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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB-2014-0033]

RIN 3170-AA49

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

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending certain mortgage servicing rules issued by the Bureau in 2013. This final rule clarifies, revises, or amends provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions. The final rule also addresses proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act. The final rule also makes technical corrections to several provisions of Regulations X and Z. The Bureau is issuing concurrently with this final rule an interpretive rule under the Fair Debt Collection Practices Act relating to servicers' compliance with certain mortgage servicing rules.

DATES: This final rule is effective on October 19, 2017, except that the following amendments are effective on April 19, 2018: Amendatory instructions 5, 6.b, 7, 8, 9, 11.b, 17.a.ii, 17.b.ii, 17.c, 17.d.ii, 17.f.i, 17.i.i, 17.k, 19, 20, 22, 23.c, 25.a, 25.b, 25.c.ii, and 25.d.ii. For additional

discussion regarding the effective date of the rule, see part VI of the **SUPPLEMENTARY INFORMATION** below.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

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

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

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

Rule).[3]

The Bureau clarified and revised those rules through notice and comment rulemaking during the summer and fall of 2013 in the (1) Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (July 2013 Mortgage Final Rule)[4] and (2) Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z) (September 2013 Mortgage Final Rule).[5] In October 2013, the Bureau clarified compliance requirements in relation to successors in interest, early intervention requirements, bankruptcy law, and the Fair Debt Collection Practices Act (FDCPA),[6] through an Interim Final Rule (October 2013 IFR or IFR)[7] and a contemporaneous compliance bulletin (October 2013 Servicing Bulletin).[8] In addition, in October 2014, the Bureau added an alternative definition of small servicer in the Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z).[9] The purpose of each of these updates was to address important questions raised by industry, consumer advocacy groups, and other stakeholders. The 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, as amended in 2013 and 2014, are collectively referred to herein as the 2013 Mortgage Servicing Final Rules.

On November 20, 2014, the Bureau issued a proposed rule that would have further

[3] 78 FR 10901 (Feb. 14, 2013).
[4] 78 FR 44685 (July 24, 2013).
[5] 78 FR 60381 (Oct. 1, 2013).
[6] 15 U.S.C. 1692 *et seq.*
[7] 78 FR 62993 (Oct. 23, 2013).
[8] Bureau of Consumer Fin. Prot., CFPB Bulletin 2013-12, *Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.
[9] 79 FR 65300, 65304 (Nov. 3, 2014).

amended the 2013 Mortgage Servicing Final Rules.[10] The proposal covered nine major topics, and focused primarily on clarifying, revising, or amending provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions. The proposal also addressed proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act.

The Bureau is now finalizing the proposed amendments, with additional clarifications and revisions, to revise regulatory provisions and official interpretations relating to the Regulation X and Z mortgage servicing rules.[11] The final rule also covers nine major topics, summarized below, generally in the order they appear in the final rule. More details can be found in the section-by-section analysis below.

1. Successors in interest. The Bureau is finalizing three sets of rule changes relating to successors in interest. First, the Bureau is adopting definitions of successor in interest for purposes of Regulation X's subpart C and Regulation Z that are modeled on the categories of transfers protected under section 341(d) of the Garn-St Germain Act. Second, the Bureau is finalizing rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest.[12] Third, the Bureau is applying the Regulation X and Z mortgage servicing

[10] 79 FR 74175 (Dec. 15, 2014).
[11] Note that RESPA and TILA differ in their terminology. Whereas Regulation X generally refers to "borrowers," Regulation Z generally refers to "consumers."
[12] This final rule uses the term "successor in interest's status" to refer to the successor in interest's identity and ownership interest in the property.

rules to successors in interest once a servicer confirms the successor in interest's status.

2. Definition of delinquency. The Bureau is finalizing a general definition of delinquency that applies to all of the servicing provisions of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. 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.

3. Requests for information. The Bureau is finalizing amendments that change how a servicer must respond to requests for information asking for ownership information for loans in trust for which the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) is the owner of the loan or the trustee of the securitization trust in which the loan is held.

4. Force-placed insurance. The Bureau is finalizing amendments to the force-placed insurance disclosures and model forms to account for when a servicer wishes to force-place insurance when the borrower has insufficient, rather than expiring or expired, hazard insurance coverage on the property. Additionally, servicers now will have the option to include a borrower's mortgage loan account number on the notices required under § 1024.37. The Bureau also is finalizing several technical edits to correct discrepancies between the model forms and the text of § 1024.37.

5. Early intervention. The Bureau is clarifying the early intervention live contact obligations for servicers to establish or make good faith efforts to establish live contact so long as the borrower remains delinquent. The Bureau is also clarifying requirements regarding the

frequency of the written early intervention notices, including when there is a servicing transfer. In addition, regarding certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the FDCPA, the Bureau is finalizing exemptions for servicers from complying with the live contact obligations but requiring servicers to provide written early intervention notices under certain circumstances.

6. Loss mitigation. The Bureau is finalizing several amendments relating to the loss mitigation requirements. The final rule: (1) Requires servicers to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current on payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application; (2) modifies an existing exception to the 120-day prohibition on foreclosure filing to allow a servicer to join the foreclosure action of a superior or subordinate lienholder; (3) clarifies how servicers select the reasonable date by which a borrower should return documents and information to complete an application; (4) clarifies that, if the servicer has already made the first notice or filing, and a borrower timely submits a complete loss mitigation application: (i) the servicer must not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, even where the sale proceedings are conducted by a third party, unless one of the specified circumstances is met (*i.e.*, the borrower's loss mitigation application is properly denied, withdrawn, or the borrower fails to perform on a loss mitigation agreement); (ii) that absent one of the specified circumstances, conduct of the sale violates the rule; (iii) that the servicer must instruct foreclosure counsel promptly not to make any further dispositive motion, to avoid a ruling or order on a pending dispositive motion, or to prevent conduct of a foreclosure sale, unless one of the specified circumstances is met; and (iv) that the servicer is not relieved from its obligations by counsel's actions or inactions; (5) requires that servicers provide a written

notice to a borrower within five days (excluding Saturdays, Sundays, or legal holidays) after they receive a complete loss mitigation application and requires that the notice: (i) indicate that the servicer has received a complete application; (ii) provide the date of completion, a statement that the servicer expects to complete its evaluation within 30 days from the date it received the complete application, and an explanation that the borrower is entitled to certain specific foreclosure protections and may be entitled to additional protections under State or Federal law; (iii) clarify that the servicer might need additional information later, in which case the evaluation could take longer and the foreclosure protections could end if the servicer does not receive the information as requested; (6) sets forth how servicers must attempt to obtain information not in the borrower's control and evaluate a loss mitigation application while waiting for third party information; requires servicers to exercise reasonable diligence to obtain the information and prohibits servicers from denying borrowers solely because a servicer lacks required information not in the borrower's control, except under certain circumstances; requires servicers in this circumstance to complete all possible steps in the evaluation process within the 30 days, notwithstanding the lack of the required third-party information; requires that servicers promptly provide a written notice to the borrower if the servicer lacks required third party information 30 days after receiving the borrower's complete application and cannot evaluate the application in accordance with applicable requirements established by the owner or assignee of the mortgage loan; and requires servicers to notify borrowers of their determination on the application in writing promptly upon receipt of the third party information it lacked; (7) permits servicers to offer a short-term repayment plan based upon an evaluation of an incomplete loss mitigation application; (8) clarifies that servicers may stop collecting documents and information from a borrower for a particular loss mitigation option after receiving information confirming that,

pursuant to any requirements established by the owner or assignee, the borrower is ineligible for that option; and clarifies that servicers 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 requirements established by the owner or assignee of the mortgage loan; and (9) addresses and clarifies how loss mitigation procedures and timelines apply when a transferee servicer receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer.

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

8. Periodic statements. The Bureau is finalizing several requirements relating to periodic statements. The final rule: (1) clarifies certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in temporary loss mitigation programs, or have been permanently modified, to conform generally the disclosure of the amount due with the Bureau's understanding of the legal obligation in each of those circumstances, including that the amount due may only be accurate for a specified period of time when a mortgage loan has been accelerated; (2) requires servicers to send modified periodic statements (or coupon books, where servicers are otherwise permitted to send coupon books instead of periodic statements) to consumers who have filed for bankruptcy, subject to certain exceptions, with content varying

depending on whether the consumer is a debtor in a chapter 7 or 11 bankruptcy case, or a chapter 12 or 13 bankruptcy case; and includes proposed sample periodic statement forms that servicers may use for consumers in bankruptcy to ensure compliance with § 1026.41; and (3) exempts servicers from the periodic statement requirement for charged-off mortgage loans if the servicer will not charge any additional fees or interest on the account and provides a periodic statement including additional disclosures related to the effects of charge-off.

9. Small servicer. The Bureau is finalizing certain changes to the small servicer determination. The small servicer exemption generally applies to servicers who service 5,000 or fewer mortgage loans for all of which the servicer is the creditor or assignee. The final rule excludes certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not a creditor or assignee, from being counted toward the 5,000 loan limit, allowing servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

In addition to the changes discussed above, the final rule also makes technical corrections and minor clarifications to wording throughout several provisions of Regulations X and Z that generally are not substantive in nature.

II. Background

Title XIV Rules under the Dodd-Frank Act

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. In the Dodd-Frank Act, Congress established the Bureau and generally consolidated the rulemaking authority for Federal consumer financial laws, including the Truth in Lending Act (TILA) and the Real Estate

Settlement Procedures Act (RESPA), in the Bureau.[13] At the same time, Congress significantly amended the statutory requirements governing mortgages with the intent to restrict the practices that contributed to and exacerbated the crisis.[14] Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[15] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules in January 2013 to implement these new statutory provisions and provide for an orderly transition. These rules included the 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, issued on January 17, 2013. Pursuant to the Dodd-Frank Act, which permitted a maximum of one year for implementation, these rules became effective on January 10, 2014. The Bureau issued additional corrections and clarifications to the 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule in the summer and fall of 2013 and in the fall of 2014.

III. Summary of the Rulemaking Process

A. Implementation Plan for New Mortgage Rules

On February 13, 2013, the Bureau announced an initiative to support implementation of

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

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

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

the new mortgage rules (Implementation Plan),[16] under which the Bureau would work with the mortgage industry to ensure that the 2013 Title XIV Final Rules could be implemented accurately and expeditiously. The Implementation Plan included: (1) Coordination with other agencies; (2) Publication of plain-language guides to the new rules; (3) Ongoing conversations with stakeholders involved in implementation with respect to questions and concerns they had identified; (4) Publication of additional interpretive guidance and corrections or clarifications of the new rules as needed; (5) Publication of readiness guides for the new rules; and (5) Education of consumers on the new rules.

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

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

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

B. Ongoing Monitoring

After the January 10, 2014 effective date of the rules, the Bureau has continued to engage in ongoing outreach and monitoring with industry, consumer advocacy groups, and other stakeholders. As a result, the Bureau has identified further issues that continue to pose implementation challenges or require clarification. The Bureau has also recognized that there are instances in which the rules are creating unintended consequences or failing to achieve desired objectives.

The Bureau recognizes that industry has incurred costs in the implementation of the 2013 Mortgage Servicing Final Rules. The Bureau believes that the majority of the provisions in this final rule would impose, at most, minimal new compliance burdens, and in many cases would reduce the compliance burden relative to the existing rules. Where the Bureau is adding new requirements to the 2013 Mortgage Servicing Final Rules, the Bureau is doing so after careful weighing of incremental costs and benefits.

This final rule adopts the proposed amendments with some additional clarifications and revisions. The purpose of these updates is to address important questions raised by industry, consumer advocacy groups, and other stakeholders.

C. Testing of Bankruptcy Periodic Statement Sample Forms

In the proposed rule, the Bureau indicated that it would conduct consumer testing of the proposed sample periodic statement forms for consumers who have filed for bankruptcy and would publish and seek comment on a report summarizing the methods and results of such testing prior to finalizing any sample forms. Following publication of the proposed rule, the Bureau engaged Fors Marsh Group (FMG), a research and consulting firm that specializes in designing disclosures and consumer testing, to conduct one-on-one cognitive interviews to test the Bureau's proposed sample periodic statement forms for consumers who have filed for bankruptcy. As described in detail in the report summarizing the testing,[17] between May 2015 and August 2015, the Bureau worked with the firm to conduct three rounds of one-on-one cognitive interviews with a total of 51 consumers in Arlington, Virginia, Fort Lauderdale, Florida, and Chicago, Illinois. Efforts were made to recruit a significant number of participants who had filed for bankruptcy, who had a mortgage (preferably when they filed for bankruptcy), and who had trouble making mortgage payments in the last two years.

During the interviews, participants were shown sample modified periodic statements. In general, participants who had filed for chapter 7 bankruptcy reviewed statements tailored to borrowers who are debtors in a chapter 7 or chapter 11 bankruptcy case, while participants who had filed for chapter 13 bankruptcy reviewed statements tailored to borrowers who are debtors in a chapter 12 or chapter 13 bankruptcy case. Participants were asked specific questions to test their understanding of the information presented in the sample statements and how easily they

[17] Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing* (Feb. 2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/testing-bankruptcy-periodic-statement-forms-mortgage-servicing/ (report on consumer testing submitted to the Bureau of Consumer Fin. Prot.).

could find various pieces of information presented in the sample statements, as well as to learn about how they would use the information presented in the sample statements. The Bureau and FMG jointly developed revisions to all of the forms between rounds to address any apparent usability or comprehension issues and in response to public comments the Bureau received on the proposed rule.

The Bureau conducted the consumer testing after the close of the original comment period. The notice seeking public comment specifically on the report summarizing the methods and results of the testing was published in the *Federal Register* on April 26, 2016.[18]

D. Comments on the Proposed Rule and Testing of Bankruptcy Periodic Statement Sample Forms

The Bureau issued the proposed rule on November 20, 2014, and the proposal was published in the *Federal Register* on December 15, 2014.[19] The comment period ended on March 16, 2015. The comment period on the report summarizing the results of the consumer testing of bankruptcy periodic statement sample forms ended on May 26, 2016. The Bureau received more than 160 comments on the proposed rule and approximately 20 comments on the testing report. The comments were received from consumers, consumer advocacy groups, government agencies, servicers, industry trade associations, and others. As discussed in more detail below, the Bureau has considered these comments in adopting this final rule.

The Bureau notes that a number of consumer advocacy group commenters discussed language access and communications with consumers with limited English proficiency (LEP)

[18] 81 FR 24519 (Apr. 26, 2016).
[19] 79 FR 74175 (Dec. 15, 2014).

and indicated that this is an area that needs further action and attention from the Bureau. One commenter urged the Bureau to consider additional rulemaking to require servicers to respond effectively to the needs of LEP borrowers. Another commenter stated that servicers' failure to communicate effectively with LEP homeowners remains a major unresolved issue, and said that servicers fail to provide written communication in the homeowner's preferred non-English language, fail to provide adequate oral translation for LEP homeowners, and refuse to accept official government documents in non-English languages. The commenter suggested that the Bureau should ensure that materials and points of contact are available in homeowners' preferred languages.

The Bureau takes seriously the important considerations of language access. The Bureau believes that LEP consumers should be served fairly, equitably, and in a nondiscriminatory manner. The Bureau recognizes that LEP consumers face particular challenges and obstacles in accessing effective loss mitigation. The Bureau believes that servicers should communicate with borrowers clearly, including in the consumer's preferred language, where possible, and especially when lenders advertise in the consumer's preferred language.

The Bureau has not had the opportunity, however, to test either the new disclosures that the Bureau is adopting in this final rule or the pre-existing RESPA and TILA servicing disclosures in languages other than English. Nor has the Bureau had the opportunity to take comment from all interested parties about the significant operational challenges implicated in addressing language access in the mortgage servicing context. Accordingly, the Bureau is not imposing mandatory language translation requirements or other language access requirements at this time with respect to the mortgage servicing disclosures and other mortgage servicing requirements.

Although the Bureau declines at this time to implement requirements regarding language access, the Bureau reiterates the importance of servicers communicating clearly and in a non-discriminatory manner with all consumers, including those with limited English proficiency. Servicers should ensure they are in compliance with all applicable law. For instance, servicers may have separate responsibilities under State law, which may, in certain circumstances, require that financial institutions provide foreign language services. As the Bureau has previously noted, the Final Servicing Rules do not have the effect of prohibiting State law from affording borrowers broader consumer protections relating to mortgage servicing than those conferred under the mortgage servicing rules.[20] The Bureau will continue to consider language access generally in connection with mortgage servicing, including access to effective loss mitigation. The Bureau continues to explore the obstacles that LEP consumers face when attempting to access credit, as well as the challenges that servicers and creditors face when interacting with those consumers.[21] The Bureau will consider further requirements on servicer communications with LEP consumers in the mortgage servicing context, if appropriate.

IV. Legal Authority

As discussed more fully in the section-by-section analysis, the Bureau is issuing this final rule pursuant to RESPA, TILA, the FDCPA, and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions"

[20] 78 FR 10696, 10706 (Feb. 14, 2013).

[21] The Bureau has created a Language Access Task Force, which is an internal cross-divisional working group aimed at developing and executing a Bureau-wide strategy to provide LEP consumers with meaningful access to information produced by the Bureau. The Language Access Task Force coordinated the development of the Bureau's Language Access Plan, which describes the Bureau's policy and how the current language access activities are implemented across all of the Bureau's operations, programs, and services. Bureau of Consumer Fin. Prot. Language Access Plan, *available at* https://www.federalregister.gov/articles/2014/10/08/2014-24122/proposed-language-access-plan-for-the-consumer-financial-protection-bureau.

previously vested in certain other Federal agencies, including the Board of Governors of the Federal Reserve System (Board). The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines." Section 1061 of the Dodd-Frank Act also transferred to the Bureau all of the Department of Housing and Urban Development's (HUD's) consumer protection functions relating to RESPA. Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with RESPA, TILA, the FDCPA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[22]

A. RESPA

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, and section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E), authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. As identified in the 2013 RESPA Servicing Final Rule, the consumer protection purposes of RESPA

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

include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees and facilitating review for foreclosure avoidance options. Each of the amendments or clarifications to Regulation X is intended to achieve some or all these purposes.

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

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

B. TILA

Section 105(a) of TILA, 15 U.S.C. 1604(a), authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Under section 102(a), 15 U.S.C. 1601(a), the purposes of TILA include assuring the meaningful disclosure of credit terms to enable consumers to compare more readily the various credit terms available and avoid the uninformed use of credit and to protect consumers against inaccurate and unfair credit billing practices. The Bureau's amendments to Regulation Z carry out TILA's purposes and such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary

and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance therewith.

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

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

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

C. FDCPA

As explained in the section-by-section analysis, the Bureau also is issuing an FDCPA interpretive rule in a separate notice issued concurrently with this Final Rule.[23] The Bureau exercises its authority to prescribe rules with respect to the collection of debts by debt collectors pursuant to section 814(d) of the FDCPA, 15 U.S.C. 1692l(d), and its power to issue advisory opinions under section 813(e) of the FDCPA, 15 U.S.C. 1692k(e). Under that section, "[n]o provision of [the FDCPA] imposing any liability shall apply to any act done or omitted in good

[23] *See* Bureau of Consumer Fin. Prot., Official Bureau Interpretations: Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (Aug. 4, 2016), *available at* http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/safe-harbors-liability-under-fair-debt-collection-practices-act-certain-actions-taken-compliance-mortgage-servicing-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z.

faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason." The Bureau relies on this authority to issue an FDCPA interpretive rule interpreting the exceptions set forth in section 805(c)(2) and (3) of the FDCPA to include the written early intervention notice required by proposed § 1024.39(d)(2)(iii) as well as providing that loss mitigation information or assistance provided in response to a borrower-initiated communication should be considered outside the scope of a borrower's invocation of the cease communication right. The interpretive rule also interprets the term consumer for purposes of FDCPA section 805 to include a confirmed successor in interest, as that term is defined in Regulation X § 1024.31 and Regulation Z § 1026.2(a)(27)(ii).

D. The Dodd-Frank Act

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

Section 1032(a) of the Dodd-Frank Act, 12 U.S.C. 5532(a), provides that the Bureau "may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." The authority granted to the Bureau in section 1032(a) of the Dodd-Frank Act is broad and empowers the Bureau to prescribe rules regarding the disclosure of the "features" of consumer financial

products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

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

V. Section-by-Section Analysis

A. Overview of Sections Relating to Successors in Interest in Regulations X and Z

Introduction

Several aspects of the final rule affect provisions in both Regulations X and Z. For example, the definition of delinquency in § 1024.31 affects requirements in §§ 1024.39 through 1024.41 of Regulation X, as well as § 1026.41 of Regulation Z. Generally, the Bureau discusses each section of the final rule under the heading designating the applicable regulation below—part V.B. for Regulation X and part V.C. for Regulation Z. However, because the final rule and commentary relating to successors in interest are interspersed throughout Regulations X and Z and many commenters addressed multiple sections of the proposal at once, this combined part V.A. provides an overview of the successor in interest provisions in the final rule and related issues raised by commenters for both Regulations X and Z. The Bureau then discusses each

specific section of the final rule relating to successors in interest in more detail under the heading designating the applicable regulation below.

Current § 1024.38(b)(1)(vi) provides that servicers are required to maintain policies and procedures that are reasonably designed to ensure that the servicer can, upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower with respect to the property securing the deceased borrower's mortgage loan. The Bureau adopted this requirement in the 2013 RESPA Servicing Final Rule because it understood that successors in interest may encounter challenges in communicating with mortgage servicers about a deceased borrower's mortgage loan account.[24]

The Bureau provided guidance about this requirement in the October 2013 Servicing Bulletin. The Bureau noted that it had received reports of servicers either refusing to speak to a successor in interest or demanding documents to prove the successor in interest's claim to the property that either did not exist or were not reasonably available.[25] The Bureau stated that these practices often prevented a successor in interest from pursuing assumption of the mortgage loan and, if applicable, loss mitigation options.[26] The October 2013 Servicing Bulletin provided examples of servicer practices and procedures that would accomplish the objectives set forth in § 1024.38(b)(1)(vi) and alleviate these problems.[27]

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[24] 78 FR 10695, 10781 (Feb. 14, 2013).
[25] October 2013 Servicing Bulletin at 2.
[26] *Id.*
[27] *Id.* On July 17, 2014, the Bureau also issued an interpretive rule clarifying that where a successor in interest who has previously acquired a legal interest in a dwelling agrees to be added as obligor on the mortgage loan, the servicer's express acknowledgment of the successor in interest as obligor does not constitute an "assumption" as that term is used in Regulation Z. *See* 79 FR 41631, 41632-33 (July 17, 2014). Accordingly, the Regulation Z Ability-to-Repay Rule does not apply when a creditor expressly accepts a successor in interest as obligor on a loan under these circumstances. *See id.* The interpretive rule also noted that the servicer must comply with any ongoing obligations pertaining to consumer credit, such as the ARM notice requirements (12 CFR 1026.20(c) and (d)) and

Despite the Bureau's guidance regarding the requirements of the existing rule, housing counselors and consumer advocacy groups continue to report, in both published reports and their comments on this rulemaking, that successors in interest face a variety of challenges, including difficulties in obtaining information about the status of mortgage loans on their homes or the monthly payment amount, getting servicers to accept their payments, and finding out their options to avoid foreclosure.[28] Housing counselors and consumer advocacy groups have also reported that servicers often refuse to speak with successors in interest, tell them they must assume the loan before they can apply for a loss mitigation option, or accept payments for several months before telling a successor in interest that the servicer will no longer accept payments because the successor in interest is not a borrower.

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periodic statement requirement (12 CFR 1026.41), after the successor in interest is added as an obligor on the mortgage note. *Id.*

[28] *See, e.g.,* Alys Cohen, Nat'l Consumer Law Ctr., *Snapshots of Struggle: Saving the Family Home After a Death or Divorce, Successors Still Face Major Challenges in Obtaining Loan Modifications* (Mar. 2016), *available at* https://www.nclc.org/images/pdf/pr-reports/report-snapshot-struggle.pdf; Nat'l Hous. Res. Ctr., *Servicer Compliance with CFPB Servicing Regulations* (Feb. 2016), *available at* http://www.hsgcenter.org/wp-content/uploads/2016/02/NHRC-2016-Servicing-Survey-Report.pdf; Nat'l Consumer Law Ctr., *NCLC Survey Reveals Ongoing Problems with Mortgage Servicing* (May 2015), *available at* http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/ib-servicing-issues-2015.pdf; Nat'l Council of La Raza & Nat'l Hous. Res. Ctr., *Are Mortgage Servicers Following the New Rules? A Snapshot of Compliance with CFPB Servicing Standards* 3, 7 (Jan. 9, 2015), *available at* http://www.nclr.org/Assets/uploads/Publications/mortgageservicesreport_11215.pdf; Nat'l Consumer Law Ctr., *Examples of Cases Where Successors in Interest and Similar Parties Faced Challenges Seeking Loan Modifications and Communicating with Mortgage Servicers* (July 1, 2014), *available at* http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/successor-stories-2014.pdf; Cal. Reinvestment Coal., *Chasm Between Words and Deeds X: How Ongoing Mortgage Servicing Problems Hurt California Homeowners and Hardest-Hit Communities* (May 2014), *available at* http://www.calreinvest.org/publications/california-reinvestment-coalition-research; Nat'l Hous. Res. Ctr., *National Mortgage Settlement Servicing Standards and Noncompliance: Results of a National Housing Counselor Survey* 8 (June 5, 2013), *available at* http://www.hsgcenter.org/wp-content/uploads/2013/06/NMS_Findings.pdf; Cal. Reinvestment Coal., *Chasm Between Words and Deeds IX: Bank Violations Hurt Hardest Hit Communities* (April 2013), *available at* http://www.calreinvest.org/publications/california-reinvestment-coalition-research. The Bureau's examiners have also observed non-compliance with Regulation X's policy and procedure requirement relating to successors in interest. *See* Bureau of Consumer Fin. Prot., *Supervisory Highlights Mortgage Servicing Special Edition (Issue 11)* at 15-16 (June 2016).

Consumer advocacy groups emphasized in their comments that successors in interest also continue to face problems establishing their successor status. For example, when surveyed by one consumer advocacy organization about their experiences assisting successors in interest, a large number of elder advocates including legal services attorneys and housing counselors reported that they had been asked for probate documents despite having provided the servicer with a right of survivorship deed, had been asked to supply the same documents regarding proof of successor status multiple times, had experienced a servicer refusing to communicate with a successor in interest at all, or had dealt with a servicer that was unclear about what documents were needed to establish successor status. These reports suggest that widespread confusion remains about the rights and options of successors in interest.

Moreover, the protections established in the Bureau's existing rules do not apply to many categories of successors in interest in need of assistance. The office of a State Attorney General commented that it continues to receive complaints on behalf of non-borrowers who obtain property through divorce or other types of family transfers that are not covered under the current rules.

The ability of successors in interest to sell, encumber, or make improvements to their property is limited by the lien securing the mortgage loan. As homeowners of property securing a mortgage loan, successors in interest typically must satisfy the loan's payment obligations to avoid foreclosure, even though a successor in interest will not necessarily have assumed liability for the mortgage debt under State law. A foreclosure or threatened foreclosure imperils a successor in interest's ownership interest and poses significant risk of consumer harm. Successors in interest, like other homeowners, can face serious adverse consequences from

foreclosure. These consumer harms may include loss of the home and accumulated equity, displacement, and damage to credit scores.

Successors in interest may also have difficulty, beyond that of other homeowners, in avoiding foreclosure and may be more likely than other homeowners to have experienced recently or to be experiencing an income disruption due to death or divorce. Successors in interest may also have more difficulty than other homeowners obtaining information about the status of the mortgage loan, options for loss mitigation, and payoff information and may be more likely than other homeowners to experience difficulty with the prompt crediting of their payments, resulting in unnecessary foreclosure. For all these reasons, successors in interest are a particularly vulnerable group at risk of substantial harms.

These difficulties present significant problems related to the consumer protection purposes of RESPA and TILA and are similar to many of the problems that prompted the Bureau to adopt the 2013 Mortgage Servicing Rules. As the Bureau noted in its 2013 RESPA Servicing Final Rule, RESPA's consumer protection purposes include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options. The Dodd-Frank Act provides the Bureau authority to establish prohibitions on servicers of federally related mortgage loans appropriate to carry out the consumer protection purposes of RESPA.[29] As the proposal explained, the Bureau believes that further modifications to Regulation X's mortgage servicing rules relating to successors in interest serve these purposes, in particular with respect to preventing unnecessary foreclosure

[29] 12 U.S.C. 5512(b)(1).

and other homeowner harms, much as the 2013 RESPA Servicing Final Rule served these consumer protection purposes.

The purposes of TILA are to assure a meaningful disclosure of credit terms so that the consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit and to protect consumers against inaccurate and unfair credit billing practices.[30] The Bureau believes these purposes are served by extending the protections of Regulation Z's mortgage servicing rules to confirmed successors in interest, who, as owners of dwellings securing mortgage loans, have an interest in obtaining timely and accurate account information as to the mortgage secured by their dwelling. The Dodd-Frank Act authorizes the Bureau to modify or create an exemption from the disclosure requirements of TILA regarding residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest.[31]

As explained in more detail in the discussion that follows and in the section-by-section analysis of the final rule sections,[32] the Bureau proposed three sets of rules relating to successors in interest. First, the Bureau proposed rules to define successors in interest for purposes of Regulation X's subpart C and Regulation Z as those persons who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Depository Institutions Act of 1982 (the Garn-St Germain Act).[33] Second, the Bureau proposed rules relating to how a mortgage servicer confirms a successor in interest's identity and

[30] 15 U.S.C. 1601(a).
[31] Dodd-Frank Act section 1405(b), 15 U.S.C. 1601 note.
[32] *See* section-by-section analyses of §§ 1024.30(d), 1024.31, 1024.36(i), 1024.38(b)(1)(vi), 1024.39(b)(1), 1024.41(b), 1026.2(a)(11), 1026.2(a)(27), and 1026.41(a), *infra*.
[33] 12 U.S.C. 1701j-3(d).

ownership interest in the property. Third, the Bureau proposed to apply certain mortgage servicing rules to successors in interest whose identity and ownership interest in the property have been confirmed by the servicer.

The Bureau received more comments on the successor in interest provisions than on any other aspect of the proposal. As noted above, in their comments, consumer advocacy groups reported that successors in interest continue to face challenges with respect to the servicing of mortgage loans secured by their property. These commenters generally expressed support for the Bureau's proposal and, in many instances, urged the Bureau to adopt additional or broader protections for successors in interest. Servicers, trade associations, and other industry commenters, however, raised a variety of concerns about the Bureau's proposal, including operational challenges, privacy concerns, and questions about the Bureau's legal authority and the proposal's interaction with other laws.

As explained in more detail in the discussion that follows and in the section-by-section analysis of the final rule sections, the Bureau is finalizing the three sets of rules relating to successors in interest with significant adjustments to address concerns raised in the comments. The Bureau believes that the successor in interest provisions in the final rule are necessary to address the significant problems successors in interest continue to encounter with respect to the servicing of mortgage loans secured by their property, such as lack of access to information about the mortgage loan. The Bureau also believes that the rule, as finalized, addresses the operational, privacy, and other significant concerns raised by commenters.

As explained below, the final rule defines successor in interest and establishes requirements relating to confirming successors in interest. It also extends to confirmed successors in interest the protections of the mortgage servicing rules that the Bureau identified in

the proposal (Regulation X's subpart C and §§ 1026.20(c), (d), and (e), 1026.36(c), and 1026.41), as well as two additional protections that were not part of the proposal (§§ 1024.17 and 1026.39). These provisions are referred to herein collectively as the Mortgage Servicing Rules.[34]

Consistent with the proposal, coverage under the final rule does not depend on whether a successor in interest has assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law. Whether a successor in interest has assumed a mortgage loan obligation under State law is a fact-specific question. The final rule does not affect this question but applies with respect to a successor in interest regardless of whether that person has assumed the mortgage loan obligation under State law.[35] As explained in comment 30(d)-2 to Regulation X and in comment 2(a)(11)-4 to Regulation Z, 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 Regulations X and Z are not limited to the protections that apply under §§ 1024.30(d) and 1026.2(a)(11) to a confirmed successor in interest.

Scope of Successor in Interest Rules

The Bureau proposed changes regarding who is considered a successor in interest for purposes of Regulation X's subpart C and Regulation Z. Current § 1024.38(b)(1)(vi) refers to the successor in interest of the deceased borrower. The Bureau proposed to define successor in interest using definitions based on section 341(d) of the Garn-St Germain Act, which generally

[34] The term Mortgage Servicing Rules has a broader meaning as used herein than it did in the proposal, where the Bureau used it to refer to the 2013 Mortgage Servicing Rules as amended in 2013 and 2014. The term Mortgage Servicing Rules as used herein includes §§ 1024.17 and 1026.39 in addition to the 2013 Mortgage Servicing Rules as amended in 2013 and 2014.

