~~make 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 consumer protection purposes of RESPA.~~

Section 1024.35 Error Resolution Procedures

Proposed § 1024.35 states the error resolution requirements that servicers would be required to follow for a notice of error from a borrower. In general, this proposal provides an opportunity to clarify servicer obligations to correct errors and respond to information requests to provide certainty to borrowers regarding their rights and to servicers regarding their obligations.

Currently, section 6(e) of RESPA requires servicers to respond to "qualified written requests." Qualified written requests must be in writing and must relate to the "servicing" of the mortgage loan, as that term is defined in RESPA. Although the Bureau believes that qualified written requests may be used to either assert an error or to request information, there has been confusion among courts regarding whether both types of requests are necessary to set forth a qualified written request.[70]

The Dodd-Frank Act adds another layer of complexity. Section 1463(a) of the Dodd-Frank Act amends RESPA to add section 6(k)(1)(C), which states that a servicer shall not fail to take timely action to "correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties." Further, section 1463(a) of the Dodd-Frank Act amends 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. Neither section indicates whether the request to correct an error or the request for information must be in the form of a qualified written request.

In light of these disparate obligations, the Bureau believes that both borrowers and servicers would be better served if the Bureau were to clearly define a servicer's obligation to correct errors or respond to information requests. To that end, the Bureau proposes §§ 1024.35 (Error resolution procedures) and 1024.36 (Requests for information) to establish separate but parallel obligations for servicers to respond to notices of error and information requests. Further, the Bureau's intention is to establish servicer procedural requirements for error resolution and information requests that are consistent with the requirements applicable to a qualified written request under RESPA. Through this, the Bureau intends to make the restrictions and circumlocutions inherent in the language of the qualified written request provisions obsolete. Any valid qualified written request is a valid notice of error or information request. An invalid qualified written request may still be a valid notice of error or information request.[71]

Proposed § 1024.35 establishes the rules implementing the servicer prohibitions set forth in section 6(k)(1)(B), (C), and (E) of RESPA. These prohibitions make it unlawful for a servicer to charge a fee for responding to valid qualified written requests, to fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, avoiding foreclosure, or other standard servicer's

[70] *See Catalan v. GMAC Mortgage Corp.*, 629 F.3d 676 (7th Cir. 2011); *Pettie v. Saxon Mortgage Services*, No. C08-5089, 2009 U.S. Dist. LEXIS 41496 (W.D. Wa. May 12, 2009).

[71] Notably, a notice of error may also constitute a direct dispute under Regulation V, which implements the Fair Credit Reporting Act, if it complies with the requirements in 12 CFR 1022.43.

duties, and to fail to comply with any other obligation found by the Bureau to be appropriate to carry out the consumer protection purposes of RESPA.

35(a) Notice of Error

Proposed § 1024.35(a) states that a notice of error may be made orally or in writing and must include the name of the borrower, information that enables a servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred.

Section 6(k)(1)(C) of RESPA, as added by section 1463(a) of the Dodd-Frank Act, refers generically to servicers' failures to respond to requests of borrowers to correct certain errors. However, unlike section 6(e) of RESPA, which contains the statutory language regarding qualified written requests, section 6(k)(1)(C) of RESPA does not specify that borrowers' requests to correct errors must be submitted in any particular format.

Oral notices of error. The Bureau proposes to allow a borrower to make a notice of error either orally or in writing. The Bureau believes this approach is warranted because, based on its discussions with consumers, consumer advocates, servicers, and industry trade associations, it appears that the vast majority of borrower complaints are generated orally instead of in writing. A requirement that a notice of error must be in writing generally serves as a barrier that unduly restricts the ability of a borrower to have errors resolved. The Bureau believes it is important for consumers to receive the benefit of required correction or investigation from servicers of orally asserted errors.

Servicers and servicer representatives stated that allowing a notice of error to be provided orally would create new burdens for servicers regarding tracking the notices of error and monitoring that a borrower receives written acknowledgements and responses. In addition, small entity representatives with whom the Small Business Review Panel conducted outreach reiterated these burdens on behalf of small servicers. The Small Business Review Panel recommended that the CFPB consider requiring small servicers to comply with the error resolution procedures only when borrowers provided error notices in writing.[72] The Small Business Review Panel also recommended that the Bureau consider adopting a more flexible process for tracking errors and demonstrating compliance that could be used by small servicers.[73]

The Bureau recognizes the burdens on servicers to ensure compliance with this proposed rule for notices of error received orally. In order to implement this section, servicers may adopt systems to ensure that a borrower's notice of error is tracked and receives the required acknowledgement and response. In light of the concerns express in the Small Business Review Panel Report, the Bureau has declined to specify any particular requirement that a servicer must undertake to track notices of error. Further, ensuring that borrower assertions of errors are investigated, responded to, and, as appropriate, corrected, is an objective of the reasonable information management policies and procedures set forth below in proposed § 1024.38. The Bureau has created that proposal to provide flexibility to servicers, including small servicers, to design policies and procedures that are appropriate to the particular circumstances of each servicer. The Bureau believes this flexibility reflects that Small Business Review Panel recommendation that the Bureau create flexibility in the manner in which small servicers comply

[72] *See* Small Business Review Panel Report at 30.
[73] *Id*.

with the error resolution requirements.

The Bureau further believes that elements of the proposed rule assist in mitigating burden for all servicers. These elements include, for example, a limitation on the types of errors that servicers would be required to resolve to a finite list, as well as a proposal to allow servicers to designate a specific telephone number for receiving oral notices of error.

The Bureau believes the error resolution (as well as the information management) requirement provides appropriate flexibility for small servicers to implement policies and procedures to comply with this objective that make sense for their organizations and responds to the findings and recommendations in the Small Business Review Panel Report.[74]

The Bureau solicits comments regarding whether servicers should be required to apply the error resolution requirements to notices of error received orally. The Bureau further solicits comments regarding whether small servicers (as that term is defined in the 2012 TILA Servicing Proposal) should be exempt from a requirement to apply the error resolution procedures in proposed § 1024.35 to notices of error received orally.

Qualified written requests. Proposed § 1024.35(a) would require a servicer to treat notices of error, whether oral or written, the same way it treats a qualified written request that asserts an error. The Bureau's intention is to propose servicer obligations applicable to a notice of error that are exactly the same as obligations applicable to a qualified written request. For example, as set forth below, a servicer may not charge a fee for responding to a notice of error, a servicer must acknowledge receipt of a notice of error within five days (excluding legal public holidays, Saturdays, and Sundays) and must respond to the notice of error within 30 days (excluding legal public holidays, Saturdays, and Sundays). Moreover, a servicer's potential liability for failure to respond to a notice of error is the same as the potential liability for failure to respond to a qualified written request. Thus, under proposed § 1024.35(a), there is no reason for a borrower to send a qualified written request as opposed to an oral or written notice of error nor is there a reason for a servicer to reject a qualified written request because it does not meet the requirements for a qualified written request in section 6(e) of RESPA when such request constitutes a valid notice of error. Even if a borrower does not comply with all the requirements of a qualified written request, including, for instance, by asserting an error orally, or by asserting an error that is defined in § 1024.35(b) but does not constitute "servicing" as defined in RESPA, the obligations for the servicer to respond to the borrower are the same and the liability for the servicer's failure to respond to the borrower is the same.

Proposed comment 35(a)-1 would clarify that a notice of error submitted by a person acting on behalf of the borrower is considered a notice of error pursuant to proposed § 1024.35(b). This clarification is substantially the same as the current requirement existing under section 6(e)(1)(A) of RESPA with respect to a qualified written request.[75] Servicers 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.

Proposed comment 35(a)-2 would clarify that the substance of the notice of error would

[74] *See* Small Business Review Panel Report at 29.

[75] Section 6(e)(1)(A) of RESPA states that a qualified written request may be provided by a "borrower (or an agent of the borrower)."

determine the servicer's obligation to comply with the error resolution requirements. No particular language (such as "qualified written request" or "notice of error") is necessary to set forth a notice of error.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(b) Scope of error resolution

Proposed § 1024.35(b) provides a finite list of errors to which the error resolution provisions would relate (covered errors). A finite list of covered errors provides certainty to both borrowers and servicers regarding the types of errors that are subject to the error resolution process. Further, a finite list of covered errors is intended to ensure that servicer resources can be dedicated to responding to errors that are capable of correction, to the benefit of a borrower. For example, the Bureau considered whether to define as a covered error a servicer's failure to accurately and timely provide a disclosure to a borrower as required by applicable law. The Bureau determined that such a failure was not appropriate as a covered error because the information request provisions provide the borrower the ability to obtain the underlying information. Further, the Bureau believes that a servicer's action to attempt to correct the failure, such as by sending the untimely disclosure after the deadline, would not actually correct the timeliness error and would not be helpful or useful to borrowers. In that circumstance, the error resolution request would create burden and impose costs on servicers without offering concomitant benefit for borrowers.

The Bureau further considered the impact of the proposed error resolution requirements if the types of covered errors were not limited. The proposal expands servicer's obligations to respond to error notices and information requests from borrowers. Borrowers may initiate an error resolution process orally, not just in writing. Further, in general, the proposal reduces the time period within which a servicer must respond to a borrower (from 60 days to 30 days), consistent with the Dodd-Frank Act amendments to section 6(e)(2) of RESPA. For certain types of covered errors, the time period to respond to the borrower is even more limited. The Bureau believes that the added costs and burden created by having an open-ended definition of an error could substantially increase the costs to servicers with limited additional benefit to consumers. The Bureau further believes that requiring servicers to respond to potentially any assertion of an error could, as a practical matter, lead to servicers using disproportionate resources to respond to every asserted error. That practice may cause servicers to expend fewer resources to address errors that may be far more significant to borrowers.

The Small Business Review Panel received feedback from SERs regarding whether the error resolution procedures should include a catch-all provision to the enumerated list of errors. In general, the SERs commented favorably on the Bureau's proposal to include a finite list of errors. The SERs indicated that if the Bureau were to consider adding a catch-all provision, then the Bureau should request comment on whether to not include such a provision. Accordingly, for the reasons above, proposed § 1024.35(b) provides a finite list of covered errors to which the

error resolution provisions would relate. The Bureau requests comment regarding whether (1) the finite list of covered errors should include any other specific types of errors that are not addressed in the list and (2) whether the list of covered errors should not be finite and should include a catch-all provision for other types of errors not set forth in the rule.

