

Condominiums, Consumer protection, Housing, Insurance, Mortgages, Mortgagees, Mortgage servicing, Reporting and recordkeeping requirements.

*12 CFR Part 1026*

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

**Authority and Issuance**

For the reasons set forth in the preamble, the Bureau amends 12 CFR parts 1024 and 1026 as follows:

**PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)**

1. The authority citation for part 1024 continues to read as follows:

**Authority:** 12 U.S.C. 2603-2605, 2607, 2609, 2617, 5512, 5532, 5581.

**Subpart B—Mortgage Settlement and Escrow Accounts**

2. Section 1024.6 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

**§ 1024.6 Special information booklet at time of loan application.**

\* \* \* \* \*

(d) *Permissible changes.* (1) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Bureau shall be made other than the permissible changes specified in paragraphs (d)(2) and (d)(3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph. A request to the Bureau for approval of any changes other than the permissible changes specified in paragraphs (d)(2) and (d)(3) of this section shall be submitted in writing to the address indicated in the definition of *Public Guidance Documents* in § 1024.2, stating the reasons why

the applicant believes such changes, deletions, or additions are necessary.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures, or artwork, provided that the words “settlement costs” are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

\* \* \* \* \*

3. Section 1024.9 is amended by revising paragraphs (a)(5) and (c) to read as follows:

**§ 1024.9 Reproduction of settlement statements.**

(a) \* \* \*

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD-1 and do not require prior Bureau approval: size of pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD-1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The expiration date associated with the OMB number listed on the form may be deleted. Any changes in the HUD number or OMB approval number may be announced by notice in the *Federal Register*, rather than by amendment of this part.

\* \* \* \* \*

(c) *Written approval.* Any other deviation in the HUD-1 or HUD-1A forms is permissible only upon receipt of written approval of the Bureau; provided, however, that

notwithstanding contrary instructions in this section or appendix A, reproducing the HUD-1 or HUD-1A forms with the Bureau's OMB approval number displayed in place of HUD's OMB approval number does not require the written approval of the Bureau. A request to the Bureau for approval shall be submitted in writing to the address indicated in the definition of *Public Guidance Documents* in § 1024.2 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

\* \* \* \* \*

4. Section 1024.17 is amended by revising paragraph (h)(1) to read as follows:

**§ 1024.17 Escrow accounts.**

\* \* \* \* \*

(h) *Format for initial escrow account statement.* (1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled “Initial Escrow Account Disclosure Statement—Format” and “Initial Escrow Account Disclosure Statement—Example,” available in accordance with the direction in the definition of *Public Guidance Documents* in § 1024.2.

\* \* \* \* \*

**Subpart C—Mortgage Servicing**

4. Section 1024.30 is amended by adding paragraph (d) to read as follows:

**§ 1024.30 Scope.**

\* \* \* \* \*

(d) *Successors in interest.* A confirmed successor in interest shall be considered a borrower for purposes of § 1024.17 and this subpart.

5. Section 1024.31 is amended by adding definitions of *Confirmed successor in interest*,

*Delinquency*, and *Successor in interest*, in alphabetical order, to read as follows:

**§ 1024.31 Definitions.**

\* \* \* \* \*

*Confirmed successor in interest* means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to this subpart.

\* \* \* \* \*

*Delinquency* means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid.

\* \* \* \* \*

*Successor in interest* means a person to whom an ownership interest in a property securing a mortgage loan subject to this subpart is transferred from a borrower, provided that the transfer is:

- (1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- (2) A transfer to a relative resulting from the death of a borrower;
- (3) A transfer where the spouse or children of the borrower become an owner of the property;
- (4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the

borrower becomes an owner of the property; or

(5) A transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

\* \* \* \* \*

6. Section 1024.32 is amended by adding paragraph (c) to read as follows:

**§ 1024.32 General disclosure requirements.**

\* \* \* \* \*

(c) *Successors in interest.* (1) *Optional notice with acknowledgment form.* Upon confirmation, a servicer may provide a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice together with a separate acknowledgment form that meets the requirements of paragraph (c)(1)(iv) of this section and that does not require acknowledgment of any items other than those identified in paragraph (c)(1)(iv) of this section. The written notice must clearly and conspicuously explain that:

(i) The servicer has confirmed the successor in interest's identity and ownership interest in the property;

(ii) Unless the successor in interest assumes the mortgage loan obligation under State law, the successor in interest is not liable for the mortgage debt and cannot be required to use the successor in interest's assets to pay the mortgage debt, except that the lender has a security interest in the property and a right to foreclose on the property, when permitted by law and authorized under the mortgage loan contract;

(iii) The successor in interest may be entitled to receive certain notices and communications about the mortgage loan if the servicer is not providing them to another confirmed successor in interest or borrower on the account;

(iv) In order to receive such notices and communications, the successor in interest must execute and provide to the servicer an acknowledgment form that:

(A) Requests receipt of such notices and communications if the servicer is not providing them to another confirmed successor in interest or borrower on the account; and

(B) Indicates that the successor in interest understands that such notices do not make the successor in interest liable for the mortgage debt and that the successor in interest is only liable for the mortgage debt if the successor in interest assumes the mortgage loan obligation under State law; and

(C) Informs the successor in interest that there is no time limit to return the acknowledgment but that the servicer will not begin sending such notices and communications to the confirmed successor in interest until the acknowledgment is returned; and

(v) Whether or not the successor in interest executes the acknowledgment described in paragraph (c)(1)(iv) of this section, the successor in interest is entitled to submit notices of error under § 1024.35, requests for information under § 1024.36, and requests for a payoff statement under § 1026.36 with respect to the mortgage loan account, with a brief explanation of those rights and how to exercise them, including appropriate address information.

(2) *Effect of failure to execute acknowledgment.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with paragraph (c)(1) of this section, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by §§ 1024.17, 1024.33, 1024.34, 1024.37, or § 1024.39 or to comply with the live contact requirements in § 1024.39(a) with respect to the confirmed successor in interest until the confirmed successor in interest either assumes the mortgage loan obligation under State

law or executes an acknowledgment that complies with paragraph (c)(1)(iv) of this section and provides it to the servicer.

(3) *Additional copies of acknowledgment form.* If a servicer provides a confirmed successor in interest with a written notice and acknowledgment form in accordance with paragraph (c)(1) of this section, the servicer must make additional copies of the written notice and acknowledgment form available to the confirmed successor in interest upon written or oral request.

(4) *Multiple notices unnecessary.* Except as required by § 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by §§ 1024.17, 1024.33, 1024.34, 1024.37, or § 1024.39(b) if the servicer is providing the same specific disclosure to another borrower on the account. A servicer is also not required to comply with the live contact requirements set forth in § 1024.39(a) with respect to a confirmed successor in interest if the servicer is complying with those requirements with respect to another borrower on the account.

7. Section 1024.35 is amended by adding paragraph (e)(5) to read as follows:

**§ 1024.35 Error resolution procedures.**

\* \* \* \* \*

(e) \* \* \*

(5) *Omissions in responses to requests for documentation.* In its response to a request for documentation under paragraph (e)(4) of this section, a servicer may omit location and contact information and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if:

(i) The information pertains to a potential or confirmed successor in interest who is not

the requester; or

(ii) The requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester.

\* \* \* \* \*

8. Section 1024.36 is amended by adding paragraphs (d)(3) and (i) to read as follows:

**§ 1024.36 Requests for information.**

\* \* \* \* \*

(d) \* \* \*

(3) *Omissions in responses to requests.* In its response to a request for information, a servicer may omit location and contact information and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if:

(i) The information pertains to a potential or confirmed successor in interest who is not the requester; or

(ii) The requester is a confirmed successor and the information pertains to any borrower who is not the requester.

\* \* \* \* \*

(i) *Potential successors in interest.* (1) With respect to any written request from a person that indicates that the person may be a successor in interest and that includes the name of the transferor borrower from whom the person received an ownership interest and information that enables the servicer to identify the mortgage loan account, a servicer shall respond by providing the potential successor in interest with a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and contact information, including a telephone number, for further assistance. With respect to the



written request, a servicer shall treat the potential successor in interest as a borrower for purposes of the requirements of paragraphs (c) through (g) of this section.

(2) If a written request under paragraph (i)(1) of this section does not provide sufficient information to enable the servicer to identify the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property, the servicer may provide a response that includes examples of documents typically accepted to establish identity and ownership interest in a property; indicates that the person may obtain a more individualized description of required documents by providing additional information; specifies what additional information is required to enable the servicer to identify the required documents; and provides contact information, including a telephone number, for further assistance. A servicer's response under this paragraph must otherwise comply with the requirements of paragraph (i)(1).

Notwithstanding paragraph (f)(1)(i), if a potential successor in interest subsequently provides orally or in writing the required information specified by the servicer pursuant to this paragraph, the servicer must treat the new information, together with the original request, as a new, non-duplicative request under paragraph (i)(1), received as of the date the required information was received, and must respond accordingly.

(3) In responding to a request under paragraph (i)(1) of this section prior to confirmation, the servicer is not required to provide any information other than the information specified in paragraphs (i)(1) and (2). In responding to a written request under paragraph (i)(1) that requests other information, the servicer must indicate that the potential successor in interest may resubmit any request for information once confirmed as a successor in interest.

(4) If a servicer has established an address that a borrower must use to request information pursuant to paragraph (b) of this section, a servicer must comply with the

requirements of paragraph (i)(1) of this section only for requests received at the established address.

9. Section 1024.37 is amended by revising paragraphs (c)(2)(v), (c)(4), (d)(2)(ii) introductory text, (d)(2)(ii)(B), (d)(3), (d)(4), and (e)(4) to read as follows:

**§ 1024.37 Force-placed insurance.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) A statement that:

(A) The borrower’s hazard insurance is expiring, has expired, or provides insufficient coverage, as applicable;

(B) The servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date or evidence that the borrower has hazard insurance that provides sufficient coverage, as applicable; and

(C) If applicable, identifies the type of hazard insurance for which the servicer lacks evidence of coverage;

\* \* \* \* \*

(4) *Additional Information.* Except for the mortgage loan account number, a servicer may not include any information other than information required by paragraph (c)(2) of this section in the written notice required by paragraph (c)(1)(i) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

(d) \* \* \*

(2) \* \* \*

(ii) *Servicer lacking evidence of continuous coverage.* A servicer that has received hazard insurance information after delivering to a borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section, but has not received, from the borrower or otherwise, evidence demonstrating that the borrower has had sufficient hazard insurance coverage in place continuously, must set forth in the notice required by paragraph (c)(1)(ii) of this section the following information:

\* \* \* \* \*

(B) The information required by paragraphs (c)(2)(ii) through (iv), (ix) through (xi), and (d)(2)(i)(B) and (D) of this section;

\* \* \* \* \*

(3) *Format.* A servicer must set the information required by paragraphs (d)(2)(i)(B) and (D) of this section in bold text. The requirements of paragraph (c)(3) of this section apply to the information required by paragraph (d)(2)(i)(C) of this section. A servicer may use form MS-3B in appendix MS-3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(i) of this section. A servicer may use form MS-3C in appendix MS-3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(ii) of this section.

(4) *Additional information.* Except for the borrower's mortgage loan account number, a servicer may not include any information other than information required by paragraph (d)(2)(i) or (ii) of this section, as applicable, in the written notice required by paragraph (c)(1)(ii) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

\* \* \* \* \*

(e) \* \* \*

(4) *Additional information.* Except for the borrower's mortgage loan account number, a servicer may not include any information other than information required by paragraph (e)(2) of this section in the written notice required by paragraph (e)(1) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

\* \* \* \* \*

10. Section 1024.38 is amended by revising paragraph (b)(1)(vi) and adding paragraph (b)(2)(vi) to read as follows:

**§ 1024.38 General servicing policies, procedures, and requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vi)(A) Upon receiving notice of the death of a borrower or of any transfer of the property securing a mortgage loan, promptly facilitate communication with any potential or confirmed successors in interest regarding the property;

(B) Upon receiving notice of the existence of a potential successor in interest, promptly determine the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i) (including the appropriate address); and

(C) Upon the receipt of such documents, promptly make a confirmation determination and promptly notify the person, as applicable, that the servicer has confirmed the person's status,

has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest.

\* \* \* \* \*

(2) \* \* \*

(vi) Promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of § 1024.41(c)(4).

\* \* \* \* \*

11. Section 1024.39 is amended by revising paragraphs (a), (b)(1), (c), and (d) to read as follows:

**§ 1024.39 Early intervention requirements for certain borrowers.**

(a) *Live contact.* Except as otherwise provided in this section, a servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate.

(b) *Written notice—(1) Notice required.* Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section no later than the 45th day of the borrower's delinquency and again no later than 45 days after each payment due date so long as the borrower remains delinquent. A servicer is not required to provide the written notice, however, more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-

day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 180 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent.

\* \* \* \* \*

(c) *Borrowers in bankruptcy*—(1) *Partial exemption*. While any borrower on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, a servicer, with regard to that mortgage loan:

(i) Is exempt from the requirements of paragraph (a) of this section;

(ii) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or if any borrower on the mortgage loan has provided a notification pursuant to the Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)) with respect to that mortgage loan as referenced in paragraph (d) of this section; and

(iii) If the conditions of paragraph (c)(1)(ii) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (c)(1)(iii):

(A) If a borrower is delinquent when the borrower becomes a debtor in bankruptcy, a servicer must provide the written notice required by paragraph (b) of this section not later than the 45th day after the borrower files a bankruptcy petition under title 11 of the United States Code. If the borrower is not delinquent when the borrower files a bankruptcy petition, but subsequently becomes delinquent while a debtor in bankruptcy, the servicer must provide the written notice not later than the 45th day of the borrower's delinquency. A servicer must comply with these timing requirements regardless of whether the servicer provided the written notice in

the preceding 180-day period.

(B) The written notice required by paragraph (b) of this section may not contain a request for payment.

(C) A servicer is not required to provide the written notice required by paragraph (b) of this section more than once during a single bankruptcy case.

(2) *Resuming compliance.* (i) Except as provided in paragraph (c)(2)(ii) of this section, a servicer that was exempt from paragraphs (a) and (b) of this section pursuant to paragraph (c)(1) of this section must resume compliance with paragraphs (a) and (b) of this section after the next payment due date that follows the earliest of the following events:

(A) The bankruptcy case is dismissed;

(B) The bankruptcy case is closed; and

(C) The borrower reaffirms personal liability for the mortgage loan.

(ii) With respect to a mortgage loan for which the borrower has discharged personal liability pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, a servicer:

(A) Is not required to resume compliance with paragraph (a) of this section; and

(B) Must resume compliance with paragraph (b) of this section if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case.

(d) *Fair Debt Collection Practices Act—Partial exemption.* With regard to a mortgage loan for which any borrower has provided a notification pursuant to the Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)), a servicer subject to the FDCPA with respect to that borrower's loan:

(1) Is exempt from the requirements of paragraph (a) of this section;

(2) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or while any borrower on that mortgage loan is a debtor in bankruptcy under title 11 of the United States Code as referenced in paragraph (c) of this section; and

(3) If the conditions of paragraph (d)(2) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (d)(3):

(i) In addition to the information required pursuant to paragraph (b)(2) of this section, the written notice must include a statement that the servicer may or intends to invoke its specified remedy of foreclosure. Model clause MS-4(D) in appendix MS-4 to this part may be used to comply with this requirement.

(ii) The written notice may not contain a request for payment.

(iii) A servicer is prohibited from providing the written notice more than once during any 180-day period.

12. Section 1024.41 is amended by revising the introductory text of paragraph (c)(1), revising paragraphs (c)(2)(iii) and (iv), adding paragraphs (c)(3) and (c)(4), revising paragraph (f)(1)(iii) and paragraph (i), and adding paragraph (k) to read as follows:

**§ 1024.41 Loss mitigation procedures.**

\* \* \* \* \*

(c) \* \* \*

(1) *Complete loss mitigation application.* Except as provided in paragraph (c)(4)(ii) of this section, if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving the complete loss mitigation application, a servicer shall:

\* \* \* \* \*



(2) \* \* \*

(iii) *Short-term loss mitigation options.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program or a short-term repayment plan to a borrower based upon an evaluation of an incomplete loss mitigation application. Promptly after offering a payment forbearance program or a repayment plan under this paragraph, unless the borrower has rejected the offer, the servicer must provide the borrower a written notice stating the specific payment terms and duration of the program or plan, that the servicer offered the program or plan based on an evaluation of an incomplete application, that other loss mitigation options may be available, and that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program or repayment plan offered pursuant to this paragraph. A servicer may offer a short-term payment forbearance program in conjunction with a short-term repayment plan pursuant to this paragraph.

(iv) *Facially complete application.* A loss mitigation application shall be considered facially complete when a borrower submits all the missing documents and information as stated in the notice required under paragraph (b)(2)(i)(B) of this section, when no additional information is requested in such notice, or once the servicer is required to provide the borrower a written notice pursuant to paragraph (c)(3)(i) of this section. If the servicer later discovers that additional information or corrections to a previously submitted document are required to

complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it first became facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of this paragraph (c). A servicer that complies with this paragraph will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B) of this section.

(3) *Notice of complete application.* (i) Except as provided in paragraph (c)(3)(ii) of this section, within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving a borrower's complete loss mitigation application, a servicer shall provide the borrower a written notice that sets forth the following information:

(A) That the loss mitigation application is complete;

(B) The date the servicer received the complete application;

(C) That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;

(D) That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:

(1) If the servicer has not made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer cannot make the first notice or filing required to commence or initiate the foreclosure process under applicable law before evaluating the borrower's complete application; or

(2) If the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer has begun the foreclosure process, and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application;

(E) That the servicer may need additional information at a later date to evaluate the application, in which case the servicer will request that information from the borrower and give the borrower a reasonable opportunity to submit it, the evaluation process may take longer, and the foreclosure protections could end if the servicer does not receive the information as requested; and

(F) That the borrower may be entitled to additional protections under State or Federal law.