[35] As noted, the Bureau has also clarified in an interpretive rule that where a successor in interest who has previously acquired a legal interest in a dwelling agrees to be added as obligor on the mortgage loan, the servicer's express acknowledgment of the successor in interest as obligor does not constitute an "assumption" as that term is used in Regulation Z. *See* 79 FR 41631, 41632-33 (July 17, 2014).

prohibits the exercise of due-on-sale clauses with respect to certain protected transfers.[36] The Act protects certain types of transfers involving the death of a borrower.[37] In addition, the Garn-St Germain Act protects other categories of transfers: a transfer where the spouse or children of the borrower become an owner of the property; a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; a transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; and any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board.[38]

The Bureau proposed that, to the extent that certain mortgage servicing rules apply to successors in interest, the rules would apply to all successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act, rather than only successors in interest who acquired an ownership interest upon a borrower's death. Accordingly, for the purposes of Regulation X, the Bureau proposed to define successor in interest in § 1024.31 as a member of any of the categories of successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act. The Bureau also proposed to modify current § 1024.38(b)(1)(vi) to account for all transfers to successors in interest meeting this definition. Similarly, for the purposes of Regulation Z, proposed § 1026.2(a)(27) would have defined

[36] 12 U.S.C. 1701j-3(d).
[37] Specifically, the Act protects a transfer to a relative resulting from the death of a borrower and a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety. *Id.*
[38] *Id.* The Garn-St Germain Act also prohibits exercise of due-on-sale clauses with respect to certain other situations that do not involve transfer of an ownership interest in the property. *Id.* The Bureau's proposal would not have applied to these situations.

successor in interest to cover all categories of successors in interest who acquired an ownership interest in the dwelling securing a mortgage loan in a transfer protected by the Garn-St Germain Act.

For the reasons that follow and that are explained in the section-by-section analyses of §§ 1024.31 and 1026.2(a)(27)(i), the final rule includes definitions of successor in interest in §§ 1024.31 and 1026.2(a)(27)(i) that are modeled on categories of transfers protected in the Garn-St Germain Act, but the definitions do not cross-reference the Garn-St Germain Act itself. Specifically, after reviewing the comments, the Bureau is defining successor in interest for purposes of subpart C of Regulation X in § 1024.31 to mean a person to whom an ownership interest in a property securing a mortgage loan subject to subpart C is transferred from a borrower, provided that the transfer falls in one or more of the following categories:

- A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- A transfer to a relative resulting from the death of a borrower;
- A transfer where the spouse or children of the borrower become an owner of the property;
- A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
- 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.[39]

The Bureau is finalizing an analogous definition for Regulation Z in § 1026.2(a)(27)(i).[40]

Whether to use the Garn-St Germain Act categories at all in defining successor in interest. Commenters offered different views on whether the Bureau should use the Garn-St Germain Act categories at all in defining the term successor in interest. Consumer advocacy groups and some State and local government commenters expressed support for including the Garn-St Germain Act categories in the definition.[41] For example, one consumer advocacy group indicated that, for a large percentage of the successors in interest it has assisted, the servicers' refusal to provide any information about the status of the account to the successor in interest has led to prolonged delinquency and unnecessary foreclosure proceedings. This group stated that it believes that the proposed definition of successor in interest would offer important protections to prevent unnecessary foreclosures and reduce unnecessary delays in reaching agreements. Another consumer advocacy group indicated that extending the rules to include all protected transfers under the Garn-St Germain Act would significantly benefit its vulnerable clients.

The office of a State Attorney General expressed support for extending protections to the

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[39] The Bureau interprets "spouse" to include married same-sex spouses. *See* Memorandum on Ensuring Equal Treatment for Same-Sex Married Couples (Same-Sex Married Couple Policy) (June 25, 2014), *available at* http://files.consumerfinance.gov/f/201407_cfpb_memo_ensuring-equal-treatment-for-same-sex-married-couples.pdf.

[40] The final rule's definition of successor in interest for Regulation Z is identical to the definition for subpart C of Regulation X, except that the Regulation Z definition substitutes "a dwelling securing a closed-end consumer credit transaction is transferred from a consumer" for "a property securing a mortgage loan is transferred from a borrower" and substitutes "consumer" for "borrower" throughout. Both definitions of successor in interest are limited to transferees who receive an ownership in property that secures closed-end credit because § 1024.31 defines mortgage loan for purposes of Regulation X subpart C to exclude open-end lines of credit and § 1026.2(a)(27)(i) refers to closed-end consumer credit transactions. However, transferees of properties that secure open-end credit are entitled to protection as borrowers under RESPA and Regulation X and consumers under TILA and Regulation Z if they assume the loan obligation under State law or are otherwise liable on the mortgage loan obligation and may be protected under other laws.

[41] As discussed *infra*, these commenters generally also favored adding additional categories to the proposed definitions of successor in interest for Regulation X subpart C and Regulation Z.

Garn-St Germain Act categories and indicated that servicers often refuse to communicate with divorcees and other family transferees. A local government commenter also expressed strong support for including in the definition successors in interest who meet the criteria set forth in the Garn-St Germain Act based on its experience running a mortgage foreclosure diversion program over the past seven years.

Some industry commenters objected to the use of the Garn-St Germain Act framework in defining who is a successor in interest. Two trade associations stated that Congress did not intend for the Garn-St Germain Act to protect against any consequences of delinquency. These commenters stated that section 341 of the Garn-St Germain Act was designed to address when lenders may and may not require a loan modification. One of these trade associations suggested that the Garn-St Germain Act categories are not well-suited for use in the successor in interest definitions because a child who buys a property from a parent would be protected but a parent who buys a property from a child would not. Another trade association stated that the sole purpose of the Garn-St Germain Act was to preempt acceleration based on certain transfers of ownership on residential properties.

Despite the concerns expressed by some commenters, the Bureau continues to believe that it is appropriate to align the successor in interest definitions in Regulations X and Z in large part with the categories in section 341(d) of the Garn-St Germain Act. Although a few industry commenters attempted to characterize this provision differently, the text of section 341(d) clearly provides a broad exemption from due-on-sale enforcement for various categories of transfers. The legislative history of the Garn-St Germain Act reflects that Congress chose to create this

broad exemption because it deemed such enforcement unfair and inappropriate.[42] For the same reasons that due-on-sale enforcement would be inappropriate in the context of these transfers, the Bureau believes it is also important to ensure that servicers do not interfere in other ways with the transferees' ability to take advantage of their ownership interest in the property. For example, just as due-on-sale enforcement can result in a successor in interest losing a property, a servicer's failure to provide information to a successor in interest about the status of a mortgage loan or to evaluate the successor in interest for available loss mitigation options could result in unnecessary foreclosure and loss of the successor in interest's ownership interest.

Congress identified in the Garn-St Germain Act the categories that it felt warranted protection from one type of foreclosure risk. The Bureau agrees that these general categories include the most vulnerable classes of transferees and has concluded that it is important to protect such transferees from other types of foreclosure risk and servicing abuses.

Notwithstanding the suggestion of one commenter to the contrary, the Bureau also believes that the categories established in section 341(d) of the Garn-St Germain Act provide adequate protection for transfers from child to parent. Section 341(d)(5) includes transfers from a relative (including from a child to a parent or from a parent to a child) that occur upon the death of a borrower. Section 341(d)(6) also includes ownership transfers from a parent to a child and between spouses that occur during the life of the borrower. The fact that section 341(d) does

[42] *See* S. Rep. No. 536, 97th Cong., at 24 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3054, 3078 ("The Committee believes that it would be unfair and inappropriate for lenders to enforce due-on-sale clauses under certain circumstances—such as involuntary transfers resulting from the death of a borrower, transfers which rearrange ownership rights within a family, or transfers resulting from a separation or dissolution of a marriage. Similarly, further encumbrances of the property, such as second mortgages which are often used by families to send a child to college, or finance home improvements, will not trigger due-on-sale enforcement as long as the encumbrance does not relate to a transfer of rights of occupancy in the property.").

not include transfers from a child to a parent that occur during the life of the transferor reflects Congress's determination that transfers from parent to child need greater protection from due-on-sale enforcement. The Bureau believes that the same policy choice is appropriate in defining successor in interest in Regulations X and Z because lifetime transfers to children and spouses are both more common than lifetime transfers to parents and more central to ensuring that familial homesteads and wealth will be available to the next generation.[43]

Whether to cross-reference the Garn-St Germain Act in the definitions and whether to incorporate limitations imposed by the Garn-St Germain Act implementing regulations. Industry commenters asked whether the Bureau intended to incorporate the occupancy requirements of the Garn-St Germain Act implementing regulations administered by the Office of the Comptroller of the Currency (OCC), 12 CFR 191.5(b). The implementing regulations impose certain occupancy requirements and expressly exclude reverse mortgages from the scope of Garn-St Germain due-on-sale protection.[44] Commenters indicated uncertainty about whether the Bureau intended to apply the occupancy requirements that appear only in the Garn-St Germain Act implementing regulations and not in the Garn-St Germain Act.

An industry commenter suggested that the Bureau should omit reference to the Garn-St Germain Act in Regulations X and Z and instead enumerate the categories of transfers of ownership that would qualify for regulatory protection, in order to avoid unintended

[43] Another commenter suggested that using the Garn-St Germain Act categories could create inequitable results, noting that if three descendants inherit an unencumbered property that is later encumbered by only one descendant, there would be no successor in interest, but if the parent had encumbered the property with a mortgage loan prior to the inheritance, all three descendants would be successors in interest. The Bureau believes, however, that those situations are not comparable. In the former case, where the transfer of ownership occurs before the encumbrance, the interests of the heirs are generally only subject to the mortgage if they have consented to the mortgage.
[44] 12 CFR 191.5(b).

consequences. Other industry commenters asked the Bureau to clarify in the final rule how the existing exemptions and scope limitations in Regulations X and Z would apply to the servicing of a mortgage loan with respect to a successor in interest.

A trade association urged the Bureau to exempt reverse mortgages entirely. It stated that existing guidelines, protocols, and timelines governing Home Equity Conversion Mortgages insured by the Federal Housing Administration (FHA) require servicers of such reverse mortgages to reach out to and deal with persons who might fall within the Bureau's definition of successor in interest. This trade association said that its membership indicated that servicers of non-FHA-insured reverse mortgages follow similar processes. It also noted that reverse mortgages are exempt from many of the mortgage servicing requirements in Regulations X and Z. It suggested that applying the successor in interest requirements to reverse mortgage servicers would be burdensome and would provide little if any practical benefits given the servicing protocols and requirements already in place in the reverse mortgage industry.

A trade association requested that small servicers be exempted from complying with the prescriptive requirements of the successor in interest provisions. It stated that tracking successors in interest could require costly system modifications. The commenter indicated that an exemption for small servicers would be consistent with the Bureau's approach to other general servicing requirements for small servicers. By contrast, several consumer advocacy groups urged the Bureau to expand the requirements for small servicers beyond those in the proposal to require small servicers to comply with all of the proposed requirements of § 1024.38(b)(1)(vi).

Upon consideration, the Bureau has decided to incorporate the relevant categories of transfers directly into the final rule, rather than relying on a cross-reference to the Garn-St

Germain Act. Accordingly, the final rule lists the specific categories of transfers that qualify a transferee to be a successor in interest, using categories that are modeled on categories protected by the Garn-St Germain Act. To ensure that the scope of the final rule does not change over time without further rulemaking by the Bureau, the Bureau has omitted the Garn-St Germain Act category that protects from due-on-sale enforcement any other transfer or disposition described in the Garn-St Germain Act implementing regulations.[45] The Bureau believes that listing the specific categories rather than including a cross-reference makes the definitions in Regulations X and Z clearer and easier to apply.

In restating the categories in the final rule, the Bureau has not incorporated certain scope limitations imposed by the Garn-St Germain Act itself or its implementing regulations. The Bureau notes that many of those limitations are similar in nature to those in the Mortgage Servicing Rules themselves and believes that it will be easier for servicers and more protective for consumers to let the Mortgage Servicing Rules' limitations determine the scope of coverage consistently for confirmed successors in interest as for other borrowers under the Mortgage Servicing Rules, rather than to import slightly varying limitations in the Garn-St Germain Act or OCC regulations.[46] The Mortgage Servicing Rules thus generally apply to confirmed successors in interest in the same manner that they do to other borrowers.

For example, section 341(d) of the Garn St-Germain Act by its terms only applies with

[45] 12 U.S.C. 1701j-3(d)(9). There are no such other categories currently in the OCC's regulation. *See* 12 CFR 191.5(b)(1). The Bureau has also omitted several categories in the Garn-St Germain Act that do not result in a transfer of ownership interest and that are therefore irrelevant for successor in interest status. *See* 12 U.S.C. 1701j-3(d)(1), (2), (4); *see also* 79 FR 74176, 74181 n.28 (Dec. 15, 2014) (noting that the proposal would not apply to the situations described in these categories).

[46] While the Garn-St Germain Act and its implementing regulations define a category of transactions that should receive protection from foreclosure through the exercise of a due-on-sale clause, the focus of the Garn-St Germain Act and its implementing regulations is solely on operation of due-on-sale protections, and the Bureau's focus, while related, is somewhat different.

respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home.[47] For ease of application and to align with other parts of Regulations X and Z, the Bureau has not incorporated these limitations into the definitions of successor in interest in the final rule. Instead, the definitions of successor in interest in the final rule incorporate the scope limitations from Regulations X and Z respectively by, for example, referring to a mortgage loan in the definition of successor in interest in § 1024.31 and to a dwelling securing a closed-end consumer credit transaction in § 1026.2(a)(27)(i).[48]

The Bureau has also decided not to incorporate certain limitations imposed by the Garn-St Germain Act implementing regulations. The implementing regulations issued by the OCC's predecessor, the Federal Home Loan Bank Board, exempt reverse mortgages from the due-on-sale protections in Garn-St Germain Act section 341(d).[49] They also impose certain occupancy requirements, which limit protection from due-on-sale enforcement to circumstances where the property was occupied or was to be occupied by the borrower.[50] The implementing regulations further limit protection from due-on-sale enforcement to circumstances where the transferee occupies or will occupy the property if it is an intra-familial transfer and to circumstances where

[47] 12 U.S.C. 1701j-3(d).
[48] *See, e.g.*, § 1024.31 (defining mortgage loan for purposes of Regulation X subpart C as any federally related mortgage loan, as that term is defined in § 1024.2 subject to the exemptions in § 1024.5(b), but not including open-end lines of credit (home equity plans)); § 1026.2(a)(19) (defining dwelling for Regulation Z as a residential structure that contains one to four units, whether or not that structure is attached to real property, and noting that the term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence).
[49] 12 CFR 191.5(b)(1).
[50] 12 CFR 191.5(b).

the borrower is and remains an occupant of the property if it is a transfer to an *inter vivos* trust.[51]

Rather than incorporating these scope limitations into the final rule, the Bureau has decided to apply the exemptions and scope limitations in the existing Mortgage Servicing Rules to the servicing of a mortgage loan with respect to a confirmed successor in interest, as it proposed to do. For example, § 1024.30(b) exempts small servicers from §§ 1024.38 through 1024.41 (except § 1024.41(j)). Likewise, § 1024.30(b) provides an exemption from these sections with respect to reverse mortgage transactions and mortgage loan for which the servicer is a qualified lender as that term is defined in 12 CFR 617.7000. Accordingly, except as otherwise provided in § 1024.41(j), and consistent with the generally applicable scope limitations of the Mortgage Servicing Rules, §§ 1024.38 through 1024.41 do not apply to confirmed successors in interest with respect to small servicers, reverse mortgage transactions, and mortgage loans for which the servicer is a qualified lender. Similarly, § 1024.30(c) provides that § 1024.33(a) only applies to reverse mortgage loan transactions and that §§ 1024.39 through 1024.41 only apply to mortgage loans secured by property that is a borrower's principal residence. Accordingly, with respect to confirmed successors in interest, § 1024.33(a) only applies to reverse mortgage loan transactions, and §§ 1024.39 through 1024.41 only apply to mortgage loans secured by property that is the confirmed successor in interest's principal residence.[52]

The Mortgage Servicing Rules in Regulation Z contain similar exemptions and scope limitations, which also apply to the treatment of confirmed successors in interest under the final

[51] 12 CFR 191.5(b)(1)(v), (vi).
[52] In response to questions raised by commenters, the final rule clarifies in comments 30(d)-1 and 41(b)-1.ii to Regulation X that a property must be the confirmed successor in interest's primary residence for the procedures in § 1024.41 to apply.

rule. For example, creditors, assignees, and servicers are exempt from § 1026.41's periodic statement requirements for mortgage loans serviced by a small servicer, as defined in § 1026.41(e)(4).[53]

Applying these existing exemptions and scope limitations to the servicing of a mortgage loan with respect to a confirmed successor in interest promotes clarity and consistency with other aspects of Regulations X and Z, making the rules easier to apply. It also furthers the policy goals that led to the adoption of those exemptions and scope limitations in the existing Mortgage Servicing Rules. In adopting the 2013 Mortgage Servicing Rules, the Bureau weighed relevant considerations for the exemptions and scope limitations and made a series of carefully calibrated judgments about the circumstances under which each of the rule's protections should apply.[54] For example, in limiting the scope of §§ 1024.39 through 1024.41 to mortgage loans that are secured by a borrower's principal residence in § 1024.30(c), the Bureau noted that the purpose of the early intervention requirement, the continuity of contact requirement, and the loss mitigation procedures is to help borrowers stay in their principal residences, where possible, while mitigating the losses of loan owners and assignees, by ensuring that servicers use clear standards of review for loss mitigation options.[55] The Bureau did not believe that this purpose would be furthered by extending those protections to mortgage loans for investment, vacation, or other properties that are not principal residences.[56] These same considerations support applying the

[53] Section 1026.41 defines servicers to mean creditors, assignees, or servicers for the purposes of § 1026.41. The Bureau, therefore, also uses the term servicer to mean a creditor, assignee, or servicer in this discussion and in the section-by-section analysis of § 1026.41.
[54] *See, e.g.*, 78 FR 10696, 10718-22 (Feb. 14, 2013).
[55] *Id*. at 10722.
[56] For example, the Bureau noted that, for properties that are not the borrower's principal residence, the protections set forth in §§ 1024.39 through 41 might only serve to assist a non-occupying borrower to maintain cash flow from

same exemptions and scope limitations in the context of confirmed successors in interest.

Applying occupancy requirements from the Garn-St Germain Act implementing regulations to successors in interest would make Regulations X and Z more complex and difficult to implement and administer and would offer less protection to successors in interest. While certain Mortgage Servicing Rules will not apply due to existing exemptions and scope limitations,[57] the Bureau believes that successors in interest will benefit from other protections of the Mortgage Servicing Rules even if they do not occupy or intend to occupy the property, just as non-occupant borrowers currently do. For example, successors in interest, whether occupants or non-occupants, often encounter difficulties accessing information about the mortgage account and making payments and will benefit from the ability to submit requests for information and request payoff statements once they are confirmed.

The Bureau also believes it is appropriate to include reverse mortgages to the same extent that they are covered under the existing Mortgage Servicing Rules. The Bureau recognizes that there are many ways in which reverse mortgages differ from other mortgages. The exemptions and scope limitations in the existing Mortgage Servicing Rules are already tailored to these differences and ensure that consumers with reverse mortgages benefit from the protections that are relevant to their situations and that reverse mortgage servicers are not required to comply with Regulation X and Z protections that are not relevant to reverse mortgages. When a reverse mortgage is secured by a property that is acquired by a successor in interest, the successor in

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rental revenue during a period of delinquency. *Id.* Further, the Bureau recognized that, for certain properties that are not principal residences, there is a significant risk that a property may not be maintained and may present hazards and blight to local communities. *Id.* The Bureau also noted that this limitation is consistent with the California Homeowner Bill of Rights and the National Mortgage Settlement and that its incorporation would further the goal of creating uniform standards. *Id.*

[57] *See, e.g.*, § 1024.30(c)(2).

interest will benefit upon confirmation from the ability to invoke the Mortgage Servicing Rules that apply to reverse mortgages, just as the transferor borrower might benefit. For example, in many instances, successors in interest to properties that are secured by reverse mortgages will need to pay off the reverse mortgage in order to protect their ownership interest and will benefit from the information in a payoff statement available under § 1026.36(c). The Bureau believes that it will be easier for servicers to follow consistent rules with regard to reverse mortgages regardless of whether there has been a succession of interest with respect to a particular property and that such an approach provides greater protections to consumers that are calibrated to the context of the Mortgage Servicing Rules.

The final rule also applies the same exemptions for small servicers that currently apply under the Mortgage Servicing Rules. Although a trade association suggested that it would be consistent with other mortgage servicing requirements to exempt small servicers entirely from the successor in interest provisions, the Bureau believes that the most consistent approach is to apply the same exemptions that exist in current Regulations X and Z to the final rule's new successor in interest provisions. These exemptions reflect the unique circumstances of small servicers, which may not have systems in place to implement certain requirements in a cost-effective way given their size. Although some consumer advocacy groups suggested that the Bureau should subject small servicers to the policies and procedures requirements in § 1024.38(b)(1)(vi), the Bureau believes that requiring small servicers to develop such policies and procedures could cause small servicers to incur incremental expenses which, because of their size, would be burdensome for them. Under the final rule, as under the proposal, § 1024.36(i), but not § 1024.38(b)(1)(vi), applies to small servicers. Accordingly, small servicers, for example, must respond to requests for information under § 1024.36(i) by providing a written

description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property within the timeframe set forth in § 1024.36, even though small servicers are not required to maintain policies and procedures to determine promptly what documents the servicer reasonably requires to confirm the successor in interest's identity and ownership interest in the property. The Bureau believes that this approach appropriately balances the burden on small servicers with confirmed successors in interest's need to receive this information.

Whether to limit the Garn-St Germain Act categories to situations involving death, to persons who have assumed the loan obligation, or in other significant ways. Some industry commenters suggested narrowing the scope of the successor in interest provisions in various ways. A number of industry commenters suggested limiting the categories to situations involving the death of an obligor, as the current rule does, or the death of all obligors. These commenters said that providing loan-related information to a successor in interest who is not liable on the note could violate the financial privacy of living obligors and result in liability for servicers.

Other industry commenters suggested limiting the scope to successors in interest who obtain their interest through death or divorce, sometimes with additional triggering criteria. An industry commenter suggested limiting the scope to situations involving a mortgage transaction where either the borrower is deceased or the loan is in default due to delinquency and the borrower is unwilling to work with the servicer to resolve the default. A trade association suggested that the definition should be limited to circumstances where the successor inherits property after death, has been awarded property in a divorce action, or has received a quitclaim deed from the borrower.

Some industry commenters suggested other limiting factors for recognizing successors in interest. A trade association stated that transfers where the transferor borrower retains ownership rights and remains obligated on the loan do not actually involve a succession of interest. Some industry commenters also suggested that the Bureau should impose occupancy restrictions in the definition—for example, by limiting the definition to individuals who occupy the property as a primary residence. Two industry commenters urged the Bureau to exclude from the definition of successors in interest third parties who become successors in interest through "take over the payments," contracts for deed, wrap notes, and similar sales transactions that are unauthorized by mortgagees and are in violation of due-on-sale clauses in the mortgage instruments.

In suggesting these limitations, some commenters expressed concern about excessive regulatory burden. Other industry commenters asserted that the scope of the successor in interest definitions in the proposal would allow borrowers to transfer the property solely to delay foreclosure and to influence whose income is considered in loss mitigation, which would impose additional costs on the holder of the mortgage. Others suggested that the definition should not include transfers while the transferor borrower is living (such as transfers where the child of a borrower becomes an owner or transfers into an *inter vivos* trust) because living transferor borrowers always have the option to create authority in a transferee through a power of attorney or other means should they wish to do so.

A number of industry commenters suggested that the Bureau should exclude anyone who has not assumed the mortgage loan obligation from the definitions of successor in interest in order to address their concerns about being required to interact with a person not legally obligated on the note. One commenter stated that it would not be appropriate to grant statutory rights to a person who is a legal stranger to the owner of the loan and against whom the owner of

the loan may not proceed if the loan becomes delinquent. Another suggested that the primary reason that borrowers receive many protections under the mortgage servicing rules is because they have undertaken a substantial obligation to repay a loan and could suffer significant negative ramifications if they fail to meet that obligation. Some commenters expressed concern that the proposal would allow someone who is not a party to the loan agreement to modify its terms. A trade association indicated that treating people who have not assumed the loan as successors in interest would raise serious privacy concerns and suggested that the Bureau should provide a safe harbor if the final rule requires disclosure of nonpublic borrower information to non-obligated co-owners. Other industry commenters urged the Bureau to provide clarification, potentially in commentary, on the privacy implications of the proposed provision's coverage of successors-in-interest who have not assumed the mortgage loan obligation under State law.

By contrast, consumer advocacy groups and government commenters emphasized in their comments the need for broad coverage. A State Attorney General's office noted that it often must intervene on behalf of vulnerable non-borrowers who obtain an interest in a property through divorce or otherwise. It observed that servicers fail to communicate with these homeowners even when the loans at issue are owned by Fannie Mae and Freddie Mac, both of which have long directed servicers to work with divorcees. Several consumer advocacy groups reported that a large number of attorneys and housing counselors representing homeowners across the United States have been asked to supply a quitclaim deed to the servicer, even where the successor in interest had already provided a copy of a divorce decree that clearly transferred the property. One consumer advocacy group noted that it has seen cases involving divorced spouses and other intra-family transfers, as well as heirs, and that a large percentage of its successor in interest cases have led to prolonged delinquency and unnecessary foreclosure

proceedings due to the servicers' refusal to provide any information about the status of the account to the successor in interest.

Another consumer advocacy group expressed particular concern about the need to protect successors in interest who have experienced intimate partner violence. This commenter explained that, for example, survivors of spousal abuse often receive the marital home in a divorce only to have mortgage servicers refuse to provide them with information about the mortgage loan if the loan is in the name of the former spouse. It also noted that survivors of spousal abuse often need to request loss mitigation assistance because of their changed economic circumstances after a divorce but are told they cannot apply for loss mitigation without the participation of the former spouse. The commenter noted that giving abusers sole access to necessary information about the loan or requiring their participation for loss mitigation applications perpetuates the dynamics of power and control inherent in abusive relationships.

A consumer advocacy group stated that assumption should not be a requirement for confirmation because successors in interest cannot evaluate whether it is in their best interests to assume a loan unless they have information about the status of the loan and whether it will be possible to avoid foreclosure. This commenter noted that successors in interest are harmed if they assume liability on a loan that is in default or foreclosure only to discover that there is no feasible loss mitigation option. The office of a State Attorney General raised similar concerns.

The Bureau is not limiting the scope, as industry commenters suggested, and is expanding the scope beyond the current rule's limitation to situations involving death. In issuing current § 1024.38(b)(1)(vi), the Bureau relied on information about difficulties faced by surviving spouses, children, and other relatives who succeed in the interest of a deceased borrower to a property that the successor in interest also occupied as a principal residence, when

that property is securing a mortgage loan account solely in the name of the deceased borrower.[58] Since that time, the Bureau has received additional information that other categories of successors in interest who acquire an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act, such as divorced spouses, face similar difficulties to those identified by the Bureau in issuing the original policies and procedures requirement.[59] Many commenters confirmed that successors in interest who are transferred an ownership interest in property securing a mortgage loan upon divorce and through other protected transfers face similar challenges to those faced by successors in interest after a borrower's death, including, for example, difficulty obtaining information about the mortgage loan. In light of the information received through comments and published reports and the Bureau's market knowledge, the Bureau concludes that many successors in interest in the Garn-St Germain Act categories that do not involve a borrower's death face the same risk of unnecessary foreclosure and other consumer harm with respect to the mortgage loan and property as successors in interest who receive an ownership interest upon a borrower's death.

The Bureau does not believe it would be appropriate to limit the scope of the definition to transfers occurring upon death or to impose any of the alternative limitations suggested by commenters. As many commenters noted, divorcees and individuals who are legally separated from their spouses often need to communicate with servicers regarding mortgage loans that encumber property they have obtained through the divorce or legal separation process.

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[58] 78 FR 10695, 10781 (Feb. 14, 2013).

[59] For example, a national survey of attorneys and housing counselors representing homeowners in 2015 found that 55 percent of respondents were asked by a servicer to supply a quitclaim deed in circumstances where one was not needed or available because a divorce decree clearly transferred the property. Nat'l Consumer Law Ctr., *NCLC Survey Reveals Ongoing Problems with Mortgage Servicing* 1-2 (May 2015), *available at* http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/ib-servicing-issues-2015.pdf.

Similarly, children or spouses who receive an ownership interest during the life of the transferor borrower and beneficiaries of *inter vivos* trusts may need information about the mortgage loan in order to ensure the property does not go into default or foreclosure. This can be particularly important in cases where the transferor borrower is unwilling or unable to handle financial matters relating to the property. Congress included these categories in the Garn-St Germain Act, as well as various categories occurring on the death of the transferor borrower, because it concluded that due-on-sale enforcement would be unfair and inappropriate with respect to these transferees.[60] The Bureau believes that these transferees are also at risk of losing the home or falling behind on the mortgage if they do not receive timely information from the servicer and are unable to communicate with the servicer about the mortgage loan. The Bureau, therefore, has decided not to exclude from the scope of the final rule's successor in interest protections the various Garn-St Germain Act categories of ownership interest transfers that occur during the life of the transferor borrower.

The Bureau has also decided not to limit the definitions of successor in interest to those who have assumed the loan obligation. As some commenters noted, successors in interest must have access to information about the loan in order to evaluate the viability of a legal assumption of the mortgage loan obligation. The Bureau recognizes the potential privacy concerns expressed by commenters raised by sharing information with successors in interest who are not obligated on the loan. However, the Bureau does not believe that these concerns warrant narrowing the scope of the successor in interest definitions. Instead, the Bureau is authorizing servicers to withhold certain types of sensitive information in response to requests for

[60] *See* S. Rep. No. 536, 97th Cong., 2d Sess. 23, *reprinted in* 1982 U.S.C.C.A.N. 3054, 3078.

information and notices of error that involve successors in interest, as discussed below.

Commenters also expressed concern that defining successors in interest to include persons who are not obligated on the loan might needlessly delay foreclosure proceedings. The Bureau does not believe that this is a significant risk and does not believe that borrowers are likely to transfer ownership of real property simply as a delay tactic. Moreover, the final rule does not extend dual tracking protections during the pendency of the confirmation process. The final rule does, however, require servicers to review and evaluate loss mitigation applications from confirmed successors 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. The Bureau recognizes that, as with reviews and evaluations for other borrowers, these reviews and evaluations could result in short delays in some cases but believes it is important to extend these foreclosure protections to confirmed successors in interest for the reasons discussed in this discussion and in the section-by-section analysis of § 1024.30(d).

As noted above, two commenters suggested that the Bureau exclude from the definitions of successor in interest third parties who become successors in interest through "take over the payments," contracts for deed, wrap notes, and similar sales transactions. The final rule's definitions of successor in interest include transfers during the life of the transferor only if the recipient is a spouse, former spouse, or child of the transferor, or the beneficiary of an *inter vivos* trust. Third parties who do not fall into these categories and acquire the property during the life of the transferor are not successors in interest for the purpose of the final rule, regardless of how they obtain the property. Conversely, recipients who are spouses, former spouses, or children of the transferor or who are the beneficiaries of an *inter vivos* trust can be successors in interest

even if they obtain the property through the types of contracts for deed or similar transactions to which the commenters are referring. For the reasons stated in this discussion and in the section-by-section analyses of §§ 1024.31 and 1026.2(a)(27)(i), the Bureau believes that it is appropriate to treat the categories of transferees described in §§ 1024.31 and 1026.2(a)(27)(i) as successors in interest for purposes of the final rule regardless of how they obtain an interest in the property, while not treating other transferees as successors in interest.

Whether to include in the successor in interest definitions additional categories, beyond those protected by the Garn-St Germain Act. The Bureau also solicited comment on whether additional categories of successors in interest, beyond those protected by the Garn-St Germain Act, should be covered by the Bureau's definitions of successor in interest. Consumer advocacy groups urged the Bureau to broaden the definition to include various categories that are not covered by the Garn-St Germain Act but that are similar to the Garn-St Germain Act categories. They suggested, for example, that the definition should include same-sex partners, as well as parents, siblings, and grandchildren who obtain an interest in the home through a quitclaim deed. Several consumer advocacy groups suggested that, in addition to the Garn-St Germain Act categories, the definition should cover any instance where there is not an enforceable due-on-sale clause, including situations where there is no due-on-sale clause in the mortgage.[61]

A number of consumer advocacy groups urged the Bureau to expand the definitions of

[61] One consumer advocacy group suggested that the Bureau should include representatives of estates within the definitions of successor in interest. Estates and their representatives have unique interests and already benefit from protections under RESPA and TILA, which the final rule is not curtailing. The Bureau therefore has decided not to define estates or their representatives as successors in interest for purposes of this final rule. Estate-related issues are addressed further in the discussion of Regulation X comment 30(d)-3 in the section-by-section analysis of § 1024.30(d) and in the discussion of Regulation Z comment 2(a)(11)-4.iii in the section-by-section analysis of § 1026.2(a)(11), *infra*.

successor in interest to include co-homeowners who did not sign the original note. They indicated that homeowners who are not borrowers on the note experience the same frustrations, problems, and potential harms as successors in interest.

Industry commenters stated that mortgagors may have elected not to sign the note. An industry commenter also stated that mortgagors always have the option to refinance the loan in their own name should they choose to do so.