Covered errors. Paragraph 35(b) defines the types of covered errors for which the error resolution procedures apply. As discussed below, the proposed rule sets forth a finite list of nine types of covered errors based on the statutory language prohibiting servicers from failing to take timely action to respond to a borrower's request to correct errors "relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties." *See* RESPA section 6(k)(1)(C).

Proposed comment 35(b)-1 clarifies that a servicer would not be required to comply with the requirements of proposed § 1024.35(d)-(e) if a notice relates to something other than one of the types of covered errors in proposed § 1024.35(b). The proposed comment provides examples of categories of excluded errors that would not be considered covered errors pursuant to proposed § 1024.35(b). These include matters relating to the origination or underwriting of a mortgage loan, matters relating to a subsequent sale or securitization of a mortgage loan, and matters relating to a sale, assignment, or transfer of the servicing of a mortgage loan other than the transfer of information for a borrower's mortgage loan account. The Bureau believes that a mortgage servicer is generally not in a position to investigate or resolve borrower complaints regarding potential errors that may have occurred during an origination, underwriting, sale, or securitization process. The Bureau requests comment regarding whether any errors that may fall within the examples of excluded errors should instead be included as covered errors.

Paragraph 35(b)(1)

Proposed paragraph 35(b)(1) includes as a covered error a servicer's failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.

Section 6(k)(1)(C) of RESPA prohibits a servicer from failing to take timely action to respond to a borrower's request to correct errors relating to the allocation of payments for a borrower's account. Paragraph 35(b)(1) is an example of one type of error that fits within the broad statutory prohibition. A failure to accept a proper payment will necessarily have implications for the correct application of borrower payments. Further, proper acceptance of payments is, by definition, "servicing," as that term is defined in section 6(i)(3) of RESPA and already subject to the qualified written request procedure set forth in section 6(e) of RESPA and current § 1024.21(e) of Regulation X.

The Bureau further believes that proper acceptance of borrower payments is a standard servicer duty as set forth in section 6(k)(1)(C) of RESPA. Section 6(k)(1)(C) of RESPA states that a servicer shall not fail to take timely action to respond to a borrower's request to correct errors relating three specific categories as well as those relating to "other standard servicer duties." The Bureau believes that standard servicer duties are those typically undertaken by servicers in the ordinary course of business. Such duties include not only the obligations that are specifically identified in section 6(k)(1)(C), but also those duties that are defined as "servicing" by RESPA, as well as duties customarily undertaken by servicers to investors and consumers in connection with the servicing of a mortgage loan. These include duties that may not be contemplated within the definition of "servicing" in RESPA, such as duties to comply with

investor agreements and servicing program guides, to advance payments to investors, to process and pursue mortgage insurance claims, to monitor coverage for insurance (*e.g.* hazard insurance), to monitor tax delinquencies, to respond to borrowers regarding mortgage loan problems, to report data on loan performance to investors and guarantors, and to work with investors and borrowers on options to mitigate losses for defaulted mortgage loans. Throughout this proposal, the Bureau refers to these standard servicer duties, in the parlance of section 6(k)(1)(C) of RESPA, as typical servicer duties to reflect the plain language connotation that such duties are those typically performed by servicers in the normal course of business.

As set forth above, the Bureau is proposing § 1024.35(b)(1) to implement section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(2)

Proposed paragraph 35(b)(2) would include as a covered error a servicer's failure to apply an accepted payment to the amounts due for principal, interest, escrow, or other items pursuant to the terms of the mortgage loan and applicable law.

Section 6(k)(1)(C) of RESPA prohibits a servicer from failing to take timely action to respond to a borrower's request to correct errors relating to the allocation of payments for a borrower's account. Paragraph 35(b)(2) implements the prohibition in section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(3)

Proposed paragraph 35(b)(3) includes as an error a servicer's failure to credit a payment to a borrower's mortgage loan account as of the date of receipt, where such failure has resulted in a charge to the consumer or the furnishing of negative information to a consumer reporting agency.

Proper crediting of payments to consumers is required by section 129F of TILA, which was added by section 1464 of the Dodd-Frank Act and would be implemented by proposed § 1026.36(c) in the 2012 TILA Servicing Proposal. For a mortgage loan secured by a principal dwelling, TILA section 129F mandates that servicers shall not fail to credit a payment to a consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer, or in the furnishing of negative information to a consumer reporting agency. *See* 15 U.S.C. 1639f. TILA section 129F provides a specific exception for payments that do not conform to a servicer's written requirements, but nonetheless are accepted by the servicer, in which case the servicer shall credit the payment as of five days after receipt. *See* 15 U.S.C. 1639(f)(b). Servicers of mortgage loans covered by TILA section 129F have a

duty to comply with that provision.

Section 6(k)(1)(C) of RESPA prohibits a servicer from failing to take timely action to respond to a borrower's request to correct errors relating to the allocation of payments for a borrower's account. Paragraph 35(b)(3) implements this prohibition. A failure to credit a payment will necessarily have implications for the correct application of borrower payments. A servicer's failure to properly credit a payment will cause the servicer to report to a borrower improper information regarding the amounts owed by the borrower and may cause a servicer to misapply other payments received by the borrower. Further, a servicer's failure to properly credit borrower payments may generate improper late fees and other charges.

The Bureau also observes that proper crediting of borrower payments is, by definition, "servicing," as that term is defined in section 6(i)(3) of RESPA and, therefore, is subject to the qualified written request procedure set forth in section 6(e) of RESPA and current § 1024.21(e) of Regulation X.

For these reasons, the Bureau proposes to implement section 6(k)(1)(C) of RESPA by prohibiting servicers from failing to correct errors relating to proper crediting of borrower payments. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(4)

Proposed paragraph 35(b)(4) includes as an error a servicer's failure to make disbursements from an escrow account for taxes, insurance premiums (including flood insurance), or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, as required by current § 1024.17(k), or to refund an escrow account balance in a timely manner as required by proposed § 1024.34(b).

In the normal course of business, servicers typically engage in collecting payments from borrowers to fund escrow accounts and disburse payments from escrow accounts to pay borrower obligations for taxes, insurance premiums, and other charges. Servicers typically undertake this obligation on behalf of investors because a borrower's maintenance of an escrow account reduces risk for investors that unpaid taxes may generate tax liens that are higher in priority than a lender's mortgage lien and that unpaid insurance may cause lapses in insurance coverage that present risk for investors in the event of a loss. Servicers are required to make disbursements from escrow accounts in a timely manner pursuant to section 6(g) of RESPA and are required to account for the funds credited to an escrow account pursuant to section 10 of RESPA. The Bureau further observes that proper disbursement of escrow funds is, by definition, "servicing," as that term is defined in section 6(i)(3) of RESPA and, therefore, is currently subject to the qualified written request procedure set forth in section 6(e) of RESPA and current § 1024.21(e) of Regulation X.

Proposed paragraph 35(b)(4) would require a servicer to correct errors relating to a typical servicer duty and implements section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of

RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(5)

Proposed paragraph 35(b)(5) includes as an error a servicer's imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

Servicers should not impose fees on borrowers that are not bona fide – that is, fees that a servicer does not have a reasonable basis to impose upon a borrower. Examples of non-bona fide charges include such common sense errors as late fees for payments that were not late, default property management fees for borrowers that are not in a delinquency status that would justify the charge, charges for services from service providers that were not actually rendered with respect to a borrower's mortgage loan account, and charges for force-placed insurance where a servicer lacks a reasonable basis to impose the charge on the borrower as set forth in proposed § 1024.37.

Improper fees harm both mortgage loan borrowers and the investors that are mortgage servicers' principals. Improper and uncorrected fees harm borrowers by taking funds that may otherwise be used to keep a mortgage loan current. Further, improper fees reduce recovery values available to investors from foreclosures or loss mitigation activities.

Servicers that operate in good faith in the normal course of business refrain from imposing charges on borrowers that the servicer does not have a reasonable basis to impose and correct errors relating to those fees when they arise. The Bureau believes that it is a typical servicer duty, both to the borrower and to the servicer's principal, to ensure that the servicer has a reasonable basis to impose a charge on a borrower.

Proposed paragraph 35(b)(5) would require a servicer to correct errors relating to a typical servicer duty and implements section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(6)

Proposed paragraph 35(b)(6) includes as an error a servicer's failure to provide an accurate payoff balance to a borrower upon request pursuant to 12 CFR 1026.36(c)(1)(iii).

Borrowers require accurate payoff statements to manage their mortgage loan obligations. A payoff statement is necessary anytime a borrower repays a mortgage loan and servicers routinely provide payoff statements for borrowers to refinance or pay in full mortgage loan obligations. However, consumer advocates have indicated servicers have failed, or refused, to provide payoff statements to certain borrowers or have required borrowers to make a payment on

a mortgage loan as a condition of fulfilling the borrower's request for a payoff statement.[76] Any such conduct has the perverse effect of impeding a borrower's ability to pay a mortgage loan obligation in full.

Servicers already have an obligation to comply with the timing requirements of section 129G of TILA with respect to any mortgage loan that constitutes a "home loan" as used in section 129G of TILA. The Bureau believes that, in order to implement the prohibition set forth in section 6(k)(1)(C) of RESPA regarding a servicer's failure to correct errors relating to final balances for purposes of paying off the loan, a servicer should be required to comply with the requirements within a reasonable time frame. Because servicers will be required to comply with the timeframes set forth in 12 CFR 1026.36(c)(1)(iii) with respect to certain mortgage loans they service, the Bureau does not believe that requiring servicers to correct errors for mortgage loans that may not constitute home loans as that term is used in section 129G of TILA within error resolution timeframes imposes additional burden on servicers.

