer cannot determine what loss mitigation options to offer within 30 days because it has not received necessary information from a party other than the servicer or the borrower, such as homeowner association payoff information or approval of the loan owner, investor, or mortgage insurance company. The proposal would reduce the impact on the borrower of such delays by preventing the borrower's application from being denied on the basis of missing information outside the borrower's control and ensuring that the borrower is aware of the application's status.

The Bureau understands from industry outreach that servicers currently follow different practices in the event they have not received information that is outside the borrower's control 30 days after receipt of a complete loss mitigation application. Some servicers have informed the Bureau that they exceed the 30-day evaluation timeframe in § 1024.41(c)(1) and wait to receive the information before making any decision on the application. One servicer informed the Bureau that it sends a denial notice to borrowers but also informs them that the servicer will reevaluate the application upon receipt of the third-party information. As a result, borrowers may be receiving confusing or conflicting messages from servicers about the status of their applications, and in some cases borrowers' applications for loss mitigation may be denied because the servicer has experienced a delay in receiving required information that is not in the borrower's control. The proposed provision would give borrowers clearer information about their application status.

Potential benefits and costs to covered persons. The proposed provision would benefit servicers by clarifying servicer responsibilities when non-borrower information has not been received within 30 days of receiving a complete application from the borrower and prevent servicers from risking non-compliance with the evaluation requirement in order to provide a benefit to borrowers seeking loss mitigation options. The proposed changes would also require servicers to review and perhaps change their policies applicable to gathering information from parties other than the borrower and informing borrowers of their loss mitigation decisions, which would impose one-time costs of revising policies and systems in addition to the ongoing cost of providing the new notices required by the proposed provision.

The proposed provision also may impose costs on servicers because the requirement not to make a determination until information outside of the borrower's control is obtained may delay the foreclosure process for a servicer that would otherwise deny an application without having received such information. The Bureau notes, however, that servicers are not required to wait for non-borrower information to make a determination with respect to an application if a decision can be made without such information. Furthermore, the Bureau understands from industry outreach that, in cases where investor approval has not been delegated to the servicer, the missing non-borrower information is frequently investor approval of the application. Because the investor ultimately bears the cost of any delay in a foreclosure proceeding, the investor is in the best position to weigh the cost of expediting its approval process against the potential delay in a foreclosure proceeding.

The Bureau requests additional information regarding the frequency with which non-borrower information is not available to a servicer within 30 days of a servicer's receipt of a complete loss mitigation application, the types of information that may be missing at that point, the consequences for borrowers when this occurs, and the incremental cost to servicers of complying with the proposed requirement.

Clarification of the 2013 RESPA Servicing Final Rule's dual-tracking protections

The Bureau is proposing revised commentary to § 1024.41(g) that would clarify servicers' obligations with respect to § 1024.41(g)'s prohibition against moving for foreclosure judgment or order of sale, or conducting a sale, during evaluation of a complete loss mitigation application received more than 37 days before a foreclosure sale. As revised, proposed comment 41(g)-1 clarifies that if, upon receipt of a complete loss mitigation application, a servicer or its foreclosure counsel fails to take reasonable steps to avoid a ruling on a pending motion for judgment or the issuance of an order of sale, the servicer must dismiss the foreclosure proceeding if necessary to avoid the sale. Proposed new comment 41(g)-5 would clarify that § 1024.41(g) prohibits a servicer from conducting a foreclosure sale even if a person other than the servicer administers or conducts the foreclosure sale proceedings and that servicers must take reasonable steps to delay the sale until one of the conditions under § 1024.41(g)(1)-(3) is met. The Bureau also proposing to revise comment 41(g)-3 to clarify servicers' obligations under § 1024.41(g) when acting through foreclosure counsel. Similarly, the Bureau is proposing comment 38(b)(3)(iii)-1 to clarify that policies and procedures required under § 1024.38(b)(3)(iii) to facilitate sharing of information with service provider personnel responsible for handling foreclosure proceedings must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application. The proposed comments, taken together, would clarify that, when a foreclosure sale has been scheduled but the servicer is evaluating a complete loss mitigation application received more than 37 days before the scheduled foreclosure sale, the servicer must take all reasonable steps to delay the foreclosure sale.

Section 1024.41(g) is intended to protect borrowers by preventing a foreclosure sale from going forward while review of a complete loss mitigation application is pending. The proposed commentary would clarify the steps that servicers must take to protect borrowers from foreclosure when a complete loss mitigation application is pending late in the foreclosure process. The proposed commentary would also reduce servicer compliance costs by adding clarity regarding the application of § 1024.41(g) when a foreclosure sale has been scheduled. At the same time, servicers would bear costs in confirming that their policies and procedures for foreclosures, including communication with counsel, meet the requirements of § 1024.41(g) in light of the revised commentary. However, the Bureau does not believe that the proposed revisions would impose significant burdens on servicers because § 1024.41(g) and its existing commentary already require servicers to take reasonable steps to prevent a scheduled foreclosure sale from going forward when a timely loss mitigation application has been received. The proposed commentary is intended to aid servicers in complying with § 1024.41(g) by elaborating upon and clarifying a servicer's obligations under the existing requirement, but does not impose new obligations on servicers.

The proposed revision to comment 41(g)-1 contemplates dismissal of the foreclosure action if the servicer has not taken, or caused its foreclosure counsel to take, all reasonable affirmative steps to delay the foreclosure sale when a timely loss mitigation application is pending. The costs of dismissal may be significant in the context of a particular mortgage. However, the Bureau does not believe that the proposed comment would impose significant overall costs on servicers because servicers are already obligated to take reasonable steps to delay a foreclosure sale when a timely loss mitigation application is pending. Thus, servicers generally will be able to avoid the costs of dismissal so long as they comply with existing requirements.

Review of multiple loss mitigation applications

Currently, § 1024.41(i) requires a servicer to comply with the requirements of § 1024.41 for only a single complete loss mitigation application for a borrower's mortgage loan account. The Bureau is proposing to revise § 1024.41(i) to require servicers to comply with the requirements of § 1024.41 each time a borrower submits a complete loss mitigation application, unless the servicer has previously complied with § 1024.41 for a borrower's complete loss mitigation application and the borrower has been delinquent at all times since the borrower submitted the application.

Potential benefits and costs to consumers. Section 1024.41's loss mitigation procedures are intended to protect borrowers from harm in connection with the process of evaluating a borrower for loss mitigation options and proceeding to foreclosure. As discussed in the 2013 RESPA Servicing Final Rule, benefits to these borrowers include a period of 120 days in which to submit a loss mitigation application before foreclosure can commence, restrictions on dual tracking, an appeals process for denials of loss mitigation applications, and consideration for all available loss mitigation alternatives.[302] The proposed provision would make these benefits available to borrowers who complete a loss mitigation application, become (or remain) current following the initial submission of a loss mitigation application, and subsequently encounter difficulties making payments and desire to apply for loss mitigation again. The provision would thereby benefit borrowers in two general circumstances: First, borrowers who have previously applied for and received a loan modification, then subsequently have difficulty making payments on the modified loan (perhaps due to an unrelated hardship months or years after the modification), will be able to apply for loss mitigation under § 1024.41's procedures. Second, borrowers who have previously applied for loss mitigation but were not offered an option that they chose to accept will be able to apply for loss mitigation under § 1024.41's procedures if they become (or remain) current on their loan following the application.

With regard to the first group, a significant percentage of the borrowers who receive loan modifications subsequently becomes delinquent. The OCC Mortgage Metrics Report indicates that for modifications completed since the fourth quarter of 2012, 11.5 to 13.8 percent of modified loans were 60 or more days delinquent six months after modification, and 16.8 to 18.5 percent were 60 or more days delinquent after one year.[303] For the HAMP program, the FHFA reports that as of May 2014, of 625,199 permanent modifications that became effective between April 2009 and May 2014, 173,791 (27.8 percent) had defaulted by the end of the period.[304]

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[302] See 78 FR 10695, 10857-60 (Feb. 14, 2010).
[303] Fed. Reserve Sys., Office of the Comptroller of the Currency, *OCC Mortgage Metrics Report: Disclosure of Nat'l Bank and Fed. Savings Ass'n Mortgage Loan Data*, at 30 (Q1 2014), *available at* http://www.occ.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics-2014/mortgage-metrics-q1-2014.pdf.
[304] Fed. Housing Fin. Agency, Foreclosure Prevention Report, at 3 (May 2014), *available at* http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/ForeclosurePreventionReportMay2014FINAL.pdf.

These numbers suggest that a significant fraction of borrowers receiving loan modifications could potentially benefit from the proposed provision, because they would have the protection of § 1024.41's loss mitigation procedures in the wake of these subsequent delinquencies. On the other hand, the large number of borrowers who become delinquent as soon as six months after completing a loan modification suggests that in many cases the subsequent delinquency may reflect not a new adverse event, but instead the failure of the modification to achieve an affordable monthly payment for the borrower in light of the circumstances that preceded the modification. To the extent that a borrower's circumstances have not changed significantly, a subsequent loss mitigation application may not yield a new option for which the borrower is eligible and that the borrower finds more beneficial.

The Bureau does not have data indicating the number of borrowers in the second group—that is, those who apply for loss mitigation, are not approved for any option that they choose to accept, and subsequently become or remain current on their mortgage. The Bureau notes that the proposed provision may provide additional flexibility to borrowers who are current on their mortgage but might benefit from a loss mitigation option, because such borrowers could apply and determine whether they are eligible for loss mitigation without losing the opportunity to apply for loss mitigation in the future. For example, homeowners who are able to make their mortgage payments but would like to determine whether a short sale is possible would be able to apply for a short sale without losing the protection of § 1024.41's loss mitigation procedures in connection with any future application for loss mitigation.

The benefits to borrowers of the proposal depend on whether and under what circumstances investors make loss mitigation options available to borrowers who have completed an earlier loss mitigation application and perhaps received a loan modification.

Section 1024.41 does not require a servicer to make any loss mitigation options available to a borrower, but only governs a servicer's evaluation of a borrower for any loss mitigation option that is available. Many borrowers may not realize benefits from the proposed provision because, even though it may entitle them to apply for a second loan modification, they are not eligible to receive one. For example, Fannie Mae and Freddie Mac's servicing guidelines generally do not permit a subsequent loan modification under certain circumstances, including when a borrower has become 60 days delinquent within the 12 months after a borrower receives a prior loan modification.[305] The Bureau notes, however, that for some borrowers affected by the proposal, any loss mitigation option provided as a result of the proposed revision may be the first loss mitigation option offered to that borrower, even if it is not the first evaluation of a complete application.

Potential benefits and costs to covered persons. The proposed provision will impose costs on servicers by requiring them to evaluate certain borrowers for subsequent loss mitigation applications in accordance with § 1024.41's requirements. Costs of complying with § 1024.41's requirements include those arising from the requirements to send specific notices, comply with the rule's timelines for evaluation of loss mitigation applications, evaluate the borrower for all loss mitigation options, and under certain circumstances to delay initiation of foreclosure proceedings. The extent to which these requirements impose additional costs on servicers depends on their current policies with respect to subsequent loss mitigation applications. The Bureau has learned through its outreach efforts that many servicers already reevaluate borrowers

[305] *See* Fannie Mae Single Family 2012 Servicing Guide, § 602.05, Redefault, *available at* https://www.fanniemae.com/content/guide/svc031412.pdf; Freddie Mac Single Family Servicing Guide, § B65.14, Ineligibility for Freddie Mac Standard Modification, available at http://www.allregs.com/tpl/Main.aspx.

who reapply for loss mitigation using the procedures set forth in § 1024.41. To the extent that servicer practices already meet the requirements of the rule, the burden on servicers will be reduced.

The costs imposed by the rule are also mitigated by the fact that servicers can determine whether any loss mitigation options are available to borrowers and set the eligibility criteria for any second loss mitigation application. To the extent that the cost of providing subsequent loss mitigation opportunities is significant, servicers and creditors will have the opportunity to revise eligibility criteria for borrowers who have previously been evaluated for loss mitigation pursuant to the servicing rules, which will reduce the cost of complying with the proposed provision. In addition, the requirement that the borrower bring the loan current before § 1024.41's loss mitigation procedures apply to a subsequent application mitigates the costs of the proposed revision for servicers by limiting the risk that a borrower will use multiple loss mitigation applications as a way to postpone foreclosure.

Loss mitigation timelines and servicing transfers

The Bureau is proposing § 1024.41(k) to address the requirements applicable to loss mitigation applications pending at the time of a servicing transfer. Proposed § 1024.41(k) clarifies that, subject to certain exceptions, a transferee servicer must comply with § 1024.41's requirements within the same timeframes that were applicable to the transferor servicer. The proposed exceptions include a five-day extension of time for a transferee servicer to provide the written notification required by § 1024.41(b)(2)(i)(B), and a provision ensuring that a transferee servicer that acquires servicing through an involuntary transfer has at least 15 days after the transfer to evaluate a borrower's pending complete loss mitigation application. The proposal also provides that if a borrower's appeal under § 1024.41(h) is pending as of the transfer date, a transferee servicer must evaluate the appeal if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal; a transferee servicer that is unable to evaluate an appeal must treat the appeal as a complete loss mitigation application and evaluate the borrower for all loss mitigation options available to the borrower from the transferee servicer.

Potential benefits and costs to consumers. The proposed provision is intended to benefit borrowers who have loss mitigation applications in process at the time their mortgage loan is transferred to another servicer by ensuring that the transfer does not unnecessarily delay the evaluation of their applications. Delays in the processing of loss mitigation applications can prolong a borrower's delinquency, during which time fees and other costs may accrue, making it more difficult for the borrower to recover from financial distress.

The Bureau does not have representative data on how quickly servicers currently comply with the various loss mitigation requirements in the event of a servicing transfer, but believes that timelines vary significantly across servicers. The Bureau understands that, while some servicers may already be complying with the proposed timelines, others may not. To the extent that servicer practices already comply with the proposed provision, consumer benefits from the proposal will be lower.

Potential benefits and costs to covered persons. The proposed provision is intended to reduce the costs to servicers that engage in servicing transfers of complying with the proposed provision by clarifying the application of loss mitigation timelines in the context of a servicing transfer. At the same time, while transferor and transferee servicers are currently required under § 1024.38 to have policies and procedures in place to ensure the timely transfer and receipt of accurate data, including through the devotion of appropriate personnel and resources, the proposed provision would impose incremental costs on servicers to the extent that under their current transfer procedures their transfers do not comply with the proposed timelines. Transferor and transferee servicers both may be required to devote more personnel and other resources in the days or weeks before and after a transfer to ensure that the data is accurately transferred in a way that permits the transferee servicer to comply with the timelines with respect to all loss mitigation applications in process.

The proposed exceptions, including extended timelines in connection with the initial notice confirming receipt of a loss mitigation application and in connection with involuntary servicing transfers, are intended to mitigate the costs to servicers of complying with the proposal in specific circumstances in which the Bureau understands that complying with the timelines that are otherwise applicable would be especially difficult. Additionally, the Bureau understands that due to the unique circumstances and complications that may arise in connection with a transfer, there may be times when, despite the transferee servicer's good faith efforts, it may be impracticable to comply with the requirements of § 1024.41(c)(1) and (4) within 30 days of when the transferor servicer received the borrower's complete loss mitigation application. The proposal mitigates compliance costs in such circumstances by allowing that, where complying with the timelines with respect to evaluating complete loss mitigation applications is impracticable under the circumstances, the servicer must comply with the requirements within a reasonably prompt time, while stating in commentary that, in general, a reasonably prompt time would be within an additional five days.

The Bureau requests data and information regarding servicer timelines for complying with loss mitigation requirements following a servicing transfer, the extent to which consumers are affected by delays in the loss mitigation process that result from servicing transfers, and the costs to servicers of complying with the proposed requirement.

Evaluation for repayment plans based on incomplete applications

The Bureau is proposing to revise § 1024.41(c)(2)(iii) to permit a servicer to offer short-term repayment plans based upon an evaluation of an incomplete loss mitigation application. The proposal would be an exception to the general rule under § 1024.41(c)(2)(i) that a servicer may not evaluate a borrower for loss mitigation options based on an incomplete application, and would parallel the existing exception to this rule which permits a servicer to offer a short-term payment forbearance program based upon an incomplete application. Borrowers who are evaluated for a short-term repayment plan based on an incomplete application would not lose their protections under § 1024.41 with respect to a subsequent loss mitigation application.