The final rule does not cover categories of successors in interest beyond the categories established in the Garn-St Germain Act. Some of the categories that consumer advocacy groups suggested adding are already covered in part by the final rule categories that are modeled on the Garn-St Germain Act. For example, co-owners who did not sign the note will be covered upon the death of their co-owner if they are a joint tenant, a spouse who owns the property as a tenant by the entirety, or a relative who inherits an additional interest in the property. As finalized, the definitions also include transfers made where there is no due-on-sale clause in the mortgage instrument as long as the transfer falls within one of the specified categories listed in the definitions (such as a transfer to a relative resulting from the death of the transferor).

The Bureau considered adding certain additional categories to the scope of the definitions, such as non-relatives who receive property upon the death of a borrower, but decided not to do so for several reasons. Because the Bureau is applying the Mortgage Servicing Rules to confirmed successors in interest in large part to prevent unnecessary foreclosure, the Bureau believes that it is appropriate to align generally the successor in interest definitions with Congress's policy choice about which categories of successors in interest should be protected from foreclosure based on a lender's exercise of a due-on-sale clause. The Bureau also believes that the Garn-St Germain Act categories capture the most vulnerable classes of transferees that

warrant successor in interest protection. Basing the definitions on the Garn-St Germain Act categories should assist servicers in identifying successors in interest, since servicers already need to comply with the Garn-St Germain Act. Further expansion of the scope of the successor in interest definitions beyond the Garn-St Germain Act categories might not be helpful to the property owners who would be added because, in the absence of due-on-sale protection, a servicer might be able to accelerate and foreclose independent of the final rule's successor in interest protections.

How to address the rights of transferor borrowers and their estates. A large number of commenters of various types described as confusing or inaccurate the use of the terms prior borrower and prior consumer in the proposal to refer to the person who transferred an ownership interest to the successor in interest.[62] Many of these commenters noted that a borrower who transfers an interest typically remains obligated on the mortgage loan. An industry commenter suggested substituting "transferor-borrower" for "prior borrower." A number of commenters asserted that borrowers who retain ownership and remain obligated under the mortgage loan should continue to receive mortgage servicing rule protections, while a trade association suggested that the transferor borrower should stop receiving communications when a successor in interest is confirmed.

A number of commenters expressed concern that the Bureau's proposal would not provide adequate protection for the estates of transferor borrowers. Several consumer advocacy groups explained that estate representatives are protected by TILA and RESPA. These groups

[62] "Prior borrower" appears in the proposed definition of successor in interest in proposed § 1024.31; proposed § 1024.36(i); and proposed Regulation X comments 30(d)-2, 38(b)(1)(vi)-2, and 39(b)(1)-5. "Prior consumer" appears in proposed § 1026.2(a)(27) and proposed Regulation Z comment 2(a)(11)-4.

suggested that estates and their representatives should be able to obtain information and have payments applied correctly until the estate is closed. A trade association agreed with two caveats: It indicated that: (1) The servicer needs to verify that a person purporting to act as administrator or executor is properly acting in that capacity, and (2) If the estate is released from the loan obligation Regulation P may limit the estate's ability to access future loan information. Another trade association noted that the executor of an estate may ultimately be legally obligated to dispose of property and needs information in order to fulfill the executor's responsibilities. Other industry commenters suggested that protection for the estate should terminate upon confirmation of a successor in interest.

The final rule substitutes "borrower" for "prior borrower" and "consumer" for "prior consumer" in the definitions of successor in interest and in other successor in interest provisions. As many commenters noted, a borrower who transfers an ownership interest typically remains obligated on the loan, making the word "prior" inapposite. In light of concerns raised by commenters regarding the need to protect transferor borrowers and their estates, the Bureau is also clarifying in comment 30(d)-3 to Regulation X and comment 2(a)(11)-4.iii to Regulation Z that, even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of Regulations X and Z with respect to the borrower who transferred the ownership interest to the successor in interest. This final rule does not take away any existing rights of transferor borrowers or their estates under Regulations X and Z.

Confirming a Successor in Interest's Status

The Bureau proposed modifications to the Mortgage Servicing Rules in Regulation X

relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest in the property securing the mortgage loan.[63] Proposed § 1024.36(i) would have generally required a servicer to respond to a written request that indicates that the person making the request may be a successor in interest by providing that person with information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. Proposed § 1024.38(b)(1)(vi) would have added several related modifications to the current policies and procedures provision involving successors in interest.

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

[63] As the Bureau explained in the proposal, similar modifications to the Mortgage Servicing Rules in Regulation Z relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest in the dwelling are unnecessary. The Mortgage Servicing Rules in Regulation X apply to the vast majority of mortgage loans to which the Mortgage Servicing Rules in Regulation Z apply. Accordingly, the rules under Regulation X relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest in the property generally apply to loans to which the Mortgage Servicing Rules in Regulation Z apply, making unnecessary similar modifications to Regulation Z.

documents, the servicer can 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. For the reasons set forth in this discussion and in the section-by-section analyses of §§ 1024.36(i) and 1024.38(b)(1)(vi), the Bureau is finalizing §§ 1024.36(i) and 1024.38(b)(1)(vi) with a number of adjustments to clarify the parties' obligations during the confirmation process.

Industry commenters asserted that the proposal would require servicers to know the intricacies of real property law, contract law, estate law, and family law in each of the fifty States; to apply the applicable State's law to each successor in interest's factual circumstances; and to provide legal advice to people claiming to be successors in interest. One commenter indicated that servicers can assist potential successors in interest by explaining, in general terms, what information the servicer may need before the servicer can recognize a successor as an owner, but servicers cannot give the impression to potential successors in interest that the servicer's determination resolves their property interest with finality or provides the best outcome based on their particular situation. Some commenters were also concerned that proposed § 1024.38(b)(1)(vi)(A) might require them to seek out potential successors in interest even in the absence of affirmative notification. Other commenters stated that broadening the scope of successor in interest rules would further increase the complexity of confirming a successor in interest's status. Many industry commenters requested greater precision about the confirmation process and servicers' responsibilities with respect to potential successors in interest. Some also requested that the Bureau provide a safe harbor for confirmation decisions or indicate that incorrect successorship determinations or non-determinations do not give rise to

claims of unfair, deceptive, or abusive acts or practices in violation of the Dodd-Frank Act or other litigation.

As explained above, consumer advocacy groups reported in their comments that successors continue to face problems establishing their successor status. These groups urged the Bureau to create a private right of action to allow potential successors in interest to enforce the requirements of proposed §§ 1024.36(i) and 1024.38(b)(1)(vi) and a privately enforceable notice of error requirement related to successorship determinations. They suggested that rights under the final rule should be triggered by a homeowner's submission of documentation, rather than by the servicer's additional step of confirming the successor in interest's status.[64] They also encouraged the Bureau to establish time limits for the confirmation process and to institute other protections for potential successors in interest.

After reviewing the comments received, the Bureau is finalizing §§ 1024.36(i) and 1024.38(b)(1)(vi) with adjustments to clarify the parties' obligations during the confirmation process. As finalized, § 1024.36(i) generally requires a servicer to respond to a written request that indicates that the person making the request may be a successor in interest by providing that person with a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property. Section 1024.38(b)(1)(vi)(A) requires servicers to maintain policies and procedures reasonably designed to ensure that the servicer can, upon receiving notice of the death of a borrower or of any transfer of the property, promptly facilitate communication with any potential or confirmed successors in interest

[64] In the alternative, some consumer advocacy groups suggested that the Bureau could include in the definition of borrower any successor in interest who has provided reasonable proof of the successor in interest's identity and ownership interest, unless the servicer provides a timely and reasonable response stating that the potential successor in interest will not be confirmed as a successor in interest and the reason for the lack of confirmation.

regarding the property. Section 1024.38(b)(1)(vi)(B) requires servicers to maintain policies and procedures reasonably designed to ensure that the servicer can, upon receiving notice of the existence of a potential successor in interest, promptly determine the documents the servicer reasonably requires to confirm the 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). Section 1024.38(b)(1)(vi)(C) requires servicers to maintain policies and procedures reasonably designed to ensure that the servicer can, 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.

In response to the concerns raised by commenters, the Bureau has made a number of adjustments to the proposed confirmation process to delineate more clearly the parties' responsibilities during the confirmation process. For example, final § 1024.38(b)(1)(vi) makes clear that servicers do not need to search for potential successors in interest if the servicer has not received actual notice of their existence. The comments on the confirmation process set forth in proposed §§ 1024.36(i) and 1024.38(b)(1)(vi) and the changes that the Bureau has made in response to those comments are discussed in more detail in the section-by-section analyses of §§ 1024.36(i) and 1024.38(b)(1)(vi).

Like the proposal, the final rule does not require servicers to provide legal advice. The final rule does, however, require a servicer to have policies and procedures in place that are reasonably designed to ensure that the servicer can identify and communicate to potential successors in interest the documents that the servicer will accept as confirmation of the potential

successor in interest's identity and ownership interest in the property. While confirmation determinations can in some cases raise complex issues, the relevant determinations regarding identity and ownership interest are determinations that servicers make on a regular basis in the course of their work already. Servicers routinely need to determine who has an ownership interest in the properties that secure their mortgage loans—for example, in identifying who to serve in a foreclosure action or who should receive other notices required by State law. Moreover, as explained in the section-by-section analysis of § 1024.38(b)(1)(vi), the final rule allows servicers to request additional documentation if they reasonably determine that they cannot make a determination of the potential successor in interest's status based on the documentation provided.

The Bureau is not creating a safe harbor from liability for claims alleging unfair, deceptive, or abusive acts or practices in violation of the Dodd-Frank Act related to successorship determinations. Although some industry commenters requested this type of protection, the Bureau does not believe it is appropriate to shield a servicer categorically from liability for unfair, deceptive, or abusive practices that may occur during the confirmation process or otherwise in the servicer's treatment of potential successors in interest.

Despite the urging of consumer advocacy groups, the final rule does not provide potential successors in interest a private right of action or a notice of error procedure for claims that a servicer made an inaccurate determination about successorship status or failed to comply with § 1024.36(i) or § 1024.38(b)(1)(vi).[65] The Bureau expects that the confirmation process

[65] Confirmed successors in interest, however, have the same private rights of action to enforce the Mortgage Servicing Rules as other borrowers and consumers.

established by the final rule will address the problems that many successors in interest have experienced to date in trying to get servicers to recognize their status. The Bureau and other Federal and State agencies will review servicers' compliance with respect to potential successors in interest through the agencies' supervision and enforcement authority and through complaint monitoring. Through that review, the Bureau can assess whether any additional enforcement mechanisms are necessary.

The Bureau is finalizing the confirmation process in §§ 1024.36(i) and 1024.38(b)(1)(vi) largely as proposed because it continues to believe that successors in interest have difficulty demonstrating their identity and ownership interest in the property to servicers' satisfaction.[66] The risk of harm to successors in interest is highest when a servicer does not promptly confirm a successor in interest's identity and ownership interest in the property. During this period, successors in interest may have difficulty obtaining information about the loan or finding out about loss mitigation options. Accordingly, when confirmation is delayed, the potential risk of foreclosure and other harms to the successor in interest increase. The difficulties faced by successors in interest with respect to confirmation of their status have thus caused successors in interest to face unnecessary problems with respect to the mortgage loans secured by the property, which may lead to unnecessary foreclosure on the property.

The Bureau's October 2013 Servicing Bulletin addressed these problems for a subset of successors in interest by requiring servicers to have policies and procedures in place to facilitate

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[66] *See, e.g.*, Cal. Reinvestment Coal., *Chasm Between Words and Deeds X: How Ongoing Mortgage Servicing Problems Hurt California Homeowners and Hardest-Hit Communities* 20 (May 2014), *available at* https://calreinvest.wordpress.com/2014/05/21/how-ongoing-mortgage-servicing-problems-hurt-california-homeowners-and-hardest-hit-communities/ (noting that majority of housing counselors surveyed reported continuation of previously reported problems regarding successors in interest, such as that "servicers often . . . would require [such homeowners] to go through costly and unnecessary hoops").

the provision of information to successors in interest who had inherited a property securing a deceased borrower's mortgage loan. The October 2013 Servicing Bulletin indicated that servicers should have a practice of promptly providing to any party claiming to be a successor in interest a list of all documents or other evidence the servicer requires, which should be reasonable in light of the laws of the relevant jurisdiction, for the party to establish (1) the death of the borrower and (2) the identity and legal interest of the successor in interest.[67] Nonetheless, consumer advocacy groups indicated in their comments that servicers continue to ask for unnecessary documents or multiple copies of the same documents or refuse to communicate with successors in interest at all. In addition, commenters reported that the categories of successors in interest as defined in the proposal, including those who inherit the property upon death of a family member, continue to experience difficulties in having servicers confirm the successor in interest's legal status.

Changes to the rules themselves are appropriate and necessary to clarify servicers' obligations and to ensure that the requirements are widely understood and enforceable. The rule changes establishing a more structured and defined confirmation process are particularly important to enable successors in interest to demonstrate efficiently their status to servicers and, where they do, to require servicers to confirm promptly this status. Such prompt confirmation is critical to reduce the risk of unnecessary foreclosures and other consumer harm. Because the Bureau is applying the Mortgage Servicing Rules to confirmed successors in interest, enabling successors in interest to demonstrate their status to servicers efficiently and requiring servicers to confirm this status promptly will allow successors in interest to access the Mortgage Servicing

[67] October 2013 Servicing Bulletin at 2.

Rules' protections as quickly as possible.

Applying Mortgage Servicing Rules to Confirmed Successors in Interest

The Bureau proposed to apply certain mortgage servicing rules in Regulations X and Z to confirmed successors in interest. Accordingly, proposed § 1024.30(d) would have provided that a successor in interest would be considered a borrower for purposes of Regulation X's subpart C once a servicer confirms the successor in interest's identity and ownership interest in a property that secures a mortgage loan covered by subpart C. Similarly, proposed § 1026.2(a)(11) would have provided that a confirmed successor in interest is a consumer for purposes of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41. Under the proposal, these specified mortgage servicing rules would have applied with respect to a confirmed successor in interest regardless of whether that person has assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law. For the reasons that follow and that are discussed in the section-by-section analyses of §§ 1024.30(d) and 1026.2(a)(11), the Bureau is finalizing these provisions and related commentary with a number of adjustments to address concerns raised by commenters. The adjustments include changes to ensure that confirmed successors in interest can benefit from the escrow-related protections in § 1024.17 and mortgage transfer disclosures in § 1026.39, to clarify that the final rule generally does not require servicers to provide multiple copies of the same notice, to authorize servicers to withhold certain types of sensitive information in responding to requests under §§ 1024.35 or 1024.36, and to allow servicers to require confirmed successors in interest to return an acknowledgment form before the servicer sends servicing

notices to them.[68]

Whether confirmed successors in interest need the protections of the Mortgage Servicing Rules. Many commenters of all types expressed support for the Bureau's general objectives in this rulemaking. Industry commenters were divided on whether successors in interest need or will benefit from the protections of the mortgage servicing rules. A trade association asserted that servicers restrict account information due to restrictions in the FDCPA, the GLBA, and Regulation P and that making changes to Regulations X and Z would not remove these restrictions. It also suggested that, under current law, successors in interest can obtain full account access by requesting it through a borrower or the borrower's estate.

An industry commenter suggested that the additional requirements and prohibitions could increase the cost of compliance by providing protections and rights to individuals that do not have a contractual obligation with the lender or servicer. This commenter suggested that finalizing the proposal could therefore have a chilling effect on consumer lending in the real estate market.

Some industry commenters raised specific concerns about extending loss mitigation protections to confirmed successors in interest. A trade association suggested, for example, that extending protections to successors in interest who acquire an ownership interest in property as a result of divorce, legal separation, transfers to a family trust, or a transfer to a spouse or a child could disrupt and delay the foreclosure process, as discussed above. Another industry

[68] In discussing the successor in interest provisions, commenters also raised a number of specific questions or concerns relating to Regulations X and Z that could arise for borrowers or consumers regardless of whether they are confirmed successors in interest. The Bureau declines to address these issues in this rulemaking. Except as otherwise indicated in the final rule, the Mortgage Servicing Rules generally apply to confirmed successors in interest in the same way that these provisions apply to other types of borrowers and consumers.

commenter suggested that a servicer should not be required to engage in loss mitigation efforts with a successor in interest when the servicer is actively working with the primary borrower concerning a delinquency or loss mitigation effort involving the loan.[69]

Consumer advocacy groups took a different view. In their comments, they stated that surveys of attorneys and housing counselors representing homeowners indicate that successor in interest problems are widespread. They identified successor in interest problems as among the most difficult problems that attorneys and counselors representing homeowners face as they work to save homes from foreclosure. They stated that the actions taken by Federal agencies to date have not resolved the problems faced by successors in interest and that homeowners' advocates still report widespread stonewalling and obfuscation by servicers as they attempt to help successors obtain information about the mortgage and apply for needed loan modifications.

A number of consumer advocacy group commenters predicted that the number of successors in interest facing foreclosure or otherwise in need of protection is likely to grow given demographic trends, including the aging of baby boomers. They stated that, due to longer life expectancies, women often experience the death of a spouse or partner and that a large number of women who become the sole owner of a home upon the death of a spouse will not have been an original borrower on the loan. These consumer advocacy groups also noted that refinancing is

[69] One industry commenter recommended that § 1024.41 protections cover only confirmed successors in interest who have applied to assume the loan and that assumption and loss mitigation reviews should run concurrently. As explained above, the Bureau has decided not to require assumption for successor in interest status and for similar reasons does not believe that the final rule should require individuals to apply for an assumption to receive protections as confirmed successors in interest. The final rule does not, however, prevent servicers from offering simultaneous reviews for assumption and loss modification to successors in interest who might be interested. The final rule also does not prevent a servicer from conditioning an offer for a loss mitigation option on the successor in interest's assumption of the mortgage loan obligation under State law or from offering loss mitigation options to the successor in interest that differ based on whether the successor in interest would simultaneously assume the mortgage loan obligation.

unlikely to be an option for an increasing number of successors in interest because a significant percentage of homes now carry mortgage debt in excess of the value of the property.

One consumer advocacy group stated that servicers routinely provide misleading and incorrect information to survivors, which frequently leads to foreclosure on the family home. It also stated that servicers still refuse to share information about the mortgage with survivors and routinely demand that successors in interest who are already on the title or who have already provided proof that they inherited the property probate the property. It also stated that servicers persistently refuse to assist survivors with loan assumption, much less loss mitigation and loan modifications.

A number of consumer advocacy groups explained that many successors are eligible for loan modifications under applicable program rules but are experiencing unnecessary delays, frustrations, and an elevated risk of foreclosure due to servicers' unwillingness to review them properly for these loan modification programs. These groups indicated that, during each month of delay imposed by servicers in recognizing the status of a successor in interest or processing a loan modification application, the interest arrearage grows at the currently applicable note rate rather than at a modified rate. They noted that these delays can eat away at the equity in the home, push the loan further into default, and make it more difficult for successors in interest to qualify for a loan modification.

Another consumer advocacy group noted that the proposal might assist in resolving a paralyzing Catch-22, in which successors in interest are told that they cannot apply for loss mitigation without assuming the loan and that they cannot assume the loan without its being current, but they cannot bring the loan current without access to loss mitigation. The office of a State Attorney General noted in its comment that, by ensuring that servicers do not condition the

review and evaluation of a loss mitigation application on the successor in interest's assumption of the mortgage obligation, the proposal would address a longstanding dilemma faced by successors in interest: whether to assume a delinquent mortgage loan without knowing the terms of a prospective loan modification or even whether a modification is possible. This commenter explained that assuming any mortgage, especially a distressed one, is a major financial decision and successors in interest cannot know whether it is in their financial interest to assume the loan without knowing whether they qualify for a modification. It indicated that the initial loss mitigation review required by the proposal would allow successors in interest to make a more informed decision regarding whether to assume the mortgage loan obligation.

The Bureau is particularly concerned about reports from commenters and others indicating that successors in interest continue to have difficulty receiving information about the mortgage loan secured by the property or correcting errors regarding the mortgage loan account and that servicers sometimes refuse to accept, or may misapply, payments from successors in interest.[70] The Bureau is also concerned about reports that successors in interest often encounter

[70] In one 2015 survey of attorneys and housing counselors representing homeowners, 55 percent of respondents had been asked by a servicer to supply a quitclaim deed where one was not needed or available because a divorce decree clearly transferred the property; 63 percent had been asked to provide probate documents or proof that the client was the estate representative even though the property passed through a right of survivorship deed or tenancy by the entirety; 66 percent had been asked to submit the same documents over and over again in an attempt to prove an ownership interest to the servicer; 28 percent reported that a servicer had demanded a quitclaim deed when the borrower was deceased; and another 28 percent indicated that a servicer had refused to tell them what documents they needed to prove successor in interest status. Alys Cohen, Nat'l Consumer Law Ctr., *Snapshots of Struggle: Saving the Family Home After a Death or Divorce, Successors Still Face Major Challenges in Obtaining Loan Modifications* (Mar. 2016), *available at* https://www.nclc.org/images/pdf/pr-reports/report-snapshot-struggle.pdf; Nat'l Consumer Law Ctr., *NCLC Survey Reveals Ongoing Problems with Mortgage Servicing* 2, 5 (May 2015), *available at* http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/ib-servicing-issues-2015.pdf. A survey conducted in the summer of 2014 found that 63 percent of housing counselors reported servicers rarely or never had required policies in place to promptly identify and communicate with a successor in interest for a deceased borrower. Nat'l Council of La Raza & Nat'l Hous. Res. Ctr., *Are Mortgage Servicers Following the New Rules? A Snapshot of Compliance with CFPB Servicing Standards* 3, 7 (Jan. 9, 2015), *available at* http://www.nclr.org/Assets/uploads/Publications/mortgageservicesreport_11215.pdf.

difficulties when being evaluated for loss mitigation options, including that servicers often require successors in interest to assume the mortgage loan obligation under State law before evaluating the successor in interest for loss mitigation options.[71] Applying the Mortgage Servicing Rules in Regulation X to successors in interest provides these homeowners with access to information about the mortgage, helps successors in interest avoid unwarranted or unnecessary costs and fees, and prevents unnecessary foreclosure.

As many consumer advocacy groups recognized in their comments, it is especially important for the loss mitigation procedures in § 1024.41 to apply to successors in interest. When the Bureau issued the 2013 RESPA Servicing Final Rule, the Bureau observed that establishing national mortgage servicing standards ensures that borrowers have a full and fair opportunity to receive an evaluation for a loss mitigation option before suffering the harms associated with foreclosure.[72] The Bureau also recognized that these standards are appropriate and necessary to achieve the consumer protection purposes of RESPA, including facilitating borrowers' review for loss mitigation options, and to further the goals of the Dodd-Frank Act to ensure a fair, transparent, and competitive market for mortgage servicing.[73] These same consumer protection purposes are served by applying the loss mitigation procedures in § 1024.41 to confirmed successors in interest who, as homeowners of property securing a mortgage loan,

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[71] A 2015 national survey asked attorneys and housing counselors representing homeowners how frequently servicers refused to provide information about the loan or allow them to apply for a loan modification after proof of successor status was provided. Alys Cohen, Nat'l Consumer Law Ctr., *Snapshots of Struggle: Saving the Family Home After a Death or Divorce, Successors Still Face Major Challenges in Obtaining Loan Modifications* 17-18 (Mar. 2016), *available at* https://www.nclc.org/images/pdf/pr-reports/report-snapshot-struggle.pdf. Seventy percent of respondents said this happened sometimes, often, or most of the time in their successor in interest cases. *Id.* A similar proportion of respondents indicated that that they have not seen any recent improvement in problems with successors in interest seeking mortgage modifications. *Id.* at 16.
[72] 78 FR 10696, 10815 (Feb. 14, 2013).
[73] *Id.*

may need to make payments on the loan to avoid foreclosure.

Successors in interest are a particularly vulnerable group of consumers, who often must make complex financial decisions with limited information during a period of extreme emotional stress. Successors in interest may be more likely than other homeowners to experience a disruption in household income and therefore may be more likely than other homeowners to need loss mitigation to avoid foreclosure. The Bureau therefore concludes that requiring servicers to evaluate a complete loss mitigation application received from a confirmed successor in interest under § 1024.41's procedures serves RESPA's consumer protection purposes.

Further, because a successor in interest's ability to repay the mortgage loan generally was not considered in originating the mortgage loan, successors in interest are particularly dependent on a prompt loss mitigation evaluation to assess the mortgage loan's long-term affordability as to the successor in interest.[74] Requiring servicers to evaluate a complete loss mitigation application received from a confirmed successor in interest supports the successor in interest in making a fully informed decision about whether to assume the mortgage loan obligation under State law.

The Bureau also believes that requiring servicers to comply with § 1024.41's procedures with respect to confirmed successors in interest will not impose significant costs on servicers. Although some commenters expressed concern about the costs of originating loans, the final rule, like the proposal, does not require servicers to originate any loans. The Bureau is not providing confirmed successors in interest any protections that are not already available to borrowers and therefore does not anticipate the final rule will result in any unusual disruption of

[74] Where a successor in interest who has previously acquired a legal interest in a dwelling is added as an obligor on the mortgage loan, the Regulation Z Ability-to-Repay Rule does not apply. *See* 79 FR 41631, 41632-33 (July 17, 2014).

the foreclosure process. Both industry and consumer advocacy group commenters indicated that servicers are often already subject to other non-regulatory requirements to communicate with successors in interest and evaluate them for loan modifications. The costs imposed by the final rule should therefore largely be limited to ensuring that such requirements are met in a consistent and timely way. The Bureau therefore does not expect any chilling effect on consumer lending in the real estate market.

Notwithstanding the concerns expressed by industry commenters regarding potential delays, confirmation of a successor in interest will not reset the 180-day period in § 1024.39(b) or the 120-day period in § 1024.41(f)(1)(i). Section 1024.39(b) provides that a servicer is not required to provide a written early intervention notice more than once during any 180-day period. Section 1024.41(f) provides that a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent or another specified condition is met. Confirmation of a successor in interest does not change the date when a loan obligation becomes delinquent.

With respect to Regulation Z, applying the Mortgage Servicing Rules in Regulation Z to confirmed successors in interest will protect them against inaccurate and unfair payment crediting practices by the servicer of the mortgage loan on which they may be making payments and which encumbers their property. It will also help prevent unnecessary foreclosure by, for example, keeping confirmed successors in interest informed of the status of the mortgage loan. Moreover, the amendments to Regulation Z will help ensure that confirmed successors in interest receive prompt information about the amount necessary to pay off the mortgage loan, as other homeowners do under Regulation Z.

Whether to apply or clarify additional laws or regulations not discussed in the proposal. Some commenters identified additional sections of Regulations X and Z or of other laws or regulations that they believed the Bureau should address in the final rule's provisions relating to successors in interest. A number of consumer advocacy groups stated that, in order to achieve the Bureau's goal of applying all the mortgage servicing regulations to successors in interest, the final rule should also define successors in interest as borrowers for purposes of § 1024.17. These groups suggested that successors in interest are particularly likely to face escrow issues due to the transfer of ownership. They indicated that a transfer of ownership requires the new owner to take steps to obtain homeowner's insurance and, usually, to apply for the property tax homestead exemption in the new owner's own name.

A trade association also stated that a confirmed successor in interest should be a borrower for purposes of the escrow requirement in § 1024.17 and a consumer for purposes of the mortgage transfer disclosure requirements of § 1026.39. This commenter also identified various other laws and regulations that it suggested could be affected by a regulation addressing successors in interest, including additional provisions of Regulations X and Z; the Fair Credit Reporting Act and its implementing regulation, Regulation V; the FDCPA; the Servicemembers Civil Relief Act; and the Mortgage Assistance Relief Services regulation, Regulation O.

As these commenters noted, successors in interest confront the same types of escrow issues as borrowers protected by § 1024.17 and are particularly likely to experience escrow problems due to the transfer of ownership through which they acquired their ownership interest in the property. In issuing the proposal, the Bureau intended to include all of the mortgage servicing protections of Regulations X and Z, which, as the commenters noted, should include the escrow protections of § 1024.17. For the reasons set forth in this discussion and in the

section-by-section analysis of § 1024.30(d), the Bureau is expanding the protections applicable to confirmed successors in interest in § 1024.30(d) to include § 1024.17. This effectuates the Bureau's stated intent in the proposal to apply all of the mortgage servicing rules in Regulation X to confirmed successors in interest and will ensure that confirmed successors in interest can obtain necessary escrow information.

The Bureau also believes that a confirmed successor in interest should be treated as a consumer for purposes of the mortgage transfer disclosure requirement in § 1026.39, as a trade association commenter suggested. The mortgage transfer disclosure notifies consumers of valuable information regarding certain transfers of ownership of a mortgage loan, including the name and contact information for the new owner of the mortgage loan and an agent or party authorized to resolve issues concerning the consumer's payments on the loan (if the owner's information cannot be used for that purpose).[75] Information of this nature will be helpful to confirmed successors in interest in many of the same ways that it is helpful to other borrowers—for example, if they seek to engage in loss mitigation, to ensure that payments on the account are properly applied, or to identify who has a security interest in their property. For the reasons set forth in this discussion and in the section-by-section analysis of § 1026.39, the Bureau is defining the term consumer in § 1026.2(a)(11) to include confirmed successors in interest for purposes of § 1026.39.

The Bureau has reviewed the other laws and regulations that commenters suggested that the Bureau should address and has concluded that they are largely outside the scope of this

[75] § 1026.39(d).

rulemaking.[76] Except as specifically addressed elsewhere in this final rule, the Bureau does not believe that further discussion or clarification is necessary with respect to these other laws and regulations as part of this rulemaking. However, the Bureau will continue to engage in ongoing outreach and monitoring with industry, consumer advocacy groups, and other stakeholders to identify issues that pose implementation challenges, create a risk of consumer harm, or require clarification.

Two industry commenters also suggested that the final rule should incorporate into Regulation Z or its commentary the Bureau's July 17, 2014, interpretive rule relating to the application of the Ability-to-Repay Rule to certain situations involving successors in interest.[77] One commenter indicated that doing so would increase servicer awareness. The Bureau plans to incorporate the interpretive rule into the commentary to Regulation Z at a later date.

Whether to require servicers to send duplicate copies of Mortgage Servicing Rule notices to confirmed successors in interest. Proposed Regulation Z comment 41(a)-5.ii would have provided that, if a servicer sends a periodic statement meeting the requirements of § 1026.41 to another consumer, the servicer need not also send a periodic statement to a successor in interest.

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[76] For example, a trade association commenter suggested that the Bureau should address various issues relating to the right of rescission under § 1026.23. The Bureau did not propose any changes to § 1026.23 and is not making any changes to § 1026.23 in the final rule. Pursuant to § 1026.2(a)(11), a consumer for purposes of rescission under §§ 1026.15 and 1026.23 means a cardholder or natural person to whom consumer credit is offered or extended and 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.

[77] The interpretive rule clarified that, where a successor in interest who has previously acquired a legal interest in a dwelling agrees to be added as obligor on the mortgage loan, the servicer's express acknowledgment of the successor in interest as obligor does not constitute an "assumption" as that term is used in Regulation Z. 79 FR 41631 (July 17, 2014). Accordingly, the Regulation Z Ability-to-Repay Rule does not apply when a creditor expressly accepts a successor in interest as obligor on a loan under these circumstances. *See id.* The interpretive rule also noted that the servicer must comply with any ongoing obligations pertaining to the extension of consumer credit, such as the ARM notice requirements under 12 CFR 1026.20(c) and (d) and the periodic statement requirement under 12 CFR 1026.41, after the successor in interest is added as an obligor on the mortgage note. *Id.* at 41633.

The proposal did not address specifically whether servicers must provide duplicate copies of other types of required servicing notices.

A number of commenters asked the Bureau to clarify whether servicers must send multiple copies of required servicing notices after a successor in interest is confirmed. One industry commenter explained that most servicing platforms only allow for automated delivery of correspondence to one address. It indicated that a requirement to send items to multiple addresses or through differing communication channels (electronic or non-electronic) would create significant operational and systems challenges with concomitant costs. Another industry commenter suggested that the Bureau adopt, in Regulation X, language similar to proposed Regulation Z comment 41(a)-5.ii, providing that servicers need not send duplicative periodic statements to confirmed successors in interest. Another industry commenter suggested that a servicer should not be required to make live contact with a successor in interest when the servicer is actively working with the primary borrower concerning a delinquency or loss mitigation effort involving the loan.

Several consumer advocacy groups challenged the assumption that successors in interest receive copies of notices provided to the transferor borrower. They noted, for example, that the successor in interest and transferor borrower may not have any form of communication in a divorce or separation, especially in situations involving domestic violence. These groups encouraged the Bureau to require servicers to send additional copies of written early intervention notices to confirmed successors in interest. Another consumer advocacy group also suggested that anyone with an ownership interest should receive a copy of the periodic statement, provided they have given their contact information to the servicer.

The Bureau believes that it would be unnecessarily burdensome to require a servicer to send additional copies of notices required by the Mortgage Servicing Rules if the servicer is already providing the notice to another borrower or consumer on the account. As explained in the section-by-section analyses of §§ 1024.32(c)(4) and 1026.2(a)(11), the Bureau is adding § 1024.32(c)(4) and new commentary to § 1026.2(a)(11) to address whether duplicative notices are required for confirmed successors in interest for all of the Mortgage Servicing Rules. Section 1024.32(c)(4) provides that, 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. Section 1024.32(c)(4) also provides that a servicer is 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. Comment 2(a)(11)-4.iv clarifies that, except in response to an information request as required by § 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. These provisions clarify servicers' obligations under the final rule and should alleviate the concern that many commenters raised regarding the potential burden of providing duplicative notices to confirmed successors in interest.