Proposed paragraph 35(b)(6) implements section 6(k)(1)(C) of RESPA with respect to a servicer's obligation to correct errors relating to final balance for purposes of paying of a mortgage loan. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(7)

Proposed paragraph 35(b)(7) includes as an error a servicer's failure to provide accurate information to a borrower with respect to loss mitigation options available to the borrower and foreclosure timelines that may be applicable to the borrower's mortgage loan account, as required by proposed §§ 1024.39-1024.40.

In order to pursue loss mitigation options that may benefit both the borrower and the owner or assignee of the borrower's mortgage loan, a borrower requires accurate information about the loss mitigation options available to the borrower, the requirements for receiving an evaluation for any such loss mitigation option, and the applicable timelines relating to both the evaluation of the borrower for the loss mitigation options and any potential foreclosure process. Although the Bureau does not generally believe a failure to provide a required disclosure to a borrower should constitute an error requiring compliance with the error resolution procedures in proposed § 1024.35, borrowers may benefit from asserting errors with respect to a servicer's failure to provide information regarding loss mitigation options that may be available to the borrower but for which the servicer has not provided information to the borrower. By correcting this error and providing the borrower with accurate information regarding loss mitigation options that may be available to the borrower, a servicer can help a borrower receive an evaluation for the loss mitigation option pursuant to proposed § 1024.41 and may be able to reach agreement

[76] *See, e.g.*, *Mortgage Servicing: An Examination of the Role of Federal Regulators in Settlement Negotiations and the Future of Mortgage Servicing Standards: Joint Hearing Before the Subcommittee on Financial Institutions and Consumer Credit and Subcommittee on Oversight and Investigations of the House Financial Services Comm.*, No. 112-44, 112th Cong. 76 (July 7, 2011) (statement of Mike Calhoun, President, Center for Responsible Lending).

with the borrower on a loss mitigation option that is mutually beneficial to the borrower and the owner or assignee of the borrower's mortgage loan.

Proposed paragraph 35(b)(7) implements section 6(k)(1)(C) of the Dodd-Frank Act. Specifically, proposed paragraph 35(b)(7) implements a servicer's obligation to correct errors relating to avoiding foreclosure. Further, the Bureau believes that the National Mortgage Settlement, servicer participation in Home Affordable Modification Program (HAMP) sponsored by the U.S. Department of the Treasury (Treasury) and HUD, and service participation in other loss mitigation programs required by Fannie Mae and Freddie Mac demonstrate that servicers typically provide borrowers with information regarding loss mitigation options and foreclosure and that providing such information to borrowers is a typical servicer duty.

The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(8)

Proposed paragraph 35(b)(8) would include as an error a servicer's failure to accurately and timely transfer information relating to a borrower's mortgage loan account to a transferee servicer.

In the normal course of business, servicers typically anticipate that they will be required to transfer servicing for some mortgage loans they service. Owners or assignees of mortgage loans typically have rights to transfer servicing for a mortgage loan pursuant to the requirements set forth in mortgage servicing agreements. Servicers are required to develop capacity for transferring information to transferee servicers in order to comply with such obligations to owners or assignees of mortgage loans. Further, servicers are required to develop capacity to onboard data for transferred mortgage loans onto the servicer's servicing platform.

Borrowers may be harmed, however, if information that is transferred to transferee servicers is not accurate or current. In certain circumstances, such failure may cause errors to occur relating to allocating payments, calculating final balances for purposes of paying off a mortgage loan, or avoiding foreclosure.

Pursuant to proposed § 1024.38(a), servicers would be required to have policies and procedures to achieve the objectives set forth in proposed § 1024.38(b), which includes an objective of facilitating servicing transfers. An objective of the servicer's policies and procedures would be to timely transfer all information and documents 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 and that enables a transferee servicer to comply with the requirements of this subpart and the terms of the transferee servicer's contractual obligations to the owner or assignee of the mortgage loan.

The Bureau believes that by defining a servicer's failure to accurately and timely transfer information relating to a borrower's mortgage loan account to a transferee servicer, a borrower will have a remedy to ensure that a transferor servicer will update the information transferred to provide information to a transferee servicer that accurately reflects the borrower's account

consistent with the obligations applicable to a servicer's information management policies and procedures.

Proposed paragraph 35(b)(8) implements a servicer's obligation to take timely action to correct errors relating to typical servicer duties pursuant to section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(9)

Proposed paragraph 35(b)(9) would include as an error a servicer's failure to suspend a scheduled foreclosure sale in the circumstances described in proposed § 1024.41(g). Pursuant to proposed § 1024.41(g), a servicer that offers loss mitigation options to borrowers in the ordinary course of business would be prohibited from proceeding with a foreclosure sale when a borrower has submitted a complete application for a loss mitigation option unless the servicer denies the borrower's application for a loss mitigation option (including any appeal thereof), the borrower rejects the servicer's offer of a loss mitigation option, or the borrower fails to perform an agreement on a loss mitigation option. For further information, see discussion of proposed section § 1024.41 below.

The Bureau continues to consider whether to include as an error a servicer's evaluation of a borrower for a loss mitigation option. The Bureau observes that the manner in which a borrower is evaluated for a loss mitigation option is complex and includes factors that are subjective.[77] Further, the Bureau believes that the appeal process provided in proposed § 1024.41(h) provides an appropriate procedural means for borrowers to address issues relating to a servicer's evaluation of a borrower for a loan modification program.

The Bureau requests comment regarding whether to include as an error a servicer's failure to correctly evaluate a borrower for a loss mitigation option. The Bureau further requests comment regarding standards for determining if a borrower has been correctly evaluated for a loss mitigation option, including whether a servicer should be required to comply with the servicer's own standards, standards promulgated by major investors and guarantors, and standards promulgated in connection with Federal- or State-sponsored loss mitigation options.

Proposed paragraph 35(b)(9) implements section 6(k)(1)(C) of the Dodd-Frank Act. Specifically, proposed paragraph 35(b)(9) implements a servicer's obligation to correct errors relating to avoiding foreclosure. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to

[77] *See, e.g.*, Special Inspector General for the Troubled Asset Relief Program, *The Net Present Value Test's Impact on the Home Affordable Modification Program*, at 7-8 (Jun.. 18, 2012), available at http://www.sigtarp.gov/Audit%20Reports/NPV_Report.pdf (demonstrating that major HAMP servicers differed in their determinations regarding whether to apply a risk premium to the discount rate used to calculate net present value for determining eligibility for HAMP loan modifications).

make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(c) Contact information for borrowers to assert errors

Proposed § 1024.35(c) permits a servicer to establish a telephone number and address that a borrower must use to assert an error. If a servicer chooses to establish a separate telephone number and address for receiving errors, a servicer must provide the borrower a written notice that states that the borrower may assert an error at the telephone number and address established by the servicer for that purpose. Proposed comment 35(c)-2 would clarify that the written notice to the borrower may be set forth in another written notice provided to the borrower, such as a notice of transfer, periodic statement, or coupon book.

The purpose of establishing a telephone number and address that a borrower must use to assert an error is to allow servicers to direct oral and written errors to appropriate personnel that have been trained to ensure that the servicer responds appropriately. At larger servicers with other consumer financial service affiliates, many personnel simply do not typically deal with mortgage servicing-related issues. For instance, at a major bank servicer, a borrower may incorrectly believe that local bank branch staff will be required to comply with error resolution requirements for mortgage servicing errors. If a servicer establishes a telephone number and address that a borrower must use, a servicer would not be required to comply with the error resolution requirements for errors that may be received by the servicer through a different method. Proposed comment 35(c)-1 clarifies, however, that if a servicer has not designated a telephone number and address that a borrower must use to assert an error, then a servicer will be required to comply with the error resolution requirements for any notice of error received by any office of the servicer.

The Bureau believes it is reasonable, especially in light of the expanded burden of requiring compliance with error resolution for oral notices of error, to allow servicers to manage the intake of notices of error to designated telephone numbers and addresses. Further, allowing a servicer to designate a specific telephone number and address is consistent with current requirements of Regulation X with respect to qualified written requests. Current § 1024.21(e)(1) permits a servicer to designate a "separate and exclusive office and address for the receipt and handling of qualified written requests." Moreover, the Bureau believes that identifying a specific telephone number and address for receiving errors and information requests will benefit consumers as well. By providing a specific telephone number and address, servicers will identify to consumers the office capable of addressing errors identified by consumers. The Bureau is proposing in the concurrent 2012 TILA Servicing Proposal to require that any telephone number or address identified by a servicer must appear on the periodic statement or other payment form supplied by the servicer. *See* 2012 TILA Servicing Proposal at proposed § 1026.41(d)(6).

Multiple offices. Proposed § 1024.35(c) would require a servicer to use the same telephone number and address it designates for receiving notices of error for receiving information requests pursuant to proposed § 1024.36(b), and vice versa. The Bureau believes that if servicers designate separate telephone numbers and addresses for notices of error and information requests, borrower attempts to provide notices of error and information requests to servicers could be impeded. Further, proposed comment 35(c)-3 clarifies that any telephone numbers or address designated by a servicer for any borrower may be used by any other

borrower to submit a notice of error. This clarifies that a servicer may not determine that a notice of error is invalid if it was received at any telephone number or address designated by the servicer for receipt of notices of error just because it was not received by the specific phone number or address identified to a specific borrower. Proposed comment 35(c)-5 clarifies that a servicer may use automated systems, such as an interactive voice response system, to manage the intake of borrower calls. Prompts for asserting errors must be clear and provide the borrower the option to connect to a live representative.

Internet intake of notices of error. Proposed comment 35(c)-4 would clarify that a servicer is not required to establish a process for receiving notices of error through email, website, or other online methods. If a servicer establishes a process for receiving notices of error through online methods, comment 35(c)-4 is intended to clarify that the process established is the only online intake process that a borrower can use to assert an error. Thus, a servicer would not be required to provide a written notice to a borrower in order to gain the benefit of the online process being considered the exclusive online process for receiving notices of error. Proposed comment 35(c)-4 further clarifies that a servicer's decision to accept notices of error through an online intake method shall not have any impact on a servicer's obligation to comply with the requirements of § 1024.35 with respect to notices of error received in writing or orally.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in section 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(d) Acknowledgment of receipt

Proposed § 1024.35(d) would require a servicer to provide a borrower a written acknowledgement of a notice of error within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving a notice of error. Proposed § 1024.35(d) would implement section 1463(c) of the Dodd-Frank Act which amended the current acknowledgement deadline of 20 days for qualified written requests to five days. Proposed § 1024.35(d) further applies the same timeline applicable to a qualified written request to any notice of error.