As with the existing exception for short-term payment forbearance plans, the proposal is intended to benefit borrowers and servicers by permitting servicers to offer a short-term loss mitigation option to address a temporary financial setback, while preserving borrowers' loss mitigation protections, in situations in which completing an application would be time-consuming or burdensome or would significantly delay a decision. The proposal would not impose costs on borrowers because a borrower would always have the option to reject a short-term repayment plan based on review of an incomplete loss mitigation application, provide a complete loss mitigation application, and be reviewed for all loss mitigation options available to the borrower (and receive other protections) under § 1024.41. Similarly, the proposal would impose no costs on servicers because it does not impose any new obligations on servicers.

5. Periodic Statement Requirements Applicable to Consumers in Bankruptcy.

The Bureau is proposing to revise § 1026.41(e)(5) to limit the circumstances in which a servicer is exempt from the periodic statement requirements with respect to a consumer who is a debtor in bankruptcy. Currently, § 1026.41(e)(5) provides that a servicer is exempt from the requirement to provide periodic statements for a mortgage loan while the consumer is a debtor in bankruptcy. In general, the proposed revisions to § 1026.41(e)(5) limit the exemption to consumers in bankruptcy who are surrendering the property or avoiding the lien securing the mortgage loan, to consumers who have requested that a servicer cease providing periodic statements or coupon books, and in certain other circumstances. Notwithstanding meeting the above conditions for an exemption, the proposal requires servicers to provide periodic statements or coupon books if the consumer requests them in writing (unless a court has entered an order requiring otherwise) and to resume providing periodic statements when the consumer exits bankruptcy with respect to any portion of the mortgage debt that is not discharged through bankruptcy.

Potential benefits and costs to consumers. The periodic statement requirements in § 1026.41 are intended to benefit consumers by providing accurate information about payments that consumers can use to monitor the servicer, assert errors if necessary, and track the accumulation of equity so that they can effectively determine how to allocate income and consider options for refinancing. The proposal is intended to make these benefits available to consumers in bankruptcy who own a home subject to a mortgage and intend to retain the home post-bankruptcy, subject to the constraints of the Bankruptcy Code's automatic stay. The Bureau does not have representative data describing the number of consumers in the bankruptcy process that own a home and intend to retain it through the bankruptcy process. The FHFA reports that of the mortgage loans serviced for Fannie Mae and Freddie Mac, between 0.4 percent and 0.5

percent were in bankruptcy during 2013.[306] However, based on information the Bureau has received from servicers and other Federal agencies, the Bureau believes that the percentage of non-GSE loans in bankruptcy may be significantly higher.

There are at least two reasons to expect that consumers who are in bankruptcy and intend to retain their homes are particularly likely to benefit from receiving periodic statements. First, consumers in bankruptcy have demonstrated difficulties in managing their financial obligations and face unique challenges in rehabilitating their finances. Such consumers may derive particular benefit from a reminder of their payment obligations and information about the status of their mortgages that enables them to allocate income and make other decisions about their finances. Second, as discussed in the section-by-section analysis of § 1026.41(e)(5), there is evidence that some servicers may be especially prone to error in applying payments of consumers in bankruptcy, particularly in the context of Chapter 13 cases. This evidence indicates that it may be especially important for consumers in bankruptcy to be able to monitor how servicers apply their payments.

Potential benefits and costs to covered persons. The proposed provision would impose costs on servicers by requiring them to modify systems to provide statements that show how payments are applied for consumers in bankruptcy, particularly those in Chapter 13 bankruptcy. The Bureau understands from industry outreach that the principal systems some servicers currently use to process and apply mortgage payments are not designed to accommodate payments from consumers in Chapter 13 bankruptcy and that many servicers account for

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[306] Fed. Housing Fin. Agency, Foreclosure Prevention Report, at 6 (Jan. 2014), *available at* http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/ForeclosurePreventionReportJan2014FINAL.pdf.

payments from consumers in Chapter 13 bankruptcy using a separate system or process. Servicer systems for producing periodic statements are generally not designed to produce statements for consumers in Chapter 13 bankruptcy, and accounting for payments from consumers in Chapter 13 bankruptcy currently may not be done on a timeline that permits statements to be produced on a regular billing cycle. The proposed provision will require servicers either to modify the systems they use to process payments and produce periodic statements for non-bankrupt consumers so that those systems can accommodate consumers in Chapter 13 bankruptcy or to modify the systems they currently use to process payments on behalf of bankrupt consumers to permit them to produce periodic statements for consumers in Chapter 13 bankruptcy. Servicers will also incur additional vendor costs associated with distributing statements. With respect to servicers that provide consumers with coupon books, the proposed provision will require servicers to provide transaction activity and past payment application information to consumers upon a consumer's request, consistent with current § 1026.41(e)(3)(iii). The Bureau does not believe that providing this information will impose significant new costs on servicers that provide coupon books because the Bureau understands that the vast majority of servicers would already be required to provide such information in response to a consumer's written information request pursuant to § 1024.36.

The Bureau is proposing to reduce the burden of complying with the proposed provision by providing model forms for periodic statements in bankruptcy. Model forms would lower costs to servicers by eliminating the need to develop compliant forms of periodic statements, and may also increase the overall usefulness to consumers of the periodic statements.

6. Periodic Statements Following Charge Off

The Bureau proposes to add a new exemption from the requirement to provide periodic statements under § 1026.41. The proposed exemption would apply to a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account, provided that the servicer must provide the consumer a final periodic statement within 30 days of charge off or the most recent periodic statement. The proposed final periodic statement must convey in simple and clear terms that: the mortgage loan has been charged off and the servicer will not charge any additional fees or interest on the account; the lien on the property remains in place and the consumer remains liable for the mortgage loan obligation; the consumer may be required to pay the balance on the account in the future, for example, upon sale of the property; the balance on the account is not being canceled or forgiven; and the loan may be purchased, assigned or transferred.

Potential benefits and costs to consumers. The periodic statement requirements in § 1026.41 are intended to benefit consumers by providing accurate information about payments that consumers can use to monitor the servicer, assert errors if necessary, and track the accumulation of equity. Where a consumer's loan has been charged off and the servicer will no longer charge any additional fees or interest on the account, these benefits are significantly decreased. So long as the consumer is aware that no additional fees or interest will be charged, monthly statements will include no new information useful to the consumer, and the consumer may find it confusing and bothersome to continue to receive identical monthly statements. A final notice, on the other hand, could provide consumers with important information about the ongoing status of the loan and the significance of its status. The proposed final statement would clarify that, although the mortgage loan has been charged off, the obligation remains in place and describe the implications of the remaining lien for the consumer.

Although periodic statements would not provide new information to consumers where accounts have been charged off and fees and interest will no longer accrue, they may provide a benefit to some consumers as a reminder that the lien on the property remains in place. It is possible that, particularly years after a charge-off, a consumer (or successor in interest to the property securing the loan) may not realize that the obligation remains outstanding and the lien is still in place. A final statement that details the status could mitigate this issue but may not completely address it in all cases. This represents a potential cost of the proposal to some consumers. The Bureau requests additional information regarding the benefits to consumers of receiving periodic statements or other communications from the servicer about a mortgage loan, such as an annual reminder to the consumer of a loan's status, after the loan is charged off and will no longer accrue fees or additional interest.

Potential benefits and costs to covered persons. Because the provision does not impose any new requirements on servicers, it would not impose any new costs. The proposal would benefit servicers by giving them the option to send a final periodic statement in lieu of continuing to send periodic statements for charged-off mortgage loans when they find it less costly to do so.

7. Small Servicer Exemption

The Bureau is proposing to amend certain criteria for determining whether a servicer qualifies for the small servicer exemption set forth under § 1026.41(e)(4). The proposal provides that transactions serviced by the servicer for a seller financer that meet certain criteria would not be considered in determining whether a servicer qualifies as a small servicer. Under the Mortgage Servicing Rules, small servicers (generally, those that service, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee) are exempt from certain mortgage servicing requirements, including

Regulation Z's requirement to provide periodic statements for residential mortgage loans and several of Regulation X's requirements, including certain provisions related to force-placed insurance, general servicing policies and procedures, and communicating with borrowers about, and evaluation of applications for, loss mitigation options. The proposal would permit small servicers to maintain their small servicer status if they service transactions for a limited class of seller financers: those that provide seller financing for only one property in any 12-month period for the purchase of a property that they own, so long as they did not construct a residence on the property in the ordinary course of business and the financing meets certain restrictions.

The Bureau believes that the proposed changes would have little or no effect on consumers that are not parties to seller-financed transactions, because the Bureau expects that, in the absence of the proposed changes, small servicers would generally choose not to service seller-financed transactions in order to maintain their status as small servicers. The Bureau understands that the practice of servicing seller-financed transactions is not widespread and that depository institutions offering this service do not obtain significant revenue from the practice, but instead offer the service as an accommodation to depository customers that are seller financers. Thus, the Bureau does not expect that servicers' status as small servicers will ultimately be affected by the rule, meaning that the proposal would not have any significant effect on the number of consumers whose servicer qualifies for the small servicer exemption.

Given the limited nature of servicing loans for seller financers, and given the Bureau's understanding that these services are offered by depository institutions to their customers when alternative service providers are generally not available, the Bureau believes that if seller financers are unable to obtain servicing from the depository institution where they do their banking then, in many cases, they are likely to instead service the loan themselves. Consumers who purchase homes from seller financers may benefit from the servicing of the loan by a small servicer rather than directly by the seller financer. Purchasers of seller-financed residential real estate, who may be unable to secure credit through traditional means, may benefit from a bank receiving scheduled periodic payments and providing an independent accounting as a third party to the transaction. In addition, small servicers may be able to process payments and perform other servicing activities at a lower cost than seller financers, and this cost savings may be passed on to purchasers of seller-financed residential real estate.

F. Potential Specific Impacts of the Proposed Rule

Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, As Described in Section 1026

The Bureau believes that a large fraction of depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans qualify as "small servicers" for purposes of the Mortgage Servicing Rules because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. The Bureau estimates that 96 percent of insured depositories and credit unions with $10 billion or less in total assets service 5,000 mortgage loans or fewer.[307] The Bureau believes that servicers that service loans that they neither own nor originated tend to service more than 5,000 loans, given the returns to scale in servicing technology. The impact of the proposed rule on small servicers, which are exempt from many of the provisions of the servicing rules that would be affected by the proposed rule, is discussed below in connection with the Regulatory Flexibility Act.

With respect to servicers that are not small servicers as defined in the Mortgage Servicing

[307] Based on an analysis of March 2014 Call Report data as compiled by SNL Financial.

Rules, the Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the proposed rule on depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans.

Impact of the Proposed Provisions on Consumer Access to Credit and on Consumers in Rural Areas

The Bureau believes that the additional costs to servicers from the final rule are not likely to be extensive enough to have a significant impact on consumer access to credit. The exemption of small servicers from many provisions of the proposed rule will help maintain consumer access to credit through these providers.

Consumers in rural areas may experience benefits from the proposed rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural areas may be more likely to obtain mortgages from small local banks and credit unions that either service the loans in portfolio or sell the loans and retain the servicing rights. These servicers may already provide most of the benefits to consumers that the proposed rule is designed to provide. It is also possible, however, that a lack of alternative lenders in certain rural areas may make it possible for the proposed rule to provide rural consumers with greater benefits than consumers elsewhere.

The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results and other factual information on the impact of the proposed rule on consumers in rural areas.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[308] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[309]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

A. Application of the Proposed Rule to Small Entities

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA.[310] The analysis uses as a baseline the Mortgage Servicing Final Rules as currently in effect. The Bureau has identified five categories of small entities that may be subject to the proposed rule for purposes of the RFA: Commercial banks/savings institutions (NAICS 522110 and 522120), credit unions (NAICS 522130), firms providing real estate credit (NAICS 522292), firms engaged in other activities related to credit intermediation (NAICS 522390), and small non-profit organizations. Commercial banks, savings institutions, and credit unions are small businesses if they have $550 million or less in assets. Firms providing real

[308] 5 U.S.C. 601 *et seq*.
[309] 5 U.S.C. 609.
[310] For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System ("NAICS") classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

estate credit are small businesses if average annual receipts do not exceed $38.5 million, and firms engaged in other activities related to credit intermediation are small businesses if their average annual receipts do not exceed $20.5 million. A small non-profit organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The Bureau estimates that there are approximately 11,323 insured depositories (banks, thrifts and credit unions) and 1,388 non-depositories that engage in mortgage servicing and are therefore subject to the Mortgage Servicing Rules.[311] Of these, the Bureau estimates that approximately 9,724 depositories and 1,370 non-depositories are "small entities" as defined in the RFA.[312]

The large majority of these small entities qualify as "small servicers" for purposes of the Mortgage Servicing Rules: generally, servicers that service 5,000 or fewer mortgage loans, all of which the servicer or affiliates own or originated. The Bureau estimates that, among 11,094 small entities subject to the Mortgage Servicing Rules, all but approximately 19 depositories and all but approximately 55 non-depositories (collectively, approximately 0.6% of all small entities subject to the Mortgage Servicing Rules) service 5,000 loans or fewer.[313] The Bureau does not

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[311] The estimated number of insured depositories engaged in mortgage servicing is based on the March 2014 Call Report data as compiled by SNL Financial, and the estimated number of non-depositories is based on a special analysis of 2011 data from the Nationwide Mortgage Licensing System and Registry.

[312] The estimated number of insured depositories engaged in mortgage servicing that are small entities is based on the March 2014 Call Report data as compiled by SNL Financial, and the estimated number of non-depositories that are "small entities" as defined in the RFA is based on data on servicer rank and portfolio size from Inside Mortgage Finance. Non-profits and small non-profits engaged in mortgage loan servicing would be included in this estimate if their primary activity is originating or servicing loans. The Bureau has not been able to separately estimate the number of non-profits and small non-profits engaged in loan servicing.

[313] For insured depositories, the estimate is based on an analysis of the March 2014 Call Report data as compiled by SNL Financial. For depository institutions that are "small entities" as defined in the RFA, the Bureau estimates that all but 4 percent service 5,000 loans or fewer. Assuming a similar relationship between servicing revenue and loan counts holds for non-depository servicers, all but 4 percent of non-depository servicers that are small entities, or approximately 55 entities, would service 5,000 loans or less. The Bureau's methodology for these estimates is described in more detail in the 2013 RESPA Servicing Final Rule, 78 FR 10695, 10866 (Feb. 14, 2013).

have data to indicate whether these institutions service loans that they do not own and did not originate. However, as discussed in the 2013 RESPA Servicing Final Rule, the Bureau believes that a servicer that services 5,000 loans or fewer is unlikely to service loans that it did not originate, because a servicer that services loans for others is likely to see servicing as a stand-alone line of business and would likely need to service substantially more than 5,000 loans to justify its investment in servicing activities.[314]

Small servicers are exempt from many of the servicing provisions of Regulation X and Regulation Z. Pursuant to § 1024.30, small servicers are exempt from Regulation X's general servicing policies and procedures requirements (§ 1024.38), early intervention and continuity of contact requirements (§§ 1024.39 and 1024.40), and all loss mitigation procedures requirements of § 1024.41 other than § 1024.41(j), which makes applicable to small servicers § 1024.41(f)(1)'s prohibition on initiating foreclosure proceedings unless a borrower is more than 120 days delinquent and prohibits servicers from initiating foreclosure proceedings while a borrower is performing pursuant to the terms of an agreement on a loss mitigation option. Similarly, pursuant to § 1026.41(e)(4), small servicers are exempt from Regulation Z's requirement to provide periodic statements for residential mortgage loans pursuant to § 1026.41.

Given the Bureau's estimate that all but approximately 0.6 percent of small entities subject to the rule are small servicers, the proposed provisions that amend sections of Regulation X and Regulation Z from which small servicers are exempt will not have any economic impact on a substantial number of small entities. Most provisions of the proposed rule would amend §§ 1024.38 through 1024.41 and § 1026.41, and would therefore not affect small servicers.

[314] 78 FR 10695, 10866 (Feb. 14, 2013).

In addition, certain provisions of the proposed rule would apply to small servicers but would reduce servicer compliance costs by relaxing the existing rules. This includes changes to the commentary to § 1024.36 to reduce disclosure requirements when a borrower requests information about ownership of a GSE loan; an additional exception to § 1024.41(f)(1)'s 120-day pause on initiating foreclosure proceedings for a servicer joining the foreclosure action of a senior lienholder; and revisions to the definition of small servicer in § 1026.41(e)(4)(iii) that would permit small servicers to service loans for seller financers under certain circumstances.