(ii) A servicer is not required to provide a notice pursuant to paragraph (c)(3)(i) of this section if:

(A) The servicer has already provided the borrower a notice under paragraph (b)(2)(i)(B) of this section informing the borrower that the application is complete and the servicer has not subsequently requested additional information or a corrected version of a previously submitted document from the borrower pursuant to paragraph (c)(2)(iv) of this section;

(B) The application was not complete or facially complete more than 37 days before a foreclosure sale; or

(C) The servicer has already provided the borrower a notice regarding the application under paragraph (c)(1)(ii) of this section.

(4) *Information not in the borrower's control—(i) Reasonable diligence.* If a servicer requires documents or information not in the borrower's control to determine which loss

mitigation options, if any, it will offer to the borrower, the servicer must exercise reasonable diligence in obtaining such documents or information.

(ii) *Effect in case of delay.* (A)(1) Except as provided in paragraph (c)(4)(ii)(A)(2) of this section, a servicer must not deny a complete loss mitigation application solely because the servicer lacks required documents or information not in the borrower's control.

(2) If a servicer has exercised reasonable diligence to obtain required documents or information from a party other than the borrower or the servicer, but the servicer has been unable to obtain such documents or information for a significant period of time following the 30-day period identified in paragraph (c)(1) of this section, and the servicer, in accordance with applicable requirements established by the owner or assignee of the borrower's mortgage loan, is unable to determine which loss mitigation options, if any, it will offer the borrower without such documents or information, the servicer may deny the application and provide the borrower with a written notice in accordance with paragraph (c)(1)(ii) of this section. When providing the written notice in accordance with paragraph (c)(1)(ii) of this section, the servicer must also provide the borrower with a copy of the written notice required by paragraph (c)(4)(ii)(B) of this section.

(B) If a servicer is unable to make a determination within the 30-day period identified in paragraph (c)(1) of this section as to which loss mitigation options, if any, it will offer to the borrower because the servicer lacks required documents or information from a party other than the borrower or the servicer, the servicer must, within such 30-day period or promptly thereafter, provide the borrower a written notice, informing the borrower:

(1) That the servicer has not received documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer

to the borrower on behalf of the owner or assignee of the mortgage;

(2) Of the specific documents or information that the servicer lacks;

(3) That the servicer has requested such documents or information; and

(4) That the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

(C) If a servicer must provide a notice required by paragraph (c)(4)(ii)(B) of this section, the servicer must not provide the borrower a written notice pursuant to paragraph (c)(1)(ii) of this section until the servicer receives the required documents or information referenced in paragraph (c)(4)(ii)(B)(2) of this section, except as provided in paragraph (c)(4)(ii)(A)(2) of this section. Upon receiving such required documents or information, the servicer must promptly provide the borrower with the written notice pursuant to paragraph (c)(1)(ii) of this section.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(iii) The servicer is joining the foreclosure action of a superior or subordinate lienholder.

\* \* \* \* \*

(i) *Duplicative requests.* A servicer must comply with the requirements of this section for a borrower's loss mitigation application, unless the servicer has previously complied with the requirements of this section for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application.

\* \* \* \* \*

(k) *Servicing Transfers.* (1) *In general—(i) Timing of compliance.* Except as provided in paragraphs (k)(2) through (4) of this section, if a transferee servicer acquires the servicing of a mortgage loan for which a loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the requirements of this section for that loss mitigation application within the timeframes that were applicable to the transferor servicer based on the date the transferor servicer received the loss mitigation application. All rights and protections under paragraphs (c) through (h) of this section to which a borrower was entitled before a transfer continue to apply notwithstanding the transfer.

(ii) *Transfer date defined.* For purposes of this paragraph (k), the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).

(2) *Acknowledgment notices—(i) Transferee servicer timeframes.* If a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the notice required by paragraph (b)(2)(i)(B) of this section has not expired as of the transfer date and the transferor servicer has not provided such notice, the transferee servicer must provide the notice within 10 days (excluding legal public holidays, Saturdays, and Sundays) of the transfer date.

(ii) *Prohibitions.* A transferee servicer that must provide the notice required by paragraph (b)(2)(i)(B) of this section under this paragraph (k)(2):

(A) Shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section, notwithstanding paragraph (f)(1) of this section. For purposes of paragraph (f)(2) of this section, a borrower who submits a complete loss mitigation application on or before the reasonable date disclosed to the borrower pursuant to

paragraph (b)(2)(ii) of this section shall be treated as having done so during the pre-foreclosure review period set forth in paragraph (f)(1) of this section.

(B) Shall comply with paragraphs (c), (d), and (g) of this section if the borrower submits a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section.

(3) *Complete loss mitigation applications pending at transfer.* If a transferee servicer acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the applicable requirements of paragraphs (c)(1) and (4) of this section within 30 days of the transfer date.

(4) *Applications subject to appeal process.* If a transferee servicer acquires the servicing of a mortgage loan for which an appeal of a transferor servicer's determination pursuant to paragraph (h) of this section has not been resolved by the transferor servicer as of the transfer date or is timely filed after the transfer date, the transferee servicer must make a determination on the appeal if it is able to do so or, if it is unable to do so, must treat the appeal as a pending complete loss mitigation application.

(i) *Determining appeal.* If a transferee servicer is required under this paragraph (k)(4) to make a determination on an appeal, the transferee servicer must complete the determination and provide the notice required by paragraph (h)(4) of this section within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later.

(ii) *Servicer unable to determine appeal.* A transferee servicer that is required to treat a borrower's appeal as a pending complete loss mitigation application under this paragraph (k)(4) must comply with the requirements of this section for such application, including evaluating the

borrower for all loss mitigation options available to the borrower from the transferee servicer. For purposes of paragraph (c) or (k)(3) of this section, as applicable, such a pending complete loss mitigation application shall be considered complete as of the date the appeal was received by the transferor servicer or the transferee servicer, whichever occurs first. For purposes of paragraphs (e) through (h) of this section, the transferee servicer must treat such a pending complete loss mitigation application as facially complete under paragraph (c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer.

(5) *Pending loss mitigation offers.* A transfer does not affect a borrower’s ability to accept or reject a loss mitigation option offered under paragraph (c) or (h) of this section. If a transferee servicer acquires the servicing of a mortgage loan for which the borrower’s time period under paragraph (e) or (h) of this section for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

\* \* \* \* \*

13. In Appendix MS–Mortgage Servicing, the heading for Appendix MS–Mortgage Servicing is revised to read as follows:

**APPENDIX MS TO PART 1024—MORTGAGE SERVICING**

\* \* \* \* \*

14. In Appendix MS–3 to Part 1024, MS–3(A), MS–3(B), MS–3(C), and MS–3(D) are revised to read as follows:

**APPENDIX MS–3 TO PART 1024**



**MODEL FORCE-PLACED INSURANCE NOTICE FORMS**

\* \* \* \* \*

**MS-3(A)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING  
INFORMATION REQUIRED BY § 1024.37(C)(2)**

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: **Please provide insurance information for** [Property Address]

Dear [Borrower's Name]:

Our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired] [provides insufficient coverage], and we do not have evidence that you have obtained new coverage. **Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for your property] [we plan to buy insurance for your property].** You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

- **May be significantly more expensive than the insurance you can buy yourself.**
- **May not provide as much coverage as an insurance policy you buy yourself.**

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

**MS-3(B)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING  
INFORMATION REQUIRED BY § 1024.37(D)(2)(I)**

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: **Second and final notice — please provide insurance information for**

[Property Address]

Dear [Borrower's Name]:

This is your second and final notice that our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired] [provides insufficient coverage], and we do not have evidence that you have obtained new coverage. **Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for your property] [we plan to buy insurance for your property].** You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

- **[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]]**

**annually, which may be significantly more expensive than insurance you can buy yourself.**

- **May not provide as much coverage as an insurance policy you buy yourself.**

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

**MS-3(C)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING  
INFORMATION REQUIRED BY § 1024.37(D)(2)(II)**

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: **Second and final notice — please provide insurance information for**

[Property Address]

Dear [Borrower's Name]:

We received the insurance information you provided, but we are unable to verify coverage from [Date Range].

**Please provide us with insurance information for [Date Range] immediately.**

We will charge you for insurance we [bought] [plan to buy] for [Date Range] unless we can verify that you have insurance coverage for [Date Range].

The insurance we [bought] [buy]:

- **[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]]**

**annually, which may be significantly more expensive than insurance you can buy yourself.**

- **May not provide as much coverage as an insurance policy you buy yourself.**

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

**MS-3(D)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING  
INFORMATION REQUIRED BY § 1024.37(E)(2)**

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: **Please update insurance information for** [Property Address]

Dear [Borrower's Name]:

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account.

The policy that we bought [expired] [is scheduled to expire]. **Because [hazard][Insurance Type] insurance] is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought.**

The insurance we buy:

- **[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be significantly more expensive than insurance you can buy yourself.**
- **May not provide as much coverage as an insurance policy you buy yourself.**

If you buy [hazard] [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

15. In Appendix MS-4 to Part 1024, MS-4(D) is added to read as follows:

**APPENDIX MS-4 TO PART 1024—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE**

\* \* \* \* \*

**MS-4(D)—WRITTEN EARLY INTERVENTION NOTICE FOR SERVICERS SUBJECT TO FDCPA  
(§ 1024.39(D)(2)(III))**

This is a legally required notice. We are sending this notice to you because you are behind on your mortgage payment. We want to notify you of possible ways to avoid losing your home. We have a right to invoke foreclosure based on the terms of your mortgage contact. Please read this letter carefully.

16. In Supplement I to Part 1024—Official Bureau Interpretations:

A. Under *Section 1024.30—Scope*:

- i. The heading *Paragraph 30(c)(2)* is added, and paragraph 1 under that heading is added.
- ii. The heading *30(d) Successors in interest* is added, and paragraphs 1 through 3 under that heading are added.

B. Under *Section 1024.31—Definitions*:

- i. The heading *Delinquency* is added, and paragraphs 1 through 4 under that heading are added.

ii. The heading *Successor in interest* is added, and paragraphs 1 and 2 under that heading are added.

C. Under *Section 1024.32—General Disclosure Requirements*:

i. The heading *32(c) Confirmed successors in interest* is added.

ii. Under *32(c) Confirmed successors in interest*:

a. The heading *32(c)(1) Optional notice with acknowledgment form* is added, and paragraph 1 under that subheading is added.

b. The heading *32(c)(2) Effect of failure to execute acknowledgment* is added, and paragraphs 1 and 2 under that heading are added.

c. The heading *32(c)(4) Multiple notices unnecessary* is added, and paragraph 1 under that heading is added.

D. Under *Section 1024.36—Requests For Information*:

i. Under *36(a) Information request*, paragraph 2 is revised.

ii. The heading *36(i) Potential successors in interest* is added, and paragraphs 1 through 3 under that heading are added.

E. Under *Section 1024.37—Force-Placed Insurance*:

i. The heading *37(d)(4) Updating notice with borrower information* is redesignated as *37(d)(5) Updating notice with borrower information*.

ii. Under *37(d)(5) Updating notice with borrower information*, paragraph 1 is revised.

F. Under *Section 1024.38—General Servicing Policies, Procedures, and Requirements*:

i. Under *38(b) Objectives*:

a. Under *38(b)(1) Accessing and providing timely and accurate information*, the heading *Paragraph 38(b)(1)(vi)* is added, and paragraphs 1 through 5 under that heading are added.

b. The heading *38(b)(3) Facilitating oversight of, and compliance by, service providers*, is added.

c. Under *38(b)(3) Facilitating oversight of, and compliance by, service providers*, the heading *Paragraph 38(b)(3)(iii)* is added, and paragraph 1 under that heading is added.

G. Under *Section 1024.39—Early Intervention Requirements for Certain Borrowers*:

i. Under *39(a) Live contact*, paragraphs 1 and 2 are revised, paragraphs 3 and 4 are redesignated as paragraphs 4 and 5, paragraph 3 is added, paragraph 5 is revised, and paragraph 6 is added.

ii. Under *39(b) Written notice*:

a. Under *39(b)(1) Notice required*, paragraphs 2 and 3 are revised, and paragraph 5 is added.

iii. The heading *39(c) Borrowers in bankruptcy* is added, and paragraphs 1 and 2 under that heading are added.

iv. Under *39(c) Borrowers in bankruptcy*:

a. The heading *39(c)(1) Borrowers in bankruptcy—Partial exemption* is added, and paragraph 1 under that heading is added.

b. The heading *Paragraph 39(c)(1)(ii)* is added, and paragraphs 1 and 2 under that heading are added.

c. The heading *Paragraph 39(c)(1)(iii)* is added, and paragraph 1 under that heading is added.

d. The heading *39(c)(2) Resuming compliance* is added, and paragraph 1 under that heading is added.

v. The heading *39(d) Fair Debt Collection Practices Act—Partial exemption* is added,

and paragraphs 1 and 2 under that heading are added.

vi. The heading *39(d)(1) Borrowers in bankruptcy* is removed, and paragraphs 1 through 3 under that heading are removed.

vii. The heading *Paragraph 39(d)(2)* is added, and paragraph 1 under that heading is added.

H. Under *Section 1024.40—Continuity of Contact*:

i. Under *40(a) In general*, paragraph 3 is revised.

I. Under *Section 1024.41—Loss Mitigation Procedures*:

i. Under *41(b) Receipt of a loss mitigation application*, paragraph 1 is added.

ii. Under *41(b)(1) Complete loss mitigation application*, paragraph 1 is revised, the introductory text to paragraph 4 is revised, and paragraph 4.iii is revised.

iii. Under *41(b)(2) Review of loss mitigation application submission*:

a. Under *41(b)(2)(i) Requirements*, paragraph 1 is added.

b. Under *41(b)(2)(ii) Time period disclosure*, paragraph 1 is revised, and paragraphs 2 and 3 are added.

iv. The heading *41(c) Review of loss mitigation applications* is revised.

v. Under *41(c)(1) Complete loss mitigation application*, paragraph 4 is added.

vi. Under *41(c)(2) Incomplete loss mitigation application evaluation*, the heading *41(c)(2)(iii) Payment forbearance* is revised, paragraphs 1 through 3 under that heading are revised, and paragraphs 4 through 6 under that heading are added.

vii. The heading *41(c)(3) Notice of complete application* is added.

viii. The heading *Paragraph 41(c)(3)(i)* is added, and paragraphs 1 through 3 under that heading are added.



- ix. The heading *41(c)(4) Information not in the borrower's control* is added.
- x. The heading *41(c)(4)(i) Diligence requirements* is added, and paragraphs 1 and 2 under that heading are added.
- xi. The heading *41(c)(4)(ii) Effect in case of delay* is added, and paragraphs 1 and 2 under that heading are added.
- xii. Under *41(d) Denial of loan modification options*, paragraph (c)(1)(4) is removed.
- xiii. Under paragraph *41(g) Prohibition on foreclosure sale*, paragraph 3 is revised, and paragraph 5 is added.
- xiv. Under *41(i) Duplicative requests*, paragraphs 1 and 2 are revised.
- xv. The heading *41(k) Servicing transfers* is added, and paragraph 1 under that heading is added.
- xvi. The heading *41(k)(1) In general* is added.
- xvii. The heading *41(k)(1)(i) Timing of compliance* is added, and paragraphs 1 through 3 under that heading are added.
- xviii. The heading *41(k)(1)(ii) Transfer date defined* is added, and paragraph 1 under that heading is added.
- xix. The heading *41(k)(2) Acknowledgment notices* is added.
- xx. The heading *41(k)(2)(ii) Prohibitions* is added, and paragraphs 1 through 3 under that heading are added.
- xxi. The heading *41(k)(3) Complete loss mitigation applications pending at transfer* is added, and paragraphs 1 and 2 under that heading are added.
- xxii. The heading *41(k)(4) Applications subject to appeal process* is added, and paragraphs 1 and 2 under that heading are added.

xxiii. The heading *41(k)(5) Pending loss mitigation offers* is added, and paragraph 1 under that heading is added.

J. Under *Appendix MS—Mortgage Servicing Model Forms and Clauses*, the heading is revised and paragraph 2 is revised.

## **Supplement I to Part 1024—Official Bureau Interpretations**

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### **Subpart C—Mortgage Servicing**

#### *Section 1024.30—Scope*

\* \* \* \* \*

##### *Paragraph 30(c)(2).*

1. *Principal residence.* If a property ceases to be a borrower’s principal residence, the procedures set forth in §§ 1024.39 through 1024.41 do not apply to a mortgage loan secured by that property. Determination of principal residence status will depend on the specific facts and circumstances regarding the property and applicable State law. For example, a vacant property may still be a borrower’s principal residence.

##### *30(d) Successors in interest.*

1. *Treatment of confirmed successors in interest.* Under § 1024.30(d), a confirmed successor in interest must be considered a borrower for purposes of this subpart and § 1024.17, regardless of whether the successor in interest assumes the mortgage loan obligation under State law. For example, if a servicer receives a loss mitigation application from a confirmed successor in interest, the servicer must review and evaluate the application and notify the confirmed successor in interest in accordance with the procedures set forth in § 1024.41 if the property is the confirmed successor in interest’s principal residence and the procedures set forth in

§ 1024.41 are otherwise applicable. Treatment of a confirmed successor in interest as a borrower for purposes of subpart C and § 1024.17 does not affect whether the confirmed successor in interest is subject to the contractual obligations of the mortgage loan agreement, which is determined by applicable State law. Communications in compliance with this part to a confirmed successor in interest as defined in § 1024.31 do not violate section 805(b) of the Fair Debt Collection Practices Act (FDCPA) because consumer for purposes of FDCPA section 805 includes any person who meets the definition in this part of confirmed successor in interest.