The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(e) Response to Notice of Error

Proposed § 1024.35(e) would set forth requirements on servicers for responding to notices of error.

35(e)(1) Investigation and Response Requirements

Proposed paragraph 35(e)(1) would require a servicer to correct an error within 30 days

unless the servicer concludes after a reasonable investigation that no error occurred.

Notices to borrower. If a servicer corrects the error identified by the borrower, it must provide the borrower with written notification that indicates that the error was corrected, the effective date of the correction, and a telephone number the borrower can use to get further information.

If a servicer determines that no error occurred, it is required to have conducted a reasonable investigation and to provide the borrower a notice that the servicer has determined that no error has occurred, the reason(s) the servicer believes that no error has occurred, and contact information for servicer personnel that can provide further assistance. A servicer would also be required to inform the borrower in the notice that the borrower may request documents relied on by the servicer in reaching its determination and how the borrower can request such documents.

Borrower right to request documents. Proposed § 1024.35(e)(4) would require that if a servicer determines no error occurred, the servicer is required to include a statement in its response that the borrower can request documents relied upon by the servicer. A servicer must provide the documents within 15 days of the servicer's receipt of the borrower's request. The Bureau believes that this requirement strikes an appropriate balance that does not subject the servicer to undue paperwork burden while assuring that the borrower can access the underlying documentation if necessary. Further, in certain cases, a borrower may determine that the servicer's response resolves an issue and that reviewing documents would be unnecessary and requiring a servicer to provide documents only upon a borrower's request limits burden. Proposed comment 35(e)(4)-1 clarifies that a servicer need only provide documents actually relied upon by the servicer to determine that no error occurred, not all documents reviewed by a servicer. Further, the proposed comment states that where a servicer relies upon entries in its collection systems, a servicer should provide print-outs reflecting the information entered into the system.

A servicer would be required to provide information regarding the right to receive documents only if a servicer determines that no error has occurred. Proposed paragraph 35(e)(1)(i) would not require a servicer who determines that an error has occurred, and corrects the error, to provide documents to a borrower that were the basis for that determination or to provide a statement in the notice to the borrower about requesting documents. The Bureau believes that the purpose of the proposed rule is to facilitate the prompt correction of errors and borrowers likely do not need documents and information when errors are corrected per the borrower's request. The Bureau does not believe it is necessary to require servicers to provide documents to a borrower if a servicer corrects an asserted error.

Multiple responses. Proposed comment 35(e)(1)(i)-1 clarifies that if a notice of error asserts multiple errors, a servicer may respond to those errors through a single or separate written responses that address the alleged errors. The Bureau believes that the purpose of the rule, which is to require prompt resolution of errors, is facilitated by allowing a servicer to respond to multiple errors set forth in a single notice of error through separate communications. For example, a servicer could correct one error, and send a notice regarding the correction of that error, while an investigation is in process regarding another error that is the subject of the same notice of error. Further, a servicer's obligation to provide a borrower with documents relied upon by the servicer only relates to any asserted errors that the servicer determines are not errors.

A servicer is not required to provide documents with respect to any other errors in a notice of error that the servicer corrects.

Different or additional error. Proposed paragraph 35(e)(1)(ii) would provide that if a servicer, during the course of a reasonable investigation, determines that a different or additional error has occurred, a servicer is required to correct that different or additional error and provide a borrower a written notice about the error, the corrective action taken, the effective date of the corrective action, and contact information for further assistance. Because the servicer would be correcting an error, a servicer would not be required to provide documents to the borrower regarding the error identified for the reasons discussed above.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(e)(2) Requesting documentation from borrower

Proposed § 1024.35(e)(2) states that a servicer could request that a borrower provide documentation if needed to investigate an error but may not require the borrower to provide such documentation as a condition of investigating the asserted error. Nor may the servicer determine that no error occurred because the borrower failed to provide the requested documentation. The purpose of this provision is to allow servicers to obtain information that may assist in resolving notices of error. However, the Bureau believes that the process for obtaining that information should not prejudice the ability of the borrower to seek the resolution of the error.

35(e)(3) Time Limits

Paragraph 35(e)(3)(i)

Proposed paragraph 35(e)(3)(i) would require a servicer to respond to a notice of error not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the borrower notifies the servicer of the asserted error, with two exceptions: errors relating to accurate payoff balances and errors relating to failure to suspend a scheduled foreclosure sale where a borrower has submitted a complete application for a loss mitigation option.

Shortened time limit to correct errors relating to payoff balances. Pursuant to proposed paragraph 35(e)(3)(i)(A), if a borrower submits a notice of error asserting that a servicer has failed to provide an accurate payoff balance as set forth in proposed paragraph 35(b)(6), a servicer must respond to the notice of error not later than five days (excluding legal public holidays, Saturdays, and Sundays) after the borrower notifies the borrower of the alleged error. The Bureau believes that a 30-day deadline for responding to this type of notice of error does not provide adequate protection for a borrower because the servicer's failure to correct the error will prevent a borrower from pursuing options that protect the borrower, including, for example, a refinancing transaction. Based on discussions with servicers, the Bureau believes that a five day timeframe is reasonable for a servicer to correct an error with respect to calculating a payoff balance.

The Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA with respect

to qualified written requests, as well as its authority in sections 6(k)(1)(C) and 6(k)(1)(E) with respect to error resolution requirements to mandate a shorter time period for responding to notices that assert errors with respect to accurate payoff balances. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to make such exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

The Bureau requests comment regarding whether five days (excluding legal public holidays, Saturdays, and Sundays) is an appropriate timeframe for a servicer to correct an error with respect to a payoff balance.

Shortened time limit to correct certain errors relating to foreclosure. Pursuant to proposed paragraph 35(e)(3)(i)(B), if a borrower submits a notice of error asserting that a servicer has failed to suspend a scheduled foreclosure sale, a servicer would be required to investigate and respond to the notice of error by the earlier of 30 days (excluding legal public holidays, Saturdays, and Sundays) or the date of a scheduled foreclosure sale. The Bureau believes that a timeframe that allowed a servicer to investigate and respond to the notice of error after the date of a scheduled foreclosure sale would cause irreparable harm to a borrower. Proposed comment 35(e)(3)(i)(B)-1 would clarify that a servicer could maintain a 30-day timeframe to respond to the notice of error if it cancels or postpones the scheduled foreclosure sale and a subsequent sale is not scheduled before the expiration of the 30-day deadline.

Extensions of time limits. Proposed § 1024.35(e)(3)(ii) would permit a servicer to extend the time period for investigating and responding to a notice of error by 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period set forth in proposed § 1024.35(e)(3)(i)(C), the servicer notifies the borrower of the extension and the reasons for the delay in responding. Proposed comment 35(e)(3)(ii)-1 clarifies that if a notice of error asserts multiple errors, a servicer may extend the time period for investigating and responding to those errors for which extensions are permissible pursuant to proposed § 1024.35(e)(3)(ii). Section 1463(c)(3) of the Dodd-Frank Act amended section 6(e) of RESPA to provide a 15-day extension of time and proposed § 1024.35(e)(3)(ii) would implement this provision.

The Bureau proposes not to apply the extension allowance of proposed § 1024.35(e)(3)(ii) to investigate and respond to errors relating to payoff statement or to a servicer's failure to suspend a scheduled foreclosure sale. For the reasons set forth above, the Bureau does not believe that allowing a servicer to extend the time period for investigating and responding to these types of errors will provide timely resolution of errors.

Legal authority. The Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA with respect to qualified written requests, as well as its authority in sections 6(k)(1)(C) and 6(k)(1)(E) with respect to error resolution requirements to mandate a shorter time period for responding to notices that assert errors for a servicer's failure to suspend a scheduled foreclosure sale. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to make such exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

35(f) Alternative Compliance

Proposed § 1024.35(f) states that a servicer is not required to comply with paragraphs (d) and (e) of proposed § 1024.35 in two situations. First, a servicer that corrects the error identified by the borrower within five days of receiving the notice of error, and notifies the borrower of the correction in writing, is not required to comply with paragraphs (d) and (e). Because such errors are corrected, an investigation would not be required. Second, a servicer that receives a notice of error for failure to suspend a scheduled foreclosure sale, pursuant to paragraph 35(b)(9), seven days or less before a scheduled foreclosure, is not required to comply with paragraphs (d) and (e), if, within the time period set forth in paragraph (e)(3)(i)(B), the servicer responds to the borrower, orally or in writing, and corrects the error or states the reason the servicer has determined that no error has occurred.

The Bureau proposes these alternative compliance methods for two reasons. First, feedback from servicers, and especially small servicers, indicates that the majority of errors are addressed promptly after a borrower's communication and generally within five days. SERs communicated to the Small Business Review Panel that small servicers have a high-touch customer service model, which made it very easy for borrowers to report errors or make inquiries, and to receive real-time responses.[78] The Bureau believes the alternative compliance method is appropriate to reduce unnecessary burden of an acknowledgement on servicers, and especially small servicers, that are able to correct borrower errors within five days consistent with the Small Business Review Panel recommendation that the Bureau consider requirements that provide flexibility to small servicers.

Second, the Bureau believes that reduced requirements are appropriate when servicers receive a notice of error that may impact a scheduled foreclosure scale less than five days before a scheduled foreclosure sale. Only notices of errors identified in proposed paragraph 35(b)(9) implicate this concern. Numerous entities, including other federal agencies and SERs during the Small Business Review Panel outreach, expressed concern about borrower use of error resolution requirements as a procedural tool to impede proper foreclosures and promote litigation.[79] The Bureau believes that reducing the procedural requirements for servicers to follow when a notice asserting an error identified in paragraph (b)(9) is submitted less than 5 days before a scheduled foreclosure sale mitigates this concern while maintaining protection for consumers. The Bureau believes that this alternative compliance method is also consistent with the Small Business Review Panel recommendation that the Bureau provide flexibility to small servicers and responds to SERs' concern that error resolution procedures may be used in unwarranted litigation.[80] Further, the Bureau understands the timing to be consistent with account reviews required by the GSEs to document that all required actions have occurred permitting the servicer to proceed with a scheduled foreclosure sale.[81]

The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and

[78] *See* Small Business Review Panel Report at 30.
[79] *See* Small Business Review Panel Report at 30.
[80] *See* Small Business Review Panel Report at 29-30.
[81] *See, e.g.*, Fannie Mae Announcement SVC-2011-08R (September 7, 2011).

