

~~applicant, notification need only be given to one applicant but must be given to the primary applicant where one is readily apparent.~~

~~Paragraph 33(a)(2).~~

~~1. Lender servicing. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will service the mortgage loan for which the applicant has applied, the disclosure should state that such entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan.~~

~~2. Lender not servicing. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will not service the mortgage loan for which the applicant has applied, the disclosure should state that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due.~~

~~3. Other circumstances. In all other instances, a disclosure that states that the servicing of the loan may be assigned, sold, or transferred while the loan is outstanding complies with § 1024.33(a).~~

~~33(b) Notices of transfer of loan servicing.~~

~~Paragraph 33(b)(3).~~

~~1. Notice given at settlement. Notices of transfer provided at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, satisfy the timing requirements.~~

~~2. Delivery. A servicer should deliver the notice of transfer to the mailing address listed by the borrower in the mortgage loan documents, unless the borrower has notified the servicer of a new address pursuant to the servicer's requirements for receiving a notice of a change of address. When a mortgage loan has more than one borrower, the notice of transfer need only be given to one borrower, but must be given to the primary borrower where one is readily apparent.~~

~~Section 1024.34 Timely Payments by Servicer~~

~~34(b)(2) Servicer may credit funds to a new escrow account.~~

~~1. A servicer is not required to credit funds in an escrow account to an escrow account for a new mortgage loan and may, in all circumstances, comply with the requirements of § 1024.34 by refunding the funds in the escrow account to the borrower pursuant to § 1024.34(a).~~

~~Section 1024.35 – Error Resolution Procedures~~

~~35(a) Notice of error.~~

~~1. Borrower's representative. A notice of error is deemed to be submitted by a borrower if the notice of error is submitted by an agent of the borrower. 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.~~

~~2. Information request. A servicer should not solely rely on the borrower's description of a request to determine whether the notice constitutes a notice of error, an information request or both. For example, a borrower may submit a letter that claims to be a "Notice of Error" that indicates that the borrower wants to receive the information set forth in an annual escrow account statement and asserts an error for the servicer's failure to provide the borrower an annual~~

escrow statement. Although the servicer's failure to provide the borrower an annual escrow statement is not defined as an error pursuant to § 1024.35(b), such a letter may constitute an information request under § 1024.36(a) that triggers an obligation by the servicer to provide an annual escrow statement. A servicer should not rely on the borrower's characterization of the letter as a "Notice of Error," but should evaluate whether the letter fulfills the substantive requirements of a notice of error or an information request.

*35(b) Scope of error resolution.*

1. *Excluded errors.* A servicer is not required to comply with sections 1024.35(d) and (e) with respect to a borrower's assertion of an error that is not defined as a covered error in section 1024.35(b). For example, the following are not covered errors:

- i. An error relating to the origination of a mortgage loan;
- ii. An error relating to the underwriting of a mortgage loan;
- iii. An error relating to a subsequent sale or securitization of a mortgage loan;
- iv. An error relating to a determination to sell, assign, or transfer the servicing of a mortgage loan.

*35(c) Contact information for borrowers to assert errors.*

1. *Exclusive telephone number and address not required.* A servicer is not required to designate a specific telephone number and address that a borrower must use to assert an error. If a servicer does not designate a specific telephone number and address that a borrower must use to assert an error, a servicer must respond to a notice of error received by any office of the servicer.

2. *Notice of an exclusive telephone number and address.* A notice establishing a telephone number and address that a borrower must use to assert an error may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes a telephone number and address that a borrower must use to assert an error, a servicer should provide that telephone number and address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

3. *Multiple offices.* The purpose of the designation of an exclusive telephone number and address is to distinguish offices that are capable of receiving errors from other offices maintained by a servicer. A servicer may designate multiple office addresses and phone numbers for receiving errors. However, a servicer is required to comply with the requirements of § 1024.35 with respect to a notice of error received at any such address and phone number regardless of whether that specific address or phone number was provided to a specific borrower asserting an error. For example, a servicer may designate a phone number and address to receive errors for borrowers located in California and a separate phone number and address to receive errors for borrowers located in Texas. If a borrower located in California asserts an error through the phone number or address used by the servicer for borrowers located in Texas, a servicer is still considered to have received a notice of error and must comply with the requirements of § 1024.35.