The Bureau recognizes, however, that successors in interest do not in all cases have access to notices received by the transferor borrower and may need such notices. The provisions discussed above with regard to the servicer's obligations to send duplicative notices do not limit the ability of any confirmed successor in interest to request copies of notices and other

information through an information request under § 1024.36. Thus, if a confirmed successor in interest is not in contact with a borrower on the account who is receiving the disclosures, the confirmed successor in interest can request information as needed through the information request process.

Gramm-Leach-Bliley Act and privacy concerns. In the proposal, the Bureau indicated that it believed that applying Regulation X's subpart C to confirmed successors in interest does not present privacy concerns. The proposal explained that the Bureau believed that a confirmed successor in interest's ownership interest in the property securing the mortgage loan is sufficient to justify enabling the successor in interest to receive information about the mortgage loan. However, because some people representing themselves as successors in interest may not actually have an ownership interest in the property, the Bureau recognized that requiring servicers to apply the communication, disclosure, and loss mitigation requirements from Regulations X and Z to successors in interest before servicers have confirmed the successor in interest's identity and ownership interest in the property might present privacy and other concerns. The Bureau solicited comment on whether any information that could be provided to successors in interest under §§ 1024.35 and 1024.36 presents privacy concerns and whether servicers should be permitted to withhold any information from successors in interest out of such privacy concerns.

Various industry commenters expressed concern that the proposal would require them to violate privacy laws, including the Gramm-Leach-Bliley Act (GLBA) and Regulation P, and

would otherwise interfere with borrowers' privacy rights.[78] They noted that sharing information about the mortgage—including even the limited information about document requirements that would be available to potential successors in interest—would constitute a disclosure of nonpublic personal information to a nonaffiliated third party for purposes of the GLBA and Regulation P. Some requested clarity regarding what information they should release under the proposal, while others suggested that an interagency GLBA rulemaking would be required to adjust applicable privacy rules.

Some industry commenters provided specific examples of situations that might raise concern—for example, releasing contact information or sensitive information such as paystubs from a prior loss mitigation application in the context of a divorce or a domestic violence situation. Other industry commenters indicated that they were most concerned about giving a party that is not obligated on the loan access to financial records, especially in circumstances where the primary obligor remains fully obligated to the loan transaction or where there is litigation relating to the property and attendant obligation.

One industry commenter stated that these privacy concerns apply to the disclosure of the confirmed successor in interest's personal, private information to the existing borrower as well as to the disclosure of an existing borrower's personal, private information to the confirmed successor in interest. This commenter suggested that the final rule should not require servicers to

[78] Some industry commenters also suggested that the proposal might cause them to violate the information security standards required by the GLBA. Providing information to successors in interest would not violate the GLBA information security provisions, as long as disclosures are made in a manner consistent with those standards. For example, the Interagency Guidelines Establishing Information Security Standards require a financial institution to consider and, if appropriate, adopt measures including encryption of electronic customer information and controls to prevent employees from providing customer information to unauthorized individuals who may seek to obtain this information through fraudulent means. 66 FR 8616, 8633-34 (Feb. 1, 2001); 69 FR 77610 (Dec. 28, 2004). The final rule does not prevent a servicer from complying with these information security standards in dealing with successors in interest.

comply with the requirements in §§ 1024.35 and 1024.36 relating to notices of error and requests for information if communicating with a confirmed successor in interest is otherwise prohibited under applicable law, including the FDCPA, or if the servicer reasonably determines that the response to the asserted error or information request would result in the disclosure of any personal, private information of the existing borrower or of the successor in interest. Alternatively, this commenter urged the Bureau to provide servicers a safe harbor from liability under the FDCPA with respect to disclosing information regarding the debt and other Federal and State laws with respect to disclosing personal, private information for an existing borrower or a confirmed successor in interest. It noted, for example, that the former husband of an existing borrower could submit a request for information seeking copies of loss mitigation efforts by his former wife, which might include her contact information and copies of her paystubs. Other industry commenters provided additional examples of types of sensitive information that should not be disclosed, such as Social Security numbers.

Some consumer advocacy groups and the office of a State Attorney General asserted that there are no privacy concerns raised by the proposal because of the successor in interest's ownership interest in the property securing the mortgage loan. One of these consumer advocacy groups stated that the original borrower's private financial information, including credit score, income, or expenses, is not relevant to the successor homeowner and need not be disclosed. This group also indicated that no successor in interest should have a need for the original borrower's location or contact information.[79] It stated that a successor in interest should not need access to

[79] This consumer advocacy group suggested that the Bureau create an FDCPA exemption for liability under FDCPA section 805(b). It also suggested that in doing so the Bureau should indicate that information that a debt collector is permitted to share with a confirmed successor in interest regarding the mortgage loan account should not include the

other financial information of the borrower, as it will not be relevant to loss mitigation sought by the successor in interest.

The Bureau concludes that complying with the final rule does not cause servicers to violate the GLBA or its implementing regulations but recognizes the potential privacy and related concerns raised by commenters and has made adjustments in the final rule to address these concerns. Disclosing information to successors in interest as required under the final rule will not cause a servicer to violate the GLBA or Regulation P because the GLBA and Regulation P permit financial institutions to disclose information to comply with a Federal law or regulation.[80]

The Bureau continues to believe that a confirmed successor in interest's ownership interest in the property securing the mortgage loan is sufficient to warrant that person's access to information about the mortgage loan. The Bureau also believes it is important for confirmed successors in interest to be able to obtain information about the terms, status, and payment history of the mortgage loan. However, the Bureau agrees with commenters that confirmed successors in interest are unlikely to need information regarding the location or contact

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location or contact information of the original borrower or any financial information of the original borrower other than the mortgage terms and status. As explained above, concurrently with issuing this final rule, the Bureau is issuing an interpretation of FDCPA section 805 that creates a safe harbor pursuant to FDCPA section 813(e). In light of this interpretation, no exemption from the requirements of FDCPA section 805(b) is required.

[80] 15 U.S.C. 6802(e)(8); 12 CFR 1016.15(a)(7)(i) (providing an exception to the GLBA's general prohibition on disclosing nonpublic personal information to a nonaffiliated third party absent notice and an opportunity to opt out of such disclosure where the disclosure is to comply with Federal, State, or local laws, rules, and other applicable legal requirements). A trade association suggested that, before disclosing information protected under Regulation P, the servicer should be able to require the recipient to agree not to redisclose the information unless permitted by law. Although 12 CFR 1016.11(c) imposes certain restrictions on the disclosure and use of information disclosed pursuant to a Regulation P exception in 12 CFR 1016.14 or 1016.15, neither the GLBA nor Regulation P requires the recipient of such information to enter into an agreement relating to these restrictions with the financial institution that discloses the information. The Bureau therefore declines to establish such a requirement under Regulation X or Z.

information of an original borrower or financial information of an original borrower other than the mortgage terms, status, and payment history. As commenters noted, providing additional financial, contact, or location information of other borrowers could raise privacy concerns and is not likely to assist the confirmed successor in interest in maintaining the property. The Bureau believes that this is especially true with respect to a borrower's Social Security number.

The Bureau believes that similar potential privacy concerns could arise when borrowers request information about potential and confirmed successors in interest. A potential or confirmed successor in interest could, for example, submit a loss mitigation application containing a Social Security number, contact information, and paystubs. Borrowers on the account who are not the person to whom the information pertains are unlikely to need to obtain from the servicer these types of information about potential or confirmed successors in interest.

To address the potential privacy concerns raised in the comments, the Bureau is adding new §§ 1024.35(e)(5) and 1024.36(d)(3). Pursuant to these provisions, a servicer responding to a request for information or a notice of error request for documentation 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. These provisions allow servicers to limit the information that confirmed successors in interest may obtain about other borrowers (including other confirmed successors in interest) and that borrowers may obtain about potential and confirmed successors in interest who are not the requesting party.

FDCPA and related concerns. A number of industry commenters indicated in their

comments that the requirement to send servicing notices and share information about the mortgage loan with confirmed successors in interest could subject them to liability under the FDCPA. While many mortgage servicers are not subject to the FDCPA, mortgage servicers that acquired a mortgage loan at the time that it was in default are subject to the FDCPA with respect to that mortgage loan.[81] Two specific areas of concern raised by commenters are discussed in turn below: (1) Whether the proposal would cause servicers that are debt collectors for purposes of the FDCPA to violate FDCPA section 805(b)'s general prohibition on communicating with third parties in connection with the collection of a debt, and (2) Whether providing periodic statements and other servicing notices to confirmed successors in interest who have not assumed the loan obligation under State law would be confusing or harassing.

Some commenters expressed concern that sharing information about the debt, such as periodic statements and responses to requests for information, with confirmed successors in interest who are not obligated on the loan could violate FDCPA section 805(b). They suggested that, if the proposal is adopted, the Bureau should create an FDCPA exemption or include commentary providing a safe harbor under the FDCPA when a servicer contacts a successor in interest regarding a debt that is not assumed by the successor in interest.

FDCPA section 805(b) generally prohibits debt collectors from communicating with third parties in connection with the collection of a debt, in the absence of a court order or prior

[81] A trade association commenter asserted that the FDCPA should not apply to mortgage loans and suggested that the Bureau exempt mortgage loans and mortgage servicers altogether from the FDCPA or, alternatively, from the FDCPA's debt validation and cease communication requirements. These comments are beyond the scope of this rulemaking, and the Bureau declines to address them, other than to note that mortgage servicers are not per se exempt from the FDCPA.

consumer consent given directly to the debt collector.[82] FDCPA section 805(b) permits debt collectors to communicate with a person who is a consumer for purposes of section 805. FDCPA section 805(d), in turn, states that the term consumer for purposes of section 805 includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.[83] The use of the word "includes" indicates that section 805(d) is an exemplary rather than exhaustive list of the categories of individuals that are "consumers" for purposes of FDCPA section 805.

The Bureau is issuing concurrently with this final rule an interpretive rule that constitutes an advisory opinion under FDCPA section 813(e)[84] interpreting consumer for purposes of FDCPA section 805 to include a confirmed successor in interest, as that term is defined in Regulation X § 1024.31 and Regulation Z § 1026.2(a)(27)(ii).[85] As provided in FDCPA section 813(e), no liability arises under the FDCPA for an act done or omitted in good faith in conformity with an advisory opinion of the Bureau while that advisory opinion is in effect. The Bureau's interpretive rule provides a safe harbor from liability under FDCPA section 805(b) for servicers communicating with a confirmed successor in interest about a mortgage loan secured by property in which the confirmed successor in interest has an ownership interest, in compliance with Regulations X and Z.

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[82] 15 U.S.C. 1692c(b).
[83] 15 U.S.C. 1692c(d).
[84] 15 U.S.C. 1692k(e).
[85] *See* Bureau of Consumer Fin. Prot., Official Bureau Interpretations: Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (Aug. 4, 2016), *available at* http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/safe-harbors-liability-under-fair-debt-collection-practices-act-certain-actions-taken-compliance-mortgage-servicing-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z.

As the interpretive rule explains, given their relationship to the obligor, the mortgage loan, and the property securing the mortgage loan and the Bureau's extension of certain protections of Regulations X and Z to them, confirmed successors in interest are—like the narrow categories of persons enumerated in FDCPA section 805(d)—the type of individuals with whom the servicer needs to communicate. Interpreting consumers in section 805 to include confirmed successors in interest permits debt collectors to communicate with them about the mortgage loan without engaging in a third-party communication in violation of section 805(b). It also helps to ensure that confirmed successors in interest benefit from the protections for "consumers" in FDCPA section 805—including the debt collector generally being prohibited from communicating at a time or place the collector knows or should know is inconvenient and being required to cease communication upon written request from the consumer. The Bureau therefore has concluded that consumer as defined in section 805(d) includes a confirmed successor in interest, as that term is defined in Regulations X and Z.[86] The Bureau's interpretive rule should resolve commenters' concerns regarding potential liability under FDCPA section 805(b) for disclosures to confirmed successors in interest.[87]

An industry commenter suggested that successors who are not liable on the debt might be confused if they start receiving periodic statements. Another industry commenter suggested that sending loss mitigation-related letters and trying to establish right party contact with individuals

[86] Because the interpretive rule applies only to the use of the term consumer in section 805, it does not affect the definition of consumer under the remaining FDCPA provisions.

[87] The interpretation does not relieve servicers that are debt collectors of their obligations under the FDCPA. For example, they must not: engage in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt; use any false, deceptive, or misleading representation or means in connection with the collection of a debt; or use unfair or unconscionable means to collect or attempt to collect any debt.

not liable on a delinquent loan could be viewed as abusive or harassing debt collection efforts, in violation of FDCPA section 806.[88]

Under the final rule, confirmed successors in interest will receive servicing notices only after they have proceeded through the confirmation process. The servicing notices provide important information that will assist confirmed successors in interest in preserving their ownership interests in the properties secured by the relevant mortgage loans. Given this context, the Bureau does not believe that simply providing periodic statements and other servicing notices to the confirmed successor in interest pursuant to Regulations X and Z would be viewed as having the natural consequence of harassing, oppressing, or abusing the confirmed successor in interest under FDCPA section 806.

The Bureau recognizes, however, that some language appearing in the model and sample form notices in Regulations X and Z could suggest that the recipient of the notice is liable on the mortgage loan obligation and that it is possible that this language, on its own without modification, could confuse confirmed successors in interest who have not assumed the mortgage loan obligation under State law and are not otherwise liable for it as to whether they are liable on the mortgage loan obligation. For example, some of these forms state: "your loan," "your interest rate," "[y]ou are late on your mortgage payments," "[y]ou must pay us for any period during which the insurance we buy is in effect but you do not have insurance," and "you could be charged a penalty."[89]

[88] 15 U.S.C. 1692d.
[89] Regulation X appendices MS–3(A) & MS–4; Regulation Z appendices H–4(D) & H–30.

As modified by the final rule, Regulations X and Z offer servicers various means that they can employ to ensure that communications required by the Mortgage Servicing Rules do not mislead confirmed successors in interest who have not assumed the mortgage loan obligation under State law and are not otherwise liable for it. One option available to servicers is to adjust the language in the notices to replace any terminology that might suggest liability. Regulation Z already permits modification of certain model and sample forms for ARM disclosures to remove language regarding personal liability to accommodate particular consumer circumstances or transactions not addressed by the forms,[90] and the final rule clarifies in revised comment 2 to Regulation X's appendix MS and new comments 20(e)(4)-3 and 41(c)-5 to Regulation Z that similar changes may be made to other model and sample form notices. For example, as revised, comment appendix MS to part 1024-2 permits servicers to substitute "this mortgage" or "the mortgage" in place of "your mortgage" in notices sent to a confirmed successor in interest who has not assumed the mortgage loan obligation under State law or is not otherwise liable on the mortgage loan obligation.

Another option available to servicers to reduce the risk of any potential confusion is to add an affirmative disclosure to the Mortgage Servicing Rule notices that clarifies that a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable for it has no personal liability. For some of the required servicing notices, this type of disclosure could be added into the notice,[91] while for other types of notices

[90] Regulation Z comments 20(c)(3)(i)-1, 20(d)(3)(i)-1.
[91] *See, e.g.*, Regulation X comment 39(b)(2)-1; Regulation Z comment 41(c)-1.

the rules prohibit additional information in the notice but would permit an explanatory cover letter in the same transmittal.[92]

The Bureau recognizes that the foregoing options would require servicers to incur some costs because these options would involve customizing certain materials for confirmed successors in interest. To address this concern, and for the reasons stated in the section-by-section analyses of §§ 1024.32(c), 1026.20(f), 1026.39(f), and 1026.41(g), new § 1024.32(c)(1) allows servicers to provide an initial explanatory written notice and acknowledgment form to confirmed successors in interest who have not assumed the mortgage loan obligation under State law and are not otherwise liable on it. The notice explains that the confirmed successor in interest is not liable unless and until the confirmed successor in interest assumes the mortgage loan obligation under State law. The notice also indicates that the confirmed successor in interest must return the acknowledgment to receive servicing notices under the Mortgage Servicing Rules. Sections 1024.32(c), 1026.20(f), 1026.39(f), and 1026.41(g) relieve servicers that send this type of notice and acknowledgment form of the obligations to provide Mortgage Servicing Rule notices and to engage in live contacts with the confirmed successor in interest until the confirmed successor in interest provides the servicer an executed acknowledgment indicating a desire to receive the notices or assumes the mortgage loan obligation under State law.

These provisions relieve servicers of the costs associated with sending the notices to confirmed successors in interest who are not liable on the mortgage loan obligation and do not want them. However, the Bureau believes that when a confirmed successor in interest assumes a

[92] *See, e.g.*, § 1024.37(c)(4), (d)(4), (e)(4).

mortgage loan obligation under State law there is no longer any reason to suspend a servicer's obligation to provide notices and other communications that are otherwise required by the Mortgage Servicing Rules.[93] Additionally, the Bureau expects that servicers will provide additional copies of the written notice and acknowledgment form to confirmed successors in interest upon request; the Bureau recognizes that confirmed successors in interest who choose not to receive servicing notices at the time of confirmation may later wish to receive such notices and believes that servicers should facilitate subsequent requests from confirmed successors in interest to receive the notices.[94]

The final rule does not mandate that servicers use the initial notice and acknowledgment option or either of the two other options mentioned above but instead gives servicers the flexibility to use any of these options as the servicer deems appropriate to ensure clarity in its communications with confirmed successors in interest. Offering servicers these options will allow servicers to use their business judgment to determine the best approach in light of their particular situations and operational considerations.

The Bureau considered providing a safe harbor from UDAAP claims or FDCPA deception claims related to representations in notices about whether a confirmed successor in interest is liable on the mortgage loan obligation. The Bureau believes that such a safe harbor is unnecessary. The Bureau believes that UDAAP claims are unlikely to arise solely from servicers

[93] However, other provisions of existing Regulations X and Z may relieve servicers of the obligation to provide notices in those circumstances. For example, §§ 1026.17(d) and 1026.31(e) generally provide that, if there is more than one consumer, the disclosures required by Regulation Z subparts C and E may be made to any consumer who is primarily liable on the obligation, and comment 41(a)-1 to Regulation Z provides that, when two consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling, the periodic statement may be sent to either one of them.
[94] *See* section-by-section analyses of § 1024.32(c)(2) and (3).

providing to confirmed successors in interest notices and information required by and in compliance with Regulations X or Z, particularly if servicers implement one of the approaches described above. The Bureau also believes that a safe harbor insulating servicers from liability related to their communications to confirmed successors in interest could undermine incentives for servicers to ensure that the overall effect of their communications with successors in interest is not deceptive and does not create consumer harm. The options that the Bureau is providing to servicers should allow servicers to choose the most cost-effective way to ensure that their communications do not confuse or deceive successors in interest who are not liable on the mortgage loan obligation under State law.

Legal Authority

Based on its experience and expertise with respect to mortgage servicing, the Bureau believes that the amendments relating to successors in interest promote the purposes of RESPA and TILA effectuated by the Mortgage Servicing Rules. As discussed below, the Mortgage Servicing Rules apply to borrowers (for the Regulation X rules) and consumers (for the Regulation Z rules). As further discussed below, the Bureau believes that the terms borrowers in RESPA and consumers in TILA, as used in the relevant portions of the Mortgage Servicing Rules, should be understood to include confirmed successors in interest. In addition, the amendments relating to successors in interest are authorized under sections 6(j)(3), 6(k)(1)(E), and 19(a) of RESPA with respect to the Mortgage Servicing Rules in Regulation X and under section 105(a) of TILA with respect to the Mortgage Servicing Rules in Regulation Z. The amendments are also authorized under section 1022(b) of the Dodd-Frank Act, which authorizes the Bureau to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial laws.

Regulation X amendments relating to successors in interest. Some trade associations raised questions about whether RESPA permits the Bureau to regulate a servicer's conduct towards non-obligors and to create a private right of action for non-obligors. Two trade associations indicated that it is not clear that RESPA applies to servicers unless the servicer receives "payments from a borrower" who signed a federally related mortgage loan.[95]

Other commenters asserted that the Bureau's rulemaking appeared well within its legal authority. A consumer advocacy group noted that the Bureau relied on its rulemaking authority under the Dodd-Frank Act and RESPA to mandate a uniform loss mitigation framework that establishes appropriate mortgage servicing standards in the private market. It noted that RESPA already contained provisions with private rights of action and said that the Bureau's servicing regulations and proposed additions, including those related to successors in interest, simply further that existing scheme. It stated that by integrating successors in interest into the existing loss mitigation framework, the Bureau is faithfully executing its mission to implement and enforce consumer financial protection laws without imposing undue burdens on servicers who are already following the loss mitigation rules.

As explained below in the section-by-section analysis of § 1024.30(d), the final rule provides that a confirmed successor in interest shall be considered a borrower for purposes of § 1024.17 and subpart C of Regulation X. In light of its experience and expertise with respect to mortgage servicing, the Bureau believes that this interpretation promotes the purposes of RESPA effectuated through the provisions of the Mortgage Servicing Rules in Regulation X, which in

[95] These trade associations also stated that the Bureau cannot proceed with this rulemaking because it lacks rulemaking authority under the Garn-St Germain Act. Because the Bureau is not purporting to write regulations under the Garn-St Germain Act, it does not require rulemaking authority under that Act.

turn were issued under, among other provisions, sections 6(j)(3), 6(k)(1)(E), and 19(a) of RESPA. Therefore, because the Bureau concludes that confirmed successors in interest are borrowers for purposes of the Mortgage Servicing Rules in Regulation X, these amendments are authorized under the same authorities on which the applicable Mortgage Servicing Rules are based.

Although a confirmed successor in interest will not necessarily have assumed the mortgage loan obligation under State law, the successor in interest, after the transfer of ownership of the property, will have stepped into the shoes of the transferor borrower for many purposes. As noted above, the successor in interest will typically need to make payments on the loan in order to avoid foreclosure on the property. The successor in interest's ability to sell, encumber, or make improvements to the property will also be limited by the lien securing the loan. In other words, the property rights of the confirmed successor in interest, like those of the transferor borrower, are subject to the mortgage loan.

The Bureau believes that State property law, which provides the context for RESPA, also supports treating confirmed successors in interest as borrowers. At common law, a successor in interest "retains the same rights as the original owner, with no change in substance."[96] As a matter of State law, successors in interest have historically been afforded many of the same rights and responsibilities as the transferor borrower. For example, there is a significant amount of State law indicating that a successor in interest, like the transferor borrower, possesses the right to redeem following the mortgagee's foreclosure on the property.[97] Moreover, there is

[96] Black's Law Dictionary (9th ed. 2009).
[97] "'Property sold subject to redemption . . . may be redeemed in the manner hereinafter provided, by the . . . [j]udgment debtor, or his successor in interest in the whole or any part of the property . . . .'" *Phillips v. Hagart*, 45

significant State law providing that the contractual rights and obligations under the mortgage loan of the transferor borrower are freely assignable to successors in interest.[98] Further, before the enactment of the Garn-St Germain Act, several States had longstanding prohibitions on the exercise of due-on-sale clauses, thereby limiting servicers to the same contractual remedies with respect to successors in interest as were available against the transferor borrower, whether or not the successor in interest under State law assumed the legal obligation to pay the mortgage.[99] Additionally, while successors in interest may not be personally liable on the mortgage note, absent their express assumption of such liability under State law, in a significant number of mortgages, the borrower on the note is also, under State law, not personally liable for the debt upon foreclosure because a deficiency judgment is not allowed.[100] Accordingly, under State law, a successor in interest is often in virtually the same legal position as the borrower on the note with respect to foreclosure.[101]

The Bureau also believes that this treatment of successors in interest is consistent with other aspects of Federal law. The Garn-St Germain Act protects successors in interest from

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P. 843, 843 (Cal. 1896) (quoting California Code of Civil Procedure section 705); *see also, e.g.*, *Forty-Four Hundred E. Broadway Co. v. 4400 E. Broadway Co.*, 660 P.2d 866, 868 (Ariz. Ct. App. 1982) (citing *Call v. Thunderbird Mortg. Co.*, 375 P.2d 169 (Cal. 1962)); *Brastrup v. Ellingson*, 161 N.W. 553, 554 (N.D. 1917); *Tate v. Dinsmore*, 175 S.W. 528, 529 (Ark. 1915).

[98] *See, e.g.*, *Badran v. Household Fin. Corp.*, 2008 WL 4335098, at *4 (Mich. Ct. App. 2008); *Bermes v. Sylling*, 587 P.2d 377, 384 (Mont. 1978); *In re Fogarty's Estate*, 300 N.Y.S. 231 (N.Y. Sur. Ct. 1937).

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

[100] Deficiency judgments against borrowers upon foreclosure are disallowed with respect to most residential mortgages in some States. *See* Connecticut Gen. Assembly, Office of Legislative Research, OLR Research Report 2010-R-0327, *Comparison of State Laws on Mortgage Deficiencies and Redemption Periods* (Dec. 9, 2011) (citing and updating Nat'l Consumer Law Ctr., Survey of State Foreclosure Laws (2009)), *available at* http://www.cga.ct.gov/2010/rpt/2010-R-0327.htm.

[101] The Bureau is aware that some courts have indicated that successors in interest would not ordinarily be considered borrowers under RESPA. These cases were decided without the benefit of or consideration of the purposes of the regulations that the Bureau is now finalizing.

foreclosure based on the mortgage loan due-on-sale clause after transfer of homeownership to them. Additionally, several bankruptcy courts have held that successors in interest are entitled to the same treatment as transferor borrowers, for example, with respect to curing an arrearage on a mortgage and reinstating the loan.[102]

In addition, the amendments relating to successors in interest to the Mortgage Servicing Rules in Regulation X are independently authorized under sections 6(j)(3), 6(k)(1)(E), and 19(a) of RESPA. RESPA section 6(j)(3) authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA; RESPA section 6(k)(1)(E) authorizes the Bureau to create obligations for servicers through regulation that it finds appropriate to carry out the consumer protection purposes of RESPA; and RESPA section 19(a) authorizes the Bureau to prescribe such rules and regulations as may be necessary to achieve the purposes of RESPA.[103]

Considered as a whole, RESPA, as amended by the Dodd-Frank Act, reflects at least two significant consumer protection purposes: (1) To establish requirements that ensure that servicers have a reasonable basis for undertaking actions that may harm borrowers, and (2) To establish servicers' duties to borrowers with respect to the servicing of federally related mortgage loans.[104] Specifically, with respect to mortgage servicing, the consumer protection purposes of RESPA include responding to borrower requests and complaints in a timely manner, maintaining and providing accurate information, helping borrowers avoid unwarranted or

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[102] *See, e.g.*, *In re Smith*, 469 B.R. 198, 202 (Bankr. S.D.N.Y. 2012); *In re Curinton*, 300 B.R. 78, 82-86 (Bankr. M.D. Fla. 2003) (quoting *In re Garcia*, 276 B.R. 627, 631 (Bankr. D. Ariz. 2002)).

[103] A trade association commenter stated that the Bureau does not have the authority under RESPA to write loss mitigation or successorship regulations or to create a private right of action. It suggested that the Bureau's authority under RESPA sections 6(j)(3), 6(k), and 19(a) is circumscribed by the limited statutory purposes set forth in RESPA section 2(b). The Bureau disagrees. It would not be reasonable to read "consumer protection purposes of this chapter" in section 6(k) and "the purposes of this chapter" in section 19 in a way that would exclude Congress's purposes in enacting various provisions in section 6 of RESPA relating to servicing.

[104] 78 FR 10696, 10709 (Feb. 14, 2013).

unnecessary costs and fees, and facilitating review for foreclosure avoidance options.

The Bureau believes that establishing procedures for confirmation of successors in interest and extending various protections in Regulation X to confirmed successors in interest achieves these purposes of RESPA.[105] As noted above, successors in interest are a vulnerable group of consumers. As owners of property securing a mortgage loan, they may face foreclosure unless they satisfy the loan's payment obligations. But, as also noted above, successors in interest often cannot obtain information about the loan, including options for loss mitigation, and may thus have difficulty avoiding foreclosure. The Bureau therefore believes that applying servicing protections in Regulation X to confirmed successors in interest is necessary and appropriate to assist confirmed successors in interest with the types of servicing problems and issues that are within the scope of RESPA's consumer protection purposes. Specifically, as explained in the section-by-section analysis of § 1024.30(d), extending the various Regulation X protections to confirmed successors in interest will establish procedures by which servicers must respond to confirmed successors in interest's requests and complaints in a timely manner, will require servicers to maintain and provide accurate information with respect to confirmed successors in interest, and will establish safeguards to help confirmed successors in interest avoid unwarranted or unnecessary costs and fees and to facilitate review of confirmed successors in interest's applications for foreclosure avoidance options.[106]

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[105] A trade association commenter claimed that the Bureau cannot now assert that successor in interest regulations are necessary under RESPA section 6(j)(3) because the statute was enacted in 1991 and HUD did not issue any successor in interest RESPA regulations when it had rulemaking authority. However, section 6(j)(3) does not limit the Bureau's rulemaking authority based on rules previously issued by HUD. The Bureau, like HUD before it, evaluates what is necessary to carry out RESPA section 6 on an ongoing basis.

[106] A trade association commenter suggested that the Bureau's authority under RESPA section 6(k)(1)(e) is limited by the canon of *ejusdem generis*, which provides that, when a general phrase follows a list of specific items, the

The Bureau also notes that confirmed successors in interest will have a private right of action under RESPA to enforce these rules. Under section 6(f) of RESPA, 12 U.S.C. 2605(f), "[w]hoever fails to comply with any provision of this section shall be liable to the borrower for each such failure." For the reasons discussed above, the Bureau believes that the term borrower as used in the mortgage servicing provisions of RESPA should be understood to encompass confirmed successors in interest.

Regulation Z amendments relating to successors in interest. As noted in the section-by-section analysis of § 1026.2(a)(11), the Bureau is defining the term consumer to include a confirmed successor in interest for purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41. Those provisions establish certain protections for consumers with respect to their mortgage loans, and, as explained above in the context of the Regulation X, confirmed successors in interest step into the shoes of the transferor consumer for many purposes once they have obtained an ownership interest in the property. In light of its experience and expertise, the Bureau believes the term consumer in those provisions should be interpreted to include confirmed successors in interest. The Mortgage Servicing Rules in Regulation Z were authorized by, among other provisions, section 105(a) of TILA. Therefore, because the Bureau

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general phrase must be construed to include only items of the same class as the specific items on the list. RESPA section 6(k)(1)(e) requires compliance with "any other obligation" that the Bureau finds "by regulation to be appropriate to carry out the consumer protection purposes of" RESPA. The commenter suggested that "any other obligation" cannot relate to successor in interest issues or loss mitigation issues because those topics are different from the categories identified in RESPA section 6(k)(1)(a) through (d) (force-placed insurance; fees for qualified written request responses; failure to timely correct errors; and failure to provide owner or assignee contact information). However, the Bureau does not agree that the canon of *ejusdem generis* is relevant to determining the scope of section 6(k)(1)(e). That provision generally authorizes the Bureau to create obligations for services that are "appropriate to carry out the consumer protection purposes of [RESPA]." In other words, it authorizes regulations that would further RESPA's consumer protection purposes, which, as explained above, the amendments related to successors in interest do. Moreover, even if the canon applied, contrary to the commenter's assertion, the disparate items listed in RESPA section 6(k)(1)(a) through (d) are not similar in kind, nor are they all related in a way that distinguishes them as a group from successor in interest and loss mitigation issues.

concludes that confirmed successors in interest are consumers for purposes of the Mortgage Servicing Rules in Regulation Z, these amendments are authorized under the same authorities on which the Mortgage Servicing Rules are based.

In addition, the amendments relating to successors in interest to the Mortgage Servicing Rules in Regulation Z are independently authorized under section 105(a) of TILA. That provision allows the Bureau to issue regulations that may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. 15 U.S.C. 1604(a). The purposes of TILA include assuring the meaningful disclosure of credit terms to enable consumers to compare more readily the various credit terms available and avoid the uninformed use of credit and to protect consumers against inaccurate and unfair credit billing practices. 15 U.S.C. 1601(a).

The Bureau believes that the amendments to Regulation Z relating to successors in interest are necessary or proper to effectuate TILA's purposes. Successors in interest are owners of dwellings securing mortgage loans and must typically meet the payment obligations on the loan in order to avoid foreclosure on their property. Successors in interest thus have a strong interest in obtaining timely and accurate account information from servicers as to the mortgage loan secured by their dwelling. As explained in the section-by-section analysis of § 1026.2(a)(11), to achieve TILA's purposes, confirmed successors in interest warrant the protections of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41.

Some trade associations stated that it is not clear that TILA can apply to those who do not borrow. However, Regulation Z has defined consumer for decades to include non-obligors for

purposes of rescission under §§ 1026.15 and 1026.23.[107] The Bureau is now interpreting the term consumer to include confirmed successors in interest for purposes of the Mortgage Servicing Rules in Regulation Z.[108]

B. Regulation X

Section 1024.6 Special Information Booklet at Time of Loan Application

6(d) Permissible Changes

Although the Bureau did not propose to amend § 1024.6(d), for the reasons set forth below, the Bureau is revising current § 1024.6(d)(1)(i) and renumbering it as § 1024.6(d)(1), eliminating § 1024.6(d)(1)(ii), and revising § 1024.6(d)(2).