6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

The Bureau requests comment regarding whether the Bureau should consider other alternative compliance methods or should adjust the requirements of the proposed alternative compliance methods.

35(g) Requirements not Applicable

Proposed § 1024.35(g) would state that the error resolution requirements of proposed § 1024.35 would not apply to certain types of notices of error if the servicer complies with proposed § 1024.35(g)(2). The types of notice of error to which the requirements would not apply would be set forth in § 1024.35(g)(1). The Bureau solicits comments regarding whether additional types of notices of error should be identified in proposed § 1024.35(g)(1).

35(g)(1) In General

Proposed paragraph 35(g)(1) would state that a servicer is not required to comply with the requirements of § 1024.35(d) and (e) if the servicer reasonably makes certain determinations specified in paragraphs (g)(1)(i), (ii), or (iii). A servicer may be liable to the borrower for its unreasonable determination and resulting failure to comply with proposed § 1024.35(d) and (e).

Paragraph 35(g)(1)(i)

Proposed paragraph 35(g)(1)(i) would state that a servicer is not required to comply with the notice of error requirements in proposed § 1024.35(d) and (e) with respect to a notice of error where the asserted error is substantially the same as an error previously asserted by or on behalf of the borrower for which the servicer has previously complied with its obligation to respond to the notice of error pursuant to § 1024.35(e)(1), unless the borrower provides new and material information. New and material information means information that was not reviewed by the servicer in connection with investigating the prior notice of error and is reasonably likely to change a servicer's determination with respect to the existence of an error. The Bureau believes that both elements of this requirement are important. First, the information must not have been reviewed by the servicer. If the information was reviewed by the servicer, then such information is not new and requiring a servicer to re-open an investigation will create unwarranted burden and delay. Second, even if the information is new, it must be material to the asserted error. A servicer may not have reviewed information because the information may not have been material to the error asserted by the borrower.

The purpose of this proposed paragraph is to ensure that a servicer is not required to expend resources conducting duplicative investigations of notices of error unless there is a reasonable basis for re-opening a prior investigation because of new and material information.

Proposed comment 35(g)(1)(i)-1 clarifies that a dispute regarding a servicer's interpretation of information previously reviewed, including the materiality of that information, does not itself constitute new and material information and, consequently, does not require a servicer to re-open a prior, resolved investigation of a notice of error.

Paragraph 35(g)(1)(ii)

Proposed paragraph 35(g)(1)(ii) provides that a servicer is not required to comply with the notice of error requirements in proposed § 1024.35(d) and (e) with respect to a notice of error that is overbroad or unduly burdensome. The rule defines "overbroad" and "unduly burdensome" for this purpose. A notice of error is overbroad if a servicer cannot reasonably determine from the notice of error the specific covered error that a borrower asserts has occurred on a borrower's account. A notice of error is unduly burdensome if a diligent servicer could not respond to the notice of error without either exceeding the maximum timeframe permitted by paragraph (e)(3)(ii) or incurring costs (or dedicating resources) that would be unreasonably in light of the circumstances.

Consumers, consumer advocates, servicers, and servicing industry representatives have indicated to the Bureau that the current qualified written request process is not typically utilized by consumers to resolve errors. Rather, the process is more frequently used strategically to obtain documents and a servicer's responses to claims as a preliminary form of civil litigation discovery. During the Small Business Review Panel outreach, SERs expressed that typically qualified written requests received from borrowers were vague forms found online or forms used by advocates as a form of pre-litigation discovery.[82] Servicers and servicing industry representatives indicated that these types of qualified written requests are unreasonable and unduly burdensome. SERs in the Small Business Review Panel outreach requested that the Bureau consider an exemption for abusive requests, or requests made with the intent to harass the servicer.[83]

The Bureau is likewise concerned that, in light of the expanded requirements for servicers to respond to notices of error, including adding new categories of covered errors that do not specifically relate to "servicing" as defined in RESPA as well as errors asserted orally, a requirement for servicers to respond to notices of error that are overbroad or unduly burdensome may harm consumer and frustrate servicers' ability to comply with the new error resolution requirements. The effect of the proposed rule is to expand a servicer's obligation to undertake the obligations similar to those currently applicable to qualified written requests to a broader universe of potential notices of error, including notices of error made orally to a servicer. Requiring servicers to respond to overbroad or unduly burdensome notices of error from some borrowers may cause servicers to expend fewer resources to address other errors that may be more clearly stated and more clearly require servicer attention. Further, the Bureau does not believe that the error resolution procedures are the appropriate forum for borrowers to prosecute wide-ranging complaints against mortgage servicers that are more appropriate for resolution through litigation.

Proposed paragraph 35(g)(1)(ii) provides that if a servicer determines that a notice of error is overbroad or unduly burdensome, the servicer is required to notify the borrower, pursuant to proposed § 1024.35(g)(2), that it is not required to comply with the requirements of proposed § 1024.35(d) and (e). Further, the notice must state that the notice of error was overbroad or unduly burdensome, but does not need to state the specific basis for such a determination. Proposed comment 35(g)(1)(ii)-1 sets forth characteristics that may indicate if a notice of error is overbroad or unduly burdensome. If a servicer can identify a proper assertion

[82] *See* Small Business Review Panel Report at 23.
[83] *See id.*

of a covered error in a notice of error that is otherwise overbroad or unduly burdensome, a servicer would be required to respond to the covered error submissions it can identify.

The Bureau requests comment regarding whether a servicer should not be required to undertake the error resolution procedures in proposed § 1024.35(d) and (e) for notices of error that are overbroad or unduly burdensome. The Bureau further requests comment on the appropriate definition of overbroad or unduly burdensome notices of error and on the appropriate indicia for identifying notices of error that should be subject to the exclusion.

Paragraph 35(g)(1)(iii)

Proposed paragraph 35(g)(1)(iii) provides that a servicer is not required to comply with the notice of error requirements in proposed § 1024.35(d) and (e) for an untimely notice of error – that is, a notice of error received by a servicer more than one year after either servicing for the mortgage loan that is the subject of the notice of error was transferred by that servicer to a transferee servicer or the mortgage loan amount was paid in full, whichever date is applicable. The purpose of this proposed paragraph is to set a specific and clear time that a servicer may be responsible for correcting errors for a mortgage loan.

The purpose of the proposed paragraph is to achieve the same goal that currently exists in Regulation X with respect to qualified written requests. Specifically, current § 1024.21(e)(2)(ii) states that "a written request does not constitute a qualified written request if it is delivered to a servicer more than one year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable."

35(g)(3) Notice to Borrower

Proposed § 1024.35(g)(3) states that if a servicer determines it is not required to comply with the notice of error requirements in proposed § 1024.35(d) and (e) with respect to a notice of error, the servicer must provide a notice to the borrower informing the borrower of the servicer's determination. The notice must be sent not later than five days (excluding legal public holidays, Saturdays, and Sundays) after the servicer's determination and must set forth the basis upon which the servicer has made the determination and the applicable provision of proposed § 1024.35(g)(1).

The Bureau believes that borrowers should be notified that a servicer does not intend to take any action on the asserted error. The Bureau also believes borrowers should know the basis for the servicer's determination. By providing borrowers with notice of the basis for the servicer's determination, a borrower will know the servicer's basis and will have the opportunity to bring a legal action to challenge that determination where appropriate. The Bureau requests comment regarding the requirement that servicers provide a notice to the borrower and the appropriate content for the notice.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements in proposed § 1024.35(g). Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA 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 consumer protection purposes of RESPA.

35(h) Payment Requirements Prohibited

Proposed § 1024.35(h) would prohibit a servicer from charging a fee, or requiring a borrower to make any payment that may be owed on a borrower's account, as a condition of investigating and responding to a notice of error. The Bureau is implementing this provision for three reasons. First, section 1463(a) of the Dodd-Frank Act added section 6(k)(1)(B) to RESPA, which prohibits a servicer from charging fees for responding to valid qualified written requests. Proposed § 1024.35(h) would implement that provision with respect to qualified written requests. Second, the Bureau believes that a servicer's practice of charging for responding to a notice of error impedes borrowers from pursuing valid notices of error. Third, the Bureau understands that, in some instances, servicer personnel have demanded that borrowers make payments before the servicer will correct errors or provide information requested by a borrower. The Bureau believes that a servicer should be required to correct errors notwithstanding the payment status of a borrower's account.

The Bureau relies on its authority in section 6(k)(1)(B), (C), and (E) of RESPA to implement the notice of error requirements. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA 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 consumer protection purposes of RESPA.

35(i) Effect on Servicer Remedies

Adverse Information. Proposed § 1024.35(i)(1) states that a servicer may not furnish adverse information regarding any payment that is the subject of a notice of error to any consumer reporting agency for 60 days after receipt of a notice of error. RESPA section 6(e) sets forth this prohibition on servicers with respect to a qualified written request that asserts an error. Proposed § 1024.35(i)(1) would implement Section 6(e) of RESPA with respect to qualified written requests.

The Bureau proposes to maintain the 60-day timeframe set forth in section 6(e)(3) of RESPA. Even though a notice of error may be resolved by no later than 45 days pursuant to proposed § 1024.35(e)(3)(ii), the Bureau believes that the 60-day timeframe is appropriate in the event that there are follow-up inquiries or additional information provided to the borrower.

The Bureau relies on its authority in section 6(e)(3), 6(k)(1)(C), and 6(k)(1)(E) of RESPA to implement the adverse information requirements for qualified written requests and notices of error. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA 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 consumer protection purposes of RESPA.