4. *Internet intake of information requests.* A servicer may, but is not required to,

establish a process for receiving error notices through email, website form, or other online intake method. Any such process shall be in addition to, and not in lieu of, any process for receiving error notices by phone or mail. The process established by the servicer for receiving errors through an online intake method shall be considered the exclusive online intake process for receiving errors. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive process for receiving such errors.

5. *Automated systems.* Servicers may use toll-free telephone numbers that connect borrowers to automated systems, such as an interactive voice response system, through which consumers may assert errors by inputting information using a touch-tone telephone or similar device. The prompts for asserting errors must be clear and provide the borrower the option to connect to a live representative.

*35(e) Response to notice of error.*

*35(e)(1) Investigation and response requirements.*

*Paragraph 35(e)(1)(i)*

1. *Notices alleging multiple errors; separate responses permitted.* A servicer may respond to a notice of error that alleges multiple errors through either a single response or separate responses that address each asserted error.

*Paragraph 35(e)(1)(ii).*

1. *Different or additional errors; separate responses permitted.* A servicer may provide the response required for § 1024.35(e)(1)(ii) in the same notice that responds to errors asserted by the borrower pursuant to § 1024.35(e)(1)(i) or in a separate response that addresses the different or additional errors identified by the servicer.

*35(e)(3) Time limits.*

*Paragraph 35(e)(3)(i)(B).*

1. *Foreclosure sale timing.* If a servicer cannot comply with its obligations pursuant to § 1024.35(e) by the earlier of a scheduled foreclosure sale or 30 days, a servicer may cancel or postpone a scheduled foreclosure sale, in which case, the servicer meets the time limits in § 1024.35(i)(B) by complying with the requirements of § 1024.35(e) before the earlier of 30 days or the date of the rescheduled foreclosure sale.

*35(e)(3)(ii) Extension of time limits.*

1. *Notices alleging multiple errors; extension of time.* A servicer may treat a notice of error that alleges multiple errors as separate notices of error and may extend the time period for responding to each asserted errors for which an extension is permissible.

*35(e)(4) Copies of documentation.*

1. *Types of documents to be provided.* A servicer is only required to provide those documents actually relied upon by the servicer to determine that no error occurred. Such documents may include documents reflecting information entered in a servicer's collection system. For example, in response to an asserted error regarding payment allocation, a servicer may provide a printed screen capture showing amounts credited to principal, interest, escrow, or other charges in the servicer's system for the borrower's mortgage loan account.

*35(g) Requirements not applicable.*

*Paragraph 35(g)(1)(i).*

1. *New and material information.* A dispute between a borrower and a servicer with respect to (i) whether information was previously reviewed by a servicer or (ii) whether a servicer properly determined that information reviewed was not material to its determination of the existence of an error, does not itself constitute new and material information.

*Paragraph 35(g)(1)(ii).*

1. *Indicia of overbroad or unduly burdensome notices of error.* The following are indicia of notices of error that are overbroad or unduly burdensome:

i. Assertions of errors regarding substantially all aspects of a mortgage loan, including errors relating to all aspects of mortgage origination, mortgage servicing, and foreclosure, as well as errors relating to the crediting of substantially every borrower payment and escrow account transaction;

ii. Assertions of errors in the form of a judicial action complaint, subpoena, or discovery request that purports to require servicers to respond to each numbered paragraph; and

iii. Assertions of errors in a form that is not reasonably understandable or is included with voluminous tangential discussion or requests for information, such that a servicer cannot reasonably identify from the notice of error any covered error asserted by a borrower.

*35(h) Payment requirements prohibited.*

1. *Borrower obligation to make payments.* Section 1024.35(g) prohibits a servicer from requiring a borrower to make a payment that may be owed on a borrower's account as a prerequisite for complying with its obligations regarding a notice of error submitted by a borrower, but does not alter or otherwise affect a borrower's obligation to make payments owed pursuant to the terms of a mortgage loan. For example, if a borrower makes a monthly payment in February for a mortgage loan, but asserts an error relating to the servicer's acceptance of the February payment, section 1024.35(g) does not alter a borrower's obligation to make a monthly payment that the borrower owes for March. A servicer, however, may not require that a borrower make the March payment as a condition for complying with its obligations under § 1024.35 with respect to the notice of error on the February payment.

*Section 1024.36—Requests for information.*

*36(a) Information request.*

1. *Borrower's representative.* An information request is deemed to be submitted by a borrower if the information request is submitted by an agent of the borrower. 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.