There are three provisions of the proposed rule that do apply to small servicers and could potentially impose new costs on a substantial number of small entities: (1) proposed provisions related to successors in interest, which would extend the protections of all the Mortgage Servicing Rules, including certain provisions from which small servicers are not exempt, to successors in interest; (2) the definition of delinquency in proposed § 1024.31, which may affect the scope of the 2013 RESPA Servicing Final Rule's prohibition on initiating foreclosure proceedings unless a borrower's mortgage loan obligation is more than 120 days delinquent; and (3) a minor revision to the content of force-placed insurance notices required by § 1024.37(c). The following sections of this part discuss in greater detail the potential impact of these three provisions of the proposed rule on small servicers.

B. Successors in Interest

The Bureau is proposing rule changes that would impose new requirements on mortgage servicers with respect to successors in interest. For purposes of the proposed provision, successors in interest would include individuals who acquired property securing a mortgage loan in a transfer protected by the Garn-St Germain Act, including individuals who acquired an ownership interest in the property securing a mortgage loan in transfers resulting from the death of the borrower or through transfers to the borrower's spouse or children, transfers incident to divorce, and certain other transfers. The proposed provisions relate to how mortgage servicers confirm a successor in interest's identity and ownership interest in the property, and apply the Mortgage Servicing Rules to successors in interest whose identity and ownership interest in the property have been confirmed by the servicer.

Small servicers currently must comply with some, but not all, of the Mortgage Servicing Rules, and the proposed changes would require small servicers to comply with that same set of rules with respect to confirmed successors in interest. Small servicers must comply with Regulation X's requirements regarding general disclosure requirements (§ 1024.32), mortgage servicing transfers (§ 1024.33), timely escrow payments and treatment of escrow account balances (§ 1024.34), error resolution procedures (§ 1024.35), requests for information (§ 1024.36), and force-placed insurance (§ 1024.37) and the prohibition on initiating foreclosure proceedings if a borrower's mortgage loan obligation is not more than 120 days delinquent or if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option (§ 1024.41(f)(1) and (j)), and with Regulation Z's requirements regarding ARM disclosures (§ 1026.20(c) and (d)) and regarding payment processing, the prohibition on pyramiding of late fees, and the requirement to provide payoff statements (§ 1026.36(c)). The proposed provision requires small servicers to comply with each of these provisions with respect to successors in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the property.

The Bureau does not believe that the application of these requirements to confirmed successors in interest would have a significant impact on the small entities subject to the Mortgage Servicing Rules. While the Bureau does not have representative data on the number of loans that are serviced by small servicers and for which the underlying property has been transferred to a successor in interest, the Bureau expects that such loans make up a small fraction of the total loans serviced by any small servicer. The proposed provision would not require small servicers to develop new policies and procedures, but rather to continue to apply existing policies and procedures for servicing loans subject to the servicing rules to what the Bureau believes is a relatively small set of loans previously subject to the Mortgage Servicing Rules before the interest in the property was transferred to a successor in interest.

In addition, given that under the Garn-St Germain Act small servicers are effectively obligated to service loans secured by property that has been transferred to a successor in interest, there are reasons to expect that many small servicers are servicing such loans using the same policies and procedures that they use to service other mortgage loans that are already subject to the Mortgage Servicing Rules. Given that there are fixed costs associated with developing servicing policies and procedures and systems to implement those policies and procedures, it may be less costly for servicers to apply the same policies and procedures with respect to successors in interest that they apply to all other loans they service, rather than developing separate policies, procedures and systems to service loans for successors in interest. Moreover, as discussed in the 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, the Bureau believes that small servicers generally depend on a “relationship”-based business model that depends on repeat business and could suffer significant harm from any major failure to treat customers properly because small servicers are particularly vulnerable to “word of mouth."[315] A servicer that had a practice of servicing loans for confirmed successors in interest using lower standards than those used to service other loans would risk reputational harm and an associated loss of business.

Small servicers would also be subject to proposed § 1024.36(i), which requires a servicer to respond to a written request that indicates that the person making the request may be a successor in interest by providing the person with information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. Small servicers would be required to treat the person making the request as a borrower for the purposes of the procedural requirements of § 1024.36(c) through (g)—that is, for instance, the servicer would be required to acknowledge receipt of the request within five days and respond within 30 or 45 days without charge. However, because small servicers are exempt from § 1024.38, they would not be subject to proposed § 1024.38(b)(1)(vi), which requires servicers to have policies and procedures in place to identify and facilitate communication promptly with potential successors in interest, to provide promptly upon request a description of what documents the servicer reasonably requires to confirm the person's status, and, upon the receipt of such documents, notify the person promptly, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. Therefore, the proposal would not require small servicers to make any changes to their policies and procedures for identifying successors, but only to communicate to potential successors, using the same procedures they use to respond to other borrower requests, what documents they require to

[315] 78 FR 10696, 10843 (Feb. 14, 2013); 78 FR 10902, 10978 (Feb. 14, 2013).

confirm a person's status as a successor in interest. Because small servicers will typically already know what documents they require, are not subject to the requirement only to request documents that are reasonably required to determine a person's status, and will already have procedures in place for responding to borrower requests generally, the Bureau believes that the costs to small servicers of complying with § 1024.36(i) will be minimal.

C. Definition of Delinquency

The Bureau is proposing to add a general definition of delinquency in § 1024.31 that would apply to all sections of subpart C of Regulation X, replacing the existing definition of delinquency for purposes of §§ 1024.39 and 1024.40(a). Under the proposal, delinquency is defined as a period of time during which a borrower and the borrower's mortgage loan obligation are delinquent, and a borrower and a borrower's mortgage loan obligation are delinquent beginning on the day a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, became due and unpaid, until such time as the payment is made. Proposed comment 31 (Delinquency)-2 clarifies that, if a servicer applies payments to the oldest outstanding periodic payment, the date of the borrower's delinquency must advance accordingly. The Bureau understands from its outreach that the majority of servicers credit payments made to a delinquent account to the oldest outstanding periodic payment. The Bureau also understands that some servicers that use this method may be concerned about how to calculate the length of a borrower's delinquency without increased certainty from the Bureau.[316]

The Bureau believes that the proposed provision will clarify the application of the

[316] *See* Am. Bankers Ass'n. Letter to Consumer Fin. Prot. Bureau (Oct. 24, 2014), *available at* http://www.aba.com/Advocacy/commentletters/Documents/ABALetterRollingDelinquencies102414.pdf.

servicing rules—thereby reducing the costs to small servicers of complying with the rules—without imposing significant new burdens on servicers. The Bureau recognizes that, in principle, the proposed provision could affect the circumstances under which a servicer may initiate foreclosure proceedings, because the definition of “delinquency” affects the application of § 1024.41(f)(1)’s prohibition on initiating foreclosure proceedings unless “a borrower’s mortgage loan obligation is more than 120 days delinquent.”[317] In particular, the proposed provision would prohibit a servicer that otherwise applies payments to the oldest outstanding periodic payment from initiating foreclosure proceedings unless the borrower has missed the equivalent of four monthly payments. In contrast, the existing rule could be interpreted to permit the servicer to commence foreclosure even if the borrower has missed only one payment, so long as the payment was missed at least 120 days ago and the borrower has not become current since. However, information gathered in industry outreach indicates that the majority of servicers generally do not initiate foreclosure proceedings in the case of consumers that are behind by three or fewer payments. In addition, Fannie Mae and Freddie Mac servicing guidelines generally prevent servicers from initiating foreclosure if a loan is delinquent by fewer than four monthly payments. For servicers that do not apply payments to the oldest outstanding periodic payment, the proposal would not affect their application of the 120-day rule.

In addition, the Bureau believes that it is particularly unlikely that a small servicer would initiate foreclosure proceedings with respect to a borrower who is not at least four payments behind. As the Bureau stated in the 2013 RESPA Servicing Final Rule, the vast majority of

[317] Small servicers, while otherwise exempt from the provisions of § 1024.41, are not exempt from § 1024.41(f)(1) pursuant to § 1024.41(j).

small servicers are community banks and credit unions that generally maintain a “relationship” model that depends on repeat business and are particularly vulnerable to reputational harm from a failure to treat customers well. The Bureau believes that such servicers would be particularly unlikely to initiate foreclosure proceedings in a case where a consumer had fallen behind by a few mortgage payments but continued to make regular payments going forward. For these reasons, the Bureau expects that the proposed provision will not impose meaningful new constraints on servicers.

D. Changes to Force-Placed Insurance Notices

The Bureau is proposing changes to force-placed insurance notices, which pursuant to § 1024.37(c) servicers must deliver to borrowers before they can charge borrowers for force-placed insurance, to modify the prescribed notices slightly to accommodate the circumstance where a consumer’s hazard insurance coverage is insufficient, rather than expiring. The proposed rule is intended to reduce the burden on servicers and borrowers by providing greater clarity in circumstances where the form of notice that is currently required does not accurately describe the deficiency in the borrower’s insurance coverage. The proposed change represents a minor amendment to the required force-placed insurance notice and the Bureau does not believe that it will impose any significant burden on servicers.

Certification

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

VIII. Paperwork Reduction Act

Certain provisions of this notice of proposed rulemaking contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). The collection of information contained in this notice of proposed rulemaking, and identified as such, has been submitted to OMB for review under section 3507(d) of the PRA. Notwithstanding any other provision of law, under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, this information collection unless the information collection displays a currently valid control number.

This proposed rule would amend 12 CFR 1024 (Regulation X), which implements the Real Estate Settlement Procedures Act (RESPA), and 12 CFR 1026 (Regulation Z), which implements the Truth in Lending Act (TILA). Regulations X and Z currently contain collections of information approved by OMB. The Bureau’s OMB control number for Regulation X is 3170-0016 and for Regulation Z is 3170-0015. Information collections for the proposed rule would be authorized under OMB control numbers 3170-0027 for Regulation X and 3170-0028 for Regulation Z.

The Bureau is proposing six new information collection requirements, or changes to existing information collection requirements, in Regulation X:

1. Proposals to require servicers to communicate with potential successors in interest about their requirements for confirming a successor in interest’s identity and interest in the property and to treat successors in interest as borrowers for purposes of Regulation X’s mortgage servicing rules.
2. Minor changes to force-placed insurance notices to address the circumstance in which a borrower’s hazard insurance coverage is insufficient (rather than expired) and permit the consumer’s account number to be included on the notice.

3. Provisions requiring servicers to provide early intervention written notices to consumers in bankruptcy and to consumers who have provided the servicer with a cease communications notice under the FDCPA.
4. Requirement that servicers provide a notice to consumers when a loss mitigation application is complete.
5. Requirement that servicers provide a notice to consumers if their determination with respect to a loss mitigation application is delayed beyond a date that is 30 days after receipt of a complete loss mitigation application because information from third parties required to evaluate the application has not been submitted.
6. Requirement that servicers comply with the loss mitigation provisions of RESPA with respect to multiple loss mitigation applications from the same borrower. Servicers that offer loss mitigation options in the ordinary course of business are required to follow certain procedures when evaluating loss mitigation applications, including (1) providing a notice telling the borrower if the loss mitigation application is incomplete, approved, or denied (and, for denials of loan modification requests, a more detailed notice of the specific reason for denial and appeal rights), (2) providing a notice of the appeal determination, and (3) providing servicers of senior or second liens encumbering the property that is the subject of the loss mitigation application copies of the loss mitigation application.

The Bureau is also proposing two new information collection requirements, or changes to existing information collection requirements, in Regulation Z:

7. Proposals requiring servicers to treat successors in interest as consumers for purposes of Regulation Z’s mortgage servicing rules.

8. Requirement that servicers provide periodic statements to consumers in bankruptcy.

These information collections would be required to provide benefits for consumers and would be mandatory. *See* 15 U.S.C. 1601 *et seq.*; 12 U.S.C. 2601 *et seq*. Because the Bureau does not collect any information, no issue of confidentiality arises. The likely respondents would be federally insured depository institutions (such as commercial banks, savings banks, and credit unions) and non-depository institutions (such as mortgage brokers, real estate investment trusts, private-equity funds, *etc*.) that service consumer mortgages.[318]

Under the proposed rule, the Bureau accounts for the entire paperwork burden for respondents under Regulation X. The Bureau generally also accounts for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain nondepository institutions. The Bureau and the FTC generally both have enforcement authority over nondepository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden to nondepository institutions. Other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

Using the Bureau's burden estimation methodology, the Bureau believes the total estimated industry burden under Regulation X for the approximately 12,711 respondents subject to the proposed rule would be approximately 67,000 hours for one time changes and 64,000

[318] For purposes of this PRA analysis, references to "creditors" or "lenders" shall be deemed to refer collectively to commercial banks, savings institutions, credit unions, and mortgage companies (*i.e.*, non-depository lenders), unless otherwise stated. Moreover, reference to "respondents" shall generally mean all categories of entities identified in the sentence to which this footnote is appended, except as otherwise stated or if the context indicates otherwise.

hours annually. Using the Bureau's burden estimation methodology, the total estimated industry burden under Regulation Z for the approximately 12,711 banks, savings institutions, credit unions, and mortgage companies subject to the proposed rule, including Bureau respondents,[319] is approximately 2,900 hours for one-time changes and 8,300 hours annually. The estimates presented in this part VIII represent weighted averages across respondents. The Bureau expects that the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent. The estimated burdens in this PRA analysis represent averages for all respondents. The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

For purposes of this PRA analysis, the Bureau estimates that there are 11,323 depository institutions and credit unions subject to the proposed rule, and an additional 1,388 non-depository institutions. Based on discussions with industry, the Bureau assumes that all depository respondents except for one large entity and 95% of non-depository respondents (and 100% of small non-depository respondents) use third-party software and information technology vendors. Under existing contracts, vendors would absorb the one-time software and information technology costs associated with complying with the proposal for large- and medium- sized respondents but not for small respondents.

A. Information Collection Requirements—Regulation X

[319] For purposes of this PRA analysis, the Bureau's depository respondents with respect to the proposed changes to Regulation Z are 120 depository institutions and depository institution affiliates that service closed-end consumer mortgages. The Bureau's non-depository respondents are an estimated 1,388 non-depository servicers. Unless otherwise specified, all references to burden hours and costs for the Bureau respondents for the collection requirements under the proposed changes to Regulation Z are based on a calculation of the burden from all of the Bureau's depository respondents and half of the burden from the Bureau's non-depository respondents.

The Bureau believes the following aspects of the proposed rule would be information collection requirements under the PRA.

1. Successors in Interest

Under the Bureau's proposal, servicers would be required (1) to respond to a written request from a person that indicates that the person may be a successor in interest by providing that person with information regarding what documents the servicer requires to confirm the person's identity and ownership interest in the property and (2) to have policies and procedures to ensure that the servicer can provide promptly upon request a description of what documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property, and, upon the receipt of such documents, notify the person promptly, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. Servicers would also be subject to Regulation X's requirements, including loss mitigation requirements, with respect to successors in interest.

All respondents would have a one-time burden under this proposed requirement associated with reviewing the regulation. Certain respondents will have one-time burden in hours from training personnel in compliance with the proposed requirement. The Bureau estimates that one-time hourly burden to comply with the proposed disclosure requirements to be four hours and forty minutes, on average, per respondent.

Respondents would have ongoing burden in hours and/or vendor costs associated with the information technology used in producing the disclosure. All respondents would have ongoing vendor costs associated with distributing (*e.g.*, mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be 10 minutes and $0.37, on average, for each respondent.

2. Changes to Force-Placed Insurance Disclosures

The proposed rule makes minor changes to the content of required force-placed insurance notices, which are required before a servicer may charge a borrower for force-placed insurance.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. All respondents will also have one-time burden in hours or vendor costs from changing existing systems to accommodate the required new disclosure. The Bureau estimates that one-time hourly burden to comply with the proposed disclosure requirements to be 20 minutes and $70, on average, per respondent.

Because the content of the required notices would not change substantially under the proposed rule and the circumstances under which the disclosures are required would not change, there would not be an ongoing burden under the proposed rule.

3. Early Intervention Written Notices

The proposed rule requires that servicers send written early intervention notices to consumers in bankruptcy and consumers who have exercised their cease communication rights under the FDCPA. For consumers in bankruptcy, the servicer would be required to send the same early intervention notice that is required to be sent to other consumers. However, for notices sent to consumers who have exercised their FDCPA cease communication rights, the notices would be subject to certain additional requirements. Note that consumers have rights under the FDCPA only with respect to accounts that were delinquent at the time the servicer acquired the servicing rights. Therefore, servicers that do not acquire servicing rights in the course of their business would not be subject to the rule's requirements.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. Certain respondents will have one-time burden in hours or vendor costs from changing existing systems to accommodate the required new disclosure. The Bureau estimates that one-time hourly burden to comply with the proposed disclosure requirements to be one hour and 40 minutes, on average, per respondent.