Ability to pursue foreclosure. Proposed § 1024.35(i)(2) states that a servicer's obligation to comply with the requirements of proposed § 1024.35 would not prohibit a lender or servicer from pursuing any remedies, including proceeding with a foreclosure sale, permitted by the applicable mortgage loan instrument, with one exception. The purpose of this provision is to clarify that, in general, a notice of error could not be used to require a servicer to suspend a scheduled foreclosure sale. The purpose of requiring prompt correction of errors is not furthered

by allowing a notice of error to impede a lender's or servicer's ability to pursue remedies permitted by the applicable mortgage loan instrument.

The Bureau is proposing one exception because it believes it is inappropriate for a servicer to proceed with a scheduled foreclosure sale in the circumstances described in proposed § 1024.41(g). Failure to suspend a potential foreclosure sale during such periods has caused borrower harm, as discussed below.

Defining as an error a servicer's failure to suspend a scheduled foreclosure sale in the circumstances described in proposed § 1024.41(g) is consistent with section 17 of RESPA. The Bureau observes that the requirements of proposed § 1024.41 would not impede a lender's or servicer's ability to pursue a foreclosure action, or maintain a scheduled foreclosure sale. Rather, the requirements in proposed § 1024.41 establish procedures that servicers must follow for reviewing loss mitigation applications. Servicers are capable of complying with the requirements prior to a scheduled foreclosure sale. Nothing in this proposed requirement affects the validity or enforceability of the mortgage loan or lien. Further, a servicer has the opportunity to retain its remedies when a borrower submits a completed application for a loss mitigation option. A servicer may establish a deadline by which a borrower must submit a completed application for a loss mitigation option, and, so long as the servicer fulfills its duty to evaluate the borrower for a loss mitigation option before the date of a scheduled foreclosure sale, a servicer may comply with the requirements of § 1024.35 without suspending the scheduled foreclosure sale.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C), and 6(k)(1)(E) of RESPA to implement the error resolution requirements. To the extent the error resolution requirements relate to qualified written requests, the Bureau also relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA 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 consumer protection purposes of RESPA.

Section 1024.36 Requests for Information

Proposed § 1024.36 contains requirements servicers would be required to follow for information requests received from borrowers. Proposed § 1024.36 implements the servicer prohibitions set forth in section 6(k)(1)(B) and 6(k)(1)(D) of RESPA, as well as other obligations the Bureau believes to be appropriate to carry out the consumer protection purposes of RESPA pursuant to section 6(k)(1)(E) of RESPA.

36(a) Information Requests

Proposed § 1024.36(a) would require a servicer to comply with the requirements of proposed § 1024.36 for an information request from a borrower that includes the borrowers name, enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting for the borrower's mortgage loan account.

The Bureau proposes to allow a borrower to make an information request either orally or in writing. Based on the Bureau's discussions with consumers, consumer advocates, servicers, and industry trade associations, it appears that the vast majority of borrowers orally request information from servicers. As is the case for notices of error, a requirement that an information

request must be in writing generally serves as a barrier that unduly restricts the ability of borrower to have errors resolved. Further, as with notices of error, servicers and servicer representatives stated that allowing an information request to be provided orally would create new burdens for servicers. The Bureau recognizes the burdens on servicers to ensure compliance with this proposed rule and incorporates the discussion above with respect to oral notices of error. Responding to oral information requests will impose costs on servicers to ensure that such requests receive responses, but the Bureau believes it is important for consumers to receive the benefit of a requirement that servicers provide information requested by the borrowers.

The Bureau further believes that elements of the proposed rule would assist in mitigating servicer burden. These elements include, for example, a proposal to allow servicers to designate a specific telephone number for receiving oral information requests and an alternative compliance provision that allows a servicer to provide information orally if the information is provided within five days of the borrower's request. The Bureau has learned from discussions with servicers, including the SERs in the Small Business Review Panel outreach, that most information requests are responded to by servicers either on the same telephone call with the borrower or within an hour of a borrower's communication.[84] The Bureau believes that allowing servicers to respond to information requests orally significantly reduces burden associated with the proposed information request requirements on servicers. Further, the Bureau believes that this requirement provides flexibility for small servicers consistent with the recommendations of the Small Business Review Panel and mitigates concerns by the SERs regarding compliance costs.[85]

The Bureau requests comment regarding whether servicers should be required to apply the information request requirements to requests received orally from borrowers. The Bureau further requests comment regarding whether small servicers (as that term is defined in the 2012 TILA Servicing Proposal) should be exempt from the information request requirements for information requests received orally.

Qualified written requests. Similar to the proposed requirements for notices of error, proposed § 1024.36(a) would require a servicer to treat information requests, whether oral or written, the same way it treats a qualified written request that requests information. The Bureau's intention is to propose servicer obligations applicable to an information request that are exactly the same as obligations applicable to a qualified written request. Thus, under proposed § 1024.36(a), there is no reason for a borrower to send a qualified written request nor is there a reason for a servicer to reject a qualified written request because it does not meet the requirements for a qualified written request in section 6(e) of RESPA when the request would otherwise constitute an information request pursuant to proposed § 1024.36.

Borrower's representative. Proposed comment 36(a)-1 would clarify that an information request submitted by a person acting as an agent of the borrower is treated the same as a request by the borrower. This requirement is substantially similar as the current requirement existing under section 6(e)(1)(A) of RESPA for a qualified written request. Specifically, section 6(e)(1)(A) of RESPA states that a qualified written request may be provided by a "borrower (or an agent of the borrower)." *See* RESPA section 6(e)(1)(A).

---

[84] *See, e.g.*, Small Business Review Panel Report at 30.
[85] *See* Small Business Review Panel Report at 23-24, 29.

Information subject to information request procedures. In general, any information requested by a borrower is subject to the information request requirements in proposed § 1024.36 unless such information is subject to proposed § 1024.36(f). Proposed comment 36(a)-2 would clarify that if a borrower requests information regarding the owner or assignee of a mortgage loan, a servicer identifies the owner or assignee of the mortgage loan by identifying the entity that holds the legal right to receive payments from a mortgage loan. Proposed comments 36(a)-2.i and 36(a)-2.ii provide examples of which party is the owner or assignee of a mortgage loan for different forms of mortgage loan ownership. These include situations when a mortgage loan is held in portfolio by an affiliate of a servicer, when a mortgage loan is owned by a trust in connection with a private label securitization transaction, and when a mortgage loan is held in connection with a GSE or Ginnie Mae guaranteed securitization transaction. The Bureau believes that it would not provide additional consumer protection to impose an obligation on a servicer to identify entities that may have an interest in a borrower's mortgage loan other than the owner or assignee of the mortgage loan.

Servicers generally have not expressed concerns to the Bureau regarding the obligation to provide borrowers with the type of information subject to the information request requirements. Specifically, in the Small Business Review Panel outreach, SERs indicated that they felt fairly comfortable with the types of information that would be subject to the requirements, indicating that this information was generally in the borrower's mortgage loan file.[86]

The SERs did express concern regarding the obligation to provide information regarding the owner or assignee of a mortgage loan. The SERs stated that servicers may not have contact information for owners or assignees of mortgage loans, that such owners or assignees are not prepared to handle calls from borrowers, and that a typical servicer duty is to handle customer complaints so that owners or assignees of mortgage loans do not have to handle that responsibility.[87] Certain owners, assignees, and guarantors of mortgage loans, including other federal agencies, have expressed similar concerns to the Bureau.

The Bureau understands the concerns asserted by servicers, owners, assignees, guarantors, and other federal agencies that requiring servicers to provide this information to borrowers may confuse borrowers and lead to attempts to communicate with owners or assignees that are unprepared or unwilling to engage in such communications. The requirement that servicers identify to the borrower the owner or assignee of a mortgage loan was added as section 6(k)(1)(D) of RESPA by the Dodd-Frank Act and is not a discretionary exercise of the Bureau's authority. The Dodd-Frank Act clearly requires that information regarding the owner or assignee of a mortgage loan must be provided to borrowers. The Bureau proposes comment 36(a)-2 to implement this requirement.

Legal authority. The Bureau relies on its authority in sections 6(k)(1)(E) of RESPA to implement the information request requirements. To the extent the information request requirements relate to qualified written requests, the Bureau also relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(k)(1)(D) of RESPA to implement information request requirements for requests for the identity of the owner or assignee of a mortgage loan. The Bureau further relies on section 6(j)(3) of

[86] *See* Small Business Review Panel Report at 24.
[87] *Id.*

RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA 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 consumer protection purposes of RESPA.

36(b) Contact Information for Borrowers to Request Information

Proposed § 1024.36(b) permits a servicer to establish a telephone number and address that a borrower must use to request information. If a servicer chooses to establish a separate telephone number and address for receiving information requests, a servicer must provide the borrower a written notice that states that the borrower should only assert an error at the telephone number and address established by the servicer for that purpose. Proposed comment 36(b)-2 would clarify that the written notice to the borrower may be set forth in another written notice provided to the borrower, such as a notice of transfer, periodic statement, or coupon book.

As discussed above for proposed § 1024.35(c), the purpose of establishing a telephone number and address that a borrower must use to request information is to allow servicers to direct oral and written errors to appropriate personnel that have been trained to ensure that the servicer responds appropriately. Proposed comment 36(b)-1 clarifies that if a servicer has not designated a telephone number and address that a borrower must use to request information then a servicer will be required to comply with the information request requirements for any information request received by any office of the servicer.

The Bureau believes it is reasonable, especially in light of the expanded burden of requiring compliance with error resolution and information requests, to allow servicers to manage the intake of information requests to designated telephone numbers and addresses. Further, allowing a servicer to designate a specific telephone number and address is consistent with current requirements of Regulation X with respect to qualified written requests. Current § 1024.21(e)(1) permits a servicer to designate a "separate and exclusive office and address for the receipt and handling of qualified written requests." Moreover, the Bureau believes that identifying a specific telephone number and address for receiving errors and information requests will benefit consumers as well. By providing a specific telephone number and address, servicers will identify to consumers the office capable of responding to information requests. The Bureau is proposing in the concurrent 2012 TILA Servicing Proposal to require that any telephone number or address identified by a servicer must appear on the periodic statement or other payment form supplied by the servicer. *See* 2012 TILA Servicing Proposal at proposed § 1026.41(d)(6).