Under § 1024.6(a), a lender must provide a copy of a special information booklet to certain applicants for a federally related mortgage loan. The special information booklet, adopted pursuant to section 5 of RESPA, helps mortgage loan applicants understand the nature and costs of settlement services.[109] The Bureau's publication entitled "*Your Home Loan Toolkit: A Step-by-Step Guide*," updated the special information booklet to incorporate statutory amendments, the Bureau's Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (TILA-RESPA

[107] 12 CFR 1026.2(a)(11) (defining consumer for purposes of rescission under §§ 1026.15 and 1026.23 to include 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).

[108] A trade association commenter also suggested that RESPA section 17, 12 U.S.C. 2615, and TILA section 111(d), 15 U.S.C. 1610, might bar this rulemaking. They do not because the successor in interest provisions do not affect the validity or enforceability of any loan or mortgage agreement. The commenter also stated that the Bureau does not have the authority to rewrite State contract law or the mortgage default remedies that are available under State law. However, the final rule does not purport to alter State contract law principles. The final rule simply extends the Federal regulatory protections of the Mortgage Servicing Rules to confirmed successors in interest and provides other related Federal protections under the Mortgage Servicing Rules.

[109] 12 CFR 1024.2(b) (defining special information booklet for purposes of Regulation X).

Final Rule)[110], and additional contact information, online tools, and information on how to submit complaints.[111] Current § 1024.6(d)(i) and (ii) set forth the permissible changes that may be made to the special information booklet. The Bureau is revising the final sentence of current § 1024.6(d)(1)(i) to update the address to which requests for changes to the booklet beyond those permitted by the rule must be submitted.

Currently, § 1024.6(d)(1)(i) provides in relevant part that a request to the Bureau for the approval of certain changes to the booklet shall be submitted in writing to the address indicated in § 1024.3. However, § 1024.3 no longer includes this address. As revised and renumbered, final § 1024.6(d)(1) instead provides that a request to the Bureau for approval of certain changes shall be submitted in writing to the address indicated in the definition of *Public Guidance Documents* in § 1024.2.

Current § 1024.6(d)(1)(ii) sets forth three permissible changes that may be made to the special information booklet. Current § 1024.6(d)(1)(ii)(A) provides that, in the Complaints section of the booklet, it is a permissible change to substitute "the Bureau of Consumer Financial Protection" for "HUD's Office of RESPA" and "the RESPA office." Current § 1024.6(d)(1)(ii)(B) provides that, in the Avoiding Foreclosure section of the booklet, it is a permissible change to inform homeowners that they may find information on and assistance in avoiding foreclosures at *http://www.consumerfinance.gov*. It further explains that the deletion of the reference to the HUD Web page, *http://www.hud.gov/foreclosure/*, in the Avoiding Foreclosure section of the booklet, is not a permissible change. Current § 1024.6(d)(1)(ii)(C)

[110] 78 FR 79730 (Dec. 31, 2013) (TILA-RESPA Final Rule).
[111] 80 FR 17414 (April 1, 2015). *See* 12 CFR 1026.19(g) (explaining similar requirements to those in § 1024.6).

provides that, in the appendix to the booklet, it is a permissible change to substitute "the Bureau of Consumer Financial Protection" for the reference to the "Board of Governors of the Federal Reserve System" in the No Discrimination section of the appendix to the booklet. It also explains that, in the Contact Information section of the appendix to the booklet, it is a permissible change to add the following contact information for the Bureau: "Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006; *www.consumerfinance.gov/learnmore*." Finally, it provides that it is also a permissible change to remove the contact information for HUD's Office of RESPA and Interstate Land Sales from the Contact Information section of the appendix to the booklet.

To reflect the Bureau's exclusive authority with regard to the special information booklet, the final rule eliminates § 1024.6(d)(1)(ii). The Bureau is removing the references to permissible changes that are no longer relevant because the stated language for which substitutions are authorized does not in appear in the special information booklet currently prescribed by the Bureau. A lender will not be permitted to change the special information booklet in the ways described above to reference the Department of Housing and Urban Development and the Board of Governors of the Federal Reserve System. Accordingly, the Bureau is renumbering § 1024.6(d)(1)(i) as § 1024.6(d)(1); removing § 1024.6(d)(1)(ii)(A), (B), and (C); and replacing the references to § 1024.6(d)(1)(ii) in § 1024.6(d)(1) with references to § 1024.6(d)(2).

For similar reasons, the Bureau is removing the final sentence of current § 1024.6(d)(2), which provides that references to HUD on the cover of the booklet may be changed to references to the Bureau.

Section 1024.9 Reproduction of Settlement Statements

9(a) Permissible Changes —HUD-1

Although the Bureau did not propose to amend § 1024.9(a), for the reasons set forth below, the Bureau is revising § 1024.9(a). Section 1024.9(a) sets forth the permissible changes and insertions that may be made when the HUD-1 settlement statement is reproduced. The HUD-1 or HUD-1A settlement statement (also HUD-1 or HUD-1A) is defined in § 1024.2 as "the statement that is prescribed in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-[person] family residential property."[112] Current § 1024.9(a)(5) explains that certain variations in layout and format to the HUD-1 are within the discretion of persons reproducing the HUD-1 and do not require prior HUD approval.

To reflect the Bureau's exclusive authority with regard to the HUD-1, the final rule revises § 1024.9(a)(5). Final § 1024.9(a)(5) explains that certain variations in layout and format to the HUD-1 are within the discretion of persons reproducing the HUD-1 and do not require prior Bureau approval.

9(c) Written Approval

The Bureau is revising § 1024.9(c) to update the address to which requests for deviations in the HUD-1 or HUD-1A forms beyond those permitted by the rule must be submitted. Currently, § 1024.9(c) provides in relevant part that a request to the Bureau for the approval of certain deviations shall be submitted in writing to the address indicated in § 1024.3. However, § 1024.3 no longer includes this address. Thus, as revised, § 1024.9(c) instead provides that a

[112] 12 CFR 1024.2.

request to the Bureau for approval of the certain changes shall be submitted in writing to the address indicated in the definition of *Public Guidance Documents* in § 1024.2.

Section 1024.17 Escrow Accounts

17(h) Format for Initial Escrow Account Statement

17(h)(1)

Although the Bureau did not propose to amend § 1024.17(h)(1), for the reasons set forth below, the Bureau is revising § 1024.17(h)(1). Currently, § 1024.17(h)(1) provides that 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 § 1024.3. However, § 1024.3 no longer specifies how the public may request copies of Public Guidance Documents. Thus, as revised, § 1024.17(h)(1) instead provides that 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.

Section 1024.30 Scope

30(c) Scope of Certain Sections

Paragraph 30(c)(2)

Although the Bureau did not propose to add comment 30(c)(2)-1, for the reasons set forth below, the Bureau is adopting new comment 30(c)(2)-1 to provide further clarification on the determination of whether a property is a principal residence for purposes of Regulation X.

Pursuant to § 1024.30(c)(2), the procedures set forth in §§ 1024.39 through 1024.41 regarding early intervention, continuity of contact, and loss mitigation only apply to a mortgage loan secured by a property that is a borrower's principal residence. Consequently, a borrower's protections under Regulation X depend on whether or not the property securing the loan is the borrower's principal residence. The Bureau has previously explained that the determination of whether a property is the borrower's principal residence is a fact specific inquiry, particularly when a property may appear to be vacant.[113] Several servicers have indicated to the Bureau that they remain uncertain as to the applicability of, for example, the 120-day foreclosure referral waiting period in § 1024.41(f)(1)(i) when a property is vacant.

Accordingly, the Bureau is adopting comment 30(c)(2)-1, which clarifies that, 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. The comment further explains that the determination of principal residence status will depend on the specific facts and circumstances regarding the property and applicable State law. It further clarifies this explanation with an example explaining that a vacant property may still be a borrower's principal residence.

The Bureau understands that a vacant property may still be the principal residence of a borrower in certain circumstances. For example, the Bureau understands that a property may still be the borrower's principal residence where a servicemember relocates pursuant to permanent change of station orders, was occupying the property as his or her principal residence immediately prior to displacement, intends to return to the property at some point in the future,

[113] *See* Amendments to the 2013 Mortgage Rules, 78 FR 60382, 60407 (Oct. 1, 2013).

and does not own any other residential property.[114] Comment 30(c)(2)-1 clarifies that the vacancy of a property does not necessarily mean that the property is no longer the borrower's principal residence. Accordingly, a vacant property may still be covered by § 1024.41, meaning that the 120-day foreclosure referral waiting period could still apply to the mortgage loan securing that property.

New comment 30(c)(2)-1 provides servicers, borrowers, and other stakeholders with additional guidance as to the applicability of servicers' responsibilities under §§ 1024.39 through 1024.41. It should help ensure that borrowers do not lose critical protections under the mortgage servicing rules to which they are entitled. At the same time, the Bureau is not establishing a bright-line test in comment 30(c)(2)-1, as the determination of principal residence status will depend on the specific facts and circumstances regarding the property and applicable State law.

30(d) Successors in Interest

As explained in part V.A., the Bureau proposed to apply subpart C of Regulation X to confirmed successors in interest (as defined by the proposed definition of successor in interest, discussed in the section-by-section analysis of § 1024.31). Proposed § 1024.30(d) accordingly would have provided that a successor in interest must be considered a borrower for the purposes of subpart C of Regulation X once a servicer confirms the successor in interest's identity and ownership interest in a property that secures a mortgage loan covered by Regulation X's

[114] *See* Making Home Affordable Program, Handbook for Servicers of Non-GSE Mortgages Version 5.0, *HAMP Tier 1 Eligibility Criteria*, at 64 (2016), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_5.pdf; Fed. Reserve Sys., Bureau of Consumer Fin. Prot., Fed. Deposit Ins. Corp., Nat'l Credit Union Ass'n., Office of the Comptroller of the Currency, Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders, (June 21, 2012), *available at* http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf.

mortgage servicing rules. For the reasons set forth in part V.A. and in this discussion, the Bureau is finalizing § 1024.30(d) with only one substantive change. That change expands the scope of protections that apply to confirmed successors in interest to include the escrow-related requirements in § 1024.17. The Bureau has also made technical changes to incorporate the new definition of confirmed successor in interest in § 1024.31 into § 1024.30(d). As under the proposal, the exemptions and scope limitations in Regulation X's mortgage servicing rules apply to the servicing of a mortgage loan with respect to a confirmed successor in interest under the final rule.[115]

Commenters raised a number of concerns about the scope of the definition of successor in interest, which are discussed in part V.A. and the section-by-section analysis of § 1024.31. A number of industry commenters urged the Bureau not to finalize the rule. These commenters suggested, for example, that the Bureau might consider other approaches, such as best practices, guidance, and consumer education, or that the Bureau could delay action in order to solicit further comment or conduct further outreach to industry, governmental offices, and other stakeholders. Some industry commenters urged the Bureau to narrow the protections that would apply to confirmed successors in interest and not to add additional protections. For example, one industry commenter suggested that the Bureau limit the successor in interest rules and

[115] Section 1024.30(b) exempts small servicers from §§ 1024.38 through 1024.41 (except § 1024.41(j)). Likewise, § 1024.30(b) provides an exemption from these sections with respect to reverse mortgage transactions and mortgage loan for which the servicer is a qualified lender. Accordingly, except as otherwise provided in § 1024.41(j), §§ 1024.38 through 1024.41 do not apply to confirmed successors in interest with respect to small servicers, reverse mortgage transactions, and mortgage loans for which the servicer is a qualified lender. Under the final rule, however, §§ 1024.30 through 1024.37 apply with respect to reverse mortgages secured by a property acquired by a confirmed successor in interest. Section 1024.30(c) provides that § 1024.33(a) only applies to reverse mortgage transactions and that §§ 1024.39 through 1024.41 only apply to mortgage loans secured by property that is a borrower's principal residence. With respect to confirmed successors in interest, § 1024.33(a) only applies to reverse mortgage transactions, and §§ 1024.39 through 1024.41 only apply to mortgage loans secured by property that is the confirmed successor in interest's principal residence.

commentary to facilitating communication with successors in interest, while another suggested that the Bureau adopt only enhanced policies and procedures requirements setting forth objectives for servicers to meet. A number of industry commenters also urged the Bureau not to extend the protections of the mortgage servicing rules to potential successors in interest, noting that doing so could allow someone without a true ownership interest to initiate actions that might jeopardize the interests of the true owner or the privacy of any borrowers on the account.

One trade association submitted a comment listing a large number of additional regulatory provisions that the Bureau should address from Regulations X and Z and other regulations. As part of this list, this commenter stated that a confirmed successor in interest should be a borrower for purposes of § 1024.17.

A number of consumer advocacy group commenters also urged the Bureau to extend the protections of § 1024.17 to successors in interest. As discussed in part V.A. and the section-by-section analyses of §§ 1024.36(i) and 1024.38(b)(1)(vi), various consumer advocacy groups also suggested that successors in interest should receive additional protections prior to confirmation. Some consumer advocacy groups urged the Bureau to create a privately enforceable right triggered by the homeowner's submission of documentation, not the servicer's additional step of confirming the person's status. They also urged the Bureau to provide a limited notice of error procedure related to successor status before a foreclosure sale and to make both the request for information and notice of error procedures privately enforceable. Consumer advocacy groups also stated that the final rule should extend dual tracking protections to successors in interest even prior to confirmation, to ensure that the house is not lost to foreclosure before successor in interest status is determined. In their view, once a successor in interest has submitted a complete loan modification application, including reasonable documentation establishing the successor in

interest's identity and ownership interest, within the timelines contained in § 1024.41(f) and (g), a servicer should not be permitted to initiate or continue with foreclosure until it has reviewed the proof of successor status and the application.

A large number of commenters of various types expressed concern about the proposal's use of the term prior borrower because the borrower who transfers an interest may still be liable on the loan obligation (absent a release) and a borrower for purposes of Regulation X.

For the reasons set forth in part V.A. and this discussion, the Bureau is expanding the protections applicable to confirmed successors in interest to include § 1024.17. The Bureau agrees that successors in interest confront the same types of escrow issues as borrowers who are currently protected by § 1024.17. As consumer advocacy groups noted in their comments, successors in interest are particularly likely to experience escrow problems due to the transfer of ownership through which they acquired their ownership interest in the property. In issuing the proposal, the Bureau intended to include all of the mortgage servicing protections of Regulations X and Z, which, as commenters noted, should include the escrow protections of § 1024.17. Expanding the protections afforded to confirmed successors in interest to include § 1024.17 effectuates the Bureau's stated intent in the proposal to extend all of the Regulation X mortgage servicing protections to confirmed successors in interest and ensures that confirmed successors in interest can obtain necessary escrow information.

The Bureau has reviewed the other sections of Regulation X that commenters suggested that the Bureau should address and does not believe that it is appropriate to add them to the regulatory provisions listed in § 1024.30(d). For example, a trade association stated that the final rule should define a confirmed successor in interest as a borrower for purposes of § 1024.11, which governs mailing of documents under Regulation X. However, it is not necessary to do so

because § 1024.11 does not use the term borrower and, by its terms, already applies to any provision of Regulation X that requires or permits mailing of documents.

Although many industry commenters questioned the need to extend the protections of the Regulation X mortgage servicing rules to confirmed successors in interest, the Bureau concludes that such protections are necessary and appropriate. As numerous consumer advocacy groups, a local government commenter, and the office of a State Attorney General explained and illustrated in their comments, successors in interest face many of the challenges that Regulation X's mortgage servicing rules were designed to prevent. These comments are consistent with various published reports and the Bureau's market knowledge.[116] The same reasons that supported the Bureau's adoption of the 2013 RESPA Servicing Final Rule also support § 1024.30(d): Successors in interest are homeowners whose property is subject to foreclosure if the mortgage loan obligation is not satisfied, even though the successor in interest may not have assumed that obligation under State law or otherwise be liable on the obligation. In addition to

[116] *See* part V.A., *supra*; *see also* Bureau of Consumer Fin. Prot., *Supervisory Highlights Mortgage Servicing Special Edition (Issue 11)* at 15-16 (June 2016); Alys Cohen, Nat'l Consumer Law Ctr., *Snapshots of Struggle: Saving the Family Home After a Death or Divorce, Successors Still Face Major Challenges in Obtaining Loan Modifications* (Mar. 2016), *available at* https://www.nclc.org/images/pdf/pr-reports/report-snapshot-struggle.pdf; Nat'l Hous. Res. Ctr., *Servicer Compliance with CFPB Servicing Regulations* (Feb. 2016), *available at* http://www.hsgcenter.org/wp-content/uploads/2016/02/NHRC-2016-Servicing-Survey-Report.pdf; Nat'l Consumer Law Ctr., *NCLC Survey Reveals Ongoing Problems with Mortgage Servicing* 2, 5 (May 2015), *available at* http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/ib-servicing-issues-2015.pdf; Nat'l Council of La Raza & Nat'l Hous. Res. Ctr., *Are Mortgage Servicers Following the New Rules? A Snapshot of Compliance with CFPB Servicing Standards* 3, 7 (Jan. 9, 2015), *available at* http://www.nclr.org/Assets/uploads/Publications/mortgageservicesreport_11215.pdf; Nat'l Consumer Law Ctr., *Examples of Cases Where Successors in Interest and Similar Parties Faced Challenges Seeking Loan Modifications and Communicating with Mortgage Servicers* (July 1, 2014), *available at* http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/successor-stories-2014.pdf; Cal. Reinvestment Coal., *Chasm Between Words and Deeds X: How Ongoing Mortgage Servicing Problems Hurt California Homeowners and Hardest-Hit Communities* (May 2014), *available at* http://www.calreinvest.org/publications/california-reinvestment-coalition-research; Nat'l Hous. Res. Ctr., *National Mortgage Settlement Servicing Standards and Noncompliance: Results of a National Housing Counsel Survey* 8 (June 5, 2013), *available at* http://www.hsgcenter.org/wp-content/uploads/2013/06/NMS_Findings.pdf; Cal. Reinvestment Coal., *Chasm Between Words and Deeds IX: Bank Violations Hurt Hardest Hit Communities* (Apr. 2013), *available at* http://www.calreinvest.org/publications/california-reinvestment-coalition-research.

§ 1024.17 as discussed above, the Bureau has considered each section of subpart C of Regulation X and believes that each section should apply to confirmed successors in interest.[117]

Specifically, the Bureau concludes that §§ 1024.35 and 1024.36 should apply to confirmed successors in interest.[118] When the Bureau issued §§ 1024.35 and 1024.36 in the 2013 RESPA Servicing Final Rule, the Bureau acknowledged that both borrowers and servicers would be best served if the Bureau were to define clearly a servicer's obligation to correct errors or respond to information requests.[119] Clearly defining a servicer's obligation with respect to a confirmed successor in interest will similarly benefit both servicers and confirmed successors in interest. Under current § 1024.38(b)(1)(vi), servicers are required to have policies and procedures reasonably designed to ensure that the servicer can identify and communicate with successors in interest upon notification of the death of a borrower. Because §§ 1024.35 and 1024.36 do not currently necessarily apply to successors in interest, however, the extent of the obligation to communicate with successors in interest and how a successor in interest may obtain information from a servicer are not clear. Sections 1024.35 and 1024.36 will provide important protections to confirmed successors in interest. For instance, § 1024.35 will provide confirmed successors in interest with protections regarding a servicer's failure to accept payments conforming to the servicer's written requirements for payments. Additionally, § 1024.36's requirements to provide information about the mortgage loan will help prevent unnecessary

[117] As explained in part V.A., *supra*, and in the section-by-section analyses of § 1024.32(c)(1) through (4), *infra*, the final rule includes additional provisions governing how the Mortgage Servicing Rules in Regulation X apply to confirmed successors in interest.
[118] As described in the section-by-section analysis of § 1024.36(i), *infra*, in addition to applying the Mortgage Servicing Rules, including § 1024.36, with respect to confirmed successors in interest, the Bureau is also finalizing a new information request requirement in § 1024.36(i) that applies before the servicer has confirmed the successor in interest's status.
[119] 78 FR 10695, 10736 (Feb. 14, 2013).

foreclosure on the confirmed successor in interest's property by, for example, ensuring that a confirmed successor in interest can obtain information about the payment history of the loan. Because confirmed successors in interest, like transferor borrowers, bear the risk of unnecessary foreclosure as homeowners of the property, §§ 1024.35 and 1024.36 should apply to confirmed successors in interest.

The Bureau solicited comment on whether any information that could be provided to successors in interest under §§ 1024.35 and 1024.36 presents privacy concerns and whether servicers should be permitted to withhold any information from successors in interest out of such privacy concerns. A number of commenters expressed concerns regarding privacy issues, which are discussed in more detail in part V.A. In light of these concerns, the Bureau is amending §§ 1024.35 and 1024.36 to allow servicers to limit the information that confirmed successors in interest may obtain about other borrowers and that all borrowers may obtain about potential and confirmed successors in interest, as discussed in the section-by-section analyses of §§ 1024.35 and 1024.36.[120]

As explained in part V.A., after considering the comments received, the Bureau has decided that the loss mitigation procedures contained in § 1024.41 should apply to confirmed successors in interest and that servicers should be required to evaluate confirmed successors in interest for loss mitigation options to prevent unnecessary foreclosure. Significant consumer harm flows from a servicer's failure to afford a confirmed successor in interest the same access to loss mitigation as other homeowners. The Bureau also believes that requiring servicers to

[120] The Bureau also considered, as an alternative, the approach suggested by an industry commenter that would have allowed servicers to omit "personal, private information." The Bureau concluded that such a standard would have proved difficult to apply and could, in many instances, have resulted in servicers withholding information that confirmed successors in interest need to preserve their ownership interest in the property.

evaluate confirmed successors in interest for loss mitigation prior to the confirmed successor in interest's assumption of liability for the mortgage debt under State law is consistent with Fannie Mae and Freddie Mac guidelines and serves RESPA's purposes as discussed in part V.A.[121]

Consistent with the proposal and with § 1024.41's treatment of borrowers generally, the final rule does not require a servicer to offer a successor in interest any particular loss mitigation option.[122] The final rule also does not prevent a servicer from conditioning an offer for a loss mitigation option on the successor in interest's assumption of the mortgage loan obligation under State law or from offering loss mitigation options to the successor in interest that differ based on whether the successor in interest would simultaneously assume the mortgage loan obligation. Under the final rule, however, a servicer cannot condition review and evaluation of a loss mitigation application on a confirmed successor in interest's assumption of the mortgage obligation. If the property is the confirmed successor in interest's principal residence and the procedures set forth in § 1024.41 are otherwise applicable, a servicer is, for example, required under § 1024.41(b) to respond to a loss mitigation application from the confirmed successor in interest and exercise reasonable diligence in obtaining documents and information to complete the loss mitigation application. The foreclosure prohibitions under § 1024.41(f) and (g) may also apply.

For similar reasons, the early intervention and continuity of contact requirements

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

[122] A trade association also stated it was not clear if the proposal would require servicers to allow confirmed successors in interest to assume the loan. State law may require servicers to allow confirmed successors in interest to assume the loan, but the Bureau is not interpreting State law, and the final rule does not require assumptions as a matter of Federal law.

contained in §§ 1024.39 and 1024.40 should apply to confirmed successors in interest.[123] In issuing these provisions in the 2013 RESPA Servicing Final Rule, the Bureau stated that §§ 1024.39 and 1024.40 are appropriate to achieve the consumer protection purposes of RESPA, including to help borrowers avoid unwarranted or unnecessary costs and fees and to facilitate review of borrowers for foreclosure avoidance options.[124] The Bureau further determined that §§ 1024.39 and 1024.40 are necessary and appropriate to carry out the purposes of the Dodd-Frank Act of ensuring that markets for consumer financial products and services are fair, transparent, and competitive; that consumers are provided with timely and understandable information to make responsible decisions about financial transactions; and that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[125] These same consumer protection purposes are served by applying §§ 1024.39 and 1024.40 to confirmed successors in interest, who, as homeowners of a property securing a mortgage loan, may be required to make payments on the loan to avoid foreclosure. In particular, the protections provided by §§ 1024.39 and 1024.40 serve to prevent unnecessary foreclosure by alerting confirmed successors in interest to any delinquency on the mortgage loan secured by their property and assisting with the process of applying for loss mitigation options.

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[123] Although one industry commenter expressed concern that sending loss mitigation related letters and trying to establish right party contact with individuals not liable on a delinquent loan could constitute abusive or harassing debt collection efforts, in violation of FDCPA section 806, 15 U.S.C. 1692d, the Bureau does not believe that providing this important information about the property at issue to confirmed successors in interest in a notice that is required by Regulation X will be abusive or harassing absent other conduct making the overall effect of the communication abusive or harassing, as explained in part V.A., *supra*. Additionally, if upon confirmation a servicer sends an initial written notice and acknowledgment form to a confirmed successor in interest who is not liable on the mortgage loan obligation in compliance with the requirements of § 1024.32(c)(1) through (3), the final rule gives the servicer the option not to send Mortgage Servicing Rule notices to the confirmed successor in interest until the confirmed successor in interest requests them through the acknowledgment. *See* part V.A., *supra*, and the section-by-section analysis of § 1024.32(c), *infra*.

[124] 78 FR 10696, 10791 (Feb. 14, 2013) (discussing § 1024.39); *see also id.* at 10809-10 (discussing § 1024.40).

[125] *Id.* at 10791 (citing section 1021(a) and (b) of the Dodd-Frank Act).

Finally, the Bureau concludes that the requirements contained in § 1024.33 (regarding mortgage servicing transfers), § 1024.34 (regarding escrow payments and account balances), and § 1024.37 (regarding force-placed insurance) should apply to confirmed successors in interest. The same rationale for applying these rules to any borrower applies with respect to confirmed successors in interest, who are also homeowners and may be required to make payments on the loan to avoid foreclosure. Confirmed successors in interest, like other borrowers, need to know where to send their mortgage payments in the event of a servicing transfer. They also need to know the balance of the escrow loan account, how their payments into that account are applied, and the status of tax and homeowner's insurance payments made from the escrow account. Like other borrowers, they also need information about any force-placed insurance the servicer has taken out on their property. Moreover, it would add unnecessary complexity to the rules to apply the rest of the Mortgage Servicing Rules in Regulation X to confirmed successors in interest but not to apply §§ 1024.33, 1024.34, and 1024.37 to them. The Bureau believes it is preferable to apply all of the Mortgage Servicing Rules in Regulation X to confirmed successors in interest, unless there is a compelling reason not to apply a particular rule. The Bureau solicited comment as to whether any such compelling reasons exist with respect to §§ 1024.33, 1024.34, and 1024.37. After reviewing the comments, the Bureau has not identified any compelling reasons not to apply a particular provision of the Mortgage Service Rules in Regulation X to confirmed successors in interest.

While industry commenters expressed a number of concerns relating to the cost of complying with the Regulation X mortgage servicing requirements with respect to confirmed successors in interest, many of the requirements that they identified as particularly burdensome or costly are not part of the final rule. For example, a number of industry commenters indicated

that it would be costly and might require systems changes if the final rule required servicers to send confirmed successors in interest duplicate copies of mortgage servicing rule notices that the servicer was also sending to another borrower on the account. The final rule includes new § 1024.32(c)(4), which clarifies that such duplicate notices are generally not required. Other industry commenters expressed concern that it would be costly if the final rule required servicers to preserve until confirmation information requests from potential successors in interest who request information other than a list of documents required for confirmation. Section 1024.36(i) does not require servicers to preserve this type of request. Similarly, a number of industry commenters said that it would be burdensome if the final rule allowed requests for information under § 1024.36(i) to be sent to any address for the servicer. Like the proposal, the final rule permits the servicer to establish an exclusive address. Some trade associations suggested that the Bureau should have considered the costs for servicers to become equipped to originate mortgage loans. Because the final rule does not require servicers to originate mortgage loans, this type of cost, like many others mentioned by commenters, is not one imposed by the final rule.[126]

Nevertheless, the Bureau recognizes that providing confirmed successors in interest with protections under § 1024.17 and subpart C will cause servicers to incur some costs. As many industry commenters noted, servicers may need to devote additional resources to assessing the identity and ownership interest of potential successors in interest as part of the confirmation process established by the final rule. The Bureau expects that these additional costs will be

[126] Successors in interest may have a right under State law to assume the mortgage loan obligation, but that is independent of the final rule, which does not mandate assumptions. In any event, a successor in interest's assumption of the loan obligation generally would not result in a new origination. The Bureau's July 2014 interpretive rule clarified that, where a successor in interest who has previously acquired a legal interest in a dwelling is added as an obligor on the mortgage loan, the Regulation Z Ability-to-Repay Rule does not apply. *See* 79 FR 41631, 41632-33 (July 17, 2014).

limited because servicers already routinely make these types of determinations. For example, servicers confirm the identity of potential successors in interest and other third parties when such parties assume the mortgage loan obligation under State law. Prior to bringing a foreclosure action, servicers also generally have to determine who owns the property at issue, in order to ensure that all proper parties are notified. Moreover, the final rule allows a servicer to require additional documentation from a potential successor in interest if it reasonably determines that it cannot make a confirmation determination based on the documentation provided by the potential successor in interest.[127] The Bureau anticipates that these considerations will mitigate any additional costs associated with making confirmation determinations in conformance with the final rule.

Servicers may also have to devote additional resources to tracking successors in interest, providing responses to information requests from confirmed successors in interest, handling error resolution, responding to and evaluating loss mitigation applications from successors in interest, and otherwise communicating with successors in interest. Providing confirmed successors in interest with § 1024.41's protections may delay foreclosure on the property securing the mortgage loan in some cases, as discussed above. However, because servicers are already required to comply with the requirements of § 1024.17 and subpart C with respect to transferor borrowers, the additional cost to servicers to apply these requirements to confirmed successors in

[127] Comment 38(b)(1)(vi)-4 explains, for example, that, 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 before a confirmation determination can be made. Additionally, if a servicer requires additional information in order to identify the documents required for confirmation in response to a written request under § 1024.36(i), the final rule allows the servicer to 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, and provides contact information for further assistance.

interest should be limited. Moreover, applying these protections may result in the avoidance of unnecessary foreclosures where loss mitigation options are available, thus providing benefits to all parties.

The final rule limits the application of § 1024.30(d) to confirmed successors in interest.[128] Because some people representing themselves as successors in interest may not actually have an ownership interest in the property, requiring servicers to apply Regulation X's communication, disclosure, and loss mitigation requirements to successors in interest before the servicer has confirmed the successor in interest's identity and ownership interest in the property could present privacy and other concerns, as many commenters noted. The Bureau also believes it would be inappropriate to require servicers to incur substantial costs before confirming the successor in interest's identity and ownership interest in the property. The final rule includes, however, a new information request for potential successors in interest and revised policies and procedures requirements relating to potential successors in interest, which are discussed in the section-by-section analyses of §§ 1024.36(i) and 1024.38(b)(1)(vi), as well as new Regulation Z commentary related to payments by successors in interest, which is discussed in the section-by-section analysis of § 1026.36(c).

Proposed comment 30(d)-1 would have clarified the requirement in proposed § 1024.30(d) that a successor in interest must be considered a borrower for the purposes of Regulation X's subpart C once a servicer confirms the successor in interest's identity and

[128] However, a successor in interest could be a borrower for purposes of the Mortgage Servicing Rules in Regulation X (both currently and as amended by the final rule), even if the successor in interest has not been confirmed, if the successor in interest has assumed the mortgage loan obligation under State law or is otherwise obligated on the mortgage loan. Section 1024.30(d) does not prevent an unconfirmed successor in interest from being a borrower for purposes of Regulation X.

ownership interest in the property. The proposed comment included an example of the application of § 1024.41's loss mitigation procedures to successors in interest and a cross-reference to § 1024.36(i)'s requirement that a servicer must respond to written requests for certain information from a potential successor in interest.

The Bureau is finalizing proposed comment 30(d)-1 with a number of changes. To conform to final § 1024.30(d), the final version of comment 30(d)-1 identifies § 1024.17 as a protection applicable to confirmed successors in interest. As finalized, comment 30(d)-1 explains that a confirmed successor in interest must be considered a borrower for purposes of subpart C and § 1024.17, regardless of whether the successor in interest assumes the mortgage loan obligation under State law. An industry commenter suggested that the Bureau clarify that the treatment of a successor in interest may depend on whether the property is the successor in interest's principal residence, noting that, under § 1024.30(c)(2), §§ 1024.39 through 1024.41 only apply to mortgage loans that are secured by a property that is a borrower's principal residence. In illustrating how § 1024.41's loss mitigation procedures apply to confirmed successors in interest, the final version of comment 30(d)-1 indicates that the property must be the confirmed successor in interest's principal residence and that the procedures set forth in § 1024.41 must otherwise be applicable. Because comment 30(d)-1 addresses the treatment of confirmed successors in interest, the Bureau has eliminated the cross-reference to § 1024.36(i) that appeared in proposed comment 30(d)-1 and has added the word confirmed in the comment heading. The final version of comment 30(d)-1 also includes technical changes to incorporate the new definition of confirmed successor in interest.

The final version of comment 30(d)-1 also clarifies that treatment of a confirmed successor in interest as a borrower for purposes of § 1024.17 and subpart C 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. This addition clarifies that confirmation of a successor in interest who has not assumed the loan obligation and is not otherwise liable on the obligation does not make the successor in interest a "borrower" for liability purposes.[129] Consistent with an interpretive rule that the Bureau is issuing concurrently with this final rule, comment 30(d)-1 also clarifies that communications in compliance with Regulation X to a confirmed successor in interest as defined in § 1024.31 do not violate FDCPA section 805(b) because the term consumer for purposes of FDCPA section 805 includes any person who meets the definition in Regulation X of confirmed successor in interest.