2. *Owner or assignee of a mortgage loan.* A servicer responds to an information request for the owner or assignee of a mortgage loan by identifying the entity that holds the legal obligation to receive payments from the borrower. For example:

i. A servicer services a mortgage loan that is owned by the servicer, or an affiliate of the servicer, in portfolio. A servicer responds to the borrower's information request with the name,

address, and appropriate contact information for the servicer or the affiliate, as applicable.

ii. A servicer services a mortgage loan that has been securitized. In general, in a securitization transaction, a special purpose vehicle, such as a trust, is the owner or assignee of a mortgage loan. If a securitization transaction is structured such that a trust is the owner or assignee of a mortgage loan and the trust is administered by an appointed trustee, a servicer responds by providing the borrower with the name of the trust and the name, address, and appropriate contract information for the trustee. Assume a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee. The servicer responds by identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

Although investors or guarantors, including, among others, Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, may be exposed to risks related to the mortgage loans held by the trust either in connection with an investment in securities issued by the trust or the issuance of a guaranty agreement to the trust, entities that act as investors or guarantors should not be considered the owner or assignee of the mortgage loans solely as a result of their roles as investors or guarantors. In certain circumstances, however, a party such as a guarantor may assume multiple roles for a securitization transaction. For example, the Federal National Mortgage Association may act as trustee, master servicer, and guarantor in connection with a securitization transaction in which a trust owns a mortgage loan subject to a request. In this example, because Federal National Mortgage Association is the trustee of the trust that owns the mortgage loan, a servicer responds to a borrower's request for information regarding the owner or assignee of the mortgage loan by providing the name of the trust, and the name, address, and appropriate contact information for Federal National Mortgage Association as the trustee.

*36(b) Contact information for borrowers to request information.*

1. *Exclusive telephone number and address not required.* A servicer is not required to designate a specific telephone number and address that a borrower must use to request information. If a servicer does not designate a specific telephone number and address that a borrower must use to request information, a servicer must respond to an information request received by any office of the servicer.

2. *Notice of an exclusive telephone number and address.* A notice establishing a telephone number and address that a borrower must use to request information may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes a telephone number and address that a borrower must use to request information, a servicer should provide that telephone number and address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

3. *Multiple offices.* The purpose of the designation of an exclusive telephone number and address is to distinguish offices that are capable of receiving information requests from other offices maintained by a servicer. A servicer may designate multiple office addresses and phone numbers for receiving information requests. However, a servicer is required to comply with the requirements of § 1024.36 with respect to a notice of error received at any such address and phone number regardless of whether that specific address or phone number was provided to a

specific borrower that is requesting information. For example, a servicer may designate a phone number and address to receive information requests for borrowers located in California and a separate phone number and address to receive information requests for borrowers located in Texas. If a borrower located in California requests information through the phone number or address used by the servicer for borrowers located in Texas, a servicer is still considered to have received an information request and must comply with the requirements of § 1024.35.

4. *Internet intake of information requests.* A servicer may, but is not required to, establish a process for receiving information requests through email, website form, or other online method. Any such process shall be in addition to, and not in lieu of, any process for receiving information requests by phone or mail. The process established by the servicer for receiving information requests through an online intake method shall be considered the exclusive online intake process for receiving information requests. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive process for receiving information requests.

5. *Automated systems.* Servicers may use toll-free telephone numbers that connect borrowers to automated systems, such as an interactive voice response system, through which consumers may request information by using a touch-tone telephone or similar device, so long as the prompts for requesting information are clear and the borrower has the option to connect to a live representative.

*36(d) Response to information request notice.*

*36(d)(1) Investigation and response requirements.*

*Paragraph 36(d)(1)(ii).*

1. *Information not available.* Information is not available if:

- i. The information is not in the servicer's control or possession, or
- ii. The information cannot be retrieved in the ordinary course of business through reasonable efforts.

2. Examples:

i. A borrower requests a copy of a telephonic communication from a servicer. Assume the servicer's personnel have access in the ordinary course of business to audio recording files with organized recordings or transcripts of borrower telephone calls and can identify the communication referred to by the borrower through reasonable business efforts. The information requested by the borrower should be considered readily accessible.

ii. A borrower requests information stored on electronic back-up media. Access to information on electronic back-up media is not available to that servicer's personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore the information from the electronic back-up media. The information requested by the borrower should not be considered readily accessible.

iii. A borrower requests information stored at an offsite document storage facility. A servicer has a right to access documents at the offsite document storage facility and servicer personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the borrower should be considered readily accessible.