Internet intake of information requests. Proposed comment 36(b)-4 would clarify that a servicer is not required to establish a process for receiving information requests through email, website, or other online methods. In the event a servicer establishes a process for receiving information requests through online methods, comment 36(b)-4 is intended to clarify that the process established is the only online intake process that a borrower can use to make an information request. Thus, a servicer would not be required to provide a written notice to a borrower in order to gain the benefit of the online process being considered the exclusive online process for receiving information requests.

Multiple offices. Proposed § 1024.36(b), similar to proposed § 1024.35(c) for notices of error, would require a servicer to use the same telephone number and address it designates for receiving notices of error for receiving information requests pursuant to proposed § 1024.36(b),

and vice versa. Further, proposed comment 36(b)-3 clarifies that any telephone numbers or address designated by a servicer for any borrower may be used by any other borrower to submit an information request. This clarifies that a servicer may not determine that an information request is invalid if it was received at any telephone number or address designated by the servicer for receipt of information requests just because it was not received by the specific phone number or address identified to a specific borrower. Proposed comment 36(b)-5 clarifies that a servicer may use automated systems, such as an interactive voice response system, to manage the intake of borrower calls. Prompts for requesting information must be clear and provide the borrower the option to connect to a live representative.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(E) of RESPA to implement the proposed information request requirements. To the extent the information request requirements relate to qualified written requests, the Bureau also relies on its authority in section 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(k)(1)(D) of RESPA to implement information request requirements for requests for the identity of the owner or assignee of a mortgage loan. The Bureau further relies on section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA 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 consumer protection purposes of RESPA.

36(c) Acknowledgment of Receipt

Proposed § 1024.36(c) would require a servicer to provide a borrower a written acknowledgement of an information request within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request. Proposed § 1024.36(c) would implement section 1463(c) of the Dodd-Frank Act which amended the current acknowledgement deadline of 20 days for qualified written requests to five days. Proposed § 1024.36(c) would further apply the same timeline applicable to a qualified written request to any information request.

The Bureau relies on its authority in section 6(k)(1)(E) of RESPA to implement the information request requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in section 6(e), including the amendment to section 6(e) of RESPA set forth in section 1463(c) of the Dodd-Frank Act, as well as section 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

36(d) Response to Information Request

Proposed § 1024.36(d) would set forth requirements on servicers for responding to information requests.

36(d)(1) Investigation and Response Requirements

Proposed paragraph 36(d)(1) would require a servicer to respond to an information request within 30 days by either (i) providing the borrower with the requested information and contact information for further assistance, or (ii) conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer

has determined that the requested information is not available or cannot reasonably be obtained by the servicer, as appropriate, the basis for the servicer's determination, and contact information for further assistance. A servicer would only be required to provide a written notice to the borrower in response to the information request if the information requested by the borrower is not available or cannot reasonably be obtained by the servicer. A servicer would be able to respond either orally or in writing to the borrower (or electronically with the borrower's consent) if the servicer is providing the information requested by the borrower. The Bureau believes that the goal of providing information to borrowers is furthered by allowing servicers to respond orally. Additionally, allowing oral communication reduces burden on servicers.

A servicer could demonstrate its compliance with this requirement by, for example, retaining a copy of any written correspondence to the borrower that includes the information, retaining tapes of telephone conversations during which the borrower is provided the requested information, or by making a notation in a collector's notes that the information requested was provided to the borrower. The Bureau believes that the flexibility for a servicer to develop systems that are appropriate for that servicer addresses the Small Business Review Panel recommendation that the Bureau consider adopting a more flexible process for small servicers to demonstrate compliance with the information request requirements.[88]

Information not available. Proposed comment 36(d)(1)(ii)-1 clarifies that information should not be considered as available to a servicer if the information is not in the servicer's possession or control and the servicer cannot retrieve the information in the ordinary course of business through reasonable efforts.

The purpose of the information request requirements is to provide an efficient means for borrowers to obtain information regarding their mortgage loan accounts and the Bureau believes that imposing obligations on servicers to provide information in response to an information request is an efficient means of achieving the goal of providing a borrower with access to requested information. The Bureau believes that burden for information requests will greatly increase, however, if a servicer is required to undertake an investigation for documents that are not in a servicer's possession or control. The same inefficiency exists even if information is in a servicer's possession or control but, for appropriate business reasons, is stored in a medium that is not accessible by a servicer in the ordinary course of business. The Bureau believes that the marginal benefit of additional information available to borrowers is outweighed by the significant burdens that such investigations may incur.

Accordingly, the Bureau believes that servicers should not be required to provide documents in response to an information request that are not in the possession or control of the servicer and cannot be retrieved through reasonable efforts in the ordinary course of business. Proposed comment 36(d)(1)(ii)-1 provides examples of when documents should and should not be considered to be available to a servicer in response to an information request.

The Bureau has authority pursuant to section 6(k)(1)(E) of RESPA to set forth servicer obligations to provide information in response to information requests. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA. The Bureau further relies on its authority in section 19(a) of RESPA to

[88] Small Business Review Panel Report at 30.

make such rules and regulations necessary to achieve the consumer protection purposes of RESPA.

36(d)(2) Time Limits

Paragraph 36(d)(2)(i)

Proposed paragraph 36(d)(2)(i) would require a servicer to respond to an information request not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request, with one exception discussed below.

Legal authority. Section 1463(b) of the Dodd-Frank Act amended section 6(e)(2) of RESPA to require a servicer to investigate and respond to a qualified written request within 30 days. Proposed paragraph 36(e)(e)(i) would implement this provision of RESPA with respect to qualified written requests.

Shortened time limit to provide information regarding the identity of the owner or assignee. Under proposed paragraph 36(d)(2)(i)(A), if a borrower submits a request for information regarding the identity of, and address or relevant contact information for, the owner or assignee of a mortgage loan, a servicer shall respond to the information request with ten days (excluding legal public holidays, Saturdays, and Sundays).

Section 1463(a) of the Dodd-Frank Act added section 6(k)(1)(D) to RESPA, which sets forth a ten business day limitation on a servicer to respond to an information request with respect to the owner or assignee of a mortgage loan. Proposed paragraph 36(d)(2)(i)(A) implements this provision of RESPA. Proposed § 1024.36(d)(2)(i)(A) would require a servicer to provide the requested information within ten days (excluding legal public holidays, Saturdays, and Sundays) instead of "10 business days." The Bureau interprets the "10 business day" requirement in section 6(k)(1)(D) of RESPA to mean ten calendar days with an exclusion for intervening legal public holidays, Saturdays, and Sundays, and proposes to implement that interpretation in proposed § 1024.36(d)(2)(i)(A). Section 19(a) of RESPA provides the Bureau with authority to make interpretations that are necessary to achieve the consumer protection purposes of RESPA.

Extensions of time limits. Proposed § 1024.36(d)(2)(ii) permits a servicer to extend the time period for responding to an information request by 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period set forth in proposed § 1024.36(d)(2)(i)(B), the servicer notifies the borrower of the extension and the reasons for the delay in responding. Section 1463(c)(3) of the Dodd-Frank Act amended section 6(e) of RESPA to provide a 15-day extension of time and proposed § 1024.36(d)(2)(ii) would implement this provision with respect to qualified written requests. The Bureau has authority pursuant to section 6(k)(1)(E) and 6(j)(3) of RESPA to apply the extension of time provision to information requests as well. The Bureau further has authority under section 19(a) of RESPA to make such rules and regulations, and to make such interpretations necessary to achieve the consumer protection purposes of RESPA.

The Bureau proposes not to apply the extension allowance of proposed § 1024.36(d)(2)(ii) to information requests with respect to the owner or assignee of a mortgage loan. The Bureau does not believe that the burden of obtaining this information for any borrower will be significant enough to justify an extension beyond the ten days (excluding legal public holidays, Saturdays, and Sundays) established by Congress. Servicers generally have access to identification of investors as that information is necessary to determine where to direct mortgage

loan payments and reports with respect to the performance of serviced assets. The benefit to the borrower of obtaining the information, which Congress has required, outweighs the costs to servicers of complying within ten days (excluding legal public holidays, Saturdays, and Sundays).

36(e) Alternative Compliance

Proposed § 1024.36(e) would provide that a servicer is not required to comply with the requirements of paragraphs (c) and (d) of proposed § 1024.36 if the information requested by a borrower is provided to the borrower within five days along with contact information the borrower can use for further assistance. A servicer may provide the information requested either orally or in writing (including electronically, with the borrower's consent). A servicer's records should indicate that a servicer has provided the information requested to the borrower. A servicer may demonstrate its compliance with this requirement by, for example, retaining a copy of any written correspondence to the borrower that includes the information, retaining tapes of telephone conversations during which the borrower is provided the requested information, or by making a notation in a collector's notes that the information requested was provided to the borrower. As discussed above, the Bureau believes that the flexibility for a servicer to develop systems that are appropriate for that servicer addresses the Small Business Review Panel recommendation that the Bureau consider adopting a more flexible process for small servicers to demonstrate compliance with the information request requirements.[89]

36(f) Requirements not Applicable

Proposed § 1024.36(f) would state that the information request requirements of proposed § 1024.36 would not apply to certain types of information requests if the servicer complies with proposed § 1024.36(f)(2). The types of information requests to which the requirements would not apply would be set forth in § 1024.36(f)(1). The Bureau solicits comments regarding whether any forms of information requests should be removed from proposed § 1024.36(f)(1) or whether additional potential forms of information requests should be identified in proposed § 1024.36(f)(1).

36(f)(1) In general

Paragraph 36(f)(1)

Proposed paragraph 36(f)(1) would state that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) if the servicer reasonably makes certain determinations specified in paragraphs (f)(1)(i), (ii), (iii), (iv), or (v). A servicer may be liable to the borrower for its unreasonable determination and resulting failure to comply with proposed § 1024.36(c) and (d).