Respondents would have ongoing burden in hours and/or vendor costs associated with the information technology used in producing the disclosure. All respondents would have ongoing vendor costs associated with distributing (*e.g.*, mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be four hours and $446, on average, for each respondent.

4. Notice of Complete Loss Mitigation Application

The Bureau's proposal requires a servicer to provide a written notice to a borrower promptly upon receiving the borrower's complete application. The Bureau understands that the practice of providing borrowers with a written notice informing them that their loss mitigation application is complete is a common business practice (*i.e.*, a "usual and customary" business practice) today for most mortgage servicers. However, the Bureau understands that the specific content of the proposed notices may not reflect common practices.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. In addition, while the Bureau considers borrower notifications that loss mitigation applications are complete as the normal course of business, institutions may still have to incur one-time costs associated with modifying their existing disclosures to comply with the Bureau's proposed disclosure provisions. As a result, the Bureau's one-time burden incorporates these costs. The Bureau estimates this one-time burden to be three hours, on average, for each respondent.

5. Notice Regarding Outstanding Third-Party Information

The proposed rule requires written notice to borrowers if, thirty days following submission of a complete loss mitigation application, the servicer has not received information from a party other than the servicer or the borrower and is necessary to evaluate the application.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. Certain respondents will have one-time burden in hours or vendor costs from creating software and information technology capability to produce the proposed disclosure. The Bureau estimates that one-time hourly burden to comply with the proposed disclosure requirements to be three hours, on average, per respondent.

Respondents would have ongoing burden in hours and/or vendor costs associated with the information technology used in producing the disclosure. All respondents would have ongoing vendor costs associated with distributing (*e.g.*, mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be 10 minutes and $13, on average, for each respondent.

6. Requirement to Evaluate Multiple Loss Mitigation Applications

Currently, servicers (other than small servicers) are required to comply with the loss mitigation provisions of § 1024.41 only once during the life of a loan, including the provision of up to three notices per loss mitigation application. Under the proposed rule, servicers would be required to comply with the loss mitigation provisions of § 1024.41 for borrowers who have previously completed a loss mitigation application, so long as the borrower has become current in the period following the completion of the application.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. Certain respondents would have one-time burden from revising their systems to provide for evaluation of borrowers for subsequent loss mitigation applications. The Bureau estimates this one-time burden to be 40 minutes, on average, for each respondent. The Bureau estimates the ongoing burden to be 121 hours and $213, on average, for each respondent.

B. Information Collection Requirements—Regulation Z

1. Successors in Interest under Regulation Z

Under the Bureau's proposal, servicers would be subject to Regulation Z's requirements with respect to successors in interest. All respondents would have a one-time burden under this proposed requirement associated with reviewing the regulation. The Bureau estimates that one-time hourly burden to comply with the proposed disclosure requirements to be 10 minutes, on average, per respondent.

Certain respondents would have ongoing vendor costs associated with distributing (*e.g.*, mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be 10 minutes and $7, on average, for each respondent.

2. Periodic Statements

Under the proposed rule, all respondents would be required to provide periodic statements to certain borrowers in bankruptcy.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. Certain respondents will have one-time burden in hours or vendor costs from changing existing systems to produce the required new disclosure. The Bureau estimates that one-time hourly burden to comply with the proposed disclosure requirements to be 18 hours, on average, per respondent.

Respondents would have ongoing burden in hours and/or vendor costs associated with the information technology used in producing the disclosure. Certain respondents would have ongoing vendor costs associated with distributing (*e.g.*, mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be 53 hours and $5,270, on average, for each respondent.

C. Summary of Burden Hours—Regulation X

The estimated burden on Bureau respondents from the proposed changes to Regulation X is summarized below. Under the proposed rule, the Bureau accounts for the entire paperwork burden for respondents under Regulation X.

	Respondents	Disclosures per Respondent	Hours Burden per Disclosure	Total Burden Hours	Total Vendor Costs
Ongoing					
Successors in Interest—Regulation X	12,711	6	0.013	1,086	$4,731
Force-Placed Insurance	12,711	0	0	0	$0
Early Intervention Written Notices	502	1,487	0.003	2,239	$223,890
Notice of Complete Loss Mitigation Application	502	0	0	0	$0
Third-Party Information	502	52	0.003	67	$6,681
Loss Mitigation—Subsequent Applications	502	837	0.144	60,571	$107,100
One-Time					
Successors in Interest—Regulation X	12,711	1	4.7	59,742	$0
Force-Placed Insurance	12,711	1	0.269	3,418	$879,048
Early Intervention Written Notices	502	1	1.695	851	$0
Notice of Complete Loss Mitigation Application	502	1	2.640	1,326	$0
Third-Party Information	502	1	2.690	1,351	$0
Loss Mitigation—Subsequent Applications	502	1	0.578	290	$0

Totals may not be exact due to rounding.

D. Summary of Burden Hours—Regulation Z

The estimated burden on Bureau respondents from the proposed changes to Regulation Z is summarized below. The Bureau accounts for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain nondepository institutions. The Bureau and the FTC generally both have enforcement authority over nondepository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden to nondepository institutions.

	Bureau Respondents	Disclosures per Bureau Respondent	Hours Burden per Disclosure	Total Burden Hours for Bureau Respondents	Total Vendor Costs for Bureau Respondents
Ongoing					
Successors in Interest—Regulation Z	814	24	0.003	56	$5,678
Periodic Statements in Bankruptcy	157	29,521	0.002	8,247	$824,670
One-Time					
Successors in Interest—Regulation Z	814	1	0.05	41	$0
Periodic Statements in Bankruptcy	157	1	17.835	2,791	$0

Totals may not be exact due to rounding.

E. Comments

Comments are specifically requested concerning: (1) whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (2) the accuracy of the estimated burden associated with the proposed collections of information; (3) how to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC, 20503, or by the internet to http://oira_submission@omb.eop.gov, with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by the internet to CFPB_Public_PRA@cfpb.gov.

List of Subjects

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Mortgage servicing, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Reporting, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend 12 CFR parts 1024 and 1026, as follows:

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

1. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603-2605, 2607, 2609, 2617, 5512, 5532, 5581.

Subpart C—Mortgage Servicing

2. Section 1024.30 is amended by adding paragraph (d) to read as follows:

§ 1024.30 Scope.

*   *   *   *   *

(d) *Successors in interest*. A successor in interest shall be considered a borrower for the purposes of this subpart once a servicer confirms the successor in interest's identity and ownership interest in a property that secures a mortgage loan covered by this subpart.

3. Section 1024.31 is amended by adding a definition of *Delinquency*, and a definition of *Successor in interest* in alphabetical order to read as follows:

§ 1024.31 Definitions.

*   *   *   *   *

Delinquency means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow became due and unpaid, until such time as the outstanding payment is made.

*   *   *   *   *

Successor in interest means a person to whom an ownership interest in a property securing a mortgage loan is transferred from a prior borrower, provided that the transfer falls under an exemption specified in section 341(d) of the Garn-St Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d).

*   *   *   *   *

4. Section 1024.36 is amended by adding paragraph (i) to read as follows:

§ 1024.36 Requests for information.

*   *   *   *   *

(i) *Successors in interest*. With respect to any written request from a person that indicates that the person may be a successor in interest and that includes the name of the prior borrower and information that enables the servicer to identify that borrower's mortgage loan account, a servicer shall respond by providing the potential successor in interest with information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. With respect to the written request, a servicer shall treat the person as a borrower for the purposes of the requirements of paragraphs (c) through (g) of this section. If a servicer has established an address that a borrower must use to request information pursuant to paragraph (b) of this section, a servicer must comply with the requirements of this paragraph only for requests received at the established address.

5. Section 1024.37 is amended by revising paragraphs (c)(2)(v) and (c)(4), revising the introductory text of paragraph (d)(2)(ii), and revising paragraphs (d)(2)(ii)(B), (d)(3) and (4), and (e)(4), to read as follows:

§ 1024.37 Force-placed insurance.

*   *   *   *   *

(c) * * *

(2) * * *

(v) A statement that:

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

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

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

*   *   *   *   *

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

(d) * * *

(2) * * *

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

* * * * *

(B) The information required by paragraphs (c)(2)(ii) through (iv), (ix) through (xi), (d)(2)(i)(B) and (D) of this section;

* * * * *

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

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

* * * * *

(e) * * *

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

* * * * *

6. Section 1024.38 is amended by revising paragraph (b)(1)(vi) and adding paragraph (b)(2)(vi), to read as follows:

§ 1024.38 General servicing policies, procedures, and requirements.

* * * * *

(b) * * *

(1) * * *

(vi)(A) Upon notification of the death of a borrower or of any transfer of the property securing a mortgage loan, promptly identify and facilitate communication with any potential successors in interest regarding the property;

(B) Upon identification of a potential successor in interest, including through any request made by a potential successor in interest under § 1024.36(i) or any loss mitigation application received from a potential successor in interest, promptly provide to the potential successor in interest a description of the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and how the person may submit a written request under § 1024.36(i) (including the appropriate address); and

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

(2) * * *

(vi) Promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of § 1024.41(c)(4).

* * * * *

7. Section 1024.39 is amended by revising paragraphs (a), (b)(1), and (d) to read as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

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

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

*   *   *   *   *

(d) *Exemptions.* (1) *Borrowers in bankruptcy*. (i) *Live Contact*. A servicer is exempt from the requirements of paragraph (a) of this section for a borrower if:

(A) The borrower is a debtor in bankruptcy;

(B) Any borrower on the mortgage loan is a debtor in Chapter 12 or Chapter 13 bankruptcy; or

(C) The borrower has discharged personal liability for the mortgage loan through bankruptcy.

(ii) *Written notice*. A servicer is exempt from the requirements of paragraph (b) of this section for a borrower if:

(A) Any of the conditions identified in paragraph (d)(1)(i) of this section are satisfied and no loss mitigation options are available;

(B) The borrower is a debtor in bankruptcy and the borrower's confirmed plan of reorganization provides that the borrower will surrender the property securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan;

(C) The borrower is a debtor in bankruptcy and the borrower files with the court a Statement of Intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the property securing the mortgage loan; or

(D) The borrower is a debtor in bankruptcy and a court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan or lifting the automatic stay pursuant to 11 U.S.C. 362 with respect to the property securing the mortgage loan.

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

(i) Is exempt from the requirements of paragraph (a) of this section; and

(ii) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation options are available; but

(iii) Must comply with the requirements of paragraph (b) of this section, as modified herein, if loss mitigation options are available:

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

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

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

8. Section 1024.41 is amended by revising the introductory text of paragraph (c)(1), revising paragraphs (c)(2)(iii) and (c)(2)(iv), adding paragraphs (c)(3) and (c)(4), revising paragraph (f)(1)(iii), revising paragraph (i), and adding paragraph (k). The revisions and additions read as follows:

§ 1024.41 Loss mitigation procedures.

* * * * *

(c) * * *

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

* * * * *

(2) * * *

(iii) *Payment forbearance.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program or a short-term repayment plan to a borrower based upon an evaluation of an incomplete loss mitigation application. A payment forbearance program or a repayment plan offered under this paragraph must be provided to the borrower in writing before the program or plan begins and must clearly specify the payment terms and duration. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program or repayment plan offered pursuant to this section. A servicer may offer a short-term forbearance program in conjunction with a short-term repayment plan under this paragraph.

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

(3) *Notice of complete application*. (i) Subject to paragraph (c)(3)(ii) of this section, upon receiving a borrower's complete loss mitigation application, the servicer shall promptly provide the borrower a written notice including the following information:

(A) That the loss mitigation application is complete;

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

(C) Whether a foreclosure sale was scheduled as of the date the servicer received the complete application and, if so, the date of that scheduled sale;

(D) The date the borrower's protections began under paragraph (f)(2) and (g) of this section, as applicable, and a concise description of those protections;

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

(F) A statement that, although the application is complete, the borrower may need to submit additional information at a later date if the servicer determines that it is necessary; and

(G) If applicable, that the borrower will have the opportunity to appeal the servicer's determination to deny the borrower for any trial or permanent loan modification pursuant to paragraph (h) of this section.

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

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

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

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

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

(ii) *Effect in case of delay*. (A) A servicer shall not deny a complete loss mitigation application solely because the servicer has not received documents or information not in the borrower's control.

(B) If, 30 days after a complete application is received, the servicer is unable to make a determination as to which loss mitigation options, if any, it will offer to the borrower because the servicer lacks documents or information from a party other than the borrower or the servicer, the servicer must promptly provide the borrower a written notice stating:

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

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

(*3*) The date on which the servicer first requested that documentation or information during the current loss mitigation application process; and

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

(C) If, due to a lack of documents or information from a party other than the borrower or the servicer, a servicer is unable to determine which loss mitigation options, if any, to offer a borrower within 30 days of receiving a complete application, upon receiving such documents or information, the servicer must promptly provide the borrower written notice stating the servicer's determination in accordance with paragraph (c)(1)(ii) of this section.

*   *   *   *   *

(f) * * *

(1) * * *

(iii) The servicer is joining the foreclosure action of a superior or subordinate lienholder.

*   *   *   *   *

(i) *Duplicative requests.* A servicer must comply with the requirements of this section for a borrower's loss mitigation application, unless the servicer has previously complied with the requirements of this section for a complete loss mitigation application submitted by a borrower and the borrower has been delinquent at all times since the same borrower submitted the complete application.

*   *   *   *   *

(k) *Servicing Transfers*. (1) *In general*. (i) *Timing of compliance*. Except as provided in paragraphs (k)(2) through (4) of this section, if a transferee servicer acquires the servicing of a mortgage loan for which a loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the requirements of this section for that loss mitigation application within the timeframes that were applicable to the transferor servicer based on the date the transferor servicer received the loss mitigation application. Any protections under paragraphs (e) through (h) of this section that applied to a borrower before a transfer continue to apply notwithstanding the transfer.

(ii) *Transfer date defined*. For purposes of this paragraph (k), the transfer date is the date on which the transfer of the servicing responsibilities from the transferor servicer to the transferee servicer occurs.

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

(3) *Complete loss mitigation applications pending at transfer*. (i) *In general*. Except as provided in paragraph (k)(3)(ii) and (iii) of this section, if a transferee servicer acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the applicable requirements of paragraphs (c)(1) and (4) of this section within 30 days of the date the transferor servicer received the complete loss mitigation application.

(ii) *Involuntary transfers*. (A) *Timing of evaluation*. Except as provided in paragraph (k)(3)(iii) of this section, if a transferee servicer, as a result of an involuntary transfer, acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the applicable requirements of paragraphs (c)(1) and (4) of this section within 30 days of the date the transferor servicer received the complete loss mitigation application or within 15 days of the transfer date, whichever is later.

(B) *Involuntary transfer defined*. For purposes of § 1024.41(k)(3)(ii), a transfer is involuntary when an unaffiliated investor or a court or regulator with jurisdiction requires, with less than 30 days advance notice, the transferor servicer to transfer servicing to another servicer and the transferor servicer is in breach of, or default under, its servicing agreement for loss mitigation related-servicing performance deficiencies or is in receivership or bankruptcy.

(iii) *Compliance not practicable*. If compliance with the time periods set forth in paragraph (k)(3)(i) or (ii)(A) of this section, as applicable, is not practicable under the circumstances, a transferee servicer must complete the evaluation of the complete loss mitigation application and provide the applicable notices required by paragraphs (c)(1) and (4) of this section within a reasonably prompt time after the expiration of the applicable time period in paragraph (k)(3)(i) or (ii)(A) of this section.

(4) *Applications subject to appeal process*. If a transferee servicer acquires the servicing of a mortgage loan for which, as of the transfer date, a borrower's appeal pursuant to paragraph (h) of this section is pending or a borrower's time period to appeal pursuant to paragraph (h) of this section has not expired, the transferee servicer must evaluate the appeal if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal.

(i) *Evaluating appeal*. If a transferee servicer is able to evaluate the borrower's appeal but compliance within 30 days of when the borrower made the appeal is not practicable under the circumstances, a transferee servicer must complete the evaluation and provide the notice required by paragraph (h)(4) of this section within a reasonably prompt time after expiration of the 30-day period.

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

(5) *Pending loss mitigation offers*. A transfer does not affect a borrower's ability to accept or reject a loss mitigation option offered under § 1024.41(c) or (h). If a transferee servicer acquires the servicing of a mortgage loan for which the borrower's time period under § 1024.41(e) or (h) for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

9. In Appendix MS–3 to part 1024, MS–3(A), MS–3(B), MS–3(C), and MS–3(D) are amended. The amendments read as follows:

APPENDIX MS—MORTGAGE SERVICING

APPENDIX MS–3 TO PART 1024

MODEL FORCE-PLACED INSURANCE NOTICE FORMS

*** * * * ***

MS–3(A)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY § 1024.37(C)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

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

Dear [Borrower's Name]:

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

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

The insurance we [bought] [buy]:

- **May be significantly more expensive than the insurance you can buy yourself.**
- **May not provide as much coverage as an insurance policy you buy yourself.**

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

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

MS–3(B)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY § 1024.37(D)(2)(I)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

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

Dear [Borrower's Name]:

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

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

The insurance we [bought] [buy]:

- **[Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually,**

which may be significantly more expensive than insurance you can buy yourself.