*2. Assumption of the mortgage loan obligation.* A servicer may not require a confirmed successor in interest to assume the mortgage loan obligation under State law to be considered a borrower for purposes of § 1024.17 and subpart C. If a successor in interest assumes a mortgage loan obligation under State law or is otherwise liable on the mortgage loan obligation, the protections that the successor in interest enjoys under this part are not limited to the protections that apply under § 1024.30(d) to a confirmed successor in interest.

*3. Treatment of transferor borrowers.* Even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of this subpart with respect to the transferor borrower.

#### *Section 1024.31—Definitions*

##### *Delinquency.*

*1. Length of delinquency.* A borrower's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and, if applicable, escrow becomes due and unpaid, and lasts until such time as no periodic payment is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

2. *Application of funds.* If a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent borrower advances the date the borrower's delinquency began. For example, assume a borrower's mortgage loan obligation provides that a periodic payment sufficient to cover principal, interest, and escrow is due on the first of each month. The borrower fails to make a payment on January 1 or on any day in January, and on January 31 the borrower is 30 days delinquent. On February 3, the borrower makes a periodic payment. The servicer applies the payment it received on February 3 to the outstanding January payment. On February 4, the borrower is three days delinquent.

3. *Payment tolerance.* For any given billing cycle for which a borrower's payment is less than the periodic payment due, if a servicer chooses not to treat a borrower as delinquent for purposes of any section of subpart C, that borrower is not delinquent as defined in § 1024.31.

4. *Creditor's contract rights.* This subpart does not prevent a creditor from exercising a right provided by a mortgage loan contract to accelerate payment for a breach of that contract. Failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency.

\* \* \* \* \*

*Successor in interest.*

1. *Joint tenants and tenants by the entirety.* If a borrower who has an ownership interest as a joint tenant or tenant by the entirety in a property securing a mortgage loan subject to this subpart dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in § 1024.31.

2. *Beneficiaries of inter vivos trusts.* In the event of a transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights

of occupancy in the property, the beneficiaries of the *inter vivos* trust rather than the *inter vivos* trust itself are considered to be the successors in interest for purposes of § 1024.31. For example, assume Borrower A transfers her home into such an *inter vivos* trust for the benefit of her spouse and herself. As of the transfer date, Borrower A and her spouse would be considered successors in interest and, upon confirmation, would be borrowers for purposes of certain provisions of Regulation X. If the lender has not released Borrower A from the loan obligation, Borrower A would also remain a borrower more generally for purposes of Regulation X.

*Section 1024.32—General Disclosure Requirements*

*32(c) Confirmed successors in interest.*

*32(c)(1) Optional notice with acknowledgment form.*

1. A servicer may identify in the acknowledgment form examples of the types of notices and communications identified in § 1024.32(c)(1)(iii), such as periodic statements and mortgage servicing transfer notices. Any examples provided should be the types of notices or communications that would be available to a confirmed successor in interest if the confirmed successor in interest executed the acknowledgment and returned it to the servicer.

*32(c)(2) Effect of failure to execute acknowledgment.*

1. *No time limit to return acknowledgment.* A confirmed successor in interest may provide an executed acknowledgment that complies with § 1024.32(c)(1)(iv) to the servicer at any time after confirmation.

2. *Effect of revocation of acknowledgment.* If a confirmed successor in interest who is not liable on the mortgage loan obligation executes and then later revokes an acknowledgment pursuant to § 1024.32(c)(1)(iv), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by §§ 1024.17, 1024.33, 1024.34, 1024.37, or

§ 1024.39 or to comply with the live contact requirements in § 1024.39(a) with respect to the confirmed successor in interest from the date the revocation is received until the confirmed successor in interest either assumes the mortgage loan obligation under State law or executes a new acknowledgment that complies with § 1024.32(c)(1)(iv) and provides it to the servicer.

*32(c)(4) Multiple notices unnecessary.*

1. *Specific written disclosure.* A servicer may rely on § 1024.32(c)(4) if the servicer provides a specific written disclosure required by §§ 1024.17, 1024.33, 1024.34, 1024.37, or § 1024.39(b) to another borrower. For example, a servicer is not required to provide a force-placed insurance notice required under § 1024.37 to a confirmed successor in interest if the servicer is providing the same force-placed insurance notice to a transferor borrower or to another confirmed successor in interest.

\* \* \* \* \*

#### *Section 1024.36—Requests for Information*

*36(a) Information request.*

\* \* \* \* \*

2. *Owner or assignee of a mortgage loan.* i. When a loan is not held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies with § 1024.36(d) by responding to a request for information regarding the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. A servicer is not the owner or assignee for purposes of § 1024.36(d) if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation. The Government National Mortgage Association is not the owner or assignee for purposes of such requests for information

solely as a result of its role as the guarantor of the security in which the loan serves as the collateral.

ii. When the loan is held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies with § 1024.36(d) by responding to a borrower's request for information regarding the owner, assignee, or trust of the mortgage loan with the following information, as applicable:

A. For any request for information where the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is not the owner of the loan or the trustee of the securitization trust in which the loan is held: the name of the trust, and the name, address, and appropriate contact information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee. The servicer complies with § 1024.36(d) by identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

B. If the request for information did not expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: the name and contact information for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, as applicable, without also providing the name of the trust.

C. If the request for information did expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is

held: the name of the trust, and the name, address, and appropriate contact information for the trustee, as in comment 36(a)-2.ii.A above.

\* \* \* \* \*

*36(i) Potential successors in interest.*

1. *Requests that indicate that the person may be a successor in interest.* Section 1024.36(i) requires a servicer to respond to certain written requests received from a person that indicate the person may be a successor in interest. Examples of written requests that indicate that the person may be a successor in interest include, without limitation, a written statement from a person other than a borrower indicating that there has been a transfer of ownership or of an ownership interest in the property to the person or that a borrower has been divorced, legally separated, or died, or a written loss mitigation application received from a person other than a borrower.

2. *Time limits.* A servicer must respond to a request under § 1024.36(i) not later than the time limits set forth in § 1024.36(d)(2). Servicers subject to § 1024.38(b)(1)(vi)(B) must also maintain policies and procedures reasonably designed to ensure that, upon receiving notice of the existence of a potential successor in interest, the servicer can promptly determine the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i) (including the appropriate address). Depending on the facts and circumstances of the request, responding promptly may require a servicer to respond more quickly than the time limits established in § 1024.36(d)(2).

3. *Potential successor in interest's representative.* An information request pursuant to



§ 1024.36(i) is submitted by a potential successor in interest if the information request is submitted by an agent of the potential successor in interest. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a potential successor in interest has authority from the potential successor in interest to act on the potential successor in interest's behalf, for example, by requiring that a person that claims to be an agent of the potential successor in interest provide documentation from the potential successor in interest stating that the purported agent is acting on the potential successor in interest's behalf. Upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the potential successor in interest.

*Section 1024.37—Force-placed Insurance*

\* \* \* \* \*

*37(d)(5) Updating notice with borrower information.*

1. *Reasonable time.* If the written notice required by § 1024.37(c)(1)(ii) was put into production a reasonable time prior to the servicer delivering or placing the notice in the mail, the servicer is not required to update the notice with new insurance information received. For purposes of § 1024.37(d)(5), a reasonable time is no more than five days (excluding legal holidays, Saturdays, and Sundays).

\* \* \* \* \*

*Section 1024.38—General Servicing Policies, Procedures, and Requirements*

\* \* \* \* \*

*38(b) Objectives.*

*38(b)(1) Accessing and providing timely and accurate information*

\* \* \* \* \*

*Paragraph 38(b)(1)(vi).*

1. *Identification of potential successors in interest.* A servicer may be notified of the existence of a potential successor in interest in a variety of ways. For example, a person could indicate that there has been a transfer of ownership or of an ownership interest in the property or that a borrower has been divorced, legally separated, or died, or a person other than a borrower could submit a loss mitigation application. A servicer must maintain policies and procedures reasonably designed to ensure that the servicer can retain this information and promptly facilitate communication with potential successors in interest when a servicer is notified of their existence. A servicer is not required to conduct a search for potential successors in interest if the servicer has not received actual notice of their existence.

2. *Documents reasonably required.* The documents a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property must be reasonable in light of the laws of the relevant jurisdiction, the specific situation of the potential successor in interest, and the documents already in the servicer's possession. The required documents may, where appropriate, include, for example, a death certificate, an executed will, or a court order. The required documents may also include documents that the servicer reasonably believes are necessary to prevent fraud or other criminal activity (for example, if a servicer has reason to believe that documents presented are forged).

3. *Examples of reasonable requirements.* Because the relevant law governing each situation may vary from State to State, the following examples are illustrative only. The examples illustrate what documents it would generally be reasonable for a servicer to require to confirm a potential successor in interest's identity and ownership interest in the property under the specific circumstances described.

i. *Tenancy by the entirety or joint tenancy.* Assume that a servicer knows that the potential successor in interest and the transferor borrower owned the property as tenants by the entirety or joint tenants and that the transferor borrower has died. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has sole interest in the property but requires only that there be a prior recorded deed listing both the potential successor in interest and the transferor borrower as tenants by the entirety (*e.g.*, married grantees) or joint tenants. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the recorded instrument, if the servicer does not already have it, and the death certificate of the transferor borrower. Because in this situation a probate proceeding is not required under the applicable law of the relevant jurisdiction, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

ii. *Affidavits of heirship.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest upon the death of the transferor borrower through intestate succession and offers an affidavit of heirship as confirmation. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has an interest in the property but requires only an appropriate affidavit of heirship. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the affidavit of heirship and the death certificate of the transferor borrower. Because a probate proceeding is not required under the applicable law of

the relevant jurisdiction to recognize the transfer of title, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

iii. *Divorce or legal separation.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a spouse who is a borrower as a result of a property agreement incident to a divorce proceeding. Assume further that the applicable law of the relevant jurisdiction does not require a deed conveying the interest in the property but accepts a final divorce decree and accompanying separation agreement executed by both spouses to evidence transfer of title. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the final divorce decree and an executed separation agreement. Because the applicable law of the relevant jurisdiction does not require a deed, it generally would not be reasonable for the servicer to require a deed.

iv. *Living spouses or parents.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a living spouse or parent who is a borrower by quitclaim deed or act of donation. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the quitclaim deed or act of donation. It generally would not be reasonable, however, for the servicer to require additional documents.

4. *Additional documentation required for confirmation determination.* Section 1024.38(b)(1)(vi)(C) requires a servicer to maintain policies and procedures reasonably designed to ensure that, upon receipt of the documents identified by the servicer, the servicer promptly notifies a potential successor in interest that, as applicable, the servicer has confirmed the potential successor in interest's status, has determined that additional documents are required, or

has determined that the potential successor in interest is not a successor in interest. If a servicer reasonably determines that it cannot make a determination of the potential successor in interest's status based on the documentation provided, it must specify what additional documentation is required. For example, if there is pending litigation involving the potential successor in interest and other claimants regarding who has title to the property at issue, a servicer may specify that documentation of a court determination or other resolution of the litigation is required.

*5. Prompt confirmation and loss mitigation.* A servicer's policies and procedures must be reasonably designed to ensure that the servicer can promptly notify the potential successor in interest that the servicer has confirmed the potential successor in interest's status. Notification is not prompt for purposes of this requirement if it unreasonably interferes with a successor in interest's ability to apply for loss mitigation options according to the procedures provided in § 1024.41.

\* \* \* \* \*

*38(b)(3) Facilitating oversight of, and compliance by, service providers.*

*Paragraph 38(b)(3)(iii).*

*1. Sharing information with service provider personnel handling foreclosure proceedings.* A servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application and promptly instruct foreclosure counsel to take any step required by § 1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale.

\* \* \* \* \*

*Section 1024.39—Early Intervention Requirements for Certain Borrowers*

*39(a) Live contact.*

1. *Delinquency.* Section 1024.39 requires a servicer to establish or attempt to establish live contact no later than the 36th day of a borrower’s delinquency. This provision is illustrated as follows:

i. Assume a mortgage loan obligation with a monthly billing cycle and monthly payments of \$2,000 representing principal, interest, and escrow due on the first of each month.

A. The borrower fails to make a payment of \$2,000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—*i.e.*, on or before February 6.

B. The borrower makes no payments during the period January 1 through April 1, although payments of \$2,000 each on January 1, February 1, and March 1 are due. Assuming it is not a leap year, the borrower is 90 days delinquent as of April 1. The servicer may time its attempts to establish live contact such that a single attempt will meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5 and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of § 1024.39(a) for the March 1 missed payment.

\* \* \* \* \*

2. *Establishing live contact.* Live contact provides servicers an opportunity to discuss the circumstances of a borrower’s delinquency. Live contact with a borrower includes speaking on the telephone or conducting an in-person meeting with the borrower but not leaving a recorded

phone message. A servicer may rely on live contact established at the borrower's initiative to satisfy the live contact requirement in § 1024.39(a). Servicers may also combine contacts made pursuant to § 1024.39(a) with contacts made with borrowers for other reasons, for instance, by telling borrowers on collection calls that loss mitigation options may be available.

3. *Good faith efforts.* Good faith efforts to establish live contact consist of reasonable steps, under the circumstances, to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer. The length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to § 1024.39(a), are relevant circumstances to consider. For example, whereas "good faith efforts" to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, "good faith efforts" to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication. Comment 39(a)-6 discusses the relationship between live contact and the loss mitigation procedures set forth in § 1024.41.

4. *Promptly inform if appropriate.* i. *Servicer's determination.* It is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

A. A servicer provides information about the availability of loss mitigation options to a

borrower who notifies a servicer during live contact of a material adverse change in the borrower's financial circumstances that is likely to cause the borrower to experience a long-term delinquency for which loss mitigation options may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. *Promptly inform.* If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in § 1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by § 1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

5. *Borrower's representative.* Section 1024.39 does not prohibit a servicer from satisfying its requirements by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower to provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.



6. *Relationship between live contact and loss mitigation procedures.* If the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41, including during the borrower's completion of a loss mitigation application or the servicer's evaluation of the borrower's complete loss mitigation application, or if the servicer has sent the borrower a notice pursuant to § 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options, the servicer complies with § 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. A servicer must resume compliance with the requirements of § 1024.39(a) for a borrower who becomes delinquent again after curing a prior delinquency.

*39(b) Written notice.*

*39(b)(1) Notice required.*

\* \* \* \* \*

2. *Frequency of the written notice.* A servicer need not provide the written notice under § 1024.39(b) more than once during a 180-day period beginning on the date on which the written notice is provided. A servicer must provide the written notice under § 1024.39(b) at least once every 180 days to a borrower who is 45 days or more delinquent. This provision is illustrated as follows: Assume a borrower becomes delinquent on March 1, the amount due is not fully paid during the 45 days after March 1, and the servicer provides the written notice on the 45<sup>th</sup> day after March 1, which is April 15. Assume the borrower also fails to make the payment due on April 1 and the amount due is not fully paid during the 45 days after April 1. The servicer need not provide the written notice again until after the 180-day period beginning on April 15—*i.e.*, no sooner than on October 12—and then only if the borrower is at that time 45 days or more delinquent.

i. If the borrower is 45 days or more delinquent on October 12, the date that is 180 days after the prior provision of the written notice, the servicer is required to provide the written notice again on October 12.

ii. If the borrower is less than 45 days delinquent on October 12, the servicer must again provide the written notice 45 days after the payment due date for which the borrower remains delinquent. For example, if the borrower becomes delinquent on October 1, and the amount due is not fully paid during the 45 days after October 1, the servicer will need to provide the written notice again no later than 45 days after October 1—*i.e.*, by November 15.

3. *Borrower's representative.* Comment 39(a)-5 explains how a servicer may satisfy the requirements under § 1024.39 with a person authorized by the borrower to communicate with the servicer on the borrower's behalf.

\* \* \* \* \*

5. *Servicing transfers.* A transferee servicer is required to comply with the requirements of § 1024.39(b) regardless of whether the transferor servicer provided a written notice to the borrower in the preceding 180-day period. However, a transferee servicer is not required to provide a written notice under § 1024.39(b) if the transferor servicer provided the written notice under § 1024.39(b) within 45 days of the transfer date. For example, assume a borrower has monthly payments, with a payment due on March 1. The transferor servicer provides the notice required by § 1024.39(b) on April 10. The loan is transferred on April 12. Assuming the borrower remains delinquent, the transferee servicer is not required to provide another written notice until 45 days after May 1, the first post-transfer payment due date—*i.e.*, by June 15.

\* \* \* \* \*

*39(c) Borrowers in bankruptcy.*

1. *Borrower's representative.* If the borrower is represented by a person authorized by the borrower to communicate with the servicer on the borrower's behalf, the servicer may provide the written notice required by § 1024.39(b), as modified by § 1024.39(c)(1)(iii), to the borrower's representative. *See* comment 39(a)-5. In general, bankruptcy counsel is the borrower's representative. A servicer's procedures for determining whether counsel is the borrower's representative are generally considered reasonable if they are limited to, for example, confirming that the attorney's name is listed on the borrower's bankruptcy petition or other court filing.