Paragraph 36(f)(1)(i)

Proposed paragraph 36(f)(1)(i) would state that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to an information request that requests information that is substantially the same as information previously requested by or on behalf of the borrower, and for which the servicer has previously complied with its obligation to respond to the information request. The purpose of this proposed

[89] Small Business Review Panel Report at 30.

paragraph is to ensure that a servicer is not required to expend resources conducting duplicative searches for documents.

Paragraph 36(f)(1)(ii)

Proposed paragraph 36(f)(1)(ii) provides that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to an information request that requests confidential, proprietary, or general corporate information of a servicer.

The Bureau believes that the purposes of the provision, which is to provide borrowers with a means to request information regarding a borrower's mortgage loan account, are not furthered by permitting borrowers to request confidential, proprietary, or general corporation information of a servicer. Proposed comment 36(f)(1)(ii)-1 provides examples of confidential, proprietary, or general corporate information. These include information requests regarding: management and profitability of a servicer; other mortgage loans than the borrower's; investor reports; compensation, bonuses, and personnel actions for servicer personnel; the servicer's training programs; investor agreements; the evaluation or exercise of any owner or assignee remedy; the servicer's servicing program guide; investor instructions or requirements regarding loss mitigation options, examination reports, compliance audits or other investigative materials.

The Bureau believes the protection in proposed paragraph 36(f)(1)(ii) is appropriate to fulfill the purpose of the proposed rule, which is to provide a means for borrowers to obtain information from servicers regarding their own mortgage loan accounts. Permitting information requests for confidential, proprietary, or general corporate information does not further the purposes of the proposed rule.

Paragraph 36(f)(1)(iii)

Proposed paragraph 36(f)(1)(iii) would provide that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to a request for information that is not directly related to the borrower's mortgage loan account. The Bureau believes the protection in proposed paragraph 36(f)(1)(iii) is appropriate to fulfill the purpose of the proposed rule, which is to provide a means for borrowers to obtain information from servicers regarding their own mortgage loan accounts.

Paragraph 36(f)(1)(iv)

Proposed paragraph 36(f)(1)(iv) provides that a servicer is not required to comply with the request for information requirements in proposed § 1024.36(c) and (d) with respect to a request for information that is overbroad or unduly burdensome. The rule defines "overbroad" and "unduly burdensome" for this purpose. An information request is overbroad if a borrower requests a servicer provide an unreasonable volume of documents or information to a borrower. A notice of error is unduly burdensome if a diligent servicer could not respond to the information request without either exceeding the maximum timeframe permitted by paragraph (e)(3)(ii) or incurring costs (or dedicating resources) that would be unreasonably in light of the circumstances.

As discussed above for proposed paragraph 35(g)(1)(ii), consumers, consumer advocates, servicers, and servicing industry representatives have indicated to the Bureau that the current qualified written request process is not typically utilized by consumers to request information. During the Small Business Review Panel outreach, SERs expressed that typically qualified

written requests received from borrowers were vague forms found online or forms used by advocates as a form of pre-litigation discovery.[90] Servicers and servicing industry representatives indicated that these types of qualified written requests are unreasonable and unduly burdensome. SERs in the Small Business Review Panel outreach requested that the Bureau consider an exemption for abusive requests, or requests made with the intent to harass the servicer.[91]

The Bureau is concerned that, in light of the expanded requirements for servicers to respond to information requests, a requirement for servicers to respond to information requests that are overbroad or unduly burdensome may harm consumers and frustrate servicers' ability to comply with the new information request requirements. The effect of the proposed rule is to expand a servicer's obligation to undertake the obligations similar to those currently applicable to qualified written requests to a broader universe of information requests, including requests made orally to a servicer and requests for information that do not specifically relate to "servicing" as defined in RESPA. Requiring servicers to respond to overbroad or unduly burdensome information requests from some borrowers may impose unjustified and unmanageable burdens on servicers. Further, the Bureau does not believe that the request for information requirements should replace or supplant civil litigation document requests and should not be used as a forum for pre-litigation discovery.

Proposed paragraph 36(f)(1)(iv) provides that if a servicer determines that an information request is overbroad or unduly burdensome, the servicer is required to notify the borrower, pursuant to proposed § 1024.36(f)(2), that the servicer is not required to comply with the requirements of proposed § 1024.36(c) and (d). Further, the servicer must identify the specific basis for the servicer's determination so that the borrower is informed that the basis of the servicer's determination was that the information request was overbroad or unduly burdensome. Proposed comment 36(f)(1)(iv)-1 sets forth characteristics that may indicate if an information request is overbroad or unduly burdensome. A servicer bears the risk that its determination that an information request is overbroad or unduly burdensome is found to be unjustified. If a servicer can identify a proper information request from an information request that is otherwise overbroad or unduly burdensome, a servicer would be required to respond to those information requests it could identify.

The Bureau requests comment regarding whether a servicer should not be required to undertake the information request requirements in proposed § 1024.36(c) and (d) for information requests that are overbroad or unduly burdensome.

Paragraph 36(f)(1)(v)

Proposed paragraph 36(f)(1)(v) would provide that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to an information request that is delivered to a servicer more than one year after either servicing for the mortgage loan that is the subject of the information request was transferred from the servicer to a transferee servicer or the mortgage loan amount was paid in full, whichever date is applicable.

The purpose of this proposed paragraph is to set a bound on the time that a servicer may

[90] *See* Small Business Review Panel Report at 23.
[91] *See id.*

be responsible for responding to information requests with respect to a mortgage loan. The effect of the proposed paragraph is to achieve the same limitation that currently exists in Regulation X with respect to qualified written requests. Specifically, current § 1024.21(e)(2)(ii) states that "a written request does not constitute a qualified written request if it is delivered to a servicer more than one year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable." The Bureau requests comment regarding the requirement that servicers provide a notice to the borrower and the appropriate content for the notice.

36(f)(2) Notice to Borrower

Proposed § 1024.36(f)(2) provides that if a servicer determines it is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to an information request because the information requests meets one of the categories in proposed § 1024.36(f)(1), the servicer must provide a notice to the borrower informing the borrower of the servicer's determination. The notice must be sent not later than five days (excluding legal public holidays, Saturdays, and Sundays) after the servicer's determination and must set forth the basis upon which the servicer has made the determination, with a reference to the applicable provision of proposed § 1024.36(f)(1).

The Bureau's intention for proposing this requirement is to ensure that borrowers are notified that a servicer does not intend to otherwise respond to the information requests and that borrowers are informed of the basis for the servicer's determination that it is not required to comply with the information request requirements in proposed § 1024.36(c) and (d).

By receiving a notice that sets forth for the servicer's determination, a borrower will have the opportunity to assert any claims the borrower may have with respect to the reasonableness of the servicer's determination that the servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d).

Legal authority. The Bureau relies on its authority pursuant to section 6(k)(1)(E) of RESPA to set forth information requests requirements. Further, to the extent the information request requirements apply to qualified written requests, the Bureau further relies on its authority in section 6(e) and 6(k)(1)(B) of RESPA with respect to qualified written requests. The Bureau has authority pursuant to section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA. The Bureau further relies on its authority in section 19(a) of RESPA to make such rules and regulations necessary to achieve the consumer protection purposes of RESPA.

36(g) Payment Requirement Limitations

Proposed § 1024.36(g) would prohibit a servicer from charging a fee, or requiring a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request. The Bureau is implementing this provision for three reasons. First, section 1463(a) of the Dodd-Frank Act added section 6(k)(1)(B) to RESPA, which prohibits a servicer from charging fees for responding to valid qualified written requests. Proposed § 1024.36(g) would implement that provision with respect to qualified written requests that for information relating to the servicing of a mortgage loan. Second, the Bureau does not believe that a servicer practice of charging for responding to an information request facilitates the purpose of the information request requirements, which is to provide a tool for borrowers to

obtain information regarding their mortgage loan accounts. Rather, such a practice would improperly impede borrowers from pursuing valid information requests. Third, the Bureau has learned from outreach with consumer advocates that, in some instances, servicers have demanded that borrowers make payments before the servicer will provide a borrower with information requested by the borrower or will correct errors identified by a borrower. The Bureau believes that a servicer is required to provide a borrower with information about the borrower's mortgage loan account notwithstanding the payment status of a borrower's account.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(B) and 6(k)(1)(E) of RESPA. The Bureau believes the limitations of fees are appropriate to carry out the consumer protection purposes of RESPA, pursuant to section 6(k)(1)(E) of RESPA.

In addition to the authority, the Bureau also has authority pursuant to section 6(j)(3) and 19(a) of RESPA to establish requirements to carry out section 6 of RESPA or to make such rules and regulations as appropriate to achieve the consumer protection purposes of RESPA.

The Bureau requests comment regarding whether the Bureau should carve out from the prohibition on charging fees for responding to an information request any fees charged in connection with providing payoff statements or State law beneficiary notices. The Bureau further requests comment regarding whether other types of information requests should be excluded from a proposed prohibition on charging fees for responding to an information request.

36(h) Servicer remedies

Proposed § 1024.36(h) states that the existence of an outstanding information request does not prohibit a servicer from furnishing adverse information to any consumer reporting agency or from pursuing any remedies, including proceeding with a foreclosure sale, permitted by the applicable mortgage loan instrument. This proposed requirement is consistent with section 6(e)(3) of RESPA and clarifies that prohibitions on furnishing adverse information only apply to qualified written requests that assert an error with respect to a mortgage loan, not to a qualified written request that requests information. The Bureau relies on its authority in section 6(k)(1)(E) to apply this provision to information request requirements. The Bureau further relies on its authority in section 6(j)(3) to establish any requirement to carry out section 6 of RESPA and its authority in section 19(a) to make such interpretations as may be necessary to carry out the consumer protection purposes of RESPA.

~~*Section 1024.37 Force-Placed Insurance*~~

~~*37(a) Definitions*~~

~~*37(a)(1) Force-Placed Insurance*~~

~~Section 1463 of the Dodd-Frank Act amended RESPA section 6 by adding a new section 6(k)(2), which sets forth that for purposes of RESPA section 6(k) (m), "force-placed insurance" means "hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage." The Bureau proposes to implement RESPA section 6(k)(2) by adding new § 1024.37(a)(1) to Regulation X to define "force-placed insurance" to mean hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan on a property securing such loan.~~