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

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

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

MS–3(C)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY § 1024.37(D)(2)(II)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

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

Dear [Borrower's Name]:

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

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

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

The insurance we [bought] [buy]:

- **[Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be significantly more expensive than insurance you can buy yourself.**
- **May not provide as much coverage as an insurance policy you buy yourself.**

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

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

MS–3(D)—MODEL FORM FOR RENEWAL OR REPLACEMENT OF FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY § 1024.37(E)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

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

Dear [Borrower's Name]:

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

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

The insurance we buy:

- **[Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be significantly more expensive than insurance you can buy yourself.**
- **May not provide as much coverage as an insurance policy you buy yourself.**

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

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

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

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

10. In Appendix MS–4 to part 1024, MS–4(D) is added to read as follows:

APPENDIX MS-4—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE

* * * * *

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

This is a legally required notice sent to borrowers who are at least 45 days delinquent. We have a right to invoke foreclosure. Loss mitigation or other alternatives may be available to help you avoid losing your home.

11. In Supplement I to Part 1024—Official Bureau Interpretations:

A. Under *Section 1024.30—Scope*:

i. The heading *30(d) Successors in interest* is added, and paragraphs 1 and 2 under that heading are added.

B. Under *Section 1024.31—Definitions*:

i. The heading *Delinquency* is added, and paragraphs 1 through 3 under that heading are added.

C. Under *Section 1024.36—Requests For Information*:

i. Under *36(a) Information request*, paragraph 2 is revised.

ii. The heading *36(i) Successors in interest* is added, and paragraph 1 under that heading is added.

D. Under *Section 1024.37—Force-Placed Insurance*:

i. The heading *37(d)(4) Updating notice with borrower information* is redesignated as heading *37(d)(5) Updating notice with borrower information*.

ii. Under *37(d)(5) Updating notice with borrower information*, paragraph 1 is revised.

E. Under *Section 1024.38— General Servicing Policies, Procedures, and Requirements*:

i. Under *38(b) Objectives:*

a. Under *38(b)(1) Accessing and providing timely and accurate information*, the heading *Paragraph 38(b)(1)(vi)* is added, and paragraphs 1 through 3 under that heading are added.

b. The heading *38(b)(3) Facilitating oversight of, and compliance by, service providers* is added.

c. Under *38(b)(3) Facilitating oversight of, and compliance by, service providers*, the heading *Paragraph 38(b)(3)(iii)* is added, and paragraph 1 under that heading is added.

F. Under *Section 1024.39—Early Intervention Requirements for Certain Borrowers*:

i. Under *39(a) Live contact*, paragraphs 1 and 2 are revised, paragraphs 3 and 4 are redesignated as paragraphs 4 and 5, respectively, and paragraphs 3 and 6 are added.

ii. Under *39(b) Written notice*:

a. Under *39(b)(1) Notice required*, paragraph 2 is revised, and paragraphs 5 and 6 are added.

b. Under *39(b)(2) Content of the written notice*, paragraph 4 is added.

iii. The heading *39(d) Exemptions* is added.

iv. Under *39(d) Exemptions*:

a. Under *39(d)(1) Borrowers in bankruptcy*, paragraphs 1 and 3 are removed and paragraph 2 is redesignated as paragraph 1 and revised.

b. The heading *39(d)(1)(i) Live contact* is added, and paragraph 1 under that heading is added.

c. The heading *39(d)(1)(ii) Written notice* is added, and paragraphs 1 and 2 under that heading are added.

v. The heading *39(d)(2)(iii) Fair Debt Collection Practices Act* is added, and paragraphs 1 and 2 under that heading are added.

G. Under *Section 1024.41—Loss Mitigation Procedures*:

i. Under *41(b) Receipt of a loss mitigation application*, paragraph 1 is added.

a. Under *41(b)(1) Complete loss mitigation application*, paragraphs 1 and 4.iii are revised.

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

c. Under *41(b)(2)(i) Requirements*, paragraph 1 is added.

d. Under *41(b)(2)(ii) Time period disclosure*, paragraph 1 is revised, and paragraphs 2 and 3 are added.

ii. Under *41(c) Evaluation of loss mitigation applications*:

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

b. Under *41(c)(2)(iii) Payment forbearance*, paragraphs 1 through3 are revised, and paragraph 4 is added.

c. The heading *41(c)(3) Notice of complete application* is added.

d. The heading *Paragraph 41(c)(3)(i)* is added, and paragraphs 1 through 3 under that heading are added.

e. The heading *41(c)(4) Information not in the borrower's control* is added.

f. The heading *41(c)(4)(i) Diligence requirements* is added, and paragraphs 1 and 2 under that heading are added.

g. The heading *41(c)(4)(ii) Effect in case of delay* is added, and paragraph 1 under that heading is added.

h. The heading *41(c)(4)(ii)(C) Providing notification of determination to borrower in case of delay* is added, and paragraph 1 under that heading is added.

iii. Under *41(g) Prohibition on foreclosure sale*, paragraphs 1 and 3 are revised, and paragraph 5 is added.

iv. Under *41(i) Duplicative requests*, paragraph 1 is revised and paragraph 2 is removed.

v. The heading *41(k) Servicing transfers* is added, and paragraph 1 under that heading is added.

a. The heading *41(k)(1) In general* is added.

b. The heading *41(k)(1)(i) Timing of compliance* is added, and paragraphs 1 through 3 under that heading are added.

c. The heading *41(k)(1)(ii) Transfer date defined* is added, and paragraph 1 under that heading is added.

d. The heading *41(k)(3) Complete loss mitigation applications pending at transfer* is added.

e. The heading *41(k)(3)(i) In general* is added, and paragraphs 1 and 2 under that heading are added.

f. The heading *41(k)(3)(iii) Compliance not practicable* is added, and paragraph 1 under that heading is added.

g. The heading *41(k)(4) Applications subject to appeal process* is added, and paragraphs

1 and 2 under that heading are added.

h. The heading *41(k)(5) Pending loss mitigation offers* is added, and paragraph 1 under that heading is added.

The additions, redesignations, removals, and revisions read as follows:

Supplement I to Part 1024—Official Bureau Interpretations

* * * * *

Subpart C—Mortgage Servicing

Section 1024.30—Scope

* * * * *

30(d) Successors in interest.

1. *Treatment of successors in interest*. Under § 1024.30(d), a successor in interest must be considered a borrower for the purposes of this subpart once a servicer confirms the successor in interest's identity and ownership interest in the property. For example, if a servicer receives a loss mitigation application from a successor in interest after confirming the successor in interest's identity and ownership interest in the property, the servicer must review and evaluate the application and notify the successor in interest in accordance with the procedures set forth in § 1024.41. However, see § 1024.36(i), which provides that a servicer must respond to written requests for certain information from a potential successor in interest in accordance with the requirements of § 1024.36(c) through (g) before confirming that person's status.

2. *Treatment of prior borrowers*. Even after a servicer's confirmation of a successor in interest's identity and ownership interest in the property, the servicer is still required to comply with the requirements of this subpart with respect to the prior borrower, unless that borrower also has either died or been released from the obligation on the mortgage loan. The prior borrower

retains any rights under this subpart that accrued prior to the confirmation of the successor in interest to the extent these rights would otherwise survive the prior borrower's death or release from the obligation.

Section 1024.31—Definitions

Delinquency.

1. *Length of delinquency.* A borrower's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and, if applicable, escrow became due and unpaid, and lasts until such time as the payment is made, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

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

3. *Payment tolerance*. For any given billing cycle for which a borrower's payment is less than the periodic payment due, a servicer that elects to advance the missing funds to the borrower's mortgage loan account may elect not to treat the borrower as delinquent. If a servicer chooses not to treat a borrower as delinquent for purposes of any section of subpart C, that borrower is not delinquent as defined in section 1024.31.

*   *   *   *   *

Section 1024.36–Requests for Information

*   *   *   *   *

36(a) Information request.

*   *   *   *   *

2. *Owner or assignee of a mortgage loan.* i. When a loan is not held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies with § 1024.36(d) by responding to a request for information regarding the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. A servicer is not the owner or assignee for purposes of § 1024.36(d) if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation.

ii. When the loan is held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies with § 1024.36(d) by responding to a borrower's request for information regarding the owner, assignee, or trust of the mortgage loan with the following information, as applicable:

A. If the request for information expressly requested the name or number of the trust or pool: the name of the trust, and the name, address, and appropriate contact information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee. The servicer complies with § 1024.36(d) by identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

B. If the request for information did not expressly request the name or number of the trust or pool: the name of the trust, and the name, address, and appropriate contact information for the trustee, as in comment 36(a)-2.ii.A above, unless the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the investor, guarantor, or trustee. In that case, the servicer may respond to such a request by providing only the name and contact information for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, as applicable, without also providing the name of the trust. Other investors or guarantors, including the Government National Mortgage Association, are not the owners or assignees for purposes of such requests for information solely as a result of their roles as investors or guarantors.

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36(i) Successors in interest.

1. *Other information*. For the purposes of requests under § 1024.36(i), before the servicer has confirmed the identity and ownership interest of the potential successor in interest, a servicer is only required to provide information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. The servicer is not required to provide any other information that may also be requested by the person.

Section 1024.37—Force-Placed Insurance

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37(d)(5) Updating notice with borrower information.

1. *Reasonable time.* A servicer may have to prepare the written notice required by § 1024.37(c)(1)(ii) in advance of delivering or placing the notice in the mail. If the notice has already been put into production, the servicer is not required to update the notice with new insurance information received about the borrower so long as the written notice was put into production within a reasonable time prior to the servicer delivering or placing the notice in the

mail. For purposes of § 1024.37(d)(5), five days (excluding legal holidays, Saturdays, and Sundays) is a reasonable time.

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Section 1024.38—General Servicing Policies, Procedures, and Requirements

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38(b) Objectives.

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

1. *Documents reasonably required*. The documents a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property must be reasonable in light of the laws of the relevant jurisdiction, the specific situation of the potential successor in interest, and the documents already in the servicer's possession. The required documents may, where appropriate, include, for example, a death certificate, an executed will, or a court order.

2. *Examples of reasonable requirements*. Subject to the relevant law governing each situation, the following examples illustrate documents that a servicer may require to confirm a potential successor in interest's identity and ownership interest in the property and that generally would be reasonable:

i. *Tenancy by the entirety or joint tenancy*. A potential successor in interest indicates (or the servicer knows from its records or other sources) that the prior borrower and the potential successor in interest owned the property as tenants by the entirety or joint tenants and that the prior borrower has died. To demonstrate that the potential successor in interest has sole interest in the property upon the death of the prior borrower, applicable law does not require a probate proceeding, but requires only that there be a prior recorded deed listing both the potential successor in interest and the prior borrower as tenants by the entirety (*e.g.*, married grantees) or joint tenants. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the recorded instrument, if the servicer does not already have it, and the death certificate of the prior borrower. Because in this situation a probate proceeding is not required under applicable law, however, it would not be reasonable for the servicer to require documentation of a probate proceeding.

ii. *Affidavits of heirship.* A potential successor in interest indicates that he or she acquired an ownership interest in the property upon the death of the prior borrower as a result of an affidavit of heirship. To demonstrate that the potential successor in interest has an interest in the property upon the death of the prior borrower, applicable law does not require a probate proceeding, but requires only an appropriate affidavit of heirship upon death. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the affidavit of heirship and the death certificate of the prior borrower. Because a probate proceeding is not required under applicable law, however, it would not be reasonable for the servicer to require documentation of a probate proceeding.

iii. *Divorce or legal separation.* A potential successor in interest indicates that he or she acquired an ownership interest in the property from a spouse who is a borrower as a result of a property agreement incident to a divorce proceeding. Under applicable law, transfer from the borrower spouse is demonstrated by a final divorce decree and accompanying separation agreement executed by both spouses. Applicable law does not require a deed conveying the interest in the property. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the final divorce decree and an executed separation agreement. Because applicable law does not require a deed, however, it would not be reasonable for the servicer to require documentation of a deed.

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

3. *Prompt confirmation and loss mitigation.* A servicer's policies and procedures must be reasonably designed to ensure that the servicer can promptly notify the potential successor in interest that the servicer has confirmed the person's status. Upon the receipt of documents required by a servicer to confirm a successor in interest's identity and ownership interest in the property, the servicer's confirmation and notification must be sufficiently prompt so as not to interfere with the successor in interest's ability to apply for loss mitigation options according to the procedures provided in § 1024.41. In general, a servicer's policies and procedures must be reasonably designed to ensure that the servicer confirms a successor in interest's status and notifies the person of the servicer's confirmation at least 30 days before the next applicable milestone provided in comment 41(b)(2)(ii)-2.

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

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

1. *Sharing information with service provider personnel handling foreclosure proceedings.* A servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings

the servicer has received a complete loss mitigation application and to instruct promptly foreclosure counsel to take any step required by § 1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure.

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Section 1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Live contact.

1. *Delinquency.* Section 1024.39 requires a servicer to establish or attempt to establish live contact not later than the 36th day of such a borrower's delinquency. This provision is illustrated as follows:

i. Assume a loan mortgage obligation with a monthly billing cycle and monthly payments of $2000 representing principal, interest and escrow due on the first of each month.

A. The borrower fails to make a payment of $2000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—*i.e.*, on or before February 6.

B. The borrower fails to make a payment of $2000 on January 1, February 1, and March 1, making the borrower 90 days delinquent as of April 1. The servicer can time its attempts to establish live contact such that a single attempt will meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5, and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments.

2. *Establishing live contact.* Live contact provides servicers an opportunity to discuss the

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

3. *Good faith efforts.* Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer. The length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to § 1024.39(a), are relevant circumstances to consider. For example, whereas "good faith efforts" to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, "good faith efforts" to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication. Such efforts might be sufficient where there is little or no hope of home retention, such as may occur in the later stages of foreclosure. See additional examples set forth in comment 39(a)-6.

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

when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

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

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

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

5. *Borrower's representative.* Section 1024.39 does not prohibit a servicer from satisfying the requirements § 1024.39 by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from

the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

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

39(b) Written notice.

39(b)(1) Notice required.

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2. *Frequency of the written notice*. A servicer need not provide the written notice under section 1024.39(b) more than once during a 180-day period beginning on the date on which the written notice is provided. For example, a borrower has a payment due on March 1. The amount due is not fully paid during the 45 days after March 1 and the servicer provides the written notice within 45 days after March 1—*i.e.*, by April 15. Assume the servicer provides the notice on April 15. If the borrower subsequently fails to make a payment due April 1 and the amount due is not fully paid during the 45 days after April 1, the servicer need not provide the written notice again during the 180-day period beginning on April 15—*i.e.*, no sooner than on October 12. If the borrower is delinquent on October 12, however, the servicer must again provide the written

notice 45 days from the date the most recently missed payment was due. For example, if the amount due on October 1 is not fully paid during the 45 days after October 1, the servicer will need to provide the written notice again 45 days after October 1—*i.e.*, by November 15.

* * * * *

5. *Successors in interest*. Where a servicer has already provided a written notice to a prior borrower under § 1024.39(b) before confirming a successor in interest's identity and ownership interest in the property, the servicer is not required also to provide that notice to the successor in interest, but after confirming the successor in interest's identity and ownership interest in the property, the servicer must provide the successor in interest with any additional written notices required under § 1024.39(b) after confirming the successor in interest's identity and ownership interest in the property.

6. *Servicing transfers*. A transferee servicer is required to comply with the requirements of § 1024.39(b) regardless of whether the transferor servicer provided a written notice to the borrower in the preceding 180-day period. However, a transferee servicer is not required to provide written notice under § 1024.39(b) that the transferor servicer provided prior to the transfer. For example, a borrower has a payment due on March 1. The transferor servicer provides the notice required by § 1024.39(b) on April 10. The loan is transferred on April 12. Assuming the borrower remains delinquent, the transferee servicer is not required to provide another written notice until 45 days after the next payment due date—*i.e.*, by May 16.

39(b)(2) Content of the written notice.