The final rule also adds new comment 30(d)-2 relating to assumption of the mortgage loan obligation under State law. This new comment clarifies that 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. As explained in part V.A., the Bureau believes that it is important to make the protections of the Mortgage Servicing Rules available to confirmed successors in interest who have not assumed the mortgage loan obligation under State law because confirmed successors in interest may need information about the loan in order to decide whether to assume the loan obligation and to protect their ownership interest.

New comment 30(d)-2 further explains that, 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 Regulation X are not limited to the

[129] Since confirmation does not affect liability under State law, it would not be accurate, for example, for a servicer to report to a consumer reporting agency that a confirmed successor in interest is delinquent on the mortgage loan if the confirmed successor in interest has not assumed the mortgage loan obligation under State law and is not otherwise liable for it.

protections that apply under § 1024.30(d) to a confirmed successor in interest. This addition clarifies that § 1024.30(d) does not abrogate the Regulation X protections that already exist for persons (including potential or confirmed successors in interest) who assume a mortgage loan obligation under State law.

Proposed comment 30(d)-2 addressed how a servicer's confirmation of a successor in interest's identity and ownership interest in the property would affect the borrower who transferred the ownership interest. The proposed comment would have provided that, even after a servicer's confirmation of a successor in interest's identity and ownership interest in the property, the servicer would still be required to comply with the requirements of Regulation X's subpart C with respect to the prior borrower, unless that borrower also had either died or been released from the obligation on the mortgage loan. The proposed comment also would have provided that the prior borrower would retain any rights under Regulation X's subpart C that accrued prior to the confirmation of the successor in interest to the extent these rights would otherwise survive the prior borrower's death or release from the obligation. For the reasons stated in part V.A. and in this discussion, the Bureau is finalizing proposed comment 30(d)-2, renumbered as comment 30(d)-3, with substantial revisions to make it clear that confirmation of a successor in interest does not strip the borrower who transferred the ownership interest of any protections under Regulation X.[130]

As explained in part V.A., the Bureau received many comments objecting to the use of the term prior borrower on the grounds that it was confusing and inaccurate. A number of

[130] As described in the section-by-section analysis of § 1026.2(a)(11), *infra*, the Bureau is making parallel revisions to similar commentary with respect to Regulation Z's requirements.

commenters also expressed concern that the Bureau's proposal would not provide adequate protection to transferor borrowers or the estates of transferor borrowers.

As many commenters noted, the term prior borrower is inapt because a transferor borrower may still be liable on the mortgage note and may have significant legal interests at stake with respect to the mortgage loan. For example, the servicer may continue to report the performance of the loan on the transferor borrower's credit report, and, in the event of foreclosure, the transferor borrower could be liable for any deficiency, depending on the contract terms and applicable State law. The Bureau also recognizes that, when a transferor borrower dies, the estate and its representative have an important role to play and that Regulation X can provide valuable information and protections to estates even after confirmation of a successor in interest.

In light of these considerations, the Bureau does not intend for the final rule to take away the protections that Regulation X currently provides for living transferor borrowers or for estates of transferor borrowers and their representatives and has significantly revised proposed comment 30(d)-2 to make this clear. As finalized, comment 30(d)-3 provides that, even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of Regulation X with respect to the borrower who transferred the ownership interest to the successor in interest.

The Bureau acknowledges that, under the final rule, servicers will sometimes be required to comply with the Mortgage Servicing Rules in Regulation X with respect to more than one person—such as the transferor borrower or the transferor borrower's estate and the confirmed successor in interest, as well as, in some cases, multiple confirmed successors in interest who each acquire an ownership interest in a property. Although some commenters expressed concern

about this, the Bureau notes that the Mortgage Servicing Rules already may apply with respect to more than one borrower for a particular mortgage loan. Spouses, for example, are commonly jointly obligated on the mortgage note, and the Mortgage Servicing Rules apply with respect to each borrower in such cases. In addition, the final rule includes new § 1024.32(c)(4), which makes it clear that servicers generally do not need to send Regulation X notices to confirmed successors in interest if the notices would be duplicative of notices sent to another borrower on the account. Accordingly, the Bureau does not believe that applying the Mortgage Servicing Rules in Regulation X to confirmed successors in interest presents novel challenges for servicers in this regard.

Section 1024.31 Definitions

Confirmed Successor in Interest

For clarity and ease of reference, the Bureau is adding a definition of confirmed successor in interest to § 1024.31 in the final rule. As finalized, § 1024.31 defines confirmed successor in interest for purposes of subpart C of Regulation X as 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 subpart C of Regulation X. This new definition was not part of the proposal but is consistent with how the Bureau used the term confirmed successor in interest in the preamble to the proposal. The Bureau is also finalizing a definition of successor in interest, as discussed below.

Delinquency

Section 1024.31 contains definitions for various terms that are used throughout the provisions of subpart C of Regulation X. It does not contain a generally-applicable definition of the term "delinquency." However, delinquency is defined for the specific purposes of

§§ 1024.39(a) and (b) and 1024.40(a) as beginning "on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee."[131] Delinquency is not defined for purposes of other sections of subpart C, including § 1024.41(f)(1), which prohibits a servicer from making the first notice or filing for foreclosure unless "[a] borrower's mortgage loan obligation is more than 120 days delinquent."

To ensure that the term "delinquency" is interpreted consistently throughout Regulation X's mortgage servicing rules, the Bureau proposed to remove the current definition of delinquency applicable to §§ 1024.39(a) and (b) and 1024.40(a) and to add a general definition of delinquency in § 1024.31 that would apply to all sections of subpart C.[132] The Bureau proposed to define delinquency as a period of time during which a borrower and the borrower's mortgage loan obligation are delinquent. The proposed definition would have provided that a borrower and a borrower's mortgage loan obligation are delinquent beginning on the day a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, became due and unpaid, until such time as the outstanding payment is made.[133] Delinquency under the proposed definition would not have been triggered by a borrower's failure to pay a late fee, consistent with current comments 39(a)-1.i and 40(a)-3. The Bureau believed that it was unlikely that servicers would initiate foreclosure on borrowers who are current with respect to

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

principal, interest, and escrow payments solely because of a failure to pay accumulated late charges. In contrast with the definition of delinquency currently found in comments 39(a)-1.i and 40(a)-3, the proposed definition would not have included the phrase "for a given billing cycle." The proposal explained that, as used in the context of the live contact and continuity of contact requirements under §§ 1024.39 and 1024.40, respectively, "for a given billing cycle" was intended to ensure that the servicer met the respective requirements of those rules during each billing cycle in which the borrower was delinquent. However, such a definition would have created incongruities if applied to the 120-day foreclosure referral waiting period in § 1024.41(f)(1)(i).

The Bureau sought to provide servicers, borrowers, and other stakeholders with clear guidance on how to determine whether a borrower is delinquent for purposes of Regulation X's servicing provisions and when the borrower's delinquency began. Since the publication of the 2013 RESPA Servicing Final Rule, the Bureau had received numerous inquiries about how servicers should calculate delinquency with respect to those provisions of the Mortgage Servicing Rules that refer to delinquency but do not define delinquency. In particular, stakeholders had asked the Bureau how servicers should calculate the 120-day foreclosure referral waiting period set forth in § 1024.41(f)(1)(i).[134]

The Bureau also proposed three new comments to the proposed definition of delinquency. Proposed comment 31 (Delinquency)-1 essentially restated existing comments 39(a)-1.i and 40(a)-3 by stating that a borrower becomes delinquent beginning the day on which

[134] For example, in advance of the proposal, some servicers that apply a borrower's payments to the oldest outstanding periodic payment sought guidance from the Bureau about how to calculate the length of a borrower's delinquency. *See* Am. Bankers Ass'n. Letter to Bureau of Consumer Fin. Prot. (Oct. 24, 2014), *available at* http://www.aba.com/Advocacy/commentletters/Documents/ABALetterRollingDelinquencies102414.pdf.

the borrower fails to make a periodic payment, even if the servicer grants the borrower additional time after the due date to pay before charging the borrower a late fee.

Proposed comment 31 (Delinquency)-2 addressed how delinquency should be calculated if a servicer applies a borrower's payments to the oldest outstanding periodic payment. Proposed comment 31 (Delinquency)-2 would have clarified that, if a servicer applies payments to the oldest outstanding periodic payment, the date of the borrower's delinquency must advance accordingly. The proposed comment included an example illustrating this concept. The Bureau understood from its outreach that many servicers credit payments made to a delinquent account to the oldest outstanding periodic payment; in fact, the Fannie Mae's and Freddie Mac's model deeds of trust require this.[135] The Bureau also understood that most servicers already do not treat such a borrower as seriously delinquent and do not initiate loss mitigation procedures or seek to foreclose on that borrower. As such, the Bureau explained that the proposed comment would not place a significant additional burden on most servicers. Moreover, because the proposed comment would not have required servicers to apply payments to the oldest outstanding periodic payment, consistent with the Bureau's decision in the context of the 2013 TILA Servicing Final Rule, servicers who do not apply payments to the oldest outstanding periodic payment would be unaffected.

Proposed comment 31 (Delinquency)-3 would have permitted servicers to apply a payment tolerance to partial payments under certain circumstances. The Bureau learned from its

[135] *See, e.g.*, Fannie Mae, *Security Instruments*, https://www.fanniemae.com/singlefamily/security-instruments (security instruments for various states but with a uniform covenant that payments shall be applied to each periodic payment in the order in which it became due); Fannie Mae & Freddie Mac, California Single Family Uniform Instrument, Form 3005-4, *available at* https://www.fanniemae.com/content/legal_form/3005w.doc; Fannie Mae & Freddie Mac, New York Single Family Uniform Instrument, Form 3033, *available at* https://www.fanniemae.com/content/legal_form/3033w.doc.

pre-proposal outreach that some servicers elect or are required to treat borrowers as having made a timely payment even if they make payments that are less than the amount due by some small amount (perhaps as a result of a scrivener's error or a recent ARM payment adjustment), such that the account is reflected as current in the servicer's systems. Proposed comment 31 (Delinquency)-3 would have permitted servicers that elect to advance outstanding funds to a borrower's mortgage loan account to treat the borrower's insufficient payment as timely, and therefore not delinquent, for purposes of Regulation X's mortgage servicing rules. The comment would have clarified, however, that if a servicer chooses not to treat the borrower as delinquent for purposes of subpart C of Regulation X, the borrower is not delinquent as defined in § 1024.31. This clarification was intended to prevent servicers from selectively applying a payment tolerance only where doing so benefits the servicer. The Bureau sought comment on whether it should limit servicers' use of a payment tolerance to a specific dollar amount or percentage of the periodic payment amount and, if so, what the specific amount or percentage should be.

The Bureau sought comment regarding whether the proposed definition of delinquency had the potential of interfering with industry's existing policies and procedures and on whether there were better ways to articulate the proposed definition. The Bureau received a number of comments. Most commenters generally supported the proposal, and some stated that it reflected industry's general understanding of the term. One industry commenter expressed concern with the proposal's treatment of a borrower as delinquent until such time as the outstanding payment is made. The commenter noted that, in the section-by-section analysis of § 1024.41(i) discussing duplicative requests, the Bureau assumed that a borrower who is performing on a permanent loan modification does not meet the definition of delinquency that the Bureau was proposing. The

commenter stated that a borrower performing on a permanent loan modification may not have made all outstanding payments and therefore would be considered delinquent under the proposal, contrary to the Bureau's assumption.

Several industry commenters expressed concern that the proposal addressed only breaches of the mortgage loan obligation regarding the borrower's periodic payment obligation and did not specifically address other breaches of the mortgage loan obligation. They stated that, in addition to delinquency, borrowers may breach mortgage contracts in other ways, including through, for example, non-occupancy of the property, waste, damage to the property, and civil or criminal violations that could result in forfeiture of the property.[136] A few industry commenters expressed concern that a borrower's failure to pay taxes or insurance outside of escrow would not meet the proposed definition of delinquency. Some industry commenters requested that the Bureau clarify whether these types of contractual defaults would be considered a delinquency that would trigger the 120-day period under § 1024.41(f)(1)(i) during which a servicer may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure. Several industry commenters requested that the 120-day foreclosure referral waiting period under § 1024.41(f)(1)(i) not apply when borrowers commit "waste" or abandonment in violation of the underlying mortgage contract because these forms of default impair the value of the collateral.

Many industry commenters also expressed concern that the proposal did not specifically address "rolling delinquencies." These commenters described rolling delinquencies as situations

[136] The Bureau notes that these other types of breaches are sometimes referred to as non-monetary breaches or non-monetary defaults, even though they may involve a monetary aspect (such as failure to pay homeowners association dues or taxes outside of escrow).

where the borrower becomes delinquent, resumes making payments but does not make all outstanding payments to cure the delinquency, and the servicer's application of payments to the oldest outstanding payment advances the borrower's delinquency. A primary concern among commenters was a situation where a servicer would never be able to pursue foreclosure because a borrower is delinquent but never becomes more than 120 days delinquent because of the rolling delinquency. In this circumstance, § 1024.41(f)(1)(i), as described above, would prohibit the servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure. Industry commenters urged the Bureau to provide clarity on the application of § 1024.41(f)(1)(i) to rolling delinquencies. A few commenters suggested the Bureau permit servicers to file for foreclosure when a borrower has been continuously delinquent for a period of time, but does not becomes more than 120 days delinquent. Two commenters requested that the Bureau clarify that servicers have the right to accelerate the mortgage loan if permitted by State law and the contract and can then refer the mortgage loan to foreclosure if the accelerated amount is not paid after 120 days.

One consumer advocacy group expressed support for the clarification in proposed comment 31 (Delinquency)-2 that, 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. This commenter recommended the Bureau consider requiring servicers to apply borrower payments to the oldest outstanding periodic payment. This commenter said that this guidance is consistent with Fannie Mae and Freddie Mac guidelines and, as such, should not impose significant costs on industry.

Several industry commenters and one consumer advocacy group expressed support for proposed comment 31 (Delinquency)-3. Some industry commenters stated that servicers do not

always advance outstanding funds to address the insufficient payment. They said, for example, that servicers may use escrow funds to make up the delinquency. One consumer advocacy group recommended that the Bureau limit servicers' use of a payment tolerance to 10 dollars. Several industry commenters requested that a limit on payment tolerances not be set, but recommended that, if the Bureau did set a limit, such a limit should be set at a dollar amount rather than a percentage. One industry commenter suggested that any limit be set at an amount not to exceed five dollars.

For the reasons discussed below, the Bureau is adopting the definition of delinquency in § 1024.31 with changes from the proposal. The Bureau is adopting a revised definition of delinquency in § 1024.31 and adopting comments 31(Delinquency)-1 and -2 with revisions for clarity. The Bureau is making minor revisions to comment 31 (Delinquency)-3 in light of comments, and is adopting new comment 31(Delinquency)-4 for further clarity.

As adopted, the definition of delinquency in § 1024.31 explains that delinquency means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. It further explains that 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.

The Bureau recognizes that the proposed language indicating that the delinquency ends when the outstanding payment is made may have caused uncertainty as to whether a borrower performing on a permanent loan modification would have been delinquent under the proposed definition of delinquency. Accordingly, the Bureau is revising the definition of delinquency to clarify that 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. By providing that the delinquency exists only until no periodic payment is due and unpaid, the revised definition of delinquency addresses a situation where a borrower may not have made the outstanding payment, but no periodic payment is due and unpaid. For example, a borrower performing under a permanent loan modification agreement may not have made all outstanding payments but may be making all periodic payments due and owing under the modified contract terms. Thus, a borrower performing on a permanent loan modification is not delinquent under § 1024.31.

The definition of delinquency in § 1024.31 applies only for purposes of the mortgage servicing rules in Regulation X. It is not intended to affect industry's existing policies and procedures for identifying and working with borrowers who are late or behind on their payments, or existing requirements imposed by other laws or regulations, such as the Fair Credit Reporting Act and Regulation V. Servicers may use different definitions of "delinquency" for operational purposes. Servicers may also use different or additional terminology when referring to borrowers who are late or behind on their payments—for example, servicers may refer to borrowers as "past due" or "in default," and may distinguish between borrowers who are "delinquent" and "seriously delinquent."

The Bureau is finalizing comment 31 (Delinquency)-1 to provide further clarity and reflect the changes to § 1024.31. Comment 31 (Delinquency)-1 explains that 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. Comment 31 (Delinquency)-1 clarifies that the delinquency lasts until no periodic payment is due and unpaid.

The Bureau is finalizing comment 31 (Delinquency)-2 substantially as proposed, with minor revisions for clarity. Comment 31 (Delinquency)-2 provides that 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. It provides an illustrative example. The Bureau notes that some commenters asked about how proposed comment 31 (Delinquency)-2 would impact a servicer's obligations under the 120-day foreclosure referral waiting period in § 1024.41(f)(1)(i). Because the definition of delinquency in § 1024.31 applies to all provisions of subpart C of Regulation X, it applies to § 1024.41(f)(1)(i). Therefore, if a servicer credits a payment by a delinquent borrower to the oldest missed payment, the result is that the 120-day foreclosure referral waiting period in § 1024.41(f)(1)(i) is advanced.

The Bureau declines to adopt a requirement in the final rule that servicers must apply payments to the oldest outstanding periodic payment. As the Bureau has previously explained, such a requirement would provide limited consumer benefit and may pose a conflict with State law.[137] The Bureau continues to believe, however, as it stated in the 2012 TILA Servicing Proposal, that this method of crediting payments provides greater consumer protection.[138] The Bureau will continue to monitor the market to evaluate servicers' payment crediting practices and those practices' effects on consumers.

The Bureau is finalizing comment 31 (Delinquency)-3 with changes from the proposal.

[137] 78 FR 10901, 10956 (Feb. 14, 2013).
[138] *See* 77 FR 57318, 57352-53 (Sept. 17, 2012).

Final comment 31 (Delinquency)-3 provides that, 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. Comment 31 (Delinquency)-3 thus does not specify a method by which a servicer covers a payment tolerance, unlike the proposal. The Bureau received comments indicating that servicers may cover a payment tolerance in a variety of ways, including by advancing the outstanding payment amount to a borrower's account, as suggested in the proposal, and applying escrow funds to make up the delinquency. The Bureau understands that these servicers would prefer not to initiate early intervention communications, continuity of contact requirements, or loss mitigation procedures with those borrowers for that given billing cycle. The Bureau does not intend to mandate how servicers cover a payment tolerance. Servicers are permitted to use any method permitted by applicable law to cover a payment tolerance. However, the Bureau reminds servicers of their obligations to make full and timely payments from escrow[139] and cautions that reliance on application of a payment tolerance to escrow funds should not, for example, occasion a default in the payment of property taxes.

The Bureau understands that servicers may collect the amounts included in a payment tolerance from the borrower at a later date. The Bureau believes that such a practice would still fall within the scope of the comment but cautions that a servicer may not cancel or rescind a payment tolerance applied for a given billing cycle for purposes of determining the date on which the borrower's delinquency began.

The Bureau declines to set a tolerance limit in the rule. The Bureau understands that the

[139] 12 CFR 1024.34(a).

maximum amount servicers use for a payment tolerance is generally relatively small, ranging from $10 to $50.[140] It is not clear from the comments that a tolerance limit should be adopted, or what an appropriate limit would be. As a servicer's application of a payment tolerance is voluntary and, as noted above, prevents a borrower from becoming delinquent, the Bureau does not believe a tolerance limit is necessary to protect against borrower harm.

Finally, in light of comments, the Bureau is adopting new comment 31 (Delinquency)-4 to address a creditor's right to accelerate payment under the contract. Comment 31 (Delinquency)-4 provides that subpart C of Regulation X does not prevent a creditor from exercising a right provided by a mortgage loan contract to accelerate payment for a breach of that contract. Comment 31 (Delinquency)-4 further explains that 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.

As noted above, several industry commenters requested that the final rule address breaches of the underlying mortgage agreement other than the borrower's monthly periodic payment obligation or rolling delinquencies where the borrower is delinquent but does not become more than 120 days delinquent. Two commenters requested that the final rule clarify the right to accelerate the mortgage loan if permitted by State law and the contract. The Bureau previously explained the relationship between acceleration and delinquency in the preamble to

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

the 2013 TILA Servicing Final Rule. The Bureau explained that, because the definition of "periodic payment" is intended to reflect the consumer's contractual obligation, to the extent a consumer's mortgage loan has been accelerated (such that the periodic payment constitutes the total amount owed for all principal and interest), this total accelerated amount may be appropriately accounted for within this definition of a periodic payment,[141] and would constitute the new amount due. Comment 31 (Delinquency)-4 applies to permissible acceleration permitted based on any breach of the underlying mortgage loan obligation. Depending on the contract, this could include, for example, the borrower's failure to pay the monthly periodic payment amount on the payment due date as well as the borrower's failure to comply with other components of the contract, such as requirements to pay property taxes, maintain insurance, or pay late fees. If the borrower reinstates the loan or otherwise cures the arrearage following acceleration, the borrower would no longer be delinquent under the definition set forth in § 1024.31.

Certain industry commenters requested an exemption from the 120-day foreclosure referral waiting period under § 1024.41(f)(1)(i) where there is a breach of the underlying mortgage agreement other than the borrower's monthly periodic payment obligation. Section 1024.41(f)(1) prohibits a servicer from making the first notice or filing required under applicable law for any judicial or non-judicial foreclosure process unless one of three circumstances occurs: the mortgage loan obligation is more than 120 days delinquent, the foreclosure is based on a borrower's violation of a due-on-sale clause, or the servicer is joining the foreclosure of a

[141] 78 FR 10902, 10954 (Feb. 14, 2013).

superior or subordinate lienholder.[142] The Bureau is not providing exemptions from the requirements of § 1024.41(f)(1) for breaches of the contract other than the borrower's monthly periodic payment obligation. In the Amendments to the 2013 Mortgage Rules, the Bureau declined to exempt servicers from the borrower protections set forth in § 1024.41 for delinquent borrowers simply because these borrowers may have breached other components of the underlying mortgage, such as requirements to pay property taxes, maintain insurance, or pay late fees.[143] The Bureau expressed concern that additional exemptions would create uncertainty and could potentially be construed in a manner to permit evasion of the requirements of § 1024.41(f). Additionally, the Bureau explained that an exemption from the pre-foreclosure review period is not appropriate merely because foreclosure is based upon an obligation other than the borrower's monthly payment.[144] In many instances, these borrowers are experiencing financial distress and may benefit from time to seek loss mitigation.[145]

For similar reasons, the Bureau again declines to adopt a specific exemption from § 1024.41(f)(1) for situations where a borrower may be committing "waste" in violation of an underlying mortgage agreement. The Bureau explained in the Amendments to the 2013 Mortgage Rules that it was concerned that such an exemption could be used to circumvent the 120-day prohibition for borrowers who are also delinquent.[146] The Bureau also noted that what constitutes waste is a very fact-specific determination.[147] The Bureau recognizes that, as some

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[142] The Bureau is amending § 1024.41(f)(1)(iii) to include a servicer's joining of a superior or subordinate lienholder. *See* section-by-section analysis of § 1024.41(f)(1)(iii).
[143] Amendments to the 2013 Mortgage Rules, 78 FR 60382, 60406 (Oct. 1, 2013).
[144] *Id*.
[145] *Id*.
[146] *Id*.
[147] *Id*.

commenters suggested, § 1024.41(f)(1) may disadvantage servicers in situations where the property deteriorates during the 120-day foreclosure referral waiting period. However, the Bureau continues to believe that borrowers may be harmed by the risks associated with a broader set of exemptions from the requirements of § 1024.41(f)(1).

Additionally, the Bureau declines to adopt an exception to § 1024.41(f)(1) for rolling delinquencies. The Bureau does not want to encourage servicers to proceed to foreclosure in situations, where, as explained above, a borrower may have only missed one or two payments. Additionally, the Bureau believes that servicers may have alternative means for addressing situations where a borrower is delinquent but does not become more than 120 days delinquent, including acceleration of the loan where permitted under the contract and applicable law, as discussed in comment 31 (Delinquency)-4.

Successor in Interest

The Bureau proposed to add a definition of successor in interest to § 1024.31 that would be broader than the category of successors in interest contemplated by current § 1024.38(b)(1)(vi) and would cover all categories of successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act. The proposed definition stated that a successor in interest is a person to whom an ownership interest in a property securing a mortgage loan is transferred from a prior borrower, provided that the transfer falls under an exemption specified in section 341(d) of the Garn-St Germain Act. The Bureau is finalizing the definition of successor in interest with several adjustments to address concerns raised by commenters.

As explained in part V.A., some industry commenters objected to the use of the Garn-St Germain Act framework, and many industry commenters urged the Bureau to narrow the scope

of the definition of successor in interest substantially—for example, to limit the scope to just situations involving death or death or divorce. Others urged the Bureau to exclude anyone who has not assumed the mortgage loan obligation from the definition of successor in interest. Some suggested excluding certain types of transactions, such as reverse mortgages.

Consumer advocacy group commenters generally supported use of the Garn-St Germain Act framework and urged the Bureau to broaden the definition to include various categories that are not covered by the Garn-St Germain Act but that are similar to the Garn-St Germain Act categories. They suggested, for example, that the definition should include unmarried partners, relatives other than a spouse or child of the borrower who obtain an interest in the home through a quitclaim deed, unrelated transferees, and co-homeowners who did not sign the original loan.

Some commenters raised questions about whether the Bureau intended to incorporate the occupancy requirements of the Garn-St Germain Act implementing regulations administered by the OCC in 12 CFR part 191. An industry commenter suggested that the Bureau should omit reference to the Garn-St Germain Act and instead enumerate the categories of transfer of ownership that would qualify for regulatory protection, in order to avoid unintended consequences.

A large number of commenters of various types expressed concern about the use of the term prior borrower. These commenters noted that the borrower who transfers an interest may still be liable on the loan obligation (absent a release) and may still be a borrower for purposes of Regulation X.

For the reasons explained in part V.A. and in this discussion, the Bureau is finalizing the definition of successor in interest in § 1024.31 using the Garn-St Germain Act framework but with both substantive and technical changes. The Bureau continues to believe that it is

appropriate to use the categories of transfers of ownership interest protected under section 341(d) of the Garn-St Germain Act in defining successors in interest for purposes of subpart C of Regulation X. Congress recognized that it would be inappropriate to allow lenders to exercise a due-on-sale clause with respect to these transferees, and the Bureau has concluded that it would also be inappropriate to allow these categories of transferees to lose their ownership interests because they were unable to avail themselves of the protections of the Mortgage Servicing Rules with respect to a mortgage loan on their property. As explained in part V.A., the Bureau has considered commenters' suggestions about substantially broadening or narrowing the Garn-St Germain Act categories but has concluded that the Garn-St Germain Act categories remain the best framework to use in defining successor in interest in the final rule.

Because a transferor borrower may still be a borrower after the transfer, the final rule substitutes "borrower" where "prior borrower" appeared in the proposed definition of successor in interest. For clarity and ease of reference, the final rule does not include a cross-reference to the Garn-St Germain Act but instead lists the specific categories of transfers that could render a transferee a successor in interest. The categories are modeled on categories protected by section 341(d) of the Garn-St Germain Act. To ensure that the scope of the final rule does not change without further rulemaking by the Bureau, the Bureau has omitted the Garn-St Germain Act category that protects from due-on-sale enforcement any other transfer or disposition described in the Garn-St Germain Act implementing regulations.[148] Additionally, in restating the categories in the final rule, the Bureau has not incorporated certain scope limitations imposed by

[148] 12 U.S.C. 1701j-3(d)(9). The Bureau has also omitted several categories in section 341(d) of the Garn-St Germain Act that do not result in a transfer of ownership interest and that are therefore irrelevant for successor in interest status. *See* 12 U.S.C. 1701j-3(d)(1), (2), (4); *see also* 79 FR 74176, 74181 n.28 (Dec. 15, 2014) (noting that the proposal would not apply to the situations described in these categories).

the Garn-St Germain Act or its implementing regulations, such as the exclusion for reverse mortgages and certain occupancy requirements in 12 CFR 191.5(b). As explained in part V.A., these adjustments promote clarity and consistency with other aspects of Regulation X and with the final definition of successor in interest in Regulation Z. The final rule thus provides that the term successor in interest means a person to whom an ownership interest in a property securing a mortgage loan subject to subpart C is transferred from a borrower, provided that the transfer is:

- A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- A transfer to a relative resulting from the death of a borrower;
- A transfer where the spouse or children of the borrower become an owner of the property;
- A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
- 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 final rule adds new comment 31 (Successor in interest)-1 to the § 1024.31 definition of successor in interest to clarify how the definition applies when property is held in a joint tenancy or a tenancy by the entirety. A trade association questioned whether the proposal would protect a non-borrower owner who holds property in a tenancy by the entirety when the borrower owner dies if there is not a transfer under state law. This commenter stated that, if property is held in a tenancy by the entirety, it is not clear that there is a property transfer when one owner dies because State law may provide that the survivor continues to own an undivided interest in

the entire property and that the late spouse's property interest simply terminates.

The Bureau believes it is important to extend protections to a tenant by the entirety upon the death of a borrower spouse and to a joint tenant upon the death of a borrower joint tenant. The Bureau is adding comment 31 (Successor in interest)-1 to the definition of successor in interest in § 1024.31 to clarify that, 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 Regulation X's subpart C 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.

The final rule also adds new comment 31 (Successor in interest)-2 to the definition of successor in interest, which clarifies how the definition applies to *inter vivos* trusts. The comment explains that, 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. This clarification ensures that a trust is not a successor in interest under these circumstances. It is also consistent with comment 3(a)-10 to Regulation Z, which explains that credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization.

Section 1024.32 General Disclosure Requirements

32(c) Successors in Interest

Several commenters raised concerns as to how disclosures required under various mortgage servicing rules in Regulation X apply to successors in interest. To address these concerns, the final rule includes new § 1024.32(c) relating to general disclosure requirements for

successors in interest. Section 1024.32(c)(1) through (3) relates to an optional notice and acknowledgment form that servicers may provide upon confirmation to confirmed successors in interest who have not assumed the mortgage loan obligation and are not otherwise liable on the mortgage loan obligation. Section 1024.32(c)(4) generally relieves a servicer of the obligation to provide disclosures to a confirmed successor in interest and to engage in live contacts with a confirmed successor as required by §§ 1024.17, 1024.33, 1024.34, 1024.37, and 1024.39 if the servicer is complying with those requirements with respect to another borrower on the account.

32(c)(1) Optional Notice with Acknowledgment Form

Some commenters expressed concern about the requirement to send mortgage servicing notices to confirmed successors in interest who are not liable on the loan obligation under State law, suggesting that such contact could be viewed as confusing or harassing or could result in liability under the FDCPA. The Bureau believes that the notices and other communications required by the Mortgage Servicing Rules in Regulation X provide critical information that successors in interest will generally want to receive. However, the Bureau also recognizes that the language typically used in many of the required notices could suggest that the recipient is liable on the loan obligation. As explained in part V.A., the Bureau is therefore providing servicers with various options they can use to help ensure that confirmed successors in interest who are not liable on the mortgage loan obligation are not confused or deceived about their status. For the reasons set forth in part V.A. and in this discussion, § 1024.32(c) provides one such option, authorizing servicers, upon confirming such a successor in interest, to provide a written notice that explains the confirmed successor in interest's status together with a separate acknowledgment form for the confirmed successor in interest to return.

Section 1024.32(c)(1) provides that the written notice must clearly and conspicuously

explain:

- The servicer has confirmed the successor in interest's identity and ownership interest in the property;
- 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;
- 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;
- In order to receive such notices and communications, the successor in interest must execute and provide to the servicer an acknowledgment form that:
    - 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
    - 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
    - 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

- Whether or not the successor in interest executes the acknowledgment form, 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. Section 1024.32(c)(1) also provides that the acknowledgment form may not require acknowledgment of any items other than those identified in § 1024.32(c)(1)(iv).

Comment 32(c)(1)-1 explains that a servicer may identify in the acknowledgment form examples of the types of notices and communications that the successor in interest may be entitled to receive, such as periodic statements and mortgage servicing transfer notices. The comment clarifies that 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.

As explained in the section-by-section analysis of § 1024.32(c)(2), a servicer that provides a written notice and acknowledgment form meeting these requirements need not send any further disclosures under the Mortgage Servicing Rules in Regulation X 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 and provides it to the servicer. As discussed in part V.A., the Bureau believes that, together with § 1024.32(c)(2), § 1024.32(c)(1) provides servicers a cost-effective means that they can use to help ensure that confirmed successors in interest understand their status.

32(c)(2) Effect of Failure to Execute Acknowledgment

New § 1024.32(c)(2) addresses the consequences if a servicer provides a written notice and acknowledgment form in compliance with § 1024.32(c)(1) to a confirmed successor in interest who is not liable on the mortgage loan obligation. In that event, § 1024.32(c)(2) provides that 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 and provides it to the servicer.[149] The Bureau believes it is appropriate for § 1024.32(c)(2) to excuse servicers from the requirement to send notices required by the Mortgage Servicing Rules in Regulation X if the servicers have not received an acknowledgment back from a confirmed successor in interest, because doing so relieves servicers of the costs associated with sending notices to confirmed successors in interest who are not liable on the mortgage loan obligation and do not want notices. However, if a confirmed successor in interest assumes a mortgage loan obligation under State law, the information in the initial notice and acknowledgment form is no longer applicable, and § 1024.32(c)(2) accordingly does not suspend the servicer's obligation to provide notices required by the Mortgage Servicing Rules in Regulation X.