2. *Adapting requirements in bankruptcy.* Section 1024.39(c) does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. If necessary to comply with such law or court order, a servicer may adapt the requirements of § 1024.39 as appropriate.

*39(c)(1) Borrowers in bankruptcy—Partial exemption.*

1. *Commencing a case.* Section 1024.39(c)(1) applies once a petition is filed under title 11 of the United States Code, commencing a case in which the borrower is a debtor in bankruptcy.

*Paragraph 39(c)(1)(ii).*

1. *Availability of loss mitigation options.* In part, § 1024.39(c)(1)(ii) exempts a servicer from the requirements of § 1024.39(b) if no loss mitigation option is available. A loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

2. *Fair Debt Collections Practices Act. i. Exemption.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower in bankruptcy and any borrower on the mortgage loan has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease further communications, with regard to that mortgage loan, § 1024.39(c)(1)(ii) exempts a servicer from providing the written notice required by § 1024.39(b).

ii. *Example.* For example, assume that two spouses jointly own a home and are both primarily liable on the mortgage loan. Further assume that the servicer is subject to the FDCPA with respect to that mortgage loan. One spouse is a debtor in bankruptcy under title 11 of the United States Code subject to § 1024.39(c). The other spouse provided the servicer a notification pursuant to FDCPA section 805(c). Section 1024.39(c)(1)(ii) exempts the servicer from providing the written notice required by § 1024.39(b) with respect to that mortgage loan.

*Paragraph 39(c)(1)(iii).*

1. *Joint obligors.* When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to § 1024.39, if any of the borrowers is a debtor in bankruptcy, a servicer may provide the written notice required by § 1024.39(b), as modified by § 1024.39(c)(1)(iii), to any borrower.

*39(c)(2) Resuming compliance.*

1. *Bankruptcy case revived.* If the borrower's bankruptcy case is revived, for example if the court reinstates a previously dismissed case or reopens the case, § 1024.39(c)(1) once again applies. However, § 1024.39(c)(1)(iii)(C) provides that a servicer is not required to provide the written notice more than once during a single bankruptcy case. For example, assume a

borrower's bankruptcy case commences on June 1, the servicer provides the written notice on July 10 in compliance with § 1024.39(b) as modified by § 1024.39(c)(1)(iii), and the bankruptcy case is dismissed on August 1. If the court subsequently reopens or reinstates the borrower's bankruptcy case and the servicer does not provide a second written notice for that bankruptcy case, the servicer has complied with § 1024.39(b) and (c)(1)(iii).

*39(d) Fair Debt Collection Practices Act—Partial exemption.*

1. *Availability of loss mitigation options.* In part, § 1024.39(d)(2) exempts a servicer from providing the written notice required by § 1024.39(b) if no loss mitigation option is available. A loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

2. *Early intervention communications under the FDCPA.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower, a servicer does not violate FDCPA section 805(c) by providing the written notice required by § 1024.39(b) as modified by § 1024.39(d)(3) after a borrower has provided a notification pursuant to FDCPA section 805(c) with respect to that borrower's loan. Nor does a servicer violate FDCPA section 805(c) by providing loss mitigation information or assistance in response to a borrower-initiated communication after the borrower has invoked the cease communication right under FDCPA section 805(c). A servicer subject to the FDCPA must continue to comply with all other applicable provisions of the FDCPA, including restrictions on communications and prohibitions on harassment or abuse, false or misleading representations, and unfair practices as contained in FDCPA sections 805 through 808 (15 U.S.C. 1692c through 1692f).

*Paragraph 39(d)(2).*

1. *Borrowers in bankruptcy.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower and the borrower has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease further communications, with regard to that mortgage loan, § 1024.39(d)(2) exempts a servicer from providing the written notice required by § 1024.39(b) while any borrower on the mortgage loan is also a debtor in bankruptcy under title 11 of the United States Code. For an example, see comment 39(c)(1)(ii)-1.ii.

*Section 1024.40—Continuity of Contact*

*40(a) In general.*

\* \* \* \* \*

3. *Delinquency.* See § 1024.31 for the definition of delinquency applicable to subpart C of Regulation X.

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*Section 1024.41—Loss Mitigation Procedures*

*41(b) Receipt of a loss mitigation application.*

1. *Successors in interest.* i. If a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but need not, review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41. If a servicer complies with the requirements of § 1024.41 for a complete loss mitigation application submitted by a potential successor in interest before confirming that person's identity and ownership interest in the

property, § 1024.41(i)'s limitation on duplicative requests applies to that person, provided the servicer's evaluation of loss mitigation options available to the person would not have resulted in a different determination due to the person's confirmation as a successor in interest if it had been conducted after the servicer confirmed the person's status as a successor in interest.

ii. If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming that person's identity and ownership interest in the property, the servicer must preserve the loss mitigation application and all documents submitted in connection with the application, and, upon such confirmation, the servicer must review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41 if the property is the confirmed successor in interest's principal residence and the procedures set forth in § 1024.41 are otherwise applicable. For purposes of § 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after they were submitted and confirmation is 45 days or more before a foreclosure sale, the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to § 1024.41(b)(2).

*41(b)(1) Complete loss mitigation application.*

1. *In general.* A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options. In the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information for a particular loss mitigation option after receiving information confirming that, pursuant to

any requirements established by the owner or assignee of the borrower's mortgage loan, the borrower is ineligible for that option. A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by any requirements established by the owner or assignee. A servicer must continue to exercise reasonable diligence to obtain documents and information from the borrower that the servicer requires to evaluate the borrower as to all other loss mitigation options available to the borrower. For example:

- i. Assume a particular loss mitigation option is only available for borrowers whose mortgage loans were originated before a specific date. Once a servicer receives documents or information confirming that a mortgage loan was originated after that date, the servicer may stop collecting documents or information from the borrower that the servicer would use to evaluate the borrower for that loss mitigation option, but the servicer must continue its efforts to obtain documents and information from the borrower that the servicer requires to evaluate the borrower for all other available loss mitigation options.

- ii. Assume applicable requirements established by the owner or assignee of the mortgage loan provide that a borrower is ineligible for home retention loss mitigation options if the borrower states a preference for a short sale and provides evidence of another applicable hardship, such as military Permanent Change of Station orders or an employment transfer more than 50 miles away. If the borrower indicates a preference for a short sale or, more generally, not to retain the property, the servicer may not stop collecting documents and information from the borrower pertaining to available home retention options solely because the borrower has



indicated such a preference, but the servicer may stop collecting such documents and information once the servicer receives information confirming that the borrower has an applicable hardship under requirements established by the owner or assignee, such as military Permanent Change of Station orders or employment transfer.

\* \* \* \* \*

4. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. A servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence for purposes of § 1024.41(b)(1) includes, without limitation, the following actions:

\* \* \* \* \*

iii. A servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application and provides the borrower the written notice pursuant to § 1024.41(c)(2)(iii). If the borrower remains in compliance with the short-term payment forbearance program or short-term repayment plan, and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts until near the end of the payment forbearance program or repayment plan. However, if the borrower fails to comply with the program or plan or requests further assistance, the servicer must immediately resume reasonable diligence efforts. Near the end of a short-term payment forbearance program offered based on an evaluation of an incomplete loss mitigation application pursuant to § 1024.41(c)(2)(iii), and prior to the end of the forbearance period, if the borrower remains delinquent, a servicer must contact the borrower to determine if

the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation.

\* \* \* \* \*

*41(b)(2) Review of loss mitigation application submission.*

*41(b)(2)(i) Requirements.*

1. *Foreclosure sale not scheduled.* For purposes of § 1024.41(b)(2)(i), if no foreclosure sale has been scheduled as of the date a servicer receives a loss mitigation application, the servicer must treat the application as having been received 45 days or more before any foreclosure sale.

\* \* \* \* \*

*41(b)(2)(ii) Time period disclosure.*

1. *Thirty days is generally reasonable.* In general and subject to the restrictions described in comments 41(b)(2)(ii)-2 and -3, a servicer complies with the requirement to include a reasonable date in the written notice required under § 1024.41(b)(2)(i)(B) by including a date that is 30 days after the date the servicer provides the written notice.

2. *No later than the next milestone.* For purposes of § 1024.41(b)(2)(ii), subject to the restriction described in comment 41(b)(2)(ii)-3, the reasonable date must be no later than the earliest of:

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

3. *Seven-day minimum.* A reasonable date for purposes of § 1024.41(b)(2)(ii) must never be less than seven days from the date on which the servicer provides the written notice pursuant to § 1024.41(b)(2)(i)(B).

\* \* \* \* \*

*41(c) Evaluation of loss mitigation applications.*

*41(c)(1) Complete loss mitigation application.*

\* \* \* \* \*

4. *Other notices.* A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B, 12 CFR part 1002, or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to § 1024.41(c)(1), unless otherwise prohibited by applicable law.

\* \* \* \* \*

*41(c)(2) Incomplete loss mitigation application evaluation.*

\* \* \* \* \*

*41(c)(2)(iii) Short-term loss mitigation options.*

1. *Short-term payment forbearance program.* The exemption in § 1024.41(c)(2)(iii) applies to, among other things, short-term payment forbearance programs. For purposes of § 1024.41(c)(2)(iii), a payment forbearance program is a loss mitigation option pursuant to which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program for purposes of § 1024.41(c)(2)(iii) allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to

make up the missing payments.

2. *Short-term loss mitigation options and incomplete applications.* Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application. The servicer must still comply with the other requirements of § 1024.41 with respect to the incomplete loss mitigation application, including the requirement in § 1024.41(b)(2) to review the application to determine if it is complete, the requirement in § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (*see* comment 41(b)(1)-4.iii), and the requirement in § 1024.41(b)(2)(i)(B) to provide the borrower with written notice that the servicer acknowledges the receipt of the application and has determined that the application is incomplete.

3. *Short-term loss mitigation options and complete applications.* Even if a servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all applicable requirements in § 1024.41 if the borrower completes a loss mitigation application.

4. *Short-term repayment plan.* The exemption in § 1024.41(c)(2)(iii) applies to, among other things, short-term repayment plans. For purposes of § 1024.41(c)(2)(iii), a repayment plan is a loss mitigation option with terms under which a borrower would repay all past due payments over a specified period of time to bring the mortgage loan account current. A short-term repayment plan for purposes of § 1024.41(c)(2)(iii) allows for the repayment of no more than three months of past due payments and allows a borrower to repay the arrearage over a period lasting no more than six months.

5. *Specific payment terms and duration.* i. *General requirement.* Section

1024.41(c)(2)(iii) requires a servicer to provide the borrower a written notice stating, among other things, the specific payment terms and duration of a short-term payment forbearance program or a short-term repayment plan offered based on an evaluation of an incomplete application. Generally, a servicer complies with these requirements if the written notice states the amount of each payment due during the program or plan, the date by which the borrower must make each payment, and whether the mortgage loan will be current at the end of the program or plan if the borrower complies with the program or plan.

ii. *Disclosure of payment amounts that may change.* At the time a servicer provides the written notice pursuant to § 1024.41(c)(2)(iii), if the servicer lacks information necessary to determine the amount of a specific payment due during the program or plan (for example, because the borrower's interest rate will change to an unknown rate based on an index or because an escrow account computation year as defined in § 1024.17(b) will end and the borrower's escrow payment might change), the servicer complies with the requirement to disclose the specific payment terms and duration of a short-term payment forbearance program or short-term repayment plan if the disclosures are based on the best information reasonably available to the servicer at the time the notice is provided and the written notice identifies which payment amounts may change, states that such payment amounts are estimates, and states the general reason that such payment amounts might change. For example, if an escrow account computation year as defined in § 1024.17(b) will end during a borrower's short-term repayment plan, the written notice complies with § 1024.41(c)(2)(iii) if it identifies the payment amounts that may change, states that those payment amounts are estimates, and states that the affected payments might change because the borrower's escrow payment might change.

6. *Timing of notice.* Generally, a servicer acts promptly to provide the written notice

required by § 1024.41(c)(2)(iii) if the servicer provides such written notice no later than five days (excluding legal public holidays, Saturdays, and Sundays) after offering the borrower a short-term payment forbearance program or short-term repayment plan. A servicer may provide the written notice at the same time the servicer offers the borrower the program or plan. A written offer that contains all the required elements of the written notice also satisfies § 1024.41(c)(2)(iii).

\* \* \* \* \*

*41(c)(3) Notice of complete application.*

*Paragraph 41(c)(3)(i).*

1. *Completion date.* A servicer complies with § 1024.41(c)(3)(i)(B) by disclosing on the notice the most recent date the servicer received the complete loss mitigation application. For example, assume that a borrower first submits a complete loss mitigation application on March 1. The servicer must disclose March 1 as the date the servicer received the application under § 1024.41(c)(3)(i)(B). Assume the servicer discovers on March 10 that it requires additional information or corrected documents to complete the application and promptly requests such additional information or documents from the borrower pursuant to § 1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with § 1024.41(c)(3)(i) and disclose March 21 as the date the servicer received the complete application. *See* comment 41(c)(3)(i)-3.

2. *First notice or filing.* Section 1024.41(c)(3)(i)(D)(1) and (2) sets forth different requirements depending on whether the servicer has made the first notice or filing under applicable law for any judicial or non-judicial foreclosure process at the time the borrower submits a complete loss mitigation application. *See* comment 41(f)-1 for a description of

whether a document is considered the first notice or filing under applicable law.

3. *Additional notices.* Except as provided in § 1024.41(c)(3)(ii), § 1024.41(c)(3)(i) requires a servicer to provide a written notice every time a loss mitigation application becomes complete. For example, assume that a borrower first submits a complete loss mitigation application on March 1, and the servicer provides the notice under § 1024.41(c)(3)(i). Assume the servicer discovers on March 10 that it requires additional information or corrected documents regarding a source of income that the borrower previously identified. The servicer must promptly request such additional information or documents from the borrower pursuant to § 1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with § 1024.41(c)(3)(i), unless an exception applies under § 1024.41(c)(3)(ii). *See comment 41(c)(3)(i)-1.*

*41(c)(4) Information not in the borrower's control.*

*41(c)(4)(i) Diligence requirements.*

1. *During the first 30 days following receipt of a complete loss mitigation application.*

Section 1024.41(c)(4)(i) requires a servicer to act with reasonable diligence to obtain documents or information not in the borrower's control, which includes information in the servicer's control, that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower. At a minimum and without limitation, a servicer must request such documents or information from the appropriate party:

i. Promptly upon determining that the servicer requires the documents or information to determine which loss mitigation options, if any, the servicer will offer the borrower; and

ii. By a date that will enable the servicer to complete the evaluation within 30 days of receiving the complete loss mitigation application, as set forth in § 1024.41(c)(1), to the extent

practicable.

2. *More than 30 days following receipt of a complete loss mitigation application.* If a servicer has not, within 30 days of receiving a complete loss mitigation application, received the required documents or information from a party other than the borrower or the servicer, the servicer acts with reasonable diligence pursuant to § 1024.41(c)(4)(i) by heightening efforts to obtain the documents or information promptly, to minimize delay in making a determination of which loss mitigation options, if any, it will offer to the borrower. Such heightened efforts include, for example, promptly verifying that it has contacted the appropriate party and determining whether it should obtain the required documents or information from a different party.

*41(c)(4)(ii) Effect in case of delay.*

1. *Third-party delay.* Notwithstanding delay in receiving required documents or information from any party other than the borrower or the servicer, § 1024.41(c)(1)(i) requires a servicer to complete all possible steps in the process of evaluating a complete loss mitigation application within 30 days of receiving the complete loss mitigation application. Such steps may include requirements imposed on the servicer by third parties, such as mortgage insurance companies, guarantors, owners, or assignees. For example, if a servicer can determine a borrower's eligibility for all available loss mitigation options based on an evaluation of the borrower's complete loss mitigation application subject only to approval from the mortgage insurance company, § 1024.41(c)(1)(i) requires the servicer to do so within 30 days of receiving the complete loss mitigation application notwithstanding the need to obtain such approval before offering the borrower any loss mitigation options.

2. *Offers not prohibited.* Section 1024.41(c)(4)(ii)(A)(2) permits a servicer to deny a



complete loss mitigation application (in accordance with applicable investor requirements) if, after exercising reasonable diligence to obtain the required documents or information from a party other than the borrower or the servicer, the servicer has been unable to obtain such documents or information for a significant period of time and the servicer cannot complete its determination without the required documents or information. Section 1024.41(c)(4)(ii)(A)(2) does not require a servicer to deny a complete loss mitigation application and permits a servicer to offer a borrower a loss mitigation option, even if the servicer does not obtain the requested documents or information.

\* \* \* \* \*

*41(g) Prohibition on foreclosure sale.*

\* \* \* \* \*

3. *Interaction with foreclosure counsel.* The prohibitions in § 1024.41(g) against moving for judgment or order of sale or conducting a sale may require a servicer to act through foreclosure counsel retained by the servicer in a foreclosure proceeding. If a servicer has received a complete loss mitigation application, the servicer must instruct counsel promptly not to make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, unless one of the conditions in § 1024.41(g)(1) through (3) is met. A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation.

\* \* \* \* \*

5. *Conducting a sale prohibited.* Section 1024.41(g) prohibits a servicer from conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure

sale proceedings. Where a foreclosure sale is scheduled, and none of the conditions under § 1024.41(g)(1) through (3) are applicable, conduct of the sale violates § 1024.41(g).