*36(e) Alternative compliance.*

1. A servicer may provide the information requested either orally or in writing. If a servicer provides the information requested orally, a servicer may demonstrate that it has complied with its requirements by, among others, setting forth a notation in a servicer file that information requested by a borrower was provided, or maintaining a copy of a recorded telephone conversation in which the information requested by the borrower was provided to the borrower.

*36(f) Requirements not applicable.*

*Paragraph 36(f)(1)(i).*

1. A borrower's request for a type of information that can change over time should not be considered as substantially the same as a previous information request for the same type of information.

*Paragraph 36(f)(1)(ii).*

1. *Confidential, proprietary, or general corporate information.* A request for confidential, proprietary or general corporate information of a servicer is not an information request for which the servicer is required to comply with the requirements of § 1024.36(c) and (d). Confidential, proprietary or general corporate information includes information requests relating to, for example:

- i. Information regarding management or profitability of a servicer, including information provided to investors of the servicer.
- ii. Information that relates to the servicing of mortgage loans other than a borrower's mortgage loan, including information reported to the owner of a mortgage loan regarding individual or aggregate collections for mortgage loans owned by that entity.
- iii. Compensation, bonuses, or personnel actions relating to servicer personnel, including personnel responsible for servicing a borrower's mortgage loan account;
- iv. The servicer's training program for servicing personnel;
- v. The terms of any agreement relating to the sale of a mortgage loan, including, an indenture, purchase agreement, or pooling and servicing agreement;
- vi. The evaluation or exercise of any remedy of the owner of a mortgage loan including a foreclosure action, a mortgage insurance payment claim, or a claim relating to mortgage loan's compliance with a seller's representations and warranties;
- vii. The servicer's servicing program guide;
- viii. Investor instructions or requirements for servicers regarding criteria for negotiating or approving any program with a borrower, including any loss mitigation option; or
- ix. Records of examination reports, compliance audits, consumer complaints, and internal investigations or external investigations.

*Paragraph 36(f)(1)(iv).*

1. *Indicia of overbroad or unduly burdensome requests for information.* The following are indicia of requests for information that are overbroad or unduly burdensome:

i. Requests for information that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, including, for example, requests for all mortgage loan file documents, recorded mortgage instruments, servicing information and documents, and sale or securitization information and documents;

ii. Requests for information that substitute for discovery in a judicial action, such as information requests in the form of a discovery request that purports to require a servicer to respond to each numbered paragraph;

iii. Requests for information that are not reasonably understandable or are included with voluminous tangential discussion or assertions of errors;

iv. Requests for information that purport to require servicers to provide information in specific formats, such as in a transcript, letter form in a columnar format, or spreadsheet, when such information is not ordinarily stored in such format; or

v. Requests for information that are not reasonably likely to assist a mortgage loan borrower with the mortgage loan borrower's account, including, for example, a request for copies of the front and back all physical payment instruments (such as checks, drafts, or wire transfer confirmations) that show payments made by the borrower to the servicer and payments made by a servicer to an owner or assignee of a mortgage loan.

#### ~~Section 1024.37 – Force-Placed Insurance~~

##### ~~37(b) Basis for obtaining force-placed insurance.~~

~~1. Borrowers with escrow. A servicer has a reasonable basis to believe that a borrower with an escrow account established for hazard insurance has failed to maintain hazard insurance if, for example, by a reasonable time prior to the expiration date of the borrower's hazard insurance (e.g., 30 days before the expiration date), the servicer has not received a renewal bill. The receipt by a servicer of a notice of cancellation or non-renewal from the borrower's insurance company before payment is due on the borrower's hazard insurance premium also provides a servicer with a reasonable basis to believe that the borrower has failed to maintain hazard insurance.~~

~~2. Borrowers without escrow. A servicer has a reasonable basis to believe the borrower without an escrow account established for hazard insurance has failed to maintain hazard insurance if, for example, a servicer receives a notice of cancellation or non-renewal from the borrower's insurance company.~~

##### ~~37(e) Requirements for charging borrower for force-placed insurance.~~

###### ~~37(e)(1) In general.~~

~~1. The notice period begins on the day that the servicer delivers or mails the notice to the borrower and expires 45 days later. The servicer may charge a borrower for force placed insurance beginning on the 46th day if the servicer has fulfilled the requirements of § 1024.37(e) and (d). If not prohibited by State or other applicable law, the servicer may retroactively charge a borrower for force placed insurance obtained during the 45-day notice period.~~

###### ~~Paragraph 37(e)(1)(iii).~~