Comment 32(c)(2)-1 explains that 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. This ensures that confirmed successors in interest who have received an initial

[149] Similar provisions in §§ 1026.20(f), 1026.39(f), and 1026.41(g) address the disclosures required by Regulation Z.

written notice and acknowledgment form pursuant to § 1024.32(c)(1) do not lose the opportunity to receive Regulation X mortgage servicing disclosures due to lapse of time.

Comment 32(c)(2)-2 explains the effect of a successor in interest's revocation of an 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)(3) Additional Copies of Acknowledgment

As comment 32(c)(2)-1 explains, confirmed successors in interest may return an executed acknowledgment that complies with § 1024.32(c)(1)(iv) to the servicer at any time after confirmation. Once a confirmed successor in interest has returned an executed acknowledgment form, the servicer must provide to the confirmed successor in interest any written disclosures required by §§ 1024.17, 1024.33, 1024.34, 1024.37, and 1024.39 (as well as any required by Regulation Z) and comply with the live contact requirements in § 1024.39(a) unless and until the confirmed successor in interest revokes the acknowledgment. The Bureau wants to ensure that confirmed successors in interest who have received an initial written notice and acknowledgment form pursuant to § 1024.32(c)(1) are able to avail themselves of these protections at any time, even if they are unable to locate the original acknowledgment form they received. Accordingly, § 1024.32(c)(3) specifies that, if a servicer provides a confirmed successor in interest with a

written notice and acknowledgment form in accordance with § 1024.32(c)(1), 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.

32(c)(4) Multiple Notices Unnecessary

The Bureau is adding new § 1024.32(c)(4) to the final rule to make it clear that servicers generally do not need to provide a duplicate copy of a notice required by the Mortgage Servicing Rules in Regulation X to a confirmed successor in interest if the servicer is providing the same notice to another borrower. A number of commenters asked the Bureau to clarify whether servicers must send multiple copies of notices required by the Mortgage Servicing Rules in Regulation X after a successor in interest is confirmed. One industry commenter explained that most servicing platforms only allow for automated delivery of correspondence to one address. It indicated that a requirement to send items to multiple addresses or through differing communication channels would create significant operational and systems challenges with concomitant costs. Another industry commenter suggested that the Bureau could adopt commentary to the Mortgage Servicing Rules in Regulation X that is similar to proposed Regulation Z comment 41(a)-5.ii, which indicated that servicers do not need to send duplicative periodic statements to confirmed successors in interest.

The Bureau agrees that it would be unnecessarily burdensome to require servicers to provide the notices or communications required by the Mortgage Servicing Rules in Regulation X to a confirmed successor in interest if the same notice is already being provided to another borrower on the account. Section 1024.32(c)(4) accordingly clarifies that, 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. Section 1024.32(c)(4) also provides that a servicer is 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.[150] Section 1024.32(c)(4) thus reduces the burden imposed on servicers by Regulation X's successor in interest provisions.

Section 1024.32(c)(4) does not, however, limit the ability of any confirmed successor in interest to request copies of notices and other information through an information request under § 1024.36. Thus, confirmed successors in interest who are not receiving the required servicing communications because the servicer is providing them to another borrower on the account can request additional information as needed through the information request process.

Comment 32(c)(4)-1 explains that 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. The comment notes, for example, that 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.

Legal Authority

The Bureau relies on section 19(a) of RESPA, 12 U.S.C. 2617(a), to implement new § 1024.32(c). For the reasons explained above, the Bureau believes that these amendments are

[150] For example, if a servicer confirms multiple successors in interest and complies with the live contact requirements in § 1024.39(a) with respect to one confirmed successor in interest, the servicer is not required to comply with the live contact requirements with respect to any of the other confirmed successors in interest.

necessary to provide a cost-effective process by which servicers can provide confirmed successors in interest the information required by this final rule.

Section 1024.35 Error Resolution Procedures

35(e) Response to Notice of Error

35(e)(5) Omissions in Responding to Requests for Documentation

Section 1024.35 sets forth error resolution requirements that servicers must follow to respond to errors asserted by borrowers. When a servicer determines that no error occurred, § 1024.35(e)(4) generally requires the servicer to provide in response to the borrower's request, at no charge, copies of documents and information relied upon by the servicer in making that determination. As explained in part V.A., the Bureau proposed to apply § 1024.35 as well as the information request requirements of § 1024.36 to confirmed successors in interest. The Bureau requested comment on whether any information that could be provided to successors in interest under §§ 1024.35 and 1024.36 presents privacy concerns and whether servicers should be permitted to withhold any information from successors in interest out of such privacy concerns. In light of the concerns expressed in the comments received, as discussed in part V.A. and in this discussion, the Bureau is adding new § 1024.35(e)(5) to allow servicers to limit the information that confirmed successors in interest may obtain under § 1024.35(e)(4) about other borrowers and to limit the information that borrowers may obtain under § 1024.35(e)(4) about potential and confirmed successors in interest who are not the requesting party.

As noted in part V.A., some industry commenters recommended that disclosures under §§ 1024.35 and 1024.36 be limited due to privacy concerns. An industry commenter suggested that these privacy concerns apply not only to the disclosure of the existing borrower's personal, private information to the confirmed successor in interest, but also to the disclosure of the

confirmed successor in interest's personal, private information to the existing borrower. A consumer advocacy group commented that the original borrower's private financial information is not relevant to the successor in interest and that no successor in interest should have a need for information about the original borrower's location or contact information.

The Bureau continues to believe that it is important for confirmed successors in interest to be able to obtain information about the terms, status, and payment history of the mortgage loan. However, the Bureau recognizes that providing additional financial information about other borrowers or contact or location information for them could raise privacy concerns and is not likely to assist the confirmed successor in interest in maintaining the property. The Bureau believes that this is especially true with respect to a borrower's Social Security number. Based on similar potential privacy concerns, the Bureau also believes that it is appropriate to allow servicers to withhold certain information provided by potential and confirmed successors in interest from borrowers on the account who are not the person to whom the information pertains.

To address these potential privacy concerns, § 1024.35(e)(5) provides that, in responding to a request for documentation under § 1024.35(e)(4), 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: (1) the information pertains to a potential or confirmed successor in interest who is not the requester; or (2) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. This provision allows servicers to limit the information that confirmed successors in interest can obtain about other borrowers (including other confirmed successors in interest) and to protect

certain sensitive information about potential and confirmed successors in interest from disclosure to borrowers who are not the person to whom the information pertains.[151] The Bureau believes the restrictions in § 1024.35(e)(5) appropriately balance potential privacy concerns with the need to make mortgage information available to confirmed successors in interest and other borrowers.

Section 1024.36 Requests for Information

36(a) Information Request

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

[151] The final rule does not, however, make any changes with respect to the types of information that joint borrowers who are not confirmed successors in interest can obtain about each other.

or guarantor. The Bureau is adopting comment 36(a)-2 with changes.

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

In the proposal, the Bureau stated its belief that, with respect to a loan for which Fannie Mae or Freddie Mac is the trustee, investor, or guarantor, servicers may not need to identify both the trustee and the trust in response to all requests for information seeking ownership information. If a borrower knows that Fannie Mae or Freddie Mac is the trustee, investor, or guarantor, the borrower could look to the Fannie Mae or Freddie Mac servicing guide and related bulletins to learn what loss mitigation options are available, what foreclosure processes the servicer must follow, how the servicer is compensated, and a wide variety of other information applicable to the loan, without distinction based on the particular trust. Borrowers can also access the appropriate website to learn more information once they know which entity's guidelines apply; both Fannie Mae and Freddie Mac maintain websites containing a considerable amount of information relating to standards affecting borrowers' mortgage loans. Fannie Mae

and Freddie Mac also maintain dedicated telephone lines for borrower inquiries. Thus, requiring a servicer to identify Fannie Mae or Freddie Mac as the owner or assignee of the loan (without also identifying the name of the trust) could give borrowers access to the critical information about loss mitigation options and other investor requirements.

At the same time, the Bureau sought to preserve a borrower's right to obtain the identity of the trust by submitting a request for information under § 1024.36(a). Prior to the proposal, consumer advocacy groups informed the Bureau that borrowers need trust-identifying information in order to raise certain claims or defenses during litigation, as well as to exercise the extended right of rescission under § 1026.23(a)(3) when applicable. Further, the Bureau understood that, for loans held in a trust for which Fannie Mae or Freddie Mac is not the trustee, investor, or guarantor, a borrower would need the trust-identifying information to determine what loss mitigation options are available.

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

The Bureau believed that proposed comment 36(a)-2 would preserve a borrower's access

to information while reducing burden on servicers by no longer requiring them to obtain trust-identifying information for loans for which Fannie Mae or Freddie Mac is the trustee, investor, or guarantor. Further, the Bureau believed that, by requiring servicers to provide specific trust-identifying information upon a request expressly seeking such information, proposed comment 36(a)-2 would ensure that borrowers who do need specific trust-identifying information could obtain it. The proposed amendments also restructured comment 36(a)-2 for clarity. The proposed changes would not have affected a servicer's existing obligations with respect to loans not held in a trust for which an appointed trustee receives payments on behalf of the trust, or with respect to any loan held in a trust for which neither Fannie Mae nor Freddie Mac is the trustee, investor, or guarantor.

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

Similarly, the proposed amendments would not have changed a servicer's requirements for responding to requests for ownership information for loans for which the Government National Mortgage Association (Ginnie Mae) is the guarantor. As noted in both current

comment 36(a)-2 and proposed comment 36(a)-2.ii.B, Ginnie Mae is not the owner or assignee of the loan solely as a result of its role as a guarantor. In addition, servicing requirements for those loans are governed by the Federal agency insuring the loan—such as the Federal Housing Association, the Department of Veterans Affairs, the Rural Housing Services, or the Office of Public and Indian Housing—not by Ginnie Mae itself.

Industry commenters generally expressed strong support for the Bureau's proposal to permit servicers to respond to nonspecific requests for information about the owner or assignee of the loan by providing only the name and contact information for Fannie Mae and Freddie Mac, as applicable. These commenters stated that permitting servicers to provide this more limited information for loans where Fannie Mae or Freddie Mac was the investor, guarantor, or trustee would reduce the burden on servicers without adversely affecting a borrower's ability to obtain information on the owner or assignee of the mortgage loan. Certain industry commenters requested limits on the proposed requirement for a servicer to provide the name and number of the trust or pool even when borrowers expressly request such information. One commenter stated that providing this specific information would be burdensome and not relevant to the transaction and requested that the final rule include a list of legitimate reasons or conditions that a borrower must certify exist before a servicer would be required to provide this trust-identifying information.

Freddie Mac expressed general support for proposed comment 36(a)-2 but said that the language "investor, guarantor, or trustee" could refer to loans that were not covered by Freddie Mac's servicing guide. The commenter explained that Freddie Mac's servicing guide applies when Freddie Mac is the trustee of a trust that owns a mortgage loan, because servicers of loans held by such trusts are required to service those loans in accordance with the servicing guide.

However, the commenter stated that where Freddie Mac is acting as an investor or guarantor, rather than a trustee, the servicer is not necessarily required to comply with all of the requirements of the servicing guide with respect to that loan. The commenter recommended that the Bureau remove the reference to "investor" or "guarantor" in proposed comment 36(a)-2.

Consumer advocacy groups urged the Bureau not to adopt the proposed revisions to comment 36(a)-2. These commenters stated that there is a distinction between guarantors and owners of a loan, and that the Fannie Mae servicing guide does not fully apply to all loans that Fannie Mae guarantees. These commenters stated that borrowers may not be able to obtain all relevant information regarding loss mitigation options in Fannie Mae's servicing guide.

The Bureau conducted further outreach with FHFA, Freddie Mac, and Fannie Mae. According to these stakeholders, where Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held, the loan is subject to the servicing requirements of Fannie Mae's or Freddie Mac's servicing guide. Fannie Mae or Freddie Mac are the owner or trustee for the overwhelming majority of loans in which they have an interest. Both Fannie Mae and Freddie Mac, however, are investors in other loans, often through a securitization trust, for which they are not the trustee, and, in these cases, the requirements of the servicing guides may not necessarily apply. Where loans are held in such securitization trusts, the Bureau understands that servicers would be able to identify the name of the trust that holds the loan.

The Bureau is finalizing comment 36(a)-2 with changes. Comment 36(a)-2.i explains that, 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. The comment further explains that a servicer is not the owner or assignee for purposes of § 1024.36(d) if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation. Comment 36(a)-2.i also explains that Ginnie Mae 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.

Comment 36(a)-2.ii explains that, 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 information, as applicable, as set forth in comment 36(a)-2.ii.A through C.

The Bureau is finalizing comment 36(a)-2.ii.A with changes. Comment 36(a)-2.ii.A explains that, for any request for information where Fannie Mae or Freddie Mac is not the owner of the loan or the trustee of the securitization trust in which the loan is held, the servicer complies with § 1024.36(d) by responding to a borrower's request for information by providing information on: the name of the trust and the name, address, and appropriate contact information for the trustee. It provides an illustrative example. Comment 36(a)-2.ii.A makes clear that, where Fannie Mae or Freddie Mac is not the owner or trustee of the securitization trust in which the loan is held, a servicer must respond to even a nonspecific request for the identity of the owner or assignee by providing information about the trust and contact information for the trustee.

The Bureau is also finalizing comment 36(a)-2.ii.B with changes. The Bureau proposed comment 36(a)-2.ii.B to provide a limited exception where a borrower makes a nonspecific

request for information regarding the owner or assignee of a loan for which Fannie Mae or Freddie Mac is the investor, guarantor, or trustee. As explained in the proposal, the Bureau understood that such loans would be subject to servicing requirements set forth in Fannie Mae's or Freddie Mac's respective servicing guide. However, the Bureau now understands that this reasoning may not apply to loans for which Fannie Mae or Freddie Mac is the investor or guarantor of the loan, but not the trustee or owner of the loan.

Accordingly, the Bureau is finalizing comment 36(a)-2.ii.B to explain that, if the request for information did not expressly request the name or number of the trust or pool and Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held, the servicer complies with § 1024.36(d) by responding to a borrower's request for information by providing the name and contact information for Fannie Mae or Freddie Mac, as applicable, without also providing the name of the trust. The Bureau's intent, by referring to the "owner or the trustee of the securitization trust in which the loan is held" in comment 36(a)-2.ii.B, is to permit a servicer to respond to a nonspecific request for information by providing only the name and contact information for Fannie Mae or Freddie Mac, as applicable, for only those loans that are subject to Fannie Mae's or Freddie Mac's servicing guide but not for other loans.

The Bureau is adding comment 36(a)-2.ii.C to explain that if the request for information did expressly request the name or number of the trust or pool and Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held, the servicer complies with § 1024.36(d) by responding to a borrower's request for information by providing 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.

The Bureau is not adopting additional requirements for borrowers making specific information requests, as some commenters suggested. Requiring borrowers to provide additional detail regarding their requests would not alleviate any burden on servicers associated with providing required trust-identifying information but would impose a burden on borrowers in obtaining information.

36(d) Response to Information Request

36(d)(3) Omissions in Responding to Requests

Section 1024.36 sets forth servicers' obligations in responding to a request for information from a borrower. As explained in part V.A., the Bureau proposed to apply § 1024.36 as well as the notice of error requirements of § 1024.35 to confirmed successors in interest. The Bureau requested comment on whether any information that could be provided to successors in interest under §§ 1024.35 and 1024.36 presents privacy concerns and whether servicers should be permitted to withhold any information from successors in interest out of such privacy concerns. In light of the concerns expressed in the comments received, as discussed in part V.A. and in this discussion, the Bureau is adding new § 1024.36(d)(3) to allow servicers to limit the information that confirmed successors in interest may obtain under § 1024.36 about other borrowers and to limit the information that borrowers may obtain under § 1024.36 about potential and confirmed successors in interest who are not the requesting party.

As noted in part V.A., some industry commenters recommended that disclosures under §§ 1024.35 and 1024.36 be limited due to privacy concerns. An industry commenter suggested that these privacy concerns apply not only to the disclosure of the existing borrower's personal, private information to the confirmed successor in interest, but also to the disclosure of the confirmed successor in interest's personal, private information to the existing borrower. A

consumer advocacy group commented that the original borrower's private financial information is not relevant to the successor homeowner and that no successor in interest should have a need for information about the original borrower's location or contact information.

The Bureau continues to believe that it is important for confirmed successors in interest to be able to obtain information about the terms, status, and payment history of the mortgage loan. However, the Bureau recognizes that providing additional financial information about other borrowers or contact or location information for them could raise privacy concerns and is not likely to assist the confirmed successor in interest in maintaining the property. The Bureau believes that this is especially true with respect to a borrower's Social Security number. Based on similar potential privacy concerns, the Bureau also believes that it is appropriate to allow servicers to withhold certain information provided by potential and confirmed successors in interest from borrowers on the account who are not the person to whom the information pertains.

To address these potential privacy concerns, § 1024.36(d)(3) provides that, in responding 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: (1) the information pertains to a potential or confirmed successor in interest who is not the requester; or (2) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. This provision allows servicers to limit the information that confirmed successors in interest can obtain about other borrowers (including other confirmed successors in interest) and to protect certain sensitive information about potential and confirmed successors in interest from disclosure to borrowers who are not the

person to whom the information pertains.[152] The Bureau believes the restrictions in § 1024.36(d)(3) appropriately balance potential privacy concerns with the need to make mortgage information available to confirmed successors in interest and other borrowers.

36(i) Successors in Interest

The Bureau proposed a new request for information requirement regarding the confirmation of a successor in interest's identity and ownership interest in the property. Proposed § 1024.36(i) would have required a servicer to respond to a written request that indicates that the person may be a successor in interest and that includes the name of the prior borrower and information that enables the servicer to identify that borrower's mortgage loan account. Under the proposal, a servicer would have to respond to such a request by providing the person with information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. With respect to the written request, the proposal would have required the servicer to treat the person as a borrower for the purposes of the procedural requirements of § 1024.36(c) through (g). The proposal also would have provided that, if a servicer has established an address that a borrower must use to request information pursuant to § 1024.36(b), a servicer must comply with the requirements of § 1024.36(i) only for requests received at the established address. Servicers would have been required to comply with proposed § 1024.36(i) before confirming the successor in interest's identity and ownership interest in the property. For the reasons set forth in part V.A. and in this discussion, the Bureau is finalizing § 1024.36(i) with adjustments to clarify the parties' obligations during the

[152] The final rule does not, however, make any changes with respect to the types of information that joint borrowers who are not confirmed successors in interest can obtain about each other.

confirmation process.

Commenters expressed divergent views regarding proposed § 1024.36(i). Consumer advocacy groups suggested that the Bureau should not limit the provision to written requests. They suggested that successors in interest are unlikely to know about the request for information procedure due to their lack of prior contact with the servicer. They also suggested that a successor in interest should not need to use specific wording to trigger a response under § 1024.36(i). A consumer advocacy group suggested that a servicer should have to respond if the information provided is sufficient to put the servicer on notice that the person is a potential successor in interest.

A number of consumer advocacy groups also objected to the requirement in the proposal that a potential successor in interest use a specific address if a servicer has established one. One such group indicated that expecting a successor in interest, who often is handling many complicated personal, legal, and financial affairs in a time of grieving, to ascertain and use the servicer's established contact address would be unreasonable and overly burdensome. This group also suggested that the Bureau could require servicers, upon hearing of the death of a borrower, to send a letter to the home containing information about how successors in interest can confirm their status and explaining the servicer's obligations under § 1024.36(i). Another consumer advocacy group suggested that, if a servicer receives a request for information at a non-designated location, it should respond by notifying the potential successor in interest of the correct address for submission of requests for information.

This commenter indicated that successors in interest need prompt information identifying specific documents and that vague references to "probate documents" or "legal documents," without further elaboration, are not sufficient. It noted that delays cause significant problems

because loans may become delinquent to the point that loss mitigation options that would have been available earlier are no longer viable. It suggested that, for purposes of servicers responding to requests for information under § 1024.36(i), the final rule should define promptly as within 15 days for clarity.

Consumer advocacy groups also urged the Bureau not to require resubmission of requests that seek information other than the description of documents required for confirmation, suggesting that requiring successors in interest to resubmit such requests would cause unnecessary delay and could be confusing. These commenters suggested that servicers should be required to respond to requests for information on other issues related to the servicing of the mortgage once they have received proof of successor in interest status, with time running from the date the successor in interest provides necessary documentation showing successor in interest status. A consumer advocacy group stated that this would save time and streamline the process, where time is often of the essence.[153] Another consumer advocacy group urged the Bureau to clarify how § 1024.36(f)(1)(i)'s rule on duplicative information relates to § 1024.36(i). This group suggested that § 1024.36(f)(1)(i)'s rule should only apply if duplicative information was requested by the same person.

Industry commenters raised a variety of different concerns related to the requirements in § 1024.36(i), with some suggesting that the Bureau should not finalize the provision at all and others suggesting changes. Some industry commenters supported the proposal's requirement that requests must be in writing to trigger the requirements of § 1024.36(i). For example, a trade

[153] Consumer advocacy groups also suggested that the Bureau should make the request for information for potential successors in interest privately enforceable. As explained in part V.A., *supra*, the Bureau declines to do so.

association stated that allowing oral requests would create a risk of fraud.

A number of industry commenters also indicated that the Bureau should clarify what it means by "indicates that a person may be a successor in interest" or should substitute narrower language. For example, one trade association suggested § 1024.36(i) should only apply if the requester specifically asks for information on how to confirm the requestor's status as a successor in interest, although the commenter did not think that the final rule should require use of the term successor in interest.[154] Another industry commenter suggested that a servicer should be required to provide information regarding the documents the servicer requires to confirm a person's identity and ownership interest in the property in response to a request that affirmatively states that there has been a transfer of the property, a divorce, legal separation, or death of a borrower, or that the writer has become the owner of the property. This commenter also stated that a servicer should not be required to respond to a request from a non-borrower that does not include any statement that indicates the non-borrower may have an interest in the property.

Industry commenters also requested that, where a servicer has established an address, the final rule should limit servicers' obligation to requests received at that address. They suggested that it would be burdensome for servicers to respond to inquiries from potential successors in interest received at an address other than the established address because it would require servicers to monitor every location where a request for information could be sent. An industry commenter noted that requiring use of the established address would align treatment of requests

[154] Another trade association suggested that the final rule should limit servicers' obligations to written communications that specifically request information about confirming the person's status as a successor in interest or indicate the nature of the transfer of ownership interest. Yet another trade association suggested that the final rule should limit servicers' obligations to written communications that specifically identify the writer as one claiming to be a successor in interest to property rights and the manner in which and under what authority the claim is made.

for information under § 1024.36(i) with how other requests for information are treated under § 1024.36. Other industry commenters suggested that it would facilitate servicers' tracking of requests and that servicers would not be able to respond quickly unless they receive requests through an established address.

A number of industry commenters responded to the Bureau's request for comment regarding what requirements should apply if a potential successor in interest submits a request for information other than a description of the documents required for confirmation. Industry commenters generally urged the Bureau not to require a response unless the successor in interest resubmits the request upon confirmation, and some suggested that the final rule should require servicers to inform potential successors in interest that they would need to resubmit such requests upon confirmation. An industry commenter suggested that it might confuse successors in interest to get a response to an outdated request. Another suggested that resubmission would be much more efficient, in part because any number of variables could have changed the information that the successor in interest is seeking during the elapsed time between initial submission and confirmation. Various industry commenters noted that it would be a significant burden and might require costly systems changes to preserve requests until confirmation. An industry commenter suggested that there is nothing analogous in the servicing requirements that requires a servicer to keep consumer information requests prior to the establishment of a relationship. By contrast, one trade association suggested that the final rule should require servicers to provide confirmed successors in interest information requested prior to confirmation and that the timelines servicers must meet to provide such information should run from time of confirmation.

Industry commenters expressed concerns relating to the timeframes specified in

§ 1024.36(i) and indicated that the process described in the proposal was too rigid. Some trade associations suggested that there should be no deadline imposed. They noted that, with only the loan identified, the servicer may not know, for example, who the claimant is, the nature of the claim, the basis of the claim, whether the claim will be contested, whether the claimant is a minor, or where the borrower lived when the claim arose.[155] These commenters suggested that several rounds of communication are required in all or almost all instances because servicers need to start with basic questions and then move to more detailed questions. These commenters also suggested that servicers might deny claims unnecessarily if the final rule imposes a deadline that does not provide enough time. They also provided a sample model form for the first iteration of servicer requests for information from claimants. They indicated that servicers do not currently maintain the list of documents required by proposed § 1024.36(i) and suggested that a complete list of all documents a servicer might need would overwhelm potential successors in interest. One of these commenters also stated that servicers need to be able to verify a claimant's agent.[156]

An industry commenter also expressed concern that proposed comment 36(i)-1 might be inconsistent with the proposed regulation. It noted that the proposed commentary stated that servicers do not have to provide any additional information that may be requested by the potential successor in interest, while proposed § 1024.36(i) stated that, with respect to the written

[155] Another industry commenter made a similar point, noting that a letter from a potential successor may not provide sufficient information to allow the servicer to identify what documents are required and could, for example, simply state that a borrower died or that a divorce is being executed.

[156] An industry commenter also suggested that proposed § 1024.36(i) would require servicers to violate privacy law requirements by implicitly confirming that a customer has a mortgage loan serviced by the servicer. Disclosing information to potential successors in interest as required under the final rule will not cause a servicer to violate the GLBA or Regulation P because the GLBA and Regulation P permit financial institutions to disclose information to comply with a Federal law or regulation. 15 U.S.C. 6802(e)(8); 12 CFR 1016.15(a)(7)(i).

request, a servicer shall treat the person as a borrower for the purposes of the requirements of § 1024.36(c) through (g).

The Bureau is finalizing the requirements of proposed § 1024.36(i) in § 1024.36(i)(1) and (4), with adjustments in response to the comments received and technical changes for clarity.[157] Like proposed § 1024.36(i), § 1024.36(i)(4) provides that, if a servicer has established an address that a borrower must use to request information pursuant to § 1024.36(b), a servicer must comply with the requirements of § 1024.36(i)(1) only for requests received at the established address.

In light of industry comments indicating that more than one round of communication may be required in some instances, the Bureau has also added language in § 1024.36(i)(2) addressing circumstances where servicers are not able to respond fully based on the information provided in a request under § 1024.36(i)(1). As with other requests under § 1024.36, the Bureau anticipates that servicers may contact the requestor informally to clarify the request and obtain additional relevant information that may be needed to respond to the request. Through such contacts, servicers may be able to obtain any missing information that they need to respond fully within the time limits. However, if a request under § 1024.36(i)(1) 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, § 1024.36(i)(2) allows the servicer to 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

[157] For example, the Bureau has added language in § 1024.36(i)(1) that specifically requires servicers to provide in their written response contact information for further assistance, to ensure that it is clear that this requirement of § 1024.36(d)(1) applies to requests under § 1024.36(i). The Bureau has also substituted "a written description of" for "information regarding." This clarifies that the response must be written and aligns § 1024.36(i) with similar language used in § 1024.38(b)(1)(vi)(B), which refers to a "description" of the documents the servicer reasonably requires to confirm the potential successor in interest's identity and ownership interest in the property.

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 § 1024.36(i)(2) must otherwise comply with the requirements of § 1024.36(i)(1). Notwithstanding the duplicative request rule of § 1024.36(f)(1)(i), if a potential successor in interest subsequently provides the required information specified by the servicer pursuant to § 1024.36(i)(2) either orally or in writing, the servicer must treat the new information, together with the original request, as a new, non-duplicative request under § 1024.36(i)(1), received as of the date the required information was received, and must respond accordingly. These changes should help ensure that servicers can comply with their obligations under § 1024.36(i) in responding to requests that provide very limited information about a potential successor in interest's circumstances.

The Bureau has also incorporated the substance of proposed comment 36(i)-1 into § 1024.36(i)(3), which provides that, in responding to a request under § 1024.36(i)(1) prior to confirmation, the servicer is not required to provide any information other than the information specified in § 1024.36(i)(1) and (2). Section 1024.36(i)(3) also provides that, in responding to a written request under § 1024.36(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. The Bureau believes that addressing these issues in this manner in § 1024.36(i)(3) rather than in the commentary obviates the concern expressed by an industry commenter that the commentary might be inconsistent with the regulation.

As indicated in part V.A., § 1024.36(i) addresses problems faced by successors in interest in confirming their identity and ownership interest in the property securing the mortgage loan

and may help them avoid unnecessary foreclosure on the property. Section 1024.36(i) is complemented by § 1024.38(b)(1)(vi), which requires servicers to maintain certain policies and procedures relating to potential successors in interest. Section 1024.38(b)(1)(vi)(B) requires servicers to have policies and procedures to determine promptly what documents are reasonable to require from successors in interest in particular circumstances, so that the servicer is prepared to provide promptly a description of those documents, while § 1024.36(i) gives potential successors in interest a mechanism to obtain this information from servicers. The separate requirement in § 1024.36(i) is appropriate, in addition to the policies and procedures requirement in § 1024.38(b)(1)(vi), because information regarding the documents the servicer requires to confirm a successor in interest's status may be of importance to each individual potential successor in interest.

As the Bureau explained in the proposal, § 1024.36(i) applies to a broad range of written communications from potential successors in interest. A potential successor in interest does not need to request specifically that the servicer provide information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property. As with other requests for information, the successor in interest also does not need to indicate specifically that the request is a written request under § 1024.36 or to make the request in any particular form. Accordingly, servicers are required to provide the information in response to any written communication indicating that the person may be a successor in interest that is accompanied by the name of the transferor borrower and information that enables the servicer to identify that borrower's mortgage loan account and that is received at the address established by the servicer under § 1024.36(b) if the servicer has established one.

This broad coverage is appropriate because some successors in interest may not be aware

that they need to confirm their identity and ownership interest in the property. As consumer advocacy groups noted, successors in interest may not know the exact words to use in framing their requests. Requiring servicers to respond only to a written communication that actually requests a description of the documents required for confirmation would deprive many successors in interest of the information they need to protect their ownership interest and could subject them to unnecessary foreclosures.

Section 1024.36(i) applies with respect to the servicer's receipt of written communication from any potential successor in interest.[158] Even though a servicer may be unaware at the time of initial contact with a potential successor in interest whether the potential successor in interest is in fact a successor in interest as defined in this final rule, in these situations the servicer should still communicate with the potential successor in interest about confirmation and should not wait until it has reason to believe that the definition of successor in interest is met.

Many requests under § 1024.36(i) may indicate the nature of the transfer of the ownership interest from the transferor borrower to the successor in interest. In those cases, servicers will respond with information that is relevant to that potential successor in interest's specific situation. If the potential successor in interest does not indicate the nature of the transfer of the ownership interest to the potential successor in interest, the final rule allows the servicers to provide a response that includes examples of documents typically accepted to establish identity and ownership interest in a property, indicates that the requestor may obtain a more individualized description of required documents by providing additional information, specifies

[158] Pursuant to the Bureau's Same-Sex Married Couple Policy, *see supra* note 39, a same-sex spouse would be evaluated for confirmation as a successor in interest under § 1024.38(b)(1)(vi) as would any other potential successor in interest. As with any potential successor in interest, confirmation as a successor in interest would depend on whether the person meets the definition of successor in interest in § 1024.31.

what additional information is required to enable the servicer to identify the required documents, and provides contact information for further assistance. As with other situations where servicers are responding to customer inquiries, the Bureau believes that servicers will in many instances contact the potential successor in interest for clarifying information before providing the formal notice required under § 1024.36(i).

Section 1024.36(c) through (g) establishes various requirements governing servicers' responses to requests for information under § 1024.36, such as acknowledgment requirements and time limits. Except as otherwise provided in the final rule, the Bureau believes it is appropriate for servicers to handle requests for information under § 1024.36(i) in the same way that they handle other requests for information under § 1024.36 and therefore has decided to apply the requirements of § 1024.36(c) through (g) to requests under § 1024.36(i). For example, the final rule requires servicers to respond to a request under § 1024.36(i) in writing, as they would for any other request for information. As a result, the information servicers provide will be memorialized, which should help to avoid uncertainty.

The Bureau also concludes that it is appropriate to limit servicers' obligation to respond under § 1024.36(i) to those requests received at an established address if a servicer has established one under § 1024.36(b), as § 1024.36 does for other requests for information. As many industry commenters noted, servicers would have difficulty responding promptly and efficiently to requests for information from potential successors in interest at locations other than the established address. Because servicers that have established an address are not ordinarily required to respond to requests for information received at other locations, servicers would need to train staff and set up systems at these locations to comply with § 1024.36(i). Further, the Bureau anticipates that most successors in interest will be able to send information requests to

the established address. Successors in interest may in some circumstances have access to written communications provided to the transferor borrower that identify the established address. Additionally, under § 1024.36(b), a servicer that establishes an address for receipt of information requests must post the established address on any website maintained by the servicer if the website lists any contact address for the servicer. Furthermore, as explained in the section-by-section analysis of § 1024.38(b)(1)(vi), servicers subject to § 1024.38(b)(1)(vi) must have policies and procedures reasonably designed to ensure that they are able to respond promptly with information that includes the appropriate address for a § 1024.36(i) request upon receiving notice of the existence of a potential successor in interest, even if the notice is oral or received at an address that is not the address a servicer has established for requests under § 1024.36.