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4. *Availability of loss mitigation options.* If loss mitigation options are available, a servicer must include in the written notice the disclosures set forth in § 1024.39(b)(2)(iii) and

(iv). Loss mitigation options are available if the owner or assignee of a borrower's mortgage loan offers an alternative to foreclosure that is made available through the servicer. The availability of loss mitigation options does not depend upon a borrower's eligibility for those options, but simply depends upon whether the owner or assignee of a borrower's mortgage loan generally offers loss mitigation options through the servicer.

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39(d) Exemptions.

39(d)(1) Borrowers in bankruptcy.

1. *Resuming compliance*. i. With respect to a borrower who has not discharged the mortgage debt, a servicer must resume compliance with § 1024.39(a) and (b), as applicable, as of the first delinquency that follows the earliest of the following outcomes in the bankruptcy case: the case is dismissed, the case is closed, the borrower reaffirms the mortgage loan under 11 U.S.C. 524, or the borrower receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, this requirement to resume compliance with § 1024.39 does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent necessary to comply with such law or court order, a servicer may adapt the requirements of § 1024.39 as appropriate.

ii. Compliance with § 1024.39(a) is not required for any borrower who has discharged the mortgage debt under applicable provisions of the U.S. Bankruptcy Code. If the borrower's bankruptcy case is revived—for example if the court reinstates a previously dismissed case or reopens the case—the servicer is again exempt from the requirements of § 1024.39(a).

39(d)(1)(i) Live contact.

1. *Live contact*. The requirements of § 1024.39(a) do not apply once a petition is filed

under the U.S. Bankruptcy Code, commencing any case in which the borrower is a debtor or a Chapter 12 or Chapter 13 case in which any borrower on the mortgage loan is a debtor. The requirements of § 1024.39(a) also do not apply if the borrower has discharged personal liability for the mortgage loan under 11 U.S.C. 727, 1141, 1228, or 1328.

39(d)(1)(ii) Written notice.

1. *Plan of reorganization.* For purposes of § 1024.39(d)(1)(ii), "plan of reorganization" refers to a borrower's plan of reorganization filed under the applicable provisions of Chapter 11, Chapter 12, or Chapter 13 of the U.S. Bankruptcy Code and confirmed by a court with jurisdiction over the borrower's bankruptcy case.

2. *Fair Debt Collections Practices Act*. If the FDCPA applies to a servicer's communications with a borrower in bankruptcy and the borrower has sent a notification pursuant to FDCPA § 805(c), see comment 39(d)(2)(iii)-2.

39(d)(2)(iii) Fair Debt Collection Practices Act.

1. *Communications under the FDCPA.* To the extent the FDCPA applies to a servicer's communications with a borrower, a servicer does not violate FDCPA section 805(c) by providing the written notice required by § 1024.39(d)(2)(iii) after a borrower has sent a notification pursuant to FDCPA section 805(c) with respect to that borrower's loan. In providing the borrower the written notice, the servicer must continue to comply with all other applicable provisions of the FDCPA, including prohibitions on unfair, deceptive, and abusive practices as contained in FDCPA sections 805 through 808 (15 U.S.C. 1692c through 1692f).

2. *Borrowers in bankruptcy.* To the extent the FDCPA applies to a servicer's communications with a borrower and the borrower has sent a notification pursuant to FDCPA section 805(c), a servicer is not required to provide the written notice required by

§ 1024.39(d)(2)(iii) if the borrower is in bankruptcy and is not represented by a person authorized by the borrower to communicate with the servicer on the borrower's behalf. If the borrower is represented by a person authorized by the borrower to communicate with the servicer on the borrower's behalf, however, the servicer must provide the written notice required by § 1024.39(d)(2)(iii) to the borrower's representative. *See* comment 39(a)-4.

Section 1024.41— Loss Mitigation Procedures

* * * * *

41(b) Receipt of a loss mitigation application.

1. *Successors in interest*. i. If a servicer receives a loss mitigation application, including a complete loss mitigation application, from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but is not required to, review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41. If a servicer complies with the requirements of § 1024.41 for a complete loss mitigation application submitted by a potential successor in interest before confirming that person's identity and ownership interest in the property, § 1024.41(i)'s limitation on duplicative requests applies to that person, provided that confirmation of the successor in interest's status would not affect the servicer's evaluation of the application.

ii. If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming that person's identity and ownership interest in the property, upon such confirmation the servicer must review and evaluate that loss mitigation application in accordance with the procedures set forth in § 1024.41. For purposes of § 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest’s status.

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

1. *In general.* A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options. In the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information for a particular loss mitigation option after receiving information confirming that the borrower is ineligible for that option. For example, if a particular loss mitigation option is only available for military servicemembers, once a servicer receives documents or information confirming that the borrower is not a military servicemember, the servicer may stop collecting documents or information from the borrower that the servicer would use to evaluate the borrower for that loss mitigation option. Making such a determination does not affect the servicer’s obligation to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application; the servicer must continue its efforts to obtain documents and information from the borrower that pertain to all other available loss mitigation options. A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower’s stated preference for a particular loss mitigation option.

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4. * * *

iii. A servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an incomplete loss mitigation application; the servicer notifies the borrower that he or she is being offered a payment forbearance program or repayment plan based on an evaluation of an incomplete application, and that the borrower has the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower. If a servicer provides such a notification, the borrower remains in compliance with the payment forbearance program or repayment plan, and the borrower does not request further assistance, the servicer could suspend reasonable diligence efforts until near the end of the payment forbearance program or repayment plan. Near the end of the program or plan, and prior to the end of the forbearance or repayment period, if the borrower remains delinquent, a servicer should contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation.

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

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

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

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

1. *Affording the borrower a reasonable period of time.* In setting a reasonable date for the return of documents and information under § 1024.41(b)(2)(ii), the servicer must allow a reasonable period of time for the borrower to obtain and submit documents and information necessary to make the loss mitigation application complete. Generally, a reasonable period of time would not be less than seven days.

2. *Maximizing protections.* A servicer must preserve maximum borrower rights under § 1024.41 in setting a reasonable date under § 1024.41(b)(2)(ii). Subject to comment

41(b)(2)(ii)-1, a servicer generally should not set a reasonable date that is further away than the nearest remaining milestone from the following list:

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower’s delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

3. *Flexibility in setting a reasonable date*. Subject to comments 41(b)(2)(ii)-1 and 2, a servicer has flexibility in selecting a reasonable date for the return of documents and information under § 1024.41(b)(2)(ii). A servicer may select any date that it determines both maximizes borrower rights under § 1024.41 and allows the borrower a reasonable period of time to obtain and submit documents and information necessary to make the loss mitigation application complete. For example, a servicer may set a reasonable date that is earlier than the nearest remaining milestone listed in comment 41(b)(2)(ii)-2 and does not need to select that milestone as the reasonable date itself.

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41(c) Evaluation of loss mitigation applications.

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

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41(c)(2)(iii) Payment forbearance.

1. *Short-term payment forbearance program.* The exemption in § 1024.41(c)(2)(iii) applies to, among other things, short-term payment forbearance programs. A payment

forbearance program is a loss mitigation option pursuant to which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

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

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

4. *Short-term repayment plan.* The exemption in § 1024.41(c)(2)(iii) applies to, among other things, short-term repayment plans. A repayment plan is a loss mitigation option pursuant to which a servicer allows a borrower to repay past due payments over a specified period of time until the mortgage loan account is current. A short-term repayment plan allows for the

repayment of no more than three months of payments due and allows a borrower to repay the arrearage over future payments for a period lasting no more than six months.

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

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

1. *Prompt notification*. Section 1024.41(c)(3)(i) requires that a servicer promptly provide a borrower with written notice that the servicer has received a complete loss mitigation application. Generally, a servicer complies with this requirement by providing the written notice within five days of receiving the complete application.

2. *Date that foreclosure protections began*. Notifications sent under § 1024.41(c)(3)(i) must state, among other things, the date on which the borrower's protections began under § 1024.41(f)(2) and (g), as applicable. This date must be the date on which the application became either complete or facially complete, as applicable.

3. *Additional notices*. Section 1024.41(c)(3)(i) requires a servicer to provide a notification, subject to the exceptions under § 1024.41(c)(3)(ii), every time a loss mitigation application becomes complete. If, after providing a notice under § 1024.41(c)(3)(i), a servicer requests additional information or a corrected version of a previously submitted document required to complete the application in accordance with § 1024.41(c)(2)(iv), the servicer might have to provide an additional notice under § 1024.41(c)(3)(i) if the borrower completes the application. For example, when a borrower submits a complete application and the servicer provides the notice under § 1024.41(c)(3)(i), a servicer might later discover that it requires additional information regarding a source of income that the borrower previously identified to complete the application. In accordance with § 1024.41(c)(2)(iv) (and subject to that section's

additional requirements), the servicer must request this additional information. If the borrower submits the additional information to complete the application, the servicer must provide another notice of complete application under § 1024.41(c)(3)(i).

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

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

1. *Within 30 days of receiving a complete application.* A servicer must act with reasonable diligence to collect information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower. Further, a servicer must request such information from the appropriate person, at a minimum and without limitation:

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

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

2. *After the first 30 days.* If a servicer has not received documents or information not in the borrower's control within 30 days of receiving a complete loss mitigation application, the servicer acts with reasonable diligence by attempting to obtain the documents or information from the appropriate person as quickly as possible.

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

1. *Third-party delay.* Various third parties, such as mortgage insurance companies, guarantors, owners, or assignees, might impose requirements on servicers pertaining to the loss mitigation evaluation process. A servicer must complete all possible steps in the evaluation

process within 30 days of receiving a complete application, including by taking all steps mandated by such requirements, notwithstanding delay in receiving information from any third party. For example, if a servicer can determine a borrower's eligibility for all available loss mitigation options based upon the borrower's complete application subject only to approval from the mortgage insurance company, it must do so within 30 days of receiving the complete application notwithstanding the need to obtain such approval before offering any loss mitigation options to the borrower.

41(c)(4)(ii)(C) Providing notification of determination to borrower in case of delay.

1. *Timing*. If, due to a lack of documentation or information from a party other than the borrower or the servicer, a servicer is unable to determine which loss mitigation options, if any, to offer a borrower within 30 days of receiving a complete application, the servicer should not provide the borrower a written notice stating the servicer's determination until the servicer receives the documentation or information.

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41(g) Prohibition on foreclosure sale.

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

order of sale. Where a servicer or counsel retained by the servicer fails to take reasonable steps to avoid a ruling on such motion that was pending at the time a complete loss mitigation application is received or issuance of an order with respect to such a motion, the servicer must dismiss the foreclosure proceeding if necessary to avoid the sale.

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3. *Interaction with foreclosure counsel.* The prohibitions in § 1024.41(g) against moving for judgment or order of sale or conducting a sale may require a servicer to take steps through foreclosure counsel retained by the servicer in foreclosure proceedings. Thus, a servicer is not relieved of its obligations because the foreclosure counsel's actions or inaction caused a violation. If a servicer has received a complete loss mitigation application, the servicer must promptly instruct counsel not to make a dispositive motion for foreclosure judgment or order of sale; to take reasonable steps, where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and to take reasonable steps to delay the conduct of a foreclosure sale until the servicer satisfies one of the conditions in § 1024.41(g)(1) through (3). These instructions may include instructing counsel to move for a continuance with respect to the deadline for filing a dispositive motion or to move for or request that the foreclosure sale be stayed, otherwise delayed, or removed from the docket, or that the foreclosure proceeding be placed in any administrative status that stays the sale.

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

foreclosure sale until one of the conditions under § 1024.41(g)(1) through (3) is met. Reasonable steps include, but are not limited to, requesting that a court or the official conducting the sale re-schedule or delay the sale or remove the sale from the docket, or place the foreclosure proceeding in any administrative status that stays the sale. If a servicer, or counsel retained by the servicer, fails to take reasonable steps to delay the foreclosure sale, or if a servicer fails to instruct counsel retained by the servicer to take such reasonable steps to delay a sale (see comment 41(g)-3), the servicer must dismiss the foreclosure proceeding.

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41(i) Duplicative requests.

1. *Servicing transfers*. A transferee servicer is required to comply with the requirements of § 1024.41 regardless of whether a borrower received an evaluation of a complete loss mitigation application from a transferor servicer.

*   *   *   *   *

41(k) Servicing transfers.

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

41(k)(1) In general.

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

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

ii. A transferee servicer must, in accordance with § 1024.41(b), exercise reasonable diligence to complete a loss mitigation application received as a result of a transfer. In the transfer context, reasonable diligence includes ensuring that a borrower is informed of any changes to the application process, such as a change in the address to which the borrower should submit documents and information to complete the application, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application.

2. *Determination of protections*. For purposes of § 1024.41(e) through (h), a transferee servicer must consider documents and information that constitute a complete loss mitigation application for the transferee servicer to have been received as of the date such documents and information were received by the transferor servicer. An application that was facially complete with respect to the transferor servicer remains facially complete with respect to the transferee

servicer as of the date it was facially complete with respect to the transferor servicer. If an application was complete with respect to the transferor servicer, but is not complete with respect to the transferee servicer, the transferee servicer must treat the application as facially complete as of the date the application was complete with respect to the transferor servicer.

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

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

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

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

41(k)(3)(i) In general.

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

additional information or a correction to a previously submitted document is required based upon its criteria for evaluating loss mitigation applications, the application is considered facially complete under § 1024.41(c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer. Once the transferee servicer receives the information or corrections necessary to complete the application, § 1024.41(c)(3) requires the transferee servicer to provide a notice of complete application. An application that was complete with respect to the transferor servicer remains complete even if the transferee servicer requests that a borrower resubmit the same information in the transferee servicer's specified format or make clerical corrections to the application. A borrower's failure to resubmit such information or make such clerical corrections does not extend the time in which the transferee servicer must complete the evaluation of the borrower's complete application.

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

41(k)(3)(iii) Compliance not practicable.

1. *Reasonably prompt time*. Section 1024.41(k)(3)(iii) requires that if compliance with the time periods set forth in § 1024.41(k)(3)(i) or (ii)(A), as applicable, is not practicable under the circumstances, a transferee servicer must complete the evaluation of the complete loss

mitigation application and provide the applicable notices required by § 1024.41(c)(1) and (4) within a reasonably prompt time. In general, completing the evaluation and providing the applicable notices within an additional five days after the expiration of the time periods set forth in § 1024.41(k)(3)(i) or (ii)(A) would be considered reasonably prompt.

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

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

2. *Reasonably prompt time*. Section 1024.41(k)(5) requires that if a servicer is able to determine the outcome of an appeal, but compliance within 30 days of when the borrower made the appeal is not practicable under the circumstances, a transferee servicer must complete the determination and provide the notice required by § 1024.41(h)(4) within a reasonably prompt time. In general, completing the evaluation and providing the notice within an additional five days after the expiration of the original 30-day evaluation period would be considered reasonably prompt.

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

1. *Obtaining evidence of borrower acceptance*. A transferee servicer should expect that a borrower may provide an acceptance to the transferor servicer after the transfer date, and, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(4), a transferee servicer must obtain information or documents reflecting such acceptances from the transferor servicer and provide the borrower with the accepted loss mitigation option.

PART 1026—TRUTH IN LENDING (REGULATION Z)

12. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 et seq.

Subpart A—General

13. Section 1026.2 is amended by revising paragraph (a)(11) and adding paragraph (a)(27) to read as follows:

§ 1026.2 Definitions and rules of construction.

* * * * *

(a) * * *

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

*   *   *   *   *

(27) *Successor in interest* means a person to whom an ownership interest in a dwelling securing a closed-end consumer credit transaction is transferred from a prior consumer, provided that the transfer falls under an exemption specified in section 341(d) of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1701j-3(d)).

*   *   *   *   *

Subpart E—Special Rules for Certain Home Mortgage Transactions

14. Section 1026.36 is amended by revising paragraphs (c)(1) and (2) to read as follows:

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

*   *   *   *   *

(c) * * *

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

*   *   *   *   *

(2) *No pyramiding of late fees.* In connection with a closed-end consumer credit

transaction secured by a consumer's principal dwelling, a servicer shall not impose any late fee or delinquency charge for a payment if:

* * * * *

15. Section 1026.41 is amended by revising paragraphs (d)(8)(i) and (e)(4)(iii)(A), adding new paragraph (e)(4)(iii)(D), revising paragraph (e)(5), and adding paragraphs (e)(6) and (f), to read as follows:

§ 1026.41 Periodic statements for residential mortgage loans.

* * * * *

(d) * * *

(8) * * *

(i) The length of the consumer's delinquency, as of the date of the periodic statement;

* * * * *

(e) * * *

(4) * * *

(iii) * * *

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

* * * * *

(D) Transactions serviced by the servicer for a seller financer that meet all of the criteria identified in 12 CFR 1026.36(a)(5).