\* \* \* \* \*

*41(i) Duplicative requests.*

1. *Applicability of loss mitigation protections.* Under § 1024.41(i), a servicer must comply with § 1024.41 with respect to a loss mitigation application unless the servicer has previously done so for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application. Thus, for example, if the borrower has previously submitted a complete loss mitigation application and the servicer complied fully with § 1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, the servicer again must comply with § 1024.41 for any subsequent loss mitigation application submitted by the borrower. When a servicer is required to comply with the requirements of § 1024.41 for such a subsequent loss mitigation application, the servicer must comply with all applicable requirements of § 1024.41. For example, in such a case, the servicer's provision of the notice of determination of which loss mitigation options, if any, it will offer to the borrower under § 1024.41(c)(1)(ii) regarding the borrower's prior complete loss mitigation application does not affect the servicer's obligations to provide a new notice of complete application under § 1024.41(c)(3)(i) regarding the borrower's subsequent complete loss mitigation application.

2. *Servicing transfers.* Section 1024.41(i) provides that a servicer need not comply with § 1024.41 for a subsequent loss mitigation application from a borrower where certain conditions are met. A transferee servicer and a transferor servicer, however, are not the same servicer. Accordingly, a transferee servicer is required to comply with the applicable requirements of

§ 1024.41 upon receipt of a loss mitigation application from a borrower whose servicing the transferee servicer has obtained through a servicing transfer, even if the borrower previously received an evaluation of a complete loss mitigation application from the transferor servicer.

*41(k) Servicing transfers.*

1. *Pending loss mitigation application.* For purposes of § 1024.41(k), a loss mitigation application is pending if it was subject to § 1024.41 and had not been fully resolved before the transfer date. For example, a loss mitigation application would not be considered pending if a transferor servicer had denied a borrower for all options and the borrower's time for making an appeal, if any, had expired prior to the transfer date, such that the transferor servicer had no continuing obligations under § 1024.41 with respect to the application. A pending application is considered a pending complete application if it was complete as of the transfer date under the transferor servicer's criteria for evaluating loss mitigation applications.

*41(k)(1) In general.*

*41(k)(1)(i) Timing of compliance.*

1. *Obtaining loss mitigation documents and information.* i. In connection with a transfer, a transferor servicer must timely transfer, and a transferee servicer must obtain from the transferor servicer, documents and information submitted by a borrower in connection with a loss mitigation application, consistent with policies and procedures adopted pursuant to § 1024.38(b)(4). A transferee servicer must comply with the applicable requirements of § 1024.41 with respect to a loss mitigation application received as a result of a transfer, even if the transferor servicer was not required to comply with § 1024.41 with respect to that application (for example, because § 1024.41(i) precluded applicability of § 1024.41 with respect to the transferor servicer). If an application was not subject to § 1024.41 prior to a transfer, then for

purposes of § 1024.41(b) and (c), a transferee servicer is considered to have received the loss mitigation application on the transfer date. Any such application is subject to the timeframes for compliance set forth in § 1024.41(k).

ii. A transferee servicer must, in accordance with § 1024.41(b)(1), exercise reasonable diligence to complete a loss mitigation application, including a facially complete application, received as a result of a transfer. In the transfer context, reasonable diligence includes ensuring that a borrower is informed of any changes to the application process, such as a change in the address to which the borrower should submit documents and information to complete the application, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application.

iii. A borrower may provide documents and information necessary to complete an application to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, such documents and information.

2. *Determination of rights and protections.* For purposes of § 1024.41(c) through (h), a transferee servicer must consider documents and information that constitute a complete loss mitigation application for the transferee servicer to have been received as of the date such documents and information were received by the transferor servicer, even if such documents and information were received by the transferor servicer after the transfer date. *See* comment 41(k)(1)(i)-1.iii. An application that was facially complete under § 1024.41(c)(2)(iv) with respect to the transferor servicer remains facially complete under § 1024.41(c)(2)(iv) with respect to the transferee servicer as of the date it was facially complete with respect to the transferor servicer. If an application was complete with respect to the transferor servicer, but is

not complete with respect to the transferee servicer, the transferee servicer must treat the application as facially complete under § 1024.41(c)(2)(iv) as of the date the application was complete with respect to the transferor servicer.

*3. Duplicative notices not required.* A transferee servicer is not required to provide notices under § 1024.41 with respect to a particular loss mitigation application that the transferor servicer provided prior to the transfer. For example, if the transferor servicer provided the notice required by § 1024.41(b)(2)(i)(B) prior to the transfer, the transferee servicer is not required to provide the notice again for that application.

*41(k)(1)(ii) Transfer date defined.*

*1. Transfer date.* Section 1024.41(k)(1)(ii) provides that the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv). The transfer date is the same date as that on which the transfer of the servicing responsibilities from the transferor servicer to the transferee servicer occurs. The transfer date is not necessarily the same date as either the effective date of the transfer of servicing as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(i) or the sale date identified in a servicing transfer agreement.

*41(k)(2) Acknowledgment notices.*

*41(k)(2)(ii) Prohibitions.*

*1. Examples of prohibitions.* Section 1024.41(k)(2)(ii)(A) and (B) adjusts the timeframes for certain borrower rights and foreclosure protections where § 1024.41(k)(2)(i) applies. These provisions are illustrated as follows: Assume a transferor servicer receives a borrower's initial loss mitigation application on October 1, and the loan is transferred five days (excluding legal

public holidays, Saturdays, or Sundays) later, on October 8. Assume that Columbus Day, a legal public holiday, occurs on October 14, and the transferee servicer provides the notice required by § 1024.41(b)(2)(i)(B) 10 days (excluding legal public holidays, Saturdays, or Sundays) after the transfer date, on October 23. Assume the transferee servicer discloses a 30-day reasonable date, November 22, under § 1024.41(b)(2)(ii).

i. If the transferor servicer receives the borrower's initial loss mitigation application when the borrower's mortgage loan is 101 days delinquent, the borrower's mortgage loan would be 123 days delinquent on October 23, the date the transferee servicer provides the notice required by § 1024.41(b)(2)(i)(B). Pursuant to § 1024.41(k)(2)(ii)(A), the transferee servicer cannot make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after November 22, the reasonable date disclosed under § 1024.41(b)(2)(ii), and then only if the borrower has not submitted a complete application by that date.

ii. If the transferor servicer receives the borrower's initial loss mitigation application 55 days before the foreclosure sale, the date that the transferee servicer provides the notice required by § 1024.41(b)(2)(i)(B), October 23, is 33 days before the foreclosure sale. Pursuant to § 1024.41(k)(2)(ii)(B), the transferee servicer must comply with § 1024.41(c), (d), and (g) if the borrower submits a complete loss mitigation application on or before November 22, the reasonable date disclosed under § 1024.41(b)(2)(ii).

*2. Applicability of loss mitigation provisions.* Section 1024.41(k)(2)(ii)(A) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii), notwithstanding § 1024.41(f)(1). Section 1024.41(k)(2)(ii)(B) requires a servicer to comply with § 1024.41(c), (d), and (g) if a borrower submits a complete

loss mitigation application on or before the reasonable date disclosed in the notice required by § 1024.41(b)(2)(i)(B), even if the servicer would otherwise not be required to comply with § 1024.41(c), (d), and (g) because the application is submitted 37 days or fewer before a foreclosure sale. Section 1024.41(k)(2)(ii) provides additional protections for borrowers but does not remove any protections. Servicers remain subject to the requirements of § 1024.41 as applicable and so, for example, must comply with § 1024.41(h) if the servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale. Similarly, a servicer is prohibited from making the first notice or filing before the borrower's mortgage loan obligation is more than 120 days delinquent, even if that is after the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii).

3. *Reasonable date when no milestones remain.* Generally, a servicer does not provide the notice required under § 1024.41(b)(2)(i)(B) after the date that is 38 days before a foreclosure sale, so at least one milestone specified in comment 41(b)(ii)-1 always remains applicable. When § 1024.41(k)(2)(i) applies, however, the transferee servicer may sometimes provide the notice after the date that is 38 days before a foreclosure sale. When this occurs, the transferee servicer must determine the reasonable date when none of the four specified milestones remain. The other requirements of § 1024.41(b)(2)(ii) continue to apply. In this circumstance, a reasonable date may occur less than 30 days, but not less than seven days, after the date the transferee servicer provides the written notice pursuant to § 1024.41(b)(2)(i)(B).

*41(k)(3) Complete loss mitigation applications pending at transfer.*

1. *Additional information or corrections to a previously submitted document.* If a transferee servicer acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date and the transferee servicer determines that

additional information or a correction to a previously submitted document is required based upon its criteria for evaluating loss mitigation applications, the application is considered facially complete under § 1024.41(c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer. Once the transferee servicer receives the information or corrections necessary to complete the application, § 1024.41(c)(3) requires the transferee servicer to provide a notice of complete application.

*2. Applications first complete upon transfer.* If the borrower's loss mitigation application was incomplete based on the transferor servicer's criteria prior to transfer but is complete based upon the transferee servicer's criteria, the application is considered a pending loss mitigation application complete as of the transfer date for purposes of § 1024.41(k)(3). Consequently, the transferee servicer must comply with the applicable requirements of § 1024.41(c)(1) and (4) within 30 days of the transfer date. For purposes of § 1024.41(c) through (h), the application is complete as of the date the transferor servicer received the documents and information constituting the complete application. *See comment 41(k)(1)(i)-2.* In such circumstances, § 1024.41(c)(3) requires the transferee servicer to provide a notice of complete application that discloses the date the transferor servicer received the documents and information constituting the complete application.

*41(k)(4) Applications subject to appeal process.*

*1. Obtaining appeal.* A borrower may submit an appeal of a transferor servicer's determination pursuant to § 1024.41(h) to the transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such appeals.



2. *Servicer unable to determine appeal.* A transferee servicer may be unable to make a determination on an appeal when, for example, the transferor servicer denied a borrower for a loan modification option that the transferee servicer does not offer or when the transferee servicer receives the mortgage loan through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer lacks sufficient information to review the appeal. In that circumstance, the transferee servicer is required to treat the appeal as a pending complete application, and it must permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer, even if it does not offer the loss mitigation options offered by the transferor servicer, in addition to the loss mitigation options, if any, that the transferee servicer determines to offer the borrower based on its own evaluation of the borrower's complete loss mitigation application. For example, assume a transferor servicer denied a borrower for all loan modification options but offered the borrower a short sale option, and assume that the borrower's appeal of the loan modification denial was pending as of the transfer date. If the transferee servicer is unable to determine the borrower's appeal, the transferee servicer must evaluate the borrower for all available loss mitigation options in accordance with § 1024.41(c) and (k)(3). At the conclusion of such evaluation, the transferee servicer must permit the borrower to accept the short sale option offered by the transferor servicer, even if the transferee servicer does not offer the short sale option, in addition to any loss mitigation options the transferee servicer determines to offer the borrower based upon its own evaluation.

*41(k)(5) Pending loss mitigation offers.*

1. *Obtaining evidence of borrower acceptance.* A borrower may provide an acceptance or rejection of a pending loss mitigation offer to a transferor servicer after the transfer date.

Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such acceptances and rejections, and the transferee servicer must provide the borrower with any timely accepted loss mitigation option, even if the borrower submitted the acceptance to the transferor servicer.

**APPENDIX MS TO PART 1024—MORTGAGE SERVICING MODEL FORMS AND CLAUSES**

\* \* \* \* \*

2. *Permissible changes.* Servicers may make certain changes to the format or content of the forms and clauses and may delete any disclosures that are inapplicable without losing the protection from liability so long as those changes do not affect the substance, clarity, or meaningful sequence of the forms and clauses. Servicers making revisions to that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

- i. Use of “borrower” and “servicer” instead of pronouns.
- ii. Substitution of the words “lender” and “servicer” for each other.
- iii. Addition of graphics or icons, such as the servicer's corporate logo.
- iv. Modifications to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, this could include:

A. Use of “the mortgage loan” or “this mortgage loan” instead of “your mortgage loan” and “the monthly payments” instead of “your monthly payments.”

B. Use of “Payments due on or after [Date] may be sent to” instead of “Send all payments

due on or after [Date] to” in notices of transfer.

C. Use of “We will charge the loan account” instead of “You must pay us” in notices relating to force-placed insurance.

\* \* \* \* \*

## **PART 1026—TRUTH IN LENDING (REGULATION Z)**

17. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 et seq.

### **Subpart A—General**

18. Section 1026.2 is amended by revising paragraph (a)(11) and adding paragraph (a)(27) to read as follows:

#### **§ 1026.2 Definitions and rules of construction.**

\* \* \* \* \*

(a) \* \* \*

(11) *Consumer* means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person’s ownership interest in the dwelling is or will be subject to the security interest. For purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41, the term includes a confirmed successor in interest.

\* \* \* \* \*

(27)(i) *Successor in interest* means a person to whom an ownership interest in a dwelling securing a closed-end consumer credit transaction is transferred from a consumer, provided that

the transfer is:

(A) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(B) A transfer to a relative resulting from the death of the consumer;

(C) A transfer where the spouse or children of the consumer become an owner of the property;

(D) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the consumer becomes an owner of the property; or

(E) A transfer into an *inter vivos* trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) *Confirmed successor in interest* means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the dwelling.

\* \* \* \* \*

### **Subpart C—Closed-End Credit**

19. Section 1026.20 is amended by adding paragraph (f) to read as follows:

#### **§ 1026.20 Disclosure requirements regarding post-consummation events.**

\* \* \* \* \*

(f) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, § 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by paragraphs (c), (d), and (e) of this section unless and until the confirmed successor in interest

either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, § 1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked.

**Subpart E—Special Rules for Certain Home Mortgage Transactions**

20. Section 1026.36 is amended by revising the introductory text of paragraphs (c)(1) and (c)(2) to read as follows:

**§ 1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.**

\* \* \* \* \*

(c) \* \* \*

(1) *Payment processing.* In connection with a closed-end consumer credit transaction secured by a consumer’s principal dwelling:

\* \* \* \* \*

(2) *No pyramiding of late fees.* In connection with a closed-end consumer credit transaction secured by a consumer’s principal dwelling, a servicer shall not impose any late fee or delinquency charge for a payment if:

\* \* \* \* \*

21. Section 1026.39 is amended by adding paragraph (f) to read as follows:

**§ 1026.39 Mortgage transfer disclosures.**

\* \* \* \* \*

(f) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, § 1024.32(c)(1), the servicer is not

required to provide to the confirmed successor in interest any written disclosure required by paragraph (b) of this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, § 1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked.

22. Section 1026.41 is amended by revising paragraphs (d)(8)(i) and (e)(4)(iii)(A), adding paragraphs (e)(4)(iii)(D), revising paragraph (e)(5), and adding paragraphs (e)(6), (f), and (g) to read as follows:

**§ 1026.41 Periodic statements for residential mortgage loans.**

\* \* \* \* \*

(d) \* \* \*

(8) \* \* \*

(i) The length of the consumer's delinquency;

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(iii) \* \* \*

(A) Mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees.

\* \* \* \* \*

(D) Transactions serviced by the servicer for a seller financier that meets all of the criteria identified in § 1026.36(a)(5).

(5) *Certain Consumers in Bankruptcy*—(i) *Exemption*. Except as provided in paragraph (e)(5)(ii) of this section, a servicer is exempt from the requirements of this section with regard to a mortgage loan if:

(A) Any consumer on the mortgage loan is a debtor in bankruptcy under title 11 of the United States Code or has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328; and

(B) With regard to any consumer on the mortgage loan:

(1) The consumer requests in writing that the servicer cease providing a periodic statement or coupon book;

(2) The consumer's bankruptcy plan provides that the consumer will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan;

(3) A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring the servicer to cease providing a periodic statement or coupon book; or

(4) The consumer files with the court overseeing the bankruptcy case a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling securing the mortgage loan and a consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case.

(ii) *Reaffirmation or consumer request to receive statement or coupon book*. A servicer ceases to qualify for an exemption pursuant to paragraph (e)(5)(i) of this section with respect to a

mortgage loan if the consumer reaffirms personal liability for the loan or any consumer on the loan requests in writing that the servicer provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement or coupon book.

(iii) *Exclusive address.* A servicer may establish an address that a consumer must use to submit a written request under paragraph (e)(5)(i)(B)(1) or (ii) of this section, provided that the servicer notifies the consumer of the address in a manner that is reasonably designed to inform the consumer of the address. If a servicer designates a specific address for requests under paragraph (e)(5)(i)(B)(1) or (ii) of this section, the servicer shall designate the same address for purposes of both paragraphs (e)(5)(i)(B)(1) and (ii) of this section.

(iv) *Timing of compliance following transition—(A) Triggering events for transitioning to modified and unmodified periodic statements.* A servicer transitions to providing a periodic statement or coupon book with the modifications set forth in paragraph (f) of this section or to providing a periodic statement or coupon book without such modifications when one of the following three events occurs:

(1) A mortgage loan becomes subject to the requirements of paragraph (f) of this section;

(2) A mortgage loan ceases to be subject to the requirements of paragraph (f) of this section; or

(3) A servicer ceases to qualify for an exemption pursuant to paragraph (e)(5)(i) of this section with respect to a mortgage loan.

(B) *Transitional single-billing-cycle exemption.* A servicer is exempt from the requirements of this section with respect to a single billing cycle when the payment due date for



that billing cycle is no more than 14 days after the date on which one of the events listed in paragraph (e)(5)(iv)(A) of this section occurs.

(C) *Timing of first modified or unmodified statement after transition.* When one of the events listed in paragraph (e)(5)(iv)(A) of this section occurs, a servicer must provide the next modified or unmodified periodic statement or coupon book that complies with the requirements of this section by delivering or placing it in the mail within a reasonably prompt time after the first payment due date, or the end of any courtesy period for the payment's corresponding billing cycle, that is more than 14 days after the date on which the applicable event listed in paragraph (e)(5)(iv)(A) of this section occurs.