Because § 1024.36(c) through (g) applies to requests under § 1024.36(i), § 1024.36(f)(1)(i)'s rule on duplicative information applies to requests under § 1024.36(i). Section 1024.36(i) does not require a servicer to respond to a request if the information requested is substantially the same as information previously requested by the borrower for which the servicer has previously complied with its obligation to respond. The fact that information was previously requested by a different borrower would not excuse a servicer from compliance under § 1024.36(f)(1)(i) because, in that situation, the information would not have been requested "by the borrower" for purposes of § 1024.36(f)(1)(i).[159] Except as provided in § 1024.36(i)(2), a

[159] A trade association commenter suggested that the Bureau should indicate that, if a borrower receives information in response to a request for information and a confirmed successor later requests the same information, the second request should be deemed duplicative unless the first requester (or the first requester's estate) has been released from the loan obligation before the servicer receives the second request. The Bureau does not believe this interpretation would be consistent with the language of § 1024.36 for the reasons stated above. This commenter also asserted that, if a borrower asserts an error and a confirmed successor later asserts the same error, the second assertion should be deemed duplicative. The fact that an error asserted by a confirmed successor in interest is substantially the same as

servicer need not respond to repeated requests under § 1024.36(i) for substantially the same information from the same potential successor in interest, if the servicer has previously complied with its obligation to respond to that potential successor in interest.[160]

Proposed comment 36(i)-1 would have provided that, for the purposes of requests under § 1024.36(i), a servicer would only have been required to provide information regarding the documents the servicer requires to confirm the person's identity and ownership interest in the property, not any other information that may also be requested by the person. As explained above, the Bureau has decided to address this issue in regulation text. As finalized, § 1024.36(i)(3) indicates that, prior to confirmation, the servicer is not required to provide any information the person may request, other than the information specified in § 1024.36(i)(1) and (2). The Bureau is not finalizing proposed comment 36(i)-1 because it would be redundant of § 1024.36(i)(3).

As noted above, industry commenters requested that the Bureau clarify what types of communications might indicate that a person may be a successor in interest for purposes of § 1024.36(i). As finalized, comment 36(i)-1 provides examples of written requests that indicate that a person may be a successor in interest, including a written statement from a person other than a borrower indicating that there has been a transfer of ownership or of an ownership interest

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an error previously asserted by a transferor borrower would not excuse a servicer from compliance with the notice of error requirements in § 1024.35 because, in that situation, the error would not have been previously "asserted by the borrower" for purposes of § 1024.35(i).

[160] For the reasons explained in part V.A., the application of the scope provision in Regulation X's subpart C (§ 1024.30(b)) to successors in interest means that § 1024.36(i), but not § 1024.38(b)(1)(vi), applies to small servicers, with respect to reverse mortgage transactions, and with respect to mortgage loans for which the servicer is a qualified lender. Accordingly, small servicers, for example, are required to respond to requests for information under § 1024.36(i) by providing a written description of the documents the servicer requires to confirm the person's identity and ownership interest in the property, even though small servicers are not required to maintain policies and procedures to decide promptly what documents the servicer reasonably requires to confirm the successor in interest's identity and ownership interest in the property.

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. Providing this non-exhaustive list of examples in the commentary will assist servicers in understanding the types of contacts that constitute requests for information under § 1024.36(i).

The Bureau is also adding comment 36(i)-2, which addresses the time limits for servicers to respond to a request for information under § 1024.36(i). The comment notes that a servicer must respond to a request under § 1024.36(i) not later than the time limits set forth in § 1024.36(d)(2). It explains that 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). The comment also explains that, 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).

The Bureau considered, as an alternative, imposing a rigid, shorter time period, such as 15 days, that would apply to all requests under § 1024.36(i), as some consumer advocacy groups had suggested. The Bureau believes that such a rigid deadline might be difficult to meet for more complex requests and has therefore chosen to impose the same time limits established for other requests for information in § 1024.36, with the expectation that the policies and procedures established pursuant to § 1024.38(b)(1)(vi)(B) will provide for faster responses in appropriate cases when the facts and circumstances make that feasible, in order to avoid the harms that can

result from confirmation delays, including unnecessary foreclosures. In light of those harms, the Bureau also declines to allow servicers more time to respond to requests for information from potential successors in interest than servicers have to respond to other requests for information or to set no time limit, as some industry commenters suggested.

The Bureau is also adding comment 36(i)-3, which addresses agents of potential successors in interest. Once a servicer confirms a successor in interest, the confirmed successor in interest can take various steps through an agent because the confirmed successor in interest is treated as a borrower or consumer for purposes of a number of provisions in Regulations X and Z that permit borrowers or consumers to operate through agents.[161] The proposal, however, did not address agents of potential successors in interest. Existing comment 36(a)-1 addresses agents for purposes of information requests under § 1024.36 but does not apply to information requests that potential successors in interest submit under § 1024.36(i).

The Bureau believes that potential successors in interest should be able to submit requests pursuant to § 1024.36(i) through an agent and is adding comment 36(i)-3 to that end. Comment 36(i)-3 clarifies that an information request pursuant to § 1024.36(i) is submitted by a potential successor in interest if it is submitted by an agent of the potential successor in interest. As a trade association noted in its comment, servicers must be able to verify the agents of potential successors in interest. Comment 36(i)-3 therefore states that servicers 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 the agent provide documentation

[161] *See, e.g.*, Regulation X comments 31 (Loss mitigation application)-1, 35(a)-1, 36(a)-1.

from the potential successor in interest stating that the purported agent is acting on the potential successor in interest's behalf. The comment explains that, upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the potential successor in interest.

The Bureau anticipates that it will be easy for servicers to implement the process described in comment 36(i)-3 because it is modeled on that of comment 36(a)-1, which applies to other types of requests for information under § 1024.36. The Bureau believes comment 36(i)-3 is necessary and helpful because potential successors in interest who are experiencing difficulty in the confirmation process or in understanding the mortgage obligations that encumber their property may turn, for example, to housing counselors or other knowledgeable persons to assist them in addressing such issues.[162]

Section 1024.37 Force-placed Insurance

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

37(c)(2) Content of Notice

37(c)(2)(v)

Under § 1024.37(b), a servicer may not charge a borrower for force-placed insurance "unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan's contract requirement to maintain hazard insurance." Section 1024.37(c)(1) requires a servicer to provide to a borrower an initial notice and a reminder notice before assessing a fee or charge related to force-placed insurance. Sections 1024.37(c)(2) and

[162] For example, the Bureau believes that the clarification in comment 36(i)-3 may be helpful in cases where successors in interest are minors. A trade association commenter indicated that servicers should not be required to enter into contracts with claimants who are minors, but the final rule does not impose any such requirement.

1024.37(d)(2) specify the notices' content. Current § 1024.37(c)(2)(v) requires the initial notice to include a statement that, among other things, "the borrower's hazard insurance is expiring or has expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date . . . ." Section 1024.37(d)(2)(i)(C) requires the reminder notice to include the same statement if, after providing the initial notice, a servicer does not receive any evidence of hazard insurance. These provisions do not specify what a notice must state if a borrower has insufficient coverage, such as when the borrower's insurance provides coverage in a dollar amount less than that required by the mortgage loan contract. The Bureau proposed to amend § 1024.37(c)(2)(v) to address situations in which a borrower has insufficient, rather than expiring or expired, hazard insurance. The Bureau is finalizing § 1024.37(c)(2)(v) as proposed.

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

the force-placed insurance notice,[163] the Bureau believed that servicers and borrowers could benefit if servicers were able to state on the notice itself that the servicer lacks evidence of sufficient coverage.

Accordingly, the Bureau proposed to amend § 1024.37(c)(2)(v) to provide that the force-placed insurance notices must include a statement that the borrower's hazard insurance is expiring, has expired, or provides insufficient coverage, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date or evidence that the borrower has hazard insurance that provides sufficient coverage, as applicable. The Bureau believed that this amendment might enable servicers to provide borrowers with notices that are more accurately tailored for their precise circumstances and potentially avoid confusing a borrower whose coverage is not expiring but is insufficient under the mortgage loan contract. The Bureau solicited comment on whether other modifications to the required content of the force-placed insurance notices are necessary or appropriate to address circumstances in which a servicer force-places insurance for reasons other than expired or expiring coverage.

The Bureau received a number of comments from industry and consumer advocacy groups on its proposal to revise the notices under § 1024.37 to include a statement regarding insufficient coverage. The vast majority of commenters expressed support for the proposed revisions and agreed that a statement regarding insufficient coverage on the notices required by § 1024.37 would provide greater clarity to borrowers. One industry commenter recommended that the notices also include a statement to address a situation where the borrower purchases insurance through a company that the lender or servicer does not allow.

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

The Bureau is finalizing § 1024.37(c)(2)(v) as proposed. Section 1024.37(c)(2)(v) provides that the force-placed insurance notices must include a statement that the borrower's hazard insurance is expiring, has expired, or provides insufficient coverage, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date or evidence that the borrower has hazard insurance that provides sufficient coverage, as applicable. The Bureau declines to further modify the notices to specifically address a circumstance raised by one commenter in which a servicer force-places insurance because the borrower purchases insurance through a company that the lender or servicer does not allow. Where a borrower's hazard insurance does not satisfy the requirements of the mortgage loan contract, a servicer may explain on the force-placed insurance notices that the borrower's hazard insurance provides insufficient coverage. Any additional detail regarding the borrower's specific circumstances may be included with the force-placed insurance notice, on a separate piece of paper, as permitted under § 1024.37(c)(4).

37(c)(4) Additional Information

Section 1024.37(c) currently requires servicers to provide a borrower a notice at least 45 days before assessing a fee or charge related to force-placed insurance. Section 1024.37(c)(4) prohibits a servicer from including in the notice any information other than that required by § 1024.37(c)(2), though a servicer may provide a borrower with additional information on separate pieces of paper in the same transmittal. In the 2013 RESPA Servicing Final Rule, the Bureau explained that providing required information along with additional information in the same notice could obscure the most important information or lead to information overload. The

Bureau instead permitted servicers to provide additional information on separate pieces of paper in the same transmittal.[164]

However, in advance of the proposal, the Bureau received questions regarding whether servicers may include a borrower's mortgage loan account number in the notices required by § 1024.37, including the initial notice required by § 1024.37(c)(1)(i). As indicated in the proposal, the Bureau believed it could be appropriate to give servicers the flexibility to include a borrower's mortgage loan account number in the notices required by § 1024.37. An account number is a customary disclosure on communications between a servicer and a borrower. The Bureau also believed that including the borrower's mortgage loan account number could help facilitate communications between a borrower and a servicer regarding a notice provided under § 1024.37. Therefore, the Bureau proposed to amend § 1024.37(c)(4) to grant servicers flexibility to include a borrower's mortgage loan account number in the notices required by § 1024.37.

The Bureau received numerous comments on the proposal to permit the inclusion of the mortgage loan account number in the notices required by § 1024.37. The Bureau received several comments from industry and consumer advocacy groups expressing support for the proposal to allow servicers to include the mortgage loan account number in the written notice required by § 1024.37(c)(1)(i). One industry commenter representing credit unions stated that including the mortgage loan account number in the written notices would help borrowers identify the loan for which the written notice applies and would facilitate communication between the borrower and the credit union. Another industry commenter stated that permitting servicers to

[164] 78 FR 10695, 10770 (Feb. 14, 2013).

include the mortgage loan account number in the notices required by § 1024.37(c)(1)(i) and (ii), and (e)(1)(i) would improve clarity and continuity in the communications between borrowers and servicers. A consumer advocacy group requested that the inclusion of the mortgage loan account number in the written notices be made mandatory to avoid confusion that may occur when servicers manage two or more accounts that pertain to the same borrower. One industry commenter recommended that such inclusion remain discretionary.

Several commenters urged the Bureau to allow other additional information to be included in the notices required by § 1024.37. One industry commenter requested that § 1024.37(c)(4) permit servicers to include information that would improve borrower understanding of the notices, while another recommended that the rule permit additional information so long as it was related to the general content of the notice. One consumer advocacy group stated that the notices under § 1024.37 would provide borrowers greater clarity if they included information on the dollar amount of coverage the servicer claims is needed and the fair market value of the home that the servicer used to determine the amount of coverage needed. The commenter stated that this information would help borrowers understand why the servicer was delivering a notice resulting from insufficient insurance coverage. Several industry commenters requested that § 1024.37(c)(4) also permit the notices to include information on force-placed insurance required by State law. These commenters stated that delivering the notices required by § 1024.37(c) and State law separately increases costs to servicers and may result in borrower confusion.

The Bureau is adopting § 1024.37(c)(4) as proposed. Section 1024.37(c)(4) provides that, except for the mortgage loan account number, a servicer may not include any information other than the information required by § 1024.37(c)(2) in the written notice required by

§ 1024.37(c)(1)(i). It further explains that a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal. The Bureau declines to make the inclusion of the mortgage loan account number in the notices required by § 1024.37 mandatory, as one commenter recommended. Servicers should have flexibility to determine when the inclusion of the mortgage loan account number in the notices would be helpful to facilitating communication and borrower understanding.

The Bureau is not permitting additional types of information to be included in the notices required by § 1024.37, as some commenters recommended. In contrast to the mortgage loan account number, the Bureau believes that including information such as the dollar amount of coverage the servicer claims is needed or information on force-placed insurance required by State law, as suggested by some commenters, could obscure the required notices or create information overload in the required notices that could result in borrower uncertainty. Although such information may be helpful to borrowers, the Bureau believes it is more appropriately included on separate pieces of paper in the same transmittal under § 1024.37(c)(4).

37(d) Reminder Notice

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

37(d)(2)(ii) Servicer Lacking Evidence of Continuous Coverage

The Bureau proposed to amend § 1024.37(d)(2)(ii), which specifies the information a force-placed insurance reminder notice must contain if a servicer does not have evidence that the borrower has had hazard insurance in place continuously. Currently, this provision does not address the scenario in which a servicer receives evidence that the borrower has had hazard insurance in place continuously, but the servicer lacks evidence that the continued hazard insurance is sufficient under the mortgage loan contract. While a servicer could include on a

separate piece of paper a statement clarifying that it is purchasing insurance due to insufficient coverage, the Bureau believed it may be preferable for the notice itself to be clear in this regard.

In order to align the requirements of § 1024.37(d)(2)(ii) with the proposed changes to § 1024.37(c)(2)(v), the Bureau proposed to amend § 1024.37(d)(2)(ii) to clarify that the provision applies when a servicer has received hazard insurance information after providing the initial notice but has not received evidence demonstrating that the borrower has had sufficient hazard insurance coverage in place continuously. The Bureau solicited comment on whether other modifications to the required contents of the force-placed insurance notices are necessary or appropriate to address circumstances in which a servicer force-places insurance for reasons other than expired or expiring coverage.

The majority of commenters discussing the proposed revisions to § 1024.37 expressed support for the Bureau's proposal to address situations in which a borrower has insufficient, rather than expiring or expired, hazard insurance. A discussion of these comments is included in the section-by-section analysis of § 1024.37(c)(2).

The Bureau is finalizing § 1024.37(d)(2)(ii) as proposed. Final § 1024.37(d)(2)(ii) explains that this provision applies when a servicer has received hazard insurance information after delivering to a borrower or placing in the mail the notice required by § 1024.37(c)(1)(i), but has not received, from the borrower or otherwise, evidence demonstrating that the borrower has had sufficient hazard insurance coverage in place continuously. The requirements of final § 1024.37(d)(2)(ii) align with the requirements of final § 1024.37(c)(2)(v), discussed in the section-by section analysis of § 1024.37(c)(2)(v).

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

The Bureau proposed to correct the statement in § 1024.37(d)(2)(ii)(B) that the notice must set forth the information required by § 1024.37(c)(2)(ii) through (iv), (x), (xi), and (d)(2)(i)(B) and (D). Section 1024.37(d)(2)(ii)(B) should state that the notice must also set forth information required by § 1024.37(c)(2)(ix). The Bureau did not receive comments on this proposed correction and is finalizing § 1024.37(d)(2)(ii)(B) as proposed.

37(d)(3) Format

Section 1024.37(d)(3) sets forth certain formatting requirements for the reminder notice required by § 1024.41(c)(1)(ii). The reminder notice contains some of the same information as the initial notice provided under § 1024.37(c)(1)(i). The proposal would have made a technical correction to § 1024.37(d)(3) to state that the formatting instructions in § 1024.37(c)(3), which apply to information set forth in the initial notice, also apply to the information set forth in the reminder notice provided pursuant to § 1024.37(d). The purpose of this change was to clarify that, when the same information appears in both the initial and the reminder notice, that information must be formatted the same in both notices. The Bureau did not receive comments in response to the proposed technical correction to § 1024.37(d)(3) and is finalizing as proposed.

37(d)(4) Additional Information

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

sought comment on this proposal to grant servicers flexibility to include a borrower's mortgage loan account number in the notices required by § 1024.37 and whether there are other types of information that servicers should be allowed to include that would not obscure the required disclosures or create information overload. The Bureau also proposed technical corrections to renumber comment 37(d)(4)-1 as comment 37(d)(5)-1 and to correct an erroneous reference in that comment to § 1024.37(d)(4), which instead should be a reference to § 1024.37(d)(5).

The Bureau received numerous comments in response to its proposal to permit servicers to include a borrower's mortgage loan account number in the notices required by § 1024.37. The Bureau has included a discussion of these comments in the section-by-section analysis of § 1024.37(c)(4).

The Bureau is finalizing § 1024.37(d)(4) as proposed, and is renumbering comment 37(d)(4)-1 as comment 37(d)(5)-1 with certain changes for clarity. Section 1024.37(d)(4) explains that, except for the borrower's mortgage loan account number, a servicer may not include any information other than information required by § 1024.37(d)(2)(i) or (ii), as applicable, in the written notice required by § 1024.37(c)(1)(ii). It further explains that a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal. Final § 1024.37(d)(4) is consistent with final § 1024.37(c)(4), which allows servicers to include the borrower's mortgage loan account number in the written notice required by § 1024.37(c)(1)(i).

37(d)(5) Updating Notice with Borrower Information

For the reasons discussed above, the Bureau is renumbering comment 37(d)(4)-1 as comment 37(d)(5)-1 and is finalizing comment 37(d)(5)-1 substantially as proposed. Comment 37(d)(5)-1 explains that, 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. It clarifies that, for purposes of § 1024.37(d)(5), a reasonable time is no more than five days (excluding legal holidays, Saturdays, and Sundays). The final rule revises current comment 37(d)(5)-1 to remove superfluous language regarding a servicer preparing a written notice in advance of delivering or placing the notice in the mail and that the information received is about the borrower, and to make clear that five days is the maximum period of time that would be considered a reasonable time for purposes of § 1024.37(d)(5).

37(e) Renewing or Replacing Force-placed Insurance

37(e)(4) Additional Information

The Bureau proposed two amendments with respect to § 1024.37(e)(4). First, the Bureau proposed to amend § 1024.37(e)(4) to give servicers the flexibility to include a borrower's mortgage loan account number in the notice required by § 1024.37(e)(1)(i). For the reasons discussed in the section-by-section analysis of § 1024.37(c)(4), the Bureau explained that giving servicers flexibility to include the account number may benefit servicers and borrowers without obscuring other information on the notice or leading to information overload. Second, the Bureau proposed a technical correction to remove the unnecessary words "[a]s applicable" from § 1024.37(e)(4).

Numerous commenters discussed the Bureau's proposal to permit the inclusion of the mortgage loan account number in the notices required by § 1024.37. The Bureau has included a discussion of these comments in the section-by-section analysis of § 1024.37(c)(4).

The Bureau is finalizing § 1024.37(e)(4) substantially as proposed, with a technical correction. Section 1024.37(e)(4) provides that, except for the borrower's mortgage loan

account number, a servicer may not include any information other than information required by § 1024.37(e)(2) in the written notice required by § 1024.37(e)(1). It further explains that a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal. The Bureau is making a technical correction in this final rule to add a missing "the" to the second sentence of § 1024.37(e)(4).

Legal Authority

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

Section 1024.38 General Servicing Policies, Procedures, and Requirements

38(b) Objectives

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

Current § 1024.38(b)(1)(vi) provides that servicers shall maintain policies and procedures that are reasonably designed to achieve the objective of, upon notification of the death of a borrower, promptly identifying and facilitating communication with the successor in interest of the deceased borrower with respect to the property securing the deceased borrower's mortgage loan. The Bureau proposed several modifications to this requirement.

Proposed § 1024.38(b)(1)(vi) would have expanded the current policies and procedures requirement regarding identifying and communicating with successors in interest. Proposed § 1024.38(b)(1)(vi)(A) would have required servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can promptly identify and facilitate communication with any potential successors in interest upon notification either of the death of a borrower or of any transfer of the property securing a mortgage loan. Proposed § 1024.38(b)(1)(vi)(B) would have required servicers to maintain policies and procedures that

are reasonably designed to ensure that the servicer can, upon identification of a potential successor in interest—including through any request made by a potential successor in interest under § 1024.36(i) or any loss mitigation application received from a potential successor in interest—provide promptly to the potential successor in interest a description of the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and how the person may submit a written request under § 1024.36(i) (including the appropriate address). Proposed § 1024.38(b)(1)(vi)(C) would have required servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can, upon the receipt of such documents (*i.e.*, those the servicer reasonably requires to confirm that person's identity and ownership interest in the property), promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. Proposed commentary to § 1024.38(b)(1)(vi) would have clarified these requirements, including providing examples illustrating documents a servicer may require under certain circumstances. For the reasons stated in part V.A. and this discussion, the Bureau has decided to finalize proposed § 1024.38(b)(1)(vi) and related commentary with a number of changes.

In their comments, consumer advocacy groups generally supported the substance of the proposed changes to § 1024.38(b)(1)(vi), noting that they would bring greater clarity to the process and specificity regarding servicers' obligations. A number of these groups urged the Bureau to move all of the requirements of § 1024.38(b)(1)(vi) to a privately enforceable section of Regulation X and to require small servicers to comply with them. Some commenters also suggested that the final rule should create an appeal process or notice of error procedure, with a

private right of action, that successors in interest could use to challenge unfavorable determinations relating to successor status. Consumer advocacy groups also encouraged the Bureau to establish specific time limits for the confirmation process.

Consumer advocacy groups emphasized the need for servicers to identify promptly the specific documents required for confirmation. The office of a State Attorney General commented that, in its experience, servicers do not consider the successor in interest's circumstances or State-specific requirements and instead impose the same requirements on all potential successors in interest, forcing them to expend time and resources needlessly to establish their ownership interest in the property. This commenter supported requiring servicers to implement State-specific policies relating to necessary proof to establish an ownership interest under proposed § 1024.38(b)(1)(vi)(B). It stated that the required documents should take into account the relevant jurisdiction, the successor in interest's specific situation, and the documents already in the servicer's possession.

A number of industry commenters urged the Bureau to provide greater clarity regarding servicers' obligations in confirming successors in interest. These commenters requested clear and reasonable requirements for identifying and communicating with successors in interest. Some of these industry commenters urged the Bureau to lay out a process for identifying and communicating with potential successors and to provide a safe harbor in the final rule for servicers that comply with that process.

Various industry commenters expressed concern that the proposal might require them to provide legal advice to potential successors in interest. A trade association suggested that it would be a monumental task to create and maintain over time policies and procedures appropriate for each jurisdiction to address the varying situations that might arise. Another

industry commenter urged the Bureau to indicate that the burden of determining the appropriate jurisdictionally valid documents lies with the successor in interest. It recommended that the final rule limit a servicer's obligation to a potential successor in interest to providing general examples of documents typically accepted to establish identity and ownership interest in the property, similar to the examples provided in proposed comment 38(b)(1)(vi)-2.

Industry commenters also stated that servicers should not be put in the position of having to adjudicate the validity of a potential successor's ownership interest, particularly when there are competing claims from other parties. These commenters indicated that they did not want to get drawn into contentious divorce disputes or other civil litigation.

Two trade associations stated that the Bureau should permit servicers to adjust their practices to the actual and potential risks of illegal activity or erroneous information. They referred to requirements under the Bank Secrecy Act to verify the identity of persons who seek to open accounts and stated that servicers need to be able to decline to recognize a claimant as a borrower, where appropriate.

A number of industry commenters expressed concern about the requirement in proposed § 1024.38(b)(1)(vi)(A) to identify potential successors in interest. An industry commenter suggested that a requirement to identify any potential successors in interest could open servicers up to civil liability where the servicer has not identified all potential successors in interest. Other industry commenters expressed concern that proposed § 1024.38(b)(1)(vi)(A) might require servicers to seek out potential successors in interest. Some industry commenters suggested that the Bureau should not extend the scope of the obligation in § 1024.38(b)(1)(vi) beyond the scope of the definition of successor in interest in proposed § 1024.31. At least one industry commenter found the interplay between proposed § 1024.38(b)(1)(vi) and proposed § 1024.36(i) confusing.

Commenters expressed widely divergent views on whether § 1024.38(b)(1)(vi) should require servicers to respond to potential successors in interest in writing. Consumer advocacy groups and the office of a State Attorney General recommended requiring a written response, given the continuing problems they have seen successors in interest encounter in establishing their status. The office of a State Attorney General stated that requiring a written response would prevent miscommunications and provide clear documentation in the event of a transfer of servicing. This commenter noted that it has worked with homeowners who have had to reestablish their successor in interest status after a transfer of servicing rights. It also indicated that a homeowner who has written confirmation from a previous servicer is less likely to have to repeat the successor identification process with the new servicer. Consumer advocacy groups suggested that a written response might be helpful if a potential successor in interest is seeking assistance from an advocate. These groups indicated that, if a potential successor in interest is not confirmed, the servicer should include in its written response an explanation of reasons for the determination as well as an explanation of how to submit a written notice of error.

In contrast, industry commenters indicated that the Bureau should not require a written response. Some industry commenters suggested that servicers should have the flexibility to decide whether confirmation of the successor in interest should be in writing, oral, or both. One industry commenter noted that, if there is a danger of foreclosure, for example, a servicer could communicate a confirmation determination verbally to avoid mailing delays.

Commenters also expressed divergent views on whether the final rule should define the term promptly for purposes of § 1024.38(b)(1)(vi) and, if so, how. Several consumer advocacy groups suggested that promptly for purposes of § 1024.38(b)(1)(vi) should mean within five business days. Another consumer advocacy group suggested that, for purposes of notifying

successors in interest of confirmation, promptly should be defined as within 30 days. This commenter noted that delays in confirmation determinations can cause or increase delinquencies and harm prospects for loss mitigation. A consumer advocacy group suggested that the Bureau should consider the loss mitigation timetable that requires notices for an incomplete application, a complete application, and a deadline for review as a reference in defining promptly for purposes of § 1024.38(b)(1)(vi).

An industry commenter urged the Bureau not to define promptly, noting that what should be considered promptly may vary depending on the scenario. It suggested that servicers should have a reasonable amount of time, not less than 30 days, to make confirmation decisions. Another industry commenter suggested 60 days, while a trade association suggested that the final rule should provide a reasonable time of up to 90 calendar days, unless a dispute is being litigated. Another industry commenter suggested that 10 business days from determination of confirmation would suffice.[165]

The Bureau agrees with the various commenters that emphasized the need for greater specificity regarding the policies and procedures that servicers need to implement with regard to successors in interest. In light of the comments received, the Bureau has made adjustments to the proposed regulation text and commentary and has added additional commentary in the final rule. As finalized, § 1024.38(b)(1)(vi)(A) requires servicers to maintain policies and procedures reasonably designed to ensure that, upon receiving notice of the death of a borrower or of any transfer of the property securing a mortgage loan, the servicer can promptly facilitate

[165] As discussed below, both consumer advocacy groups and industry commenters criticized the requirement in proposed comment 38(b)(1)(vi)-3 that, in general, a servicer's policies and procedures would have to be reasonably designed to ensure that the servicer confirms a successor in interest's status and notifies the person of the servicer's confirmation at least 30 days before the next applicable milestone provided in comment 41(b)(2)(ii)-2.

communication with any potential or confirmed successors in interest regarding the property. Section 1024.38(b)(1)(vi)(B) requires servicers to 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 it 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). Section 1024.38(b)(1)(vi)(C) requires servicers to maintain policies and procedures reasonably designed to ensure that, upon the receipt of such documents, the servicer can 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.

In light of the other requirements that it is finalizing in § 1024.38(b)(1)(vi), the Bureau has concluded that there is no need to finalize the aspect of proposed § 1024.38(b)(1)(vi)(A) that would have required a servicer to have policies and procedures in place reasonably designed to identify promptly any potential successors in interest upon notification of the death of a borrower or of any transfer of the property securing a mortgage loan. In lieu of finalizing the proposed requirement to identify potential successors in interest that raised concerns for many industry commenters, the Bureau has provided illustrative examples in new comment 38(b)(1)(vi)-1 of how a servicer may be notified of the existence of a potential successor in interest. The Bureau believes that these revisions clarify servicers' responsibilities under § 1024.38(b)(1)(vi) without undermining the protections provided for potential successors in interest.

The Bureau recognizes, as it did at the proposal stage, that the policies and procedures

requirement must apply to a broader category of persons than the definition of successor in interest under the final rule. As many consumer advocacy groups and other commenters noted, a potential successor in interest may come to the attention of the servicer in a variety of ways. The policies and procedures requirements in § 1024.38(b)(1)(vi) are triggered as soon as a servicer receives notice of the existence of a potential successor in interest, even if the servicer does not know at the time of initial contact whether a potential successor in interest in fact meets the Regulation X definition of successor in interest. A servicer may not wait until it has reason to believe that the transfer falls within the scope of the definition to engage in the communications required by § 1024.38(b)(1)(vi). Thus, for example, a servicer's policies and procedures should require the servicer to facilitate communication regarding the proof required to establish successor in interest status with any person who indicates that a borrower has died, even if the servicer is not certain whether the person is in fact a successor in interest.

The final rule, like the proposal, does not require servicers to provide legal advice to successors in interest. As explained in part V.A., the final rule does, however, require a servicer to have policies and procedures in place that are reasonably designed to ensure that the servicer can promptly describe to the successor in interest the documents that the servicer will accept to confirm the potential successor in interest's identity and ownership interest in the property. The types of determinations necessary for a confirmation decision are ones that servicers routinely make for a variety of purposes—for example, in identifying who to serve in a foreclosure action and who should receive other notices required by State law.

As some industry commenters indicated, there may be circumstances where it is not possible for a servicer to make a confirmation determination based on the information submitted, due to competing successorship claims or other reasons. In light of concerns raised by

commenters, the Bureau has added commentary to § 1024.38(b)(1)(vi) addressing circumstances where additional documentation is required for confirmation, as discussed below.[166]

Although a number of consumer advocacy group commenters urged the Bureau to require servicers to provide written confirmation decisions, the final rule follows the proposal in leaving the means of communication to servicers' discretion. Servicers will likely find it beneficial to communicate their decisions in writing in many cases to prevent ambiguity and memorialize decisions. However, as industry commenters noted, there may be circumstances where oral notification is advantageous due to time constraints, and the Bureau has concluded that the best approach is to allow the servicer to choose the appropriate mode of communication based on the particular facts and circumstances of each case.

The Bureau has decided not to adopt a definition of promptly for purposes of § 1024.38(b)(1)(vi) because whether an action is prompt under § 1024.38(b)(1)(vi) will depend on the facts and circumstances of the request. In many instances, providing information promptly may require a servicer to respond more quickly than the time limits established in § 1024.36(d)(2) for responding to a request for information under § 1024.36(i). For example, if a non-borrowing spouse informs the servicer of the borrowing spouse's mortgage that the borrowing spouse has died and that the borrowing spouse and non-borrowing spouse owned the property jointly as tenants by the entirety, the Bureau expects that a servicer would respond to the non-borrowing spouse with a description of the documents required for confirmation within a

[166] The Bureau has also made adjustments to § 1024.36(i). If a written request under § 1024.36(i) does not provide sufficient information to enable the servicer to identify the documents the servicer reasonably requires for confirmation, § 1024.36(i)(2) allows the servicer to 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, and provides contact information for further assistance.

significantly shorter period of time than 30 days.

The Bureau has made specific adjustments in the final rule to ensure that it is clear that servicers must act promptly both in determining the documents the servicer reasonably requires and in providing to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i). Similarly, the Bureau has made adjustments to ensure that it is clear that both the servicer's confirmation determination and the notification to the potential successor in interest of that determination are to be done promptly. The Bureau recognizes that delays in the confirmation process can have significant deleterious consequences for successors in interest, including unnecessary foreclosures. The Bureau will monitor carefully how servicers implement the policies and procedures requirement to provide information promptly.

Although some industry commenters expressed concern regarding the possibility of fraud, identity theft, or similar malfeasance, the Bureau does not anticipate that the final rule will result in any significant increase in these problems. Revised § 1024.38(b)(1)(vi) lays out a process for confirmation of a potential successor in interest's identity and ownership interest. Neither § 1024.38(b)(1)(vi) nor § 1024.36 requires a servicer to provide any account-specific information to a potential successor in interest prior to confirmation, other than a description of the documents required for confirmation. Further, nothing in the final rule prevents compliance with the GLBA information security requirements or, if applicable