(5) *Certain Consumers in Bankruptcy*. (i) *Exemption*. A servicer is exempt from the requirements of this section, except as provided in paragraph (e)(5)(ii) of this section, with respect to a consumer if:

(A) The consumer is a debtor in a case under the U.S. Bankruptcy Code; the consumer is a primary obligor on a mortgage loan for which another primary obligor is a debtor in a Chapter 12 or Chapter 13 case under the U.S. Bankruptcy Code; or the consumer has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328; and

(B) One of the following conditions is satisfied:

(*1*) The consumer requests in writing that the servicer cease providing periodic statements or coupon books;

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

(*3*) A court enters an order in the consumer's bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with respect to the dwelling securing the mortgage loan, or requiring the servicer to cease providing periodic statements or coupon books; or

(*4*) The consumer files with the court overseeing the consumer's bankruptcy case a Statement of Intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling securing the mortgage loan.

(ii) *Resuming compliance*. (A) *Consumer request*. Notwithstanding paragraph (e)(5)(i) of this section, a servicer must comply with the requirements of this section if the consumer requests in writing that the servicer continue providing periodic statements or coupon books, unless a court enters an order in the consumer's bankruptcy case requiring the servicer to cease providing periodic statements or coupon books. A servicer must resume providing periodic statements or coupon books in compliance with paragraph (f) of this section within a reasonably prompt time after the next payment due date that follows a servicer's receipt of a consumer's written request.

(B) *Termination of bankruptcy case*. With respect to any portion of the mortgage debt that is not discharged pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, a servicer must resume providing periodic statements or coupon books in compliance with this section within a reasonably prompt time after the next payment due date that follows the earliest of the following outcomes in either the consumer's or the joint obligor's bankruptcy case, as applicable: the case is dismissed, the case is closed, the consumer reaffirms the mortgage loan under 11 U.S.C. 524, or the consumer receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328.

(6) *Charged-off loans.* A servicer is exempt from the requirements of this section for a mortgage loan if the servicer:

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

(B) Provides, within 30 days of charge off or the most recent periodic statement, a final periodic statement, clearly and conspicuously labeled "Final Statement—Retain This Copy for Your Records." The final periodic statement must explain in simple and clear terms that: the mortgage loan has been charged off and the servicer will not charge any additional fees or interest on the account; the lien on the property remains in place and the consumer remains liable for the mortgage loan obligation; the consumer may be required to pay the balance on the account in the future, for example, upon sale of the property; the balance on the account is not being cancelled or forgiven; and the loan may be purchased, assigned, or transferred.

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

With respect to a consumer who is a debtor in a case under the U.S. Bankruptcy Code or has discharged personal liability for a mortgage loan under 11 U.S.C. 727, 1141, 1228, or 1328, the requirements of this section are subject to the following modifications:

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

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

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

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

(3) *Chapter 12 and Chapter 13 consumers*. With respect to a consumer who is a debtor in a Chapter 12 or Chapter 13 bankruptcy case, the requirements of this section are subject to the following additional modifications:

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

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

(iii) *Explanation of amount due*. The explanation of amount due information set forth in paragraph (d)(2) of this section may be limited to the post-petition payments and any post-petition fees and charges imposed by the servicer.

(iv) *Past payment breakdown*. The items required by paragraph (d)(3) of this section must include the following:

(A) The total of all post-petition payments received since the last statement, including a breakdown showing the amount, if any, that was applied to principal, interest, and escrow, and the amount, if any, sent to any suspense or unapplied funds account;

(B) The total of all post-petition payments received since the beginning of the current calendar year, including a breakdown of that total showing the amount, if any, that was applied to principal, interest, escrow, and the amount, if any, currently held in any suspense or unapplied funds account;

(C) The total of all payments applied to post-petition fees or charges since the last statement; and

(D) The total of all payments applied to post-petition fees or charges since the beginning of the current calendar year.

(v) *Transaction activity*. The transaction activity information set forth in paragraph (d)(4) of this section must include any post-petition payments, pre-petition payments, and payments of post-petition fees or charges the servicer has received since the last statement.

(vi) *Pre-petition arrearage*. If applicable, a servicer must include the following, grouped in close proximity to each other:

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

(B) The total of all pre-petition payments received since the beginning of the current calendar year; and

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

(vii) *Additional disclosures.* The periodic statement must include the following, as applicable:

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

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

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

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

(4) *Multiple obligors*. If a servicer is required to provide periodic statements with the modifications set forth in § 1026.41(f) in connection with a mortgage loan with more than one primary obligor, the servicer may provide the modified statements to any or all of the primary obligors and need not provide any statements that do not include the modifications set forth paragraphs (f)(1) through (3) of this section, even if not all of the primary obligors are debtors in bankruptcy.

(5) *Coupon books*. A servicer that provides a coupon book instead of regular periodic statement under paragraph (e)(3) of this section must include in the coupon book the disclosures set forth in paragraph (f)(2) and (3)(vii) of this section, as applicable. The servicer may include these disclosures anywhere in the coupon book provided to the consumer or on a separate page enclosed with the coupon book. The servicer must make available upon request to the consumer

by telephone, in writing, in person, or electronically, if the consumer consents, the information listed in paragraph (f)(3)(vi) of this section, as applicable. The modifications set forth in paragraph (f)(1) and (3)(i) through (v) and (vii) of this section apply to coupon books and other information a servicer provides to the consumer under paragraph (e)(3) of this section.

16. Appendix H to part 1026 is amended by:

A. Revising the entry for H–30(C) in the table of contents at the beginning of the appendix;

B. Adding entries for H–30(E) and H–30(F) in the table of contents at the beginning of the appendix;

C. Revising H–4(C);

D. Revising H–14;

E. Republishing H–30(C); and

F. Adding H–30(E) and H–30(F).

The additions, republication, and revisions read as follows:

APPENDIX H TO PART 1026— CLOSED-END MODEL FORMS AND CLAUSES

*   *   *   *   *

*   *   *   *   *

*   *   *   *   *

H–4(C)—VARIABLE RATE MODEL CLAUSES

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

How Your Interest Rate and Payment Are Determined

• Your interest rate will be based on [an index plus a margin] [a formula].

• Your payment will be based on the interest rate, loan balance, and loan term.

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

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

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

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

How Your Interest Rate Can Change

• Your interest rate can change (frequency).

• [Your interest rate cannot increase or decrease more than ___ percentage points at each adjustment.]

• Your interest rate cannot increase [or decrease] more than ___ percentage points over the term of the loan.

How Your Payment Can Change

• Your payment can change (frequency) based on changes in the interest rate.

• [Your payment cannot increase more than (amount or percentage) at each adjustment.]

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

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

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

[Example

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

The example is based on the following assumptions:

Amount	$10,000

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

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

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

Year	**Index (%)**	**Margin (Percentage points)**	**Interest Rate (%)**	**Monthly Payment ($)**	**Remaining Balance ($)**

1982					
1983					
1984					
1985					
1986					
1987					
1988					
1989					
1990					
1991					
1992					
1993					
1994					
1995					
1996					

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

*   *   *   *   *

H–14—VARIABLE-RATE MORTGAGE SAMPLE

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

How Your Interest Rate and Payment Are Determined

• Your interest rate will be based on an index rate plus a margin.

• Your payment will be based on the interest rate, loan balance, and loan term.

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

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

• Your interest rate will equal the index rate plus our margin unless your interest rate "caps" limit the amount of change in the interest rate.

How Your Interest Rate Can Change

• Your interest rate can change yearly.

• Your interest rate cannot increase or decrease more than 2 percentage points per year.

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

How Your Monthly Payment Can Change

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

• [For example, on a $10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of $106.03 to a maximum of $145.34 in the fourth year. To see what your payment is, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000÷$10,000=6; 6×106.03=$636.18 per month.)]

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

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

[Example

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

Amount	$10,000
Term	30 years
Payment adjustment	1 year

Interest adjustment	1 year
Margin	3 percentage points
Caps____ 2 percentage points annual interest rate	
____ 5 percentage points lifetime interest rate	
Index____ Weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year.	

Year (as of 1st week ending in July)	**Index (%)**	**Margin* (percentage points)**	**Interest Rate (%)**	**Monthly Payment ($)**	**Remaining Balance ($)**
1982	14.41	3	17.41	145.90	9,989.37
1983	9.78	3	**15.41	129.81	9,969.66
1984	12.17	3	15.17	127.91	9,945.51
1985	7.66	3	**13.17	112.43	9,903.70
1986	6.36	3	***12.41	106.73	9,848.94
1987	6.71	3	***12.41	106.73	9,786.98
1988	7.52	3	***12.41	106.73	9,716.88
1989	7.97	3	***12.41	106.73	9,637.56
1990	8.06	3	***12.41	106.73	9,547.83

1991	6.40	3	***12.41	106.73	9,446.29
1992	3.96	3	***12.41	106.73	9,331.56
1993	3.42	3	***12.41	106.73	9,201.61
1994	5.47	3	***12.41	106.73	9,054.72
1995	5.53	3	***12.41	106.73	8,888.52
1996	5.82	3	***12.41	106.73	8,700.37

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

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

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

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

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

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

*   *   *   *   *

H–30(C) SAMPLE FORM OF PERIODIC STATEMENT FOR A PAYMENT-OPTION LOAN

Springside Mortgage

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

Mortgage Statement

Statement Date: 3/20/2012

Account Number		**1234567**
Payment Due Date		**4/1/2012**
Amount Due	**Option 1 (Full):**	**$1,829.71**
	Option 2 (Interest-Only):	**$1,443.25**
	Option 3 (Minimum):	**$1,156.43**
If payment is received after 4/15/12, $160 late fee will be charged.		

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

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

Explanation of Amount Due	Option 1 (Full)	Option 2 (Interest-Only)	Option 3 (Minimum)
Principal	$386.46	$0	$0
Interest	$1,048.07	$1,048.07	$761.25
Escrow (Taxes and Insurance)	$235.18	$235.18	$235.18
Regular Monthly Payment	**$1,669.71**	**$1,283.25**	**$996.43**
Total Fees and Charges	$160.00	$160.00	$160.00
Total Amount Due	**$1,829.71**	**$1,443.25**	**$1,156.43**
If you make this payment…	… your principal balance will decrease, and you will be closer to paying off your loan.	… your principal balance will stay the same, and you will not be closer to paying off your loan.	**… your principal balance will increase.** You will be borrowing more money and losing equity in your home.

Transaction Activity (2/20 to 3/19)

Date	Description	Charges	Payments
3/16/12	Late Fee (charged because payment was received after 3/15/2012)	$160.00	
3/19/12	Payment Received – Thank you		$1,669.71

Past Payments Breakdown	Paid Last Month	Paid Year to Date
Principal	$384.93	$1,150.25
Interest	$1,049.60	$3,153.34
Escrow (Taxes and Insurance)	$235.18	$705.54
Fees	$0.00	$0.00
Total	**$1,669.71**	**$5,009.13**

Springside Mortgage

Springside Mortgage
P.O. Box 11111
Los Angeles, CA 90010

Amount Due		
Due By 4/1/2012:	❑ **Option 1 (Full):**	**$1,829.71**
	❑ **Option 2 (Interest-Only):**	**$1,443.25**
	❑ **Option 3 (Minimum):**	**$1,156.43**
$160 late fee will be charged after 4/15/12		
Additional Principal		$.
Additional Escrow		$.
Total Amount Enclosed		**$.**

Make check payable to Springside Mortgage.

1234567 34571892 342359127 P

*   *   *   *   *

H–30(E) SAMPLE FORM OF PERIODIC STATEMENT FOR CONSUMER IN CHAPTER 7 OR CHAPTER 11 BANKRUPTCY

Springside Mortgage

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

Mortgage Statement
Statement Date: 3/20/2015

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Account Number	**1234567**
Payment Date	**4/1/2015**
Payment Amount	**$4,339.13**

Bankruptcy Notice

Our records reflect that you are presently a debtor in an active bankruptcy case or you previously received a discharge in bankruptcy. This statement is being sent to you for informational and compliance purposes only. It should not be construed as an attempt to collect a debt against you personally.

Explanation of Payment Amount	
Principal	$386.46
Interest	$1,048.07
Escrow (Taxes and Insurance)	$235.18
Regular Monthly Payment	**$1,669.71**
Total Fees and Charges	$410.00
Unpaid past payments	$2,259.42
Total Payment Amount	**$4,339.13**

Account Information	
Outstanding Principal	$264,776.43
Interest Rate (Until October 2015)	4.75%
Prepayment Penalty	Yes

Transaction Activity (2/20 to 3/19)

Date	Description	Charges	Payments
3/13/15	Partial Payment Received*		$1,000.00
3/16/15	Late Fee (charged because full payment not received by 3/15/2015)	$160.00	
3/19/15	Property Inspection Fee	$250.00	

Past Payments Breakdown

	Paid Last Month	Paid Year to Date
Principal	$0.00	$383.31
Interest	$0.00	$1,051.22
Escrow (Taxes and Insurance)	$0.00	$235.18
Fees	$0.00	$410.00
Partial Payment (Unapplied)*	$1,000.00	$1,490.00
Total	**$1,000.00**	**$3,569.71**

Important Messages

***Partial Payments:** Any partial payments that you make are not applied to your mortgage, but instead are held in a separate suspense account. If you pay the balance of a partial payment, the funds will then be applied to your mortgage.

****Account History****

Recent Account History

- Payment due 12/1/14: Fully paid on time
- Payment due 1/1/15: Fully paid on 2/3/15
- Payment due 2/1/15: Unpaid balance of $589.71
- Payment due 3/1/15: Unpaid balance of $2,079.71
- Current payment date 4/1/15: $1,669.71
- **Total: $4,339.13 unpaid amounts.**

If You Are Experiencing Financial Difficulty: See back for information about mortgage counseling or assistance.

Springside Mortgage

Springside Mortgage
P.O. Box 11111
Los Angeles, CA 90010

If you are currently a party in a bankruptcy case and you choose to make a voluntary payment, detach and return bottom remittance portion with your payment. Make any checks payable to Springside Mortgage.

Payment Amount		
Payment Date:		**4/1/2015**
Payment Amount:		**$4,339.13**
Additional Principal	$	.
Additional Escrow	$	.
Total Amount Enclosed	$	.

1234567 34571892 342359127 DN

H–30(F) SAMPLE FORM OF PERIODIC STATEMENT FOR CONSUMER IN CHAPTER 12 OR CHAPTER 13 BANKRUPTCY

Springside Mortgage

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

Mortgage Statement

Statement Date: 3/20/2015

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Account Number	**1234567**
Post-Petition Payment Date	**4/1/2015**
Post-Petition Payment Amount	**$1,939.94**

Under your bankruptcy plan, the Trustee may be making payments on your mortgage and other debts. You should contact the Trustee or your attorney if you have any questions about who is responsible for your mortgage payments.

Bankruptcy Notice

Our records reflect that you are presently a debtor in an active bankruptcy case or you previously received a discharge in bankruptcy. This statement is being sent to you for informational and compliance purposes only. It should not be construed as an attempt to collect a debt against you personally.

The information disclosed on the periodic statement may not reflect payments you have made to the Trustee and may not be consistent with the Trustee's records. Please contact the Trustee or your attorney if you have any questions regarding this matter.

Explanation of Payment Amount	
Principal	$501.63
Interest	$1,063.31
Escrow (Taxes and Insurance)	$375.00
Regular Monthly Payment	**$1,939.94**
Total Fees and Charges	$0.00
Unpaid post-petition payments	$0.00
Total Post-Petition Payment Amount	**$1,939.94**

Account Information	
Outstanding Principal	$271,043.06
Interest Rate (Until October 2015)	4.75%
Prepayment Penalty	Yes

Transaction Activity (2/20 to 3/19)

Date	Description	Charges	Payments
3/4/15	Payment Received		$1,939.94
3/17/15	Payment Received		$336.43

Post-Petition Payments Breakdown

	Paid Last Month	Paid Year to Date
Principal	$499.65	$1,493.04
Interest	$1,065.29	$3,201.78
Escrow (Taxes and Insurance)	$375.00	$1,125.00
Fees	$0.00	$0.00
Partial Payment (Unapplied)	$0.00	$0.00
Total	**$1,939.94**	**$5,819.82**

Pre-Petition Arrearage Payments

Paid Last Month	Paid Year to Date	Current Balance of Pre-Petition Arrearage
$336.43	$1,009.29	$10,093.00

Springside Mortgage

Springside Mortgage
P.O. Box 11111
Los Angeles, CA 90010

If your bankruptcy plan requires you to make your ongoing post-petition mortgage payments directly to a bankruptcy Trustee, then do not send your payment to us. Rather, send your payment to the Trustee as directed in your bankruptcy plan.