(6) *Charged-off loans.* (i) A servicer is exempt from the requirements of this section for a mortgage loan if the servicer:

(A) Has charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account; and

(B) Provides, within 30 days of charge-off or the most recent periodic statement, a periodic statement, clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records." The periodic statement must clearly and conspicuously explain that, as applicable, the mortgage loan has been charged off and the servicer will not charge any additional fees or interest on the account; the servicer will no longer provide the consumer a periodic statement for each billing cycle; the lien on the property remains in place and the consumer remains liable for the mortgage loan obligation and any obligations arising from or related to the property, which may include property taxes; the consumer may be required to pay the balance on the account in the future, for example, upon sale of the property;

the balance on the account is not being canceled or forgiven; and the loan may be purchased, assigned, or transferred.

(ii) *Resuming compliance*—(A) If a servicer fails at any time to treat a mortgage loan that is exempt under paragraph (e)(6)(i) of this section as charged off or charges any additional fees or interest on the account, the obligation to provide a periodic statement pursuant to this section resumes.

(B) *Prohibition on retroactive fees*. A servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption in paragraph (e)(6)(i) of this section applied.

(f) *Modified periodic statements and coupon books for certain consumers in bankruptcy*. While any consumer on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, or if such consumer has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, the requirements of this section are subject to the following modifications with regard to that mortgage loan:

(1) *Requirements not applicable*. The periodic statement may omit the information set forth in paragraphs (d)(1)(ii) and (d)(8)(i), (ii), and (v) of this section. The requirement in paragraph (d)(1)(iii) of this section that the amount due must be shown more prominently than other disclosures on the page shall not apply.

(2) *Bankruptcy notices*. The periodic statement must include the following:

(i) A statement identifying the consumer's status as a debtor in bankruptcy or the discharged status of the mortgage loan; and

(ii) A statement that the periodic statement is for informational purposes only.

(3) *Chapter 12 and chapter 13 consumers.* In addition to any other provisions of this paragraph (f) that may apply, with regard to a mortgage loan for which any consumer with primary liability is a debtor in a chapter 12 or chapter 13 bankruptcy case, the requirements of this section are subject to the following modifications:

(i) *Requirements not applicable.* In addition to omitting the information set forth in paragraph (f)(1) of this section, the periodic statement may also omit the information set forth in paragraphs (d)(8)(iii), (iv), (vi), and (vii) of this section.

(ii) *Amount due.* The amount due information set forth in paragraph (d)(1) of this section may be limited to the date and amount of the post-petition payments due and any post-petition fees and charges imposed by the servicer.

(iii) *Explanation of amount due.* The explanation of amount due information set forth in paragraph (d)(2) of this section may be limited to:

(A) The monthly post-petition payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow;

(B) The total sum of any post-petition fees or charges imposed since the last statement;  
and

(C) Any post-petition payment amount past due.

(iv) *Transaction activity.* The transaction activity information set forth in paragraph (d)(4) of this section must include all payments the servicer has received since the last statement, including all post-petition and pre-petition payments and payments of post-petition fees and charges, and all post-petition fees and charges the servicer has imposed since the last statement. The brief description of the activity need not identify the source of any payments.

(v) *Pre-petition arrearage.* If applicable, a servicer must disclose, grouped in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:

(A) The total of all pre-petition payments received since the last statement;

(B) The total of all pre-petition payments received since the beginning of the consumer's bankruptcy case; and

(C) The current balance of the consumer's pre-petition arrearage.

(vi) *Additional disclosures.* The periodic statement must include, as applicable:

(A) A statement that the amount due includes only post-petition payments and does not include other payments that may be due under the terms of the consumer's bankruptcy plan;

(B) If the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, a statement that the consumer should send the payment to the trustee and not to the servicer;

(C) A statement that the information disclosed on the periodic statement may not include payments the consumer has made to the trustee and may not be consistent with the trustee's records;

(D) A statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments; and

(E) If the consumer is more than 45 days delinquent on post-petition payments, a statement that the servicer has not received all the payments that became due since the consumer filed for bankruptcy.

(4) *Multiple obligors.* If this paragraph (f) applies in connection with a mortgage loan with more than one primary obligor, the servicer may provide the modified statement to any or

all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy.

(5) *Coupon books.* A servicer that provides a coupon book instead of a periodic statement under paragraph (e)(3) of this section must include in the coupon book the disclosures set forth in paragraph (f)(2) and (f)(3)(vi) of this section, as applicable. The servicer may include these disclosures anywhere in the coupon book provided to the consumer or on a separate page enclosed with the coupon book. The servicer must make available upon request to the consumer by telephone, in writing, in person, or electronically, if the consumer consents, the information listed in paragraph (f)(3)(v) of this section, as applicable. The modifications set forth in paragraph (f)(1) and (f)(3)(i) through (iv) and (vi) of this section apply to a coupon book and other information a servicer provides to the consumer under paragraph (e)(3) of this section.

(g) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, § 1024.32(c)(1), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, § 1024.32(c)(1)(iv), that the confirmed successor in interest has not revoked.

23. Appendix H to part 1026 is amended by:

A. Revising the entry for H-30(C) in the table of contents at the beginning of the appendix;

B. Adding entries for H-30(E) and H-30(F) in the table of contents at the beginning of the appendix;

C. Revising H-4(C);

D. Revising H-14;

E. Revising the title of H-30(C);

F. Republishing H-30(C); and

G. Adding H-30(E) and H-30(F).

The additions, republication, and revisions read as follows:

**APPENDIX H TO PART 1026— CLOSED-END MODEL FORMS AND CLAUSES**

\* \* \* \* \*

H-30(C) Sample Form of Periodic Statement for a Payment-Option Loan (§ 1026.41)

\* \* \* \* \*

H-30(E) Sample Form of Periodic Statement for Consumer in Chapter 7 or Chapter 11  
Bankruptcy

H-30(F) Sample Form of Periodic Statement for Consumer in Chapter 12 or Chapter 13  
Bankruptcy

\* \* \* \* \*

**H-4(C)—VARIABLE RATE MODEL CLAUSES**

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

*How Your Interest Rate and Payment Are Determined*

- Your interest rate will be based on [an index plus a margin] [a formula].
- Your payment will be based on the interest rate, loan balance, and loan term.

—[The interest rate will be based on (identification of index) plus our margin. Ask for our current interest rate and margin.]

—[The interest rate will be based on (identification of formula). Ask us for our current interest rate.]

—Information about the index [formula for rate adjustments] is published [can be found] \_\_\_\_\_.

—[The initial interest rate is not based on the (index) (formula) used to make later adjustments. Ask us for the amount of current interest rate discounts.]

#### *How Your Interest Rate Can Change*

- Your interest rate can change (frequency).
- [Your interest rate cannot increase or decrease more than \_\_\_ percentage points at each adjustment.]
- Your interest rate cannot increase [or decrease] more than \_\_\_ percentage points over the term of the loan.

#### *How Your Payment Can Change*

- Your payment can change (frequency) based on changes in the interest rate.
- [Your payment cannot increase more than (amount or percentage) at each adjustment.]
- [You will be notified at least 210, but no more than 240, days before first payment at the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]
- [You will be notified at least 60, but no more than 120, days before first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment

change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

• [For example, on a \$10,000 [term] loan with an initial interest rate of \_\_\_\_ [(the rate shown in the interest rate column below for the year 19 \_\_\_\_)] [(in effect (month) (year))], the maximum amount that the interest rate can rise under this program is \_\_\_\_ percentage points, to \_\_\_\_%, and the monthly payment can rise from a first-year payment of \$ \_\_\_\_ to a maximum of \$ \_\_\_\_ in the \_\_\_\_ year. To see what your payments would be, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of \$60,000 would be:  $\$60,000 \div \$10,000 = 6$ ;  $6 \times \text{____} = \$ \text{____}$  per month.)]

*[Example*

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:

Amount	\$10,000
Term	_____
Change date	_____
Payment adjustment	(frequency)
Interest adjustment	(frequency)
[Margin]*	_____



Caps ____ [periodic interest rate cap]
____ [lifetime interest rate cap]
____ [payment cap]
[Interest rate carryover]
[Negative amortization]
[Interest rate discount]**
Index.....(identification of index or formula)

\*This is a margin we have used recently, your margin may be different.

\*\*This is the amount of a discount we have provided recently; your loan may be discounted by a different amount.]

<b>Year</b>	<b>Index (%)</b>	<b>Margin (Percentage points)</b>	<b>Interest Rate (%)</b>	<b>Monthly Payment (\$)</b>	<b>Remaining Balance (\$)</b>
1982					
1983					
1984					
1985					
1986					

1987					
1988					
1989					
1990					
1991					
1992					
1993					
1994					
1995					
1996					

Note: To see what your payments would have been during that period, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of \$60,000 taken out in 1982 would be:

$\$60,000 \div \$10,000 = 6$ ;  $6 \times \underline{\hspace{1cm}} = \$ \underline{\hspace{1cm}}$  per month.)

\* \* \* \* \*

**H-14—VARIABLE RATE MORTGAGE SAMPLE**

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

*How Your Interest Rate and Payment Are Determined*

- Your interest rate will be based on an index rate plus a margin.

- Your payment will be based on the interest rate, loan balance, and loan term.

—The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.

—Information about the index rate is published weekly in the Wall Street Journal.

- Your interest rate will equal the index rate plus our margin unless your interest rate “caps” limit the amount of change in the interest rate.

#### *How Your Interest Rate Can Change*

- Your interest rate can change yearly.
- Your interest rate cannot increase or decrease more than 2 percentage points per year.
- Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

#### *How Your Monthly Payment Can Change*

- Your monthly payment can increase or decrease substantially based on annual changes in the interest rate.

• [For example, on a \$10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of \$106.03 to a maximum of \$145.34 in the fourth year. To see what your payment is, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of \$60,000 would be:

$\$60,000 \div \$10,000 = 6$ ;  $6 \times 106.03 = \$636.18$  per month.)]

- [You will be notified at least 210, but no more than 240, days before first payment at

the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

- [You will be notified at least 60, but no more than 120, days before first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

*[Example*

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

Amount	\$10,000
Term	30 years
Payment adjustment	1 year
Interest adjustment	1 year
Margin	3 percentage points
Caps ____ 2 percentage points annual interest rate	
____ 5 percentage points lifetime interest rate	
Index ____ Weekly average yield on U.S. Treasury securities adjusted to a constant maturity of	

one year.					
<b>Year</b> <b>(as of 1st week ending in July)</b>	<b>Index</b> <b>(%)</b>	<b>Margin*</b> <b>(percentage</b> <b>points)</b>	<b>Interest</b> <b>Rate</b> <b>(%)</b>	<b>Monthly</b> <b>Payment</b> <b>(\$)</b>	<b>Remaining</b> <b>Balance</b> <b>(\$)</b>
1982	14.41	3	17.41	145.90	9,989.37
1983	9.78	3	**15.41	129.81	9,969.66
1984	12.17	3	15.17	127.91	9,945.51
1985	7.66	3	**13.17	112.43	9,903.70
1986	6.36	3	***12.41	106.73	9,848.94
1987	6.71	3	***12.41	106.73	9,786.98
1988	7.52	3	***12.41	106.73	9,716.88
1989	7.97	3	***12.41	106.73	9,637.56
1990	8.06	3	***12.41	106.73	9,547.83
1991	6.40	3	***12.41	106.73	9,446.29
1992	3.96	3	***12.41	106.73	9,331.56
1993	3.42	3	***12.41	106.73	9,201.61
1994	5.47	3	***12.41	106.73	9,054.72
1995	5.53	3	***12.41	106.73	8,888.52

1996	5.82	3	***12.41	106.73	8,700.37
------	------	---	----------	--------	----------

\*This is a margin we have used recently; your margin may be different.

\*\*This interest rate reflects a 2 percentage point annual interest rate cap.

\*\*\*This interest rate reflects a 5 percentage point lifetime interest rate cap.

Note: To see what your payments would have been during that period, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of \$60,000 taken out in 1982 would be:  $\$60,000 \div \$10,000 = 6$ ;  $6 \times \$106.73 = \$640.38$ .)]

- [You will be notified at least 210, but no more than 240, days before first payment at the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

- [You will be notified at least 60, but no more than 120, days before first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

\* \* \* \* \*

**H-30(C) SAMPLE FORM OF PERIODIC STATEMENT FOR A PAYMENT-OPTION LOAN**

**Springside Mortgage**

Customer Service: 1-800-555-1234  
[www.springsidemortgage.com](http://www.springsidemortgage.com)

Jordan and Dana Smith  
 4700 Jones Drive  
 Memphis, TN 38109

**Mortgage Statement**

Statement Date: 3/20/2012

<b>Account Number</b>	<b>1234567</b>
<b>Payment Due Date</b>	<b>4/1/2012</b>
<b>Amount Due</b>	<b>Option 1 (Full): \$1,829.71</b>
	<b>Option 2 (Interest-Only): \$1,443.25</b>
	<b>Option 3 (Minimum): \$1,156.43</b>
<i>If payment is received after 4/15/12, \$160 late fee will be charged.</i>	

Account Information	
Outstanding Principal	\$260,000.00
Interest Rate (Until October 2012)	4.75%
Prepayment Penalty	Yes

Explanation of Amount Due			
	Option 1 (Full)	Option 2 (Interest-Only)	Option 3 (Minimum)
Principal	\$386.46	\$0	\$0
Interest	\$1,048.07	\$1,048.07	\$761.25
Escrow (Taxes and Insurance)	<u>\$235.18</u>	<u>\$235.18</u>	<u>\$235.18</u>
<b>Regular Monthly Payment</b>	<b>\$1,669.71</b>	<b>\$1,283.25</b>	<b>\$996.43</b>
Total Fees and Charges	<u>\$160.00</u>	<u>\$160.00</u>	<u>\$160.00</u>
<b>Total Amount Due</b>	<b>\$1,829.71</b>	<b>\$1,443.25</b>	<b>\$1,156.43</b>
If you make this payment...	... your principal balance will <u>decrease</u> , and you will be closer to paying off your loan.	... your principal balance will <u>stay the same</u> , and you will <u>not</u> be closer to paying off your loan.	... <b>your principal balance will increase</b> . You will be borrowing more money and losing equity in your home.

Transaction Activity (2/20 to 3/19)			
Date	Description	Charges	Payments
3/16/12	Late Fee (charged because payment was received after 3/15/2012)	\$160.00	
3/19/12	Payment Received – Thank you		\$1,669.71

Past Payments Breakdown		
	Paid Last Month	Paid Year to Date
Principal	\$384.93	\$1,150.25
Interest	\$1,049.60	\$3,153.34
Escrow (Taxes and Insurance)	\$235.18	\$705.54
Fees	\$0.00	\$0.00
<b>Total</b>	<b>\$1,669.71</b>	<b>\$5,009.13</b>

**Springside Mortgage**

Springside Mortgage  
 P.O. Box 11111  
 Los Angeles, CA 90010

Amount Due	
<input type="checkbox"/> Option 1 (Full):	<b>\$1,829.71</b>
<input type="checkbox"/> Option 2 (Interest-Only):	<b>\$1,443.25</b>
<input type="checkbox"/> Option 3 (Minimum):	<b>\$1,156.43</b>
<i>\$160 late fee will be charged after 4/15/12</i>	
Additional Principal	\$ .
Additional Escrow	\$ .
<b>Total Amount Enclosed</b>	<b>\$ .</b>

*Make check payable to Springside Mortgage.*

1234567 34571892

342359127 P

\* \* \* \* \*

**H-30(E) SAMPLE FORM OF PERIODIC STATEMENT FOR CONSUMER IN CHAPTER 7 OR  
CHAPTER 11 BANKRUPTCY**



## Springside Mortgage

Customer Service: 1-800-555-1234  
[www.springsidemortgage.com](http://www.springsidemortgage.com)

Jordan and Dana Smith  
 4700 Jones Drive  
 Memphis, TN 38109

## Mortgage Statement

Statement Date: 8/20/2015

Account Number	1234567
Payment Date	9/1/2015
Payment Amount	\$3,839.13

Bankruptcy Message
<p><b>Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.</b></p> <p>We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.</p> <p>If you want to stop receiving statements, write to us.</p>

Explanation of Payment Amount	
Principal	\$386.46
Interest	\$1,048.07
Escrow (Taxes and Insurance)	\$235.18
<b>Regular Monthly Payment</b>	<b>\$1,669.71</b>
Total Fees and Charges	\$160.00
Past Unpaid Amount	\$2,009.42
<b>Total Payment Amount</b>	<b>\$3,839.13</b>

Account Information	
Outstanding Principal	\$265,544.78
Interest Rate (Until October 2015)	4.75%
Prepayment Penalty	Yes

Transaction Activity (7/20 to 8/19)			
Date	Description	Charges	Payments
8/13/15	Partial Payment Received*		\$1,000.00
8/16/15	Late Fee (charged because full payment not received by 8/15/2015)	\$160.00	

Past Payments Breakdown		
	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$2,268.95
Interest	\$0.00	\$6,338.23
Escrow (Taxes and Insurance)	\$0.00	\$1,411.08
Fees	\$0.00	\$160.00
Partial Payment (Unapplied)*	\$1,000.00	\$1,490.00
<b>Total</b>	<b>\$1,000.00</b>	<b>\$11,668.26</b>

**Account History**
<p><i>Recent Account History</i></p> <ul style="list-style-type: none"> <li>• Payment due 5/1/15: Fully paid on time</li> <li>• Payment due 6/1/15: Fully paid on 7/3/15</li> <li>• Payment due 7/1/15: Unpaid balance of \$339.71</li> <li>• Payment due 8/1/15: Unpaid balance of \$1829.71</li> <li>• Current payment date 9/1/15: \$1,669.71</li> <li>• <b>Total: \$3,839.13 unpaid amount that, if paid, would bring your loan current.</b></li> </ul> <p><b>If You Are Experiencing Financial Difficulty:</b> See back for information about mortgage counseling or assistance.</p>

Important Messages
<p><b>*Partial Payments:</b> Any partial payments that you make are not applied to your mortgage, but instead are held in a separate suspense account. If you pay the balance of a partial payment, the funds will then be applied to your mortgage.</p>

## Springside Mortgage

Springside Mortgage  
 P.O. Box 11111  
 Los Angeles, CA 90010

Payment Amount	
Payment Date:	9/1/2015
Payment Amount:	\$3,839.13
Additional Principal	\$ .
Additional Escrow	\$ .
<b>Total Amount Enclosed</b>	<b>\$ .</b>

If you are making a payment, make your check payable to Springside Mortgage.

1234567 34571892

342359127 DN

**H-30(F) SAMPLE FORM OF PERIODIC STATEMENT FOR CONSUMER IN CHAPTER 12 OR  
CHAPTER 13 BANKRUPTCY**

**Springside Mortgage**

Customer Service: 1-800-555-1234  
[www.springsidemortgage.com](http://www.springsidemortgage.com)

**Mortgage Statement**

Statement Date: 8/20/2015

Jordan and Dana Smith  
 4700 Jones Drive  
 Memphis, TN 38109

<b>Account Number</b>	<b>1234567</b>
<b>Payment Date</b>	<b>9/1/2015</b>
<b>Payment Amount</b>	<b>\$3,569.88</b>

**Bankruptcy Message**

**Our records show that you are a debtor in bankruptcy. We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.**

If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, you should pay the Trustee instead of us. Please contact your attorney or the Trustee if you have questions.

**If you want to stop receiving statements, write to us.**

**Explanation of Payment Amount (Post-Petition Payment)**

Principal	\$511.63
Interest	\$1,053.31
Escrow (Taxes and Insurance)	\$75.00
<b>Regular Monthly Payment</b>	<b>\$1,939.94</b>
Total Fees and Charges	\$190.00
Past Unpaid Amount	\$1,439.94
<b>Total Payment Amount</b>	<b>\$3,569.88</b>

*The Payment Amount does not include any amount that was past due before you filed for bankruptcy.*

**Account Information**

Outstanding Principal	\$269,126.91
Interest Rate (Until October 2015)	4.75%
Prepayment Penalty	Yes

**Transaction Activity (7/20 to 8/19)**

Date	Description	Charges	Payments
8/10/15	Partial Payment Received*		\$336.43
8/13/15	Partial Payment Received*		\$500.00
8/16/15	Late Fee (charged because full payment not received by 8/15/15)	\$190.00	

**Breakdown of Past Payments**

	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$3,926.91
Interest	\$0.00	\$8,592.62
Escrow (Taxes and Insurance)	\$0.00	\$3,000.00
Fees	\$0.00	\$0.00
Partial Payment (Unapplied)*	\$836.43	\$1,251.53
<b>Total</b>	<b>\$836.43</b>	<b>\$16,771.06</b>

**Important Messages**

**We have not received all of your mortgage payments due since you filed for bankruptcy.**

This statement may not show recent payments you sent to the Trustee that the Trustee has not yet forwarded to us. Please contact your attorney or the Trustee if you have questions.

**\*Partial Payments:** Any partial payments listed here are not applied to your mortgage, but instead are held in one or more separate suspense accounts. Once we receive funds equal to a full monthly payment, we will apply those funds to your mortgage.

**Summary of Amounts Past Due Before Bankruptcy Filing (Pre-Petition Arrearage)**

Paid Last Month	\$336.43	This box shows amounts that were past due when you filed for bankruptcy. It may also include other allowed amounts on your mortgage loan. The Trustee is sending us the payments shown here. These are separate from your regular monthly mortgage payment.
Total Paid During Bankruptcy	\$1,345.72	
Current Balance	\$10,765.88	

**Springside Mortgage**

Springside Mortgage  
 P.O. Box 11111  
 Los Angeles, CA 90010

If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, do not send your payment to us. Instead, you should send your payment to the Trustee.

**Payment Amount**

<b>Payment Date:</b>	<b>9/1/2015</b>
<b>Payment Amount:</b>	<b>\$3,569.88</b>
Additional Principal	\$ .
Additional Escrow	\$ .
<b>Total Amount Enclosed</b>	<b>\$ .</b>

If you are sending us a payment, make your check payable to *Springside Mortgage*.

1234567 34571892

342359127 DN

\* \* \* \* \*

24. In Supplement I to part 1026:

A. Under *Section 1026.2—Definitions and Rules of Construction*:

i. Under *2(a)(11) Consumer*, paragraph 4 is added.

ii. Under *Paragraph 2(a)(27)*, the heading *2(a)(27)(i) Successor in interest* is added, and paragraphs 1 and 2 under that heading are added.

B. Under *Section 1026.20—Disclosure requirements regarding post-consummation events*:

i. Under *20(e) Escrow account cancellation notice for certain mortgage transactions*:

a. Under *20(e)(4) Form of disclosures*, paragraph 3 is added.

C. Under *Section 1026.36—Prohibited acts or practices and certain requirements for credit secured by a dwelling*:

i. Under *36(c) Servicing practices*:

a. Under *Paragraph 36(c)(1)(i)*, paragraphs 4 and 5 are added.

b. Under *Paragraph 36(c)(1)(iii)*, paragraph 2 is revised.

D. Under *Section 1026.41—Periodic Statements for Residential Mortgage Loans*:

i. Under *41(a) In general*, paragraph 1 is revised.

ii. Under *41(c) Form of the periodic statement*, paragraph 5 is added.

iii. Under *41(d) Content and layout of the periodic statement*, paragraph 1 is revised, and paragraphs 4 and 5 are added.

a. The heading *41(d)(1) Amount due* is added, and paragraphs 1 through 3 under that heading are added.

b. The heading *41(d)(2) Explanation of amount due* is added, and paragraphs 1 and 2 under that heading are added.

c. The heading *41(d)(8) Delinquency information* is added, and paragraphs 1 and 2 under that heading are added.

iv. The heading *41(e) Exemptions* is added.

v. Under *41(e) Exemptions*, the heading *41(e)(5) Consumers in bankruptcy* is revised.

vi. Under revised heading *41(e)(5) Certain consumers in bankruptcy*, paragraphs 1 through 3 are revised, and paragraph 4 is added.

a. The heading *41(e)(5)(i) Exemption* is added, and paragraph 1 under that heading is added.

b. The heading *Paragraph 41(e)(5)(i)(B)(2)* is added, and paragraph 1 under that heading is added.

c. The heading *Paragraph 41(e)(5)(i)(B)(4)* is added, and paragraph 1 under that heading is added.

d. The heading *41(e)(5)(ii) Reaffirmation or consumer request to receive statement or coupon book* is added, and paragraph 1 under that heading is added.

e. The heading *41(e)(5)(iv) Timing of compliance following transition* is added.

f. The heading *41(e)(5)(iv)(A) Triggering events for transitioning to modified or unmodified statement or coupon book* is added, and paragraphs 1 and 2 under that heading are added.

g. The heading *41(e)(5)(iv)(B) Transitional single-billing-cycle exemption* is added, and paragraph 1 under that heading is added.

h. The heading *41(e)(5)(iv)(C) Timing of first modified or unmodified statement or*

*coupon book after transition* is added, and paragraphs 1 through 3 under that heading are added.

vii. The heading *41(e)(6) Charged-off loans* is added, and paragraphs 1 and 2 under that heading are added.

a. Under *41(e)(6) Charged-off loans*, the heading *Paragraph 41(e)(6)(i)(B)* is added, and paragraph 1 under that heading is added.

viii. The heading *41(f) Modified periodic statements and coupon books for certain consumers in bankruptcy* is added, and paragraphs 1 through 6 under that heading are added.

a. The heading *41(f)(3) Chapter 12 and chapter 13 consumers* is added, and paragraphs 1 through 3 under that heading are added.

b. The heading *41(f)(3)(ii) Amount due* is added, and paragraph 1 under that heading is added.

c. The heading *41(f)(3)(iii) Explanation of amount due* is added, and paragraph 1 under that heading is added.

d. The heading *41(f)(3)(v) Pre-petition arrearage* is added, and paragraph 1 under that heading is added.

e. The heading *41(f)(4) Multiple obligors* is added, and paragraphs 1 and 2 under that heading are added.

The additions and revisions read as follows:

**Supplement I to Part 1026—Official Interpretations**

\* \* \* \* \*

**Subpart A—General**

\* \* \* \* \*

*Section 1026.2— Definitions and Rules of Construction*

\* \* \* \* \*

*2(a)(11) Consumer.*

\* \* \* \* \*

4. *Successors in interest.* i. *Assumption of the mortgage loan obligation.* A servicer may not require a confirmed successor in interest to assume the mortgage loan obligation to be considered a consumer for purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41. If a successor in interest assumes a mortgage loan obligation under State law or is otherwise liable on the mortgage loan obligation, the protections the successor in interest enjoys under this part are not limited to §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41.

ii. *Communications with confirmed successors in interest.* Communications in compliance with this part to a confirmed successor in interest as defined in § 1026.2(a)(27)(ii) do not violate section 805(b) of the Fair Debt Collection Practices Act (FDCPA) because consumer for purposes of FDCPA section 805 includes any person who meets the definition in this part of confirmed successor in interest.

iii. *Treatment of transferor consumer.* Even after a servicer’s confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41 with respect to the consumer who transferred an ownership interest to the successor in interest.

iv. *Multiple notices unnecessary.* Except as required by Regulation X, 12 CFR 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by § 1026.20(c), (d), or (e), § 1026.39, or § 1026.41 if the servicer is providing the same specific disclosure to another consumer on the account. For example, a servicer is not required

to provide a periodic statement required by § 1026.41 to a confirmed successor in interest if the servicer is providing the same periodic statement to another consumer; a single statement may be sent in that billing cycle. If a servicer confirms more than one successor in interest, the servicer need not send any disclosure required by § 1026.20(c), (d), or (e), § 1026.39, or § 1026.41 to more than one of the confirmed successors in interest.

\* \* \* \* \*

*2(a)(27)(i) Successor in interest.*

1. *Joint tenants and tenants by the entirety.* If a consumer who has an ownership interest as a joint tenant or tenant by the entirety in a dwelling securing a closed-end consumer credit transaction dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in § 1026.2(a)(27)(i).

2. *Beneficiaries of inter vivos trusts.* In the event of a transfer into an *inter vivos* trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, the beneficiaries of the *inter vivos* trust rather than the *inter vivos* trust itself are considered to be the successors in interest for purposes of § 1026.2(a)(27)(i). For example, assume Consumer A transfers her home into such an *inter vivos* trust for the benefit of her spouse and herself. As of the transfer date, Consumer A and her spouse are considered successors in interest and, upon confirmation, are consumers for purposes of certain provisions of this part. If the creditor has not released Consumer A from the loan obligation, Consumer A also remains a consumer more generally for purposes of this part.

\* \* \* \* \*

**Subpart C—Closed-End Credit**

\* \* \* \* \*



*Section 1026.20—Disclosure requirements regarding post-consummation events*

\* \* \* \* \*

*20(e) Escrow account cancellation notice for certain mortgage transactions.*

\* \* \* \* \*

*20(e)(4) Form of disclosures.*

\* \* \* \* \*

3. *Modifications of disclosures.* The requirements of § 1026.20(e)(4) to provide the § 1026.20(e) disclosures with the headings, content, order, and format substantially similar to model form H-29 in appendix H to this part do not preclude creditors and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the form or from adjusting the statement required by § 1026.20(e)(2)(ii)(A), concerning consequences if the consumer fails to pay property costs, to the circumstances of the particular consumer.

\* \* \* \* \*

**Subpart E—Special Rules for Certain Home Mortgage Transactions**

\* \* \* \* \*

*Section 1026.36—Prohibited acts or practices and certain requirements for credit secured by a dwelling*

\* \* \* \* \*

*36(c) Servicing practices.*

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

\* \* \* \* \*

4. *Temporary loss mitigation programs.* If a loan contract has not been permanently modified but the consumer has agreed to a temporary loss mitigation program, a periodic payment under § 1026.36(c)(1)(i) is the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, regardless of the payment due under the temporary loss mitigation program.

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

\* \* \* \* \*

*Paragraph 36(c)(1)(iii).*

\* \* \* \* \*

2. *Payment requirements—Limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers and potential successors in interest to make conforming payments. For example, it would be reasonable to require a cut-off time of 5 p.m. for receipt of a mailed check at the location specified by the servicer for receipt of such check.

\* \* \* \* \*

*Section 1026.41—Periodic Statements for Residential Mortgage Loans*

\* \* \* \* \*

*41(a) In general.*

1. *Recipient of periodic statement.* When two consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling subject to § 1026.41,

the periodic statement may be sent to either one of them. For example, if spouses jointly own a home, the servicer need not send statements to both spouses; a single statement may be sent.

\* \* \* \* \*

*41(c) Form of the periodic statement.*

\* \* \* \* \*

5. *Permissible changes.* Servicers may modify the sample forms for periodic statements provided in appendix H-30 to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, a servicer may modify the forms to:

- i. Use “this mortgage” or “the mortgage” instead of “your mortgage.”
- ii. Use “The payments on this mortgage are late” instead of “You are late on your mortgage payments.”
- iii. Use “This is the amount needed to bring the loan current” instead of “You must pay this amount to bring your loan current.”

*41(d) Content and layout of the periodic statement.*

1. *Close proximity.* Section 1026.41(d) requires several disclosures to be provided in close proximity to one another. To meet this requirement, the items to be provided in close proximity must be grouped together, and set off from other groupings of items. This may be accomplished in a variety of ways, for example, by presenting the information in boxes, or by arranging the items on the document and including spacing between the groupings. Items in close proximity may not have any unrelated text between them. Text is unrelated if it does not explain or expand upon the required disclosures.

\* \* \* \* \*

4. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program, the disclosures required by § 1026.41(d)(2), (3), and (5) regarding how payments were and will be applied must identify how payments are applied according to the loan contract, regardless of the temporary loss mitigation program.

5. *First statement after exemption terminates.* Section 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) requires the disclosure of the total sum of any fees or charges imposed since the last statement, the total of all payments received since the last statement, including a breakdown of how payments were applied, and a list of all transaction activity since the last statement. For purposes of the first periodic statement provided to the consumer following termination of an exemption under § 1026.41(e), the disclosures required by § 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) may be limited to account activity since the last payment due date that occurred while the exemption was in effect. For example, if mortgage loan payments are due on the first of each month and the servicer's exemption under § 1026.41(e) terminated on January 15, the first statement provided to the consumer after January 15 may be limited to the total sum of any fees or charges imposed, the total of all payments received, a breakdown of how the payments were applied, and a list of all transaction activity since January 1.

*41(d)(1) Amount due.*

1. *Acceleration.* If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due under § 1026.41(d)(1) must identify only the lesser amount that will be accepted to reinstate the loan. The periodic statement must be accurate when provided and should indicate, if applicable, that the amount due is accurate only for a specified period of time. For example, the statement may include language

such as “as of [date]” or “good through [date]” and provide an amount due that will reinstate the loan as of that date or good through that date, respectively.

2. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program, the amount due under § 1026.41(d)(1) may identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract.

3. *Permanent loan modifications.* If the loan contract has been permanently modified, the amount due under § 1026.41(d)(1) must identify only the amount due under the modified loan contract.

*41(d)(2) Explanation of amount due.*

1. *Acceleration.* If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due under § 1026.41(d)(2) must list both the reinstatement amount that is disclosed as the amount due and the accelerated amount but not the monthly payment amount that would otherwise be required under § 1026.41(d)(2)(i). The periodic statement must also include an explanation that the reinstatement amount will be accepted to reinstate the loan through the “as of [date]” or “good through [date],” as applicable, along with any special instructions for submitting the payment. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement. The explanation may include related information, such as a statement that the amount disclosed is “not a payoff amount.”

2. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program and the amount due identifies the payment due under the temporary loss mitigation program, the explanation of amount due under § 1026.41(d)(2) must include both the amount due according to the loan contract and the payment due under the temporary loss

mitigation program. The statement must also include an explanation that the amount due is being disclosed as a different amount because of the temporary loss mitigation program. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

\* \* \* \* \*

*41(d)(8) Delinquency information.*

1. *Length of delinquency.* For purposes of § 1026.41(d)(8), the length of a consumer's delinquency is measured as of the date of the periodic statement or the date of the written notice provided under § 1026.41(e)(3)(iv). A consumer's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and escrow, if applicable, becomes due and unpaid, even if the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. A consumer is delinquent if one or more periodic payments of principal, interest, and escrow, if applicable, are due and unpaid.

2. *Application of funds.* For purposes of § 1026.41(d)(8), if a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent consumer advances the date the consumer's delinquency began. For example, assume a mortgage loan obligation under which a consumer's periodic payment is due on the first of each month. A consumer fails to make a payment on January 1 but makes a periodic payment on February 3. The servicer applies the payment received on February 3 to the outstanding January payment. On February 4, the consumer is three days delinquent, and the next periodic statement should disclose the length of the consumer's delinquency using February 2 as the first day of delinquency.

*41(e) Exemptions.*

\* \* \* \* \*

*41(e)(5) Certain consumers in bankruptcy.*

1. *Consumer's representative.* If an agent of the consumer, such as the consumer's bankruptcy counsel, submits a request under § 1026.41(e)(5)(i)(B)(I) or (ii), the request is deemed to be submitted by the consumer.