Payment Amount	
Post-Petition Payment Date:	**4/1/2015**
Post-Petition Payment Amount:	**$1,939.94**
Additional Principal	$.
Additional Escrow	$.
Total Amount Enclosed	$.

1234567 34571892 342359127 DN

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17. In Supplement I to part 1026:

A. Under *Section 1026.2—Definitions and Rules of Construction*:

i. Under *2(a)(11) Consumer*, paragraph 4 is added.

B. Under *Section 1026.36—Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling*:

i. Under *36(c) Servicing practices:*

a. Under *Paragraph 36(c)(1)(i)*, paragraphs 4 and 5 are added.

C. Under *Section 1026.41—Periodic Statements for Residential Mortgage Loans*:

i. Under *41(a) In general*, paragraph 5 is added.

ii. Under *41(d) Content and layout of the periodic statement*, paragraph 1 is revised and paragraphs 4 and 5 are added.

a. The heading *41(d)(1) Amount due* is added, and paragraphs 1 through 3 under that heading are added.

b. The heading *41(d)(2) Explanation of amount due* is added, and paragraphs 1 and 2 under that heading are added.

c. The heading *41(d)(8) Delinquency information* is added, and paragraphs 1 and 2 under that heading are added.

iii. Under *41(e)(5) Consumers in bankruptcy*, the heading is revised.

iv. Under revised heading *41(e)(5) Certain consumers in bankruptcy*, paragraph 1 is revised and paragraphs 2 and 3 are removed.

a. The heading *41(e)(5)(i) Exemption* is added, and paragraphs 1 and 2 under that heading are added.

b. The heading *Paragraph 41(e)(5)(i)(B)(4)* is added, and paragraph 1 under that heading is added.

c. The heading *41(e)(5)(ii) Resuming compliance* is added, and paragraphs 1 through 3 under that heading are added.

v. The heading *41(e)(6) Charged-off loans* is added, and paragraphs 1 and 2 under that heading are added.

vi. The heading *41(f) Modified periodic statements and coupon books for certain consumers in bankruptcy* is added, and paragraphs 1 through 3 under that heading are added.

a. The heading *41(f)(3) Chapter 12 and Chapter 13 consumers* is added, and paragraphs 1 through 4 under that heading are added.

c. The heading *41(f)(3)(ii) Amount due* is added, and paragraph 1 under that heading is added.

d. The heading *41(f)(3)(iii) Explanation of amount due* is added, and paragraph 1 under that heading is added.

e. The heading *41(f)(3)(v) Transaction activity* is added, and paragraph 1 under that heading is added.

f. The heading *41(f)(3)(vi) Pre-petition arrearage* is added, and paragraph 1 under that heading is added.

g. The heading *41(f)(4) Multiple obligors* is added, and paragraph 1 under that heading is added.

The additions, removals, and revisions read as follows:

Supplement I to Part 1026—Official Interpretations

*	*	*	*	*

Subpart A—General

*   *   *   *   *

Section 1026.2— Definitions and Rules of Construction

*   *   *   *   *

2(a)(11) Consumer.

*   *   *   *   *

4. *Successors in interest.* Even after a servicer's confirmation of a successor in interest's identity and ownership interest in the dwelling, the servicer is still generally required to comply with the requirements of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 with respect to the prior consumer. However, a servicer is not required to comply with the requirements of §§ 1026.20(c) through (e) and 1026.41 if the prior consumer also has either died or has been released from the obligation on the mortgage loan, and a servicer is not required to comply with the requirements of § 1026.36(c) if the prior consumer also has been released from the obligation on the mortgage loan. The prior consumer retains any rights under §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 that accrued prior to the confirmation of the successor in interest to the extent these rights would otherwise survive the prior consumer's death or release from the obligation.

*   *   *   *   *

Subpart E—Special Rules for Certain Home Mortgage Transactions

*   *   *   *   *

Section 1026.36—Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

*   *   *   *   *

36(c) Servicing practices.

Paragraph 36(c)(1)(i).

*   *   *   *   *

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

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

*   *   *   *   *

Section 1026.41—Periodic Statements for Residential Mortgage Loans

*   *   *   *   *

41(a) In general.

*   *   *   *   *

5. *Successors in interest.*

i. *Treatment of successors in interest.* Under § 1026.2(a)(11), a successor in interest is a consumer for purposes of this section once a servicer confirms the successor in interest's identity and ownership interest in the dwelling. Accordingly, a servicer of a transaction subject to this section must provide a successor in interest with a periodic statement meeting the requirements of this section once the servicer confirms the successor in interest's identity and ownership interest in the dwelling.

ii. *Multiple periodic statements unnecessary*. If a servicer sends a periodic statement meeting the requirements of § 1026.41 to another consumer, the servicer need not also send a periodic statement to a successor in interest; a single statement may be sent. Also, if a servicer confirms more than one successor in interest's identity and ownership interest in the dwelling, the servicer need not send periodic statements to more than one of the successors in interest.

* * * * *

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

1. *Close proximity*. Paragraph (d) requires several disclosures to be provided in close proximity to one another. To meet this requirement, the items to be provided in close proximity must be grouped together, and set off from the other groupings of items. This could be accomplished in a variety of ways, for example, by presenting the information in boxes, or by arranging the items on the document and including spacing between the groupings. Items in close proximity may not have any unrelated text between them. Text is unrelated if it does not explain or expand upon the required disclosures.

* * * * *

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

5. *First statement after exemption terminates.* Sections 1026.41(d)(2)(ii), (3)(i), and (4) require the disclosure of the total sum of any fees or charges imposed, the total of all payments received, a breakdown of how payments were applied, and a list of all transaction activity "since the last statement." For purposes of the first periodic statement provided to the consumer

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

41(d)(1) Amount due.

1. *Acceleration.* If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due under § 1026.41(d)(1) should identify only the lesser amount that will be accepted to reinstate the loan.

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

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

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

1. Acceleration. If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due under § 1026.41(d)(2) should include both the reinstatement amount and the accelerated amount, but not the monthly payment amount that would otherwise be required under § 1026.41(d)(2)(i). The statement should also include an explanation that the reinstatement amount will be accepted to reinstate the loan. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

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

* * * * *

41(d)(8) Delinquency information.

1. *Length of delinquency*. For purposes of § 1026.41(d)(8), a consumer's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and escrow (if applicable) became due and unpaid, even if the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. A consumer is delinquent if one or more periodic payments of principal, interest, and escrow (if applicable) are due and unpaid.

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

payment on February 1. The servicer applies the payment received on February 1 to the outstanding January payment. On February 2, the consumer is one day delinquent, and the following periodic statement should disclose the length of the consumer's delinquency using February 2 as the first day of delinquency.

* * * * *

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

1. *Consumer's representative*. If an agent of the consumer submits a request under § 1026.41(e)(5)(i)(B)(*1*) or (ii), the request is deemed to be submitted by the consumer.

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

1. *Multiple obligors*. When two or more consumers are primarily liable on a mortgage loan, an exemption under § 1026.41(e)(5)(i) with respect to one of the primary obligors does not affect the servicer's obligations to comply with § 1026.41 with respect to the other primary obligors. For example, assume that two spouses jointly own a home and are both liable on the note, and one of the spouses files Chapter 7 bankruptcy. That spouse files a Statement of Intention in the bankruptcy case identifying an intent to surrender the home. The servicer is exempt under § 1026.41(e)(i) from providing periodic statements with respect to the spouse in bankruptcy, but the servicer is required to comply with § 1026.41 with respect to the other spouse. As a result, the other spouse would continue to receive regular periodic statements, which would not include any of the modifications set forth in § 1026.41(f). On the other hand, if the spouse in bankruptcy had instead filed a Statement of Intention identifying an intent to retain the property and reaffirm the mortgage loan, the servicer would not be exempt under § 1026.41(e)(i) with respect to that spouse. In that case, the servicer would have to provide periodic statements with the modifications required under § 1026.41(f)(1) and (2). As comment

41(f)(4)-1 explains, the servicer could provide a periodic statement with the modifications set forth in § 1026.41(f)(1) and (2) to either of the two spouses, even though only one of the spouses is in bankruptcy.

2. *Plan of reorganization.* For purposes of § 1026.41(e)(5), “plan of reorganization” refers to a consumer’s plan of reorganization filed under the applicable provisions of Chapter 11, Chapter 12, or Chapter 13 of the U.S. Bankruptcy Code, and confirmed by a court with jurisdiction over the consumer’s bankruptcy case.

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

1. *Statement of intention*. A servicer must rely on the consumer’s most recently filed Statement of Intention to determine whether the exemption under § 1026.41(e)(5)(i) applies. For example, if a consumer files a Statement of Intention on June 1 identifying an intent to retain the dwelling securing the mortgage loan, but the consumer files an amended Statement of Intention on June 15 identifying an intent to surrender the dwelling, the servicer must rely on the June 15 Statement of Intention to determine that it is exempt under § 1026.41(e)(5)(i) with respect to that consumer.

41(e)(5)(ii) Resuming compliance.

1. *Multiple requests*. A servicer must comply with a consumer’s most recent written request to cease or to continue, as applicable, providing periodic statements or coupon books.

2. *Reasonably prompt time*. Section 1026.41(e)(ii) requires that a servicer resume providing periodic statements or coupon books within a reasonably prompt time after the next payment due date that follows a servicer’s receipt of a consumer’s written request, the closing or dismissal of a bankruptcy case, the consumer’s reaffirmation of the mortgage loan, or the consumer’s discharge of the mortgage loan. Delivering, emailing or placing the periodic

statement or coupon book in the mail within four days after the next payment due date, or within four days of the close of any applicable courtesy period, generally would be considered reasonably prompt.

3. *Bankruptcy case revived*. If the consumer's bankruptcy case is revived—for example if the court reinstates a previously dismissed case or reopens the case—§ 1026.41(e)(5) may be applicable again.

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

1. *Change in ownership.* If a charged-off mortgage loan is subsequently purchased, assigned, or transferred, a covered person, as defined in § 1026.39(a)(1), must provide the transfer disclosure required by § 1026.39. A covered person, who would otherwise be subject to the requirements of § 1026.41, may take advantage of the exemption in § 1026.41(e)(6) as long as it treats the mortgage loan as charged off and will not charge any additional fees or interest on the account. If the consumer previously received a final periodic statement, a covered person is not also required to provide a final periodic statement, unless it began sending the consumer periodic statements and then later met the criteria under § 1026.41(e)(6).

2. *Resuming compliance.* If a servicer or a covered person, as defined in § 1026.39(a)(1), who would otherwise be subject to the requirements of § 1026.41, fails to treat the mortgage loan as charged off at any time or charges any additional fees or interest on the account, the obligation to provide a periodic statement pursuant to § 1026.41 resumes. The servicer or covered person may not retroactively assess fees or interest on the account for the period of time during which the exemption in § 1026.41(e)(6) applied.

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

1. *Application of 41(f) if case is closed or dismissed*. A servicer must resume providing regular periodic statements or coupon books in accordance with § 1026.41 if the consumer's bankruptcy case is closed or dismissed or the consumer reaffirms the mortgage loan. However, the requirements of § 1026.41(f) continue to apply if the consumer has discharged personal liability for the mortgage loan.

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

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

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

1. *Plan of reorganization.* For purposes of § 1026.41(f)(3), "plan of reorganization" refers to a consumer's plan of reorganization filed under the applicable provisions of Chapter 12 or Chapter 13 of the U.S. Bankruptcy Code, and confirmed by a court with jurisdiction over the consumer's bankruptcy case.

2. *Pre-petition payments and post-petition payments*. For purposes of § 1026.41(f)(3), pre-petition payments are payments made under a plan of reorganization to cure the consumer's pre-bankruptcy defaults, if any. Post-petition payments are payments made under a plan of reorganization to satisfy the mortgage loan's periodic payments as they come due after the bankruptcy case is filed. For example, assume a consumer has $3,600 in arrears as of the bankruptcy filing date with respect to a mortgage loan requiring monthly periodic payments of $2,000. The consumer's plan of reorganization requires the consumer to make payments of $100 each month for 36 months to pay the pre-bankruptcy arrearage, and $2,000 each month to satisfy the monthly periodic payments. In this example, the $100 payments are the pre-petition payments and the $2,000 payments are the post-petition payments.

3. *Post-petition fees and charges*. For purposes of § 1026.41(f)(3), post-petition fees and charges are those fees and charges imposed after the bankruptcy case is filed. To the extent that the court overseeing the consumer's bankruptcy case requires such fees and charges to be included as an amendment to a servicer's proof of claim, such fees and charges are not considered post-petition fees and charges for purposes of § 1026.41(f)(3) but should be included in the balance of the pre-petition arrearage under § 1026.41(f)(3)(vi)(C).

4. *First statement after exemption terminates*. Section 1026.41(f)(3)(iii) through (vi) requires the disclosure of the total sum of any post-petition fees or charges imposed, the total of

all post-petition payments received and how they were applied, the total of all payments applied to post-petition fees or charges imposed, a list of all transaction activity, and the total of all pre-petition payments received "since the last statement." For purposes of the first periodic statement provided to the consumer following termination of an exemption under § 1026.41(e), the disclosures required by § 1026.41(f)(3)(iii) through (vi) may be limited to account activity since the last payment due date that occurred while the exemption was in effect. *See* comment 41(d)-5.

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

1. *Amount due*. The amount due under § 1026.41(d)(1) is not required to include any amounts other than the post-petition payments the consumer is required to make under the terms of plan of reorganization and post-petition fees and charges that a servicer has imposed. The servicer is not required to include in the amount due any pre-petition payments due under the plan of reorganization or other amounts payable pursuant to a court order. With respect to post-petition fees and charges, the amount due may be limited to including those post-petition fees and charges that a servicer has imposed. A servicer that defers collecting a fee or charge until after complying with the Federal Rule of Bankruptcy Procedure 3002.1 procedures, and thus after a potential court determination on the allowability of the fee or charge, is not required to disclose the fee or charge until complying with such procedures. However, a servicer may include in the amount due other amounts due to the servicer, such as amount due under an agreed order, provided those amounts are also disclosed in the explanation of amount due and transaction activity.

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

1. *Explanation of amount due*. The explanation of amount due under § 1026.41(d)(2) is

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

41(f)(3)(v) Transaction activity.

1. *Transaction activity*. The transaction activity under § 1026.41(d)(4) must include all payments the servicer has received since the last statement that constitute post-petition payments, pre-petition payments, and payments of post-petition fees or charges. The brief description of the activity does not need to identify the source of the payments.

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

1. *Pre-petition arrearage*. To the extent that the amount of the pre-petition arrearage is subject to dispute or has not yet been determined, the periodic statement may include a statement acknowledging the unresolved amount of the pre-petition arrearage.

41(f)(4) Multiple obligors.

1. *Modified statements*. When more than one consumer is primarily obligated on a closed-end consumer credit transaction secured by a dwelling, subject to § 1026.41, the periodic statement may be sent to any one of the primary obligors. *See* comment 41(a)-1. Section 1026.41(f)(4) specifies that, if a servicer is required to provide periodic statements with the modifications set forth in § 1026.41(f) in connection with a mortgage loan with multiple obligors, the servicer may provide the modified statements to any or all of the primary obligors

instead of any statements not including the modifications, even if not all primary obligors are debtors in bankruptcy. For example, assume two spouses own a home, and only one spouse files for Chapter 13 bankruptcy. That spouse's Chapter 13 plan of reorganization provides that the same spouse will retain the home by making pre-petition and post-petition payments. The servicer is thus required to provide periodic statements with the modifications set forth in § 1026.41(f)(1) though (3). The servicer may provide periodic statements with the modifications set forth in § 1026.41(f)(1) through (3) to either of the two spouses, even though only one of the spouses is in bankruptcy. On the other hand, if the spouse in bankruptcy had a plan of reorganization providing for that spouse to surrender the home, the servicer would be exempt under § 1026.41(e)(5)(i) from providing periodic statements to that spouse. In this circumstance, the servicer would be required to provide regular periodic statements, without any of the modifications set forth in § 1026.41(f), to the spouse not in bankruptcy. *See* comment 41(e)(5)(i)-1.

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE WITH REQUEST FOR PUBLIC COMMENT TITLED "AMENDMENTS TO THE 2013 MORTGAGE RULES UNDER THE REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X) AND THE TRUTH IN LENDING ACT (REGULATION Z)"]

Dated: November 19, 2014.

Richard Cordray

Richard Cordray,

Director, Bureau of Consumer Financial Protection.