2. *Multiple requests.* A consumer's most recent written request under § 1026.41(e)(5)(i)(B)(I) or (ii) that the servicer cease or continue, as applicable, providing a periodic statement or coupon book determines whether the exemption in § 1026.41(e)(5)(i) applies.

3. *Effective upon receipt.* A consumer's written request under § 1026.41(e)(5)(i)(B)(I) or (ii) is effective as of the date of receipt by the servicer.

4. *Bankruptcy case revived.* If a consumer's bankruptcy case is revived, for example, if the court reinstates a previously dismissed case or reopens a case, § 1026.41(e)(5) may apply again, including the timing requirements in § 1026.41(e)(5)(iv).

*41(e)(5)(i) Exemption.*

1. *Multiple obligors.* When two or more consumers are joint obligors with primary liability on a mortgage loan subject to § 1026.41, § 1026.41(e)(5)(i) applies if any one of the consumers meets its criteria. For example, assume that two spouses jointly own a home and are primary obligors on the mortgage loan. One spouse files for chapter 13 bankruptcy and has a bankruptcy plan that provides for surrendering the dwelling that secures the mortgage loan. In part, § 1026.41(e)(5)(i) exempts the servicer from providing a periodic statement with regard to that mortgage loan, unless one of the spouses requests in writing that the servicer provide a periodic statement or coupon book pursuant to § 1026.41(e)(5)(ii). If either spouse, including the one who is not a debtor in bankruptcy, submits a written request to receive a periodic

statement or coupon book, the servicer must provide a periodic statement or coupon book for that mortgage loan account.

*Paragraph 41(e)(5)(i)(B)(2).*

1. *Bankruptcy plan.* For purposes of § 1026.41(e)(5)(i)(B)(2), bankruptcy plan refers to the consumer's most recently filed bankruptcy plan under the applicable provisions of title 11 of the United States Code, regardless of whether the court overseeing the consumer's bankruptcy case has confirmed or approved the plan.

*Paragraph 41(e)(5)(i)(B)(4).*

1. *Statement of intention.* For purposes of § 1026.41(e)(5)(i)(B)(4), the statement of intention refers to the consumer's most recently filed statement of intention. For example, if a consumer files a statement of intention on June 1 identifying an intent to surrender the dwelling securing the mortgage loan but files an amended statement of intention on June 15 identifying an intent to retain the dwelling, the consumer's June 15 statement of intention is the relevant filing for purposes of § 1026.41(e)(5)(i)(B)(4).

*41(e)(5)(ii) Reaffirmation or consumer request to receive statement or coupon book.*

1. *Form of periodic statement or coupon book.* Section 1026.41(e)(5)(ii) generally requires a servicer, notwithstanding § 1026.41(e)(5)(i), to resume providing a periodic statement or coupon book if the consumer in bankruptcy reaffirms personal liability for the mortgage loan or any consumer on the mortgage loan requests in writing that the servicer provide a periodic statement or coupon book. Whether a servicer provides a periodic statement or coupon book as modified by § 1026.41(f) or an unmodified periodic statement or coupon book depends on whether or not § 1026.41(f) applies to that mortgage loan at that time. For example, § 1026.41(f) does not apply with respect to a mortgage loan once the consumer has reaffirmed personal



liability; therefore, following a consumer's reaffirmation, a servicer generally would provide a periodic statement or coupon book that complies with § 1026.41 but without the modifications set forth in § 1026.41(f). *See* comment 41(f)-6. Section 1026.41(f) does apply, however, with respect to a mortgage loan following a consumer's written request to receive a periodic statement or coupon book, so long as any consumer on the mortgage loan remains in bankruptcy or has discharged personal liability for the mortgage loan; accordingly, following that written request, a servicer must provide a periodic statement or coupon book that includes the modifications set forth in § 1026.41(f).

*41(e)(5)(iv) Timing of compliance following transition.*

*41(e)(5)(iv)(A) Triggering events for transitioning to modified and unmodified periodic statements.*

1. *Section 1026.41(f) becomes applicable or ceases to apply.* Section 1026.41(e)(5)(iv) sets forth the time period in which a servicer must provide a periodic statement or coupon book for the first time after a mortgage loan either becomes subject to the requirements of § 1026.41(f) or ceases to be subject to the requirements of § 1026.41(f). A mortgage loan becomes subject to the requirements of § 1026.41(f) when, for example, any consumer on the mortgage loan becomes a debtor in bankruptcy or discharges personal liability for the mortgage loan. A mortgage loan may cease to be subject to the requirements of § 1026.41(f) when, for example, the consumer in bankruptcy reaffirms personal liability for a mortgage loan or the consumer's bankruptcy case is closed or dismissed without the consumer having discharged personal liability for the mortgage loan. *See* comment 41(f)-6.

2. *Servicer ceases to qualify for an exemption.* Section 1026.41(e)(5)(iv) sets forth the time period in which a servicer must provide a periodic statement or coupon book for the first

time after a servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i) with respect to a mortgage loan. A servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i) with respect to a mortgage loan when, for example:

i. The consumer's bankruptcy case is dismissed or closed without the consumer having discharged personal liability for the mortgage loan;

ii. The consumer files an amended bankruptcy plan or statement of intention that provides, as applicable, for the maintenance of payments due under the mortgage loan and the payment of pre-petition arrearage or that the consumer will retain the dwelling securing the mortgage loan;

iii. A consumer makes a partial or periodic payment on the mortgage loan despite the consumer in bankruptcy having filed a statement of intention identifying an intent to surrender the dwelling securing the mortgage loan, thus making § 1026.41(e)(5)(i)(B)(4) inapplicable;

iv. The consumer in bankruptcy reaffirms personal liability for the mortgage loan; or

v. The consumer submits a written request pursuant to § 1026.41(e)(ii) that the servicer resume providing a periodic statement or coupon book.

*41(e)(5)(iv)(B) Transitional single-billing-cycle exemption.*

1. An exemption under § 1026.41(e)(5)(iv) applies for only the first billing cycle that occurs after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs. If a servicer is required to provide a periodic statement or coupon book, the servicer must do so beginning with the next billing cycle in accordance with the timing provisions of § 1026.41(e)(5)(iv)(C).

*41(e)(5)(iv)(C) Timing of first modified or unmodified statement or coupon book after transition.*

1. *Reasonably prompt time.* Section 1026.41(e)(5)(iv)(C) requires that, when one of the

events listed in § 1026.41(e)(5)(iv)(A) occurs, a servicer must provide the next periodic statement or coupon book by delivering or placing it in the mail within a reasonably prompt time after the next payment due date, or the end of any courtesy period for the payment's corresponding billing cycle, that is more than 14 days after the date on which the applicable event listed in § 1026.41(e)(5)(iv)(A) occurs. Delivering, emailing, or placing the periodic statement or coupon book in the mail within four days after the payment due date or the end of the courtesy period generally would be considered reasonably prompt. *See* comment 41(b)-1.

2. *Subsequent periodic statements or coupon books.* Section 1026.41(e)(5)(iv)(C) applies to the timing of only the first periodic statement or coupon book a servicer provides after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs. For subsequent billing cycles, a servicer must provide a periodic statement or coupon book in accordance with the timing requirements of § 1026.41(a)(2) and (b), as applicable.

3. *Duplicate coupon books not required.* With respect to coupon books, § 1026.41 requires a servicer to provide a new coupon book after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs only to the extent the servicer has not previously provided the consumer with a coupon book that covered the upcoming billing cycle.

*41(e)(6) Charged-off loans.*

1. *Change in ownership.* If a charged-off mortgage loan is subsequently purchased, assigned, or transferred, § 1026.39(b) requires a covered person, as defined in § 1026.39(a)(1), to provide mortgage transfer disclosures. *See* § 1026.39.

2. *Change in servicing.* A servicer may take advantage of the exemption in § 1026.41(e)(6)(i), subject to the requirements of that paragraph, and may rely on a prior servicer's provision to the consumer of a periodic statement pursuant to § 1026.41(e)(6)(i)(B)

unless the servicer provided the consumer a periodic statement pursuant to § 1026.41(a).

*Paragraph 41(e)(6)(i)(B).*

1. *Clearly and conspicuously.* Section 1026.41(e)(6)(i)(B) requires that the periodic statement be clearly and conspicuously labeled “Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records” and that it clearly and conspicuously provide certain explanations to the consumer, as applicable, but no minimum type size or other technical requirements are imposed. The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer. *See* comment 41(c)-1.

*41(f) Modified periodic statements and coupon books for certain consumers in bankruptcy.*

1. *Compliance after the bankruptcy case ends.* Except as provided in § 1026.41(e)(5), § 1026.41(f) applies with regard to a mortgage loan for which any consumer with primary liability is a debtor in a case under title 11 of the United States Code. After the debtor exits bankruptcy, § 1026.41(f) continues to apply if the consumer has discharged personal liability for the mortgage loan, but § 1026.41(f) does not apply if the consumer has reaffirmed personal liability for the mortgage loan or otherwise has not discharged personal liability for the mortgage loan.

2. *Terminology.* With regard to a periodic statement provided under § 1026.41(f), a servicer may use terminology other than that found on the sample periodic statements in appendix H-30, so long as the new terminology is commonly understood. *See* comment 41(d)-3. For example, a servicer may take into account terminology appropriate for consumers in bankruptcy and refer to the “amount due” identified in § 1026.41(d)(1), as the “payment

amount.” Similarly, a servicer may refer to an amount past due identified in § 1026.41(d)(2)(iii) as “past unpaid amount.” Additionally, a servicer may refer to the delinquency information required by § 1026.41(d)(8) as an “account history,” and to the amount needed to bring the loan current, referred to in § 1026.41(d)(8)(vi) as “the total payment amount needed to bring the account current,” as “unpaid amount.”

3. *Other periodic statement requirements continue to apply.* The requirements of § 1026.41, including the content and layout requirements of § 1026.41(d), apply unless modified expressly by § 1026.41(e)(5) or (f). For example, the requirement under § 1026.41(d)(3) to disclose a past payment breakdown applies without modification with respect to a periodic statement provided to a consumer in bankruptcy.

4. *Further modifications.* A periodic statement or coupon book provided under § 1026.41(f) may be modified as necessary to facilitate compliance with title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure, court orders, and local rules, guidelines, and standing orders. For example, a periodic statement or coupon book may include additional disclosures or disclaimers not required under § 1026.41(f) but that are related to the consumer’s status as a debtor in bankruptcy or that advise the consumer how to submit a written request under § 1026.41(e)(5)(i)(B)(1). *See* comment 41(f)(3)-1.ii for a discussion of the treatment of a bankruptcy plan that modifies the terms of the mortgage loan, such as by reducing the outstanding balance of the mortgage loan or altering the applicable interest rate.

5. *Commencing compliance.* A servicer must begin to provide a periodic statement or coupon book that complies with paragraph (f) of this section within the timeframe set forth in § 1026.41(e)(5)(iv).

6. *Reaffirmation.* For purposes of § 1026.41(f), a consumer who has reaffirmed personal liability for a mortgage loan is not considered to be a debtor in bankruptcy.

*41(f)(3) Chapter 12 and chapter 13 consumers.*

1. *Pre-petition payments and post-petition payments.* i. For purposes of § 1026.41(f)(3), pre-petition payments are payments made to cure the consumer's pre-bankruptcy defaults, and post-petition payments are payments made to satisfy the mortgage loan's periodic payments as they come due after the bankruptcy case is filed. For example, assume a consumer is \$3,600 in arrears as of the bankruptcy filing date on a mortgage loan requiring monthly periodic payments of \$2,000. The consumer's most recently filed bankruptcy plan requires the consumer to make payments of \$100 each month for 36 months to pay the pre-bankruptcy arrearage, and \$2,000 each month to satisfy the monthly periodic payments. Assuming the consumer makes the payments according to the plan, the \$100 payments are the pre-petition payments and the \$2,000 payments are the post-petition payments for purposes of the disclosures required under § 1026.41(f)(3).

ii. If a consumer is a debtor in a case under chapter 12 or if a consumer's bankruptcy plan modifies the terms of the mortgage loan, such as by reducing the outstanding balance of the mortgage loan or altering the applicable interest rate, the disclosures under § 1026.41(d)(1), (2), (f)(3)(ii), and (iii) may disclose either the amount payable under the original terms of the mortgage loan, the amount payable under the remaining secured portion of the adjusted mortgage loan, or a statement that the consumer should contact the trustee or the consumer's attorney with any questions about the amount payable. In such cases, the remaining disclosures under § 1026.41(d) or (f)(3), as applicable, may be limited to how payments are applied to the remaining secured portion of the adjusted mortgage loan.

2. *Post-petition fees and charges.* For purposes of § 1026.41(f)(3), post-petition fees and charges are those fees and charges imposed after the bankruptcy case is filed. To the extent that the court overseeing the consumer's bankruptcy case requires such fees and charges to be included as an amendment to a servicer's proof of claim, a servicer may include such fees and charges in the balance of the pre-petition arrearage under § 1026.41(f)(3)(v)(C) rather than treating them as post-petition fees and charges for purposes of § 1026.41(f)(3).

3. *First statement after exemption terminates.* Section § 1026.41(f)(3)(iii) through (v) requires, in part, the disclosure of certain information regarding account activity that has occurred since the last statement. For purposes of the first periodic statement provided to the consumer following termination of an exemption under § 1026.41(e), those disclosures regarding account activity that has occurred since the last statement may be limited to account activity since the last payment due date that occurred while the exemption was in effect. *See comment 41(d)-5.*

*41(f)(3)(ii) Amount due.*

1. *Amount due.* The amount due under § 1026.41(d)(1) is not required to include any amounts other than post-petition payments the consumer is required to make under the terms of a bankruptcy plan, including any past due post-petition payments, and post-petition fees and charges that a servicer has imposed. The servicer is not required to include in the amount due any pre-petition payments due under a bankruptcy plan or other amounts payable pursuant to a court order. The servicer is not required to include in the amount due any post-petition fees and charges that the servicer has not imposed. A servicer that defers collecting a fee or charge until after complying with the Federal Rule of Bankruptcy Procedure 3002.1 procedures, and thus after a potential court determination on whether the fee or charge is allowed, is not required to

disclose the fee or charge until complying with such procedures. However, a servicer may include in the amount due other amounts due to the servicer that are not post-petition payments or fees or charges, such as amounts due under an agreed order, provided those other amounts are also disclosed in the explanation of amount due and transaction activity.

*41(f)(3)(iii) Explanation of amount due.*

1. *Explanation of amount due.* The explanation of amount due under § 1026.41(d)(2) is not required to include any amounts other than the post-petition payments, including the amount of any past due post-petition payments and post-petition fees and charges that a servicer has imposed. Consistent with § 1026.41(d)(3)(i), the post-petition payments must be broken down by the amount, if any, that will be applied to principal, interest, and escrow. The servicer is not required to disclose, as part of the explanation of amount due, any pre-petition payments or the amount of the consumer's pre-bankruptcy arrearage. However, a servicer may identify other amounts due to the servicer provided those amounts are also disclosed in the amount due and transaction activity. *See comment 41(d)-4.*

*41(f)(3)(v) Pre-petition arrearage.*

1. *Pre-petition arrearage.* If the pre-petition arrearage is subject to dispute, or has not yet been determined by the servicer, the periodic statement may include a statement acknowledging the unresolved amount of the pre-petition arrearage. A servicer may omit the information required by § 1026.41(f)(3)(v) from the periodic statement until such time as the servicer has had a reasonable opportunity to determine the amount of the pre-petition arrearage. The servicer may not omit the information required by § 1026.41(f)(3)(v) from the periodic statement after the date that the bankruptcy court has fixed for filing proofs of claim in the consumer's bankruptcy case.



*41(f)(4) Multiple obligors.*

1. *Modified statements.* When two or more consumers are joint obligors with primary liability on a mortgage loan subject to § 1026.41, a servicer may send the periodic statement to any one of the primary obligors. *See* comment 41(a)-1. Section 1026.41(f)(4) provides that a servicer may provide a modified statement under § 1026.41(f), if applicable, to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy. The servicer need not provide an unmodified statement to any of the primary obligors. For example, assume that two spouses jointly own a home and are both primarily liable on the mortgage loan. One spouse files for chapter 13 bankruptcy, and that spouse's chapter 13 bankruptcy plan provides that the same spouse will retain the home by making pre-petition and post-petition payments. The servicer complies with § 1026.41 by providing the modified periodic statement under § 1026.41(f) to either spouse.

2. *Obligors in different chapters of bankruptcy.* If two or more consumers are joint obligors with primary liability on a mortgage loan subject to § 1026.41 and are debtors under different chapters of bankruptcy, only one of which is subject to § 1026.41(f)(3), a servicer may, but need not, include the modifications set forth in § 1026.41(f)(3). For example, assume one joint obligor is a debtor in a case under chapter 7 and another joint obligor is a debtor in a case under chapter 13, and that the servicer is not exempt from the periodic statement requirement under § 1026.41(e)(5). The periodic statement or coupon book is subject to the modifications set forth in § 1026.41(f)(1) and (2), but the servicer may determine whether it is appropriate to include the modifications set forth in § 1026.41(f)(3).

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[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED  
“AMENDMENTS TO THE 2013 MORTGAGE RULES UNDER THE REAL ESTATE  
SETTLEMENT PROCEDURES ACT (REGULATION X) AND THE TRUTH IN  
LENDING ACT (REGULATION Z)”]

Dated: August 2, 2016.



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**Richard Cordray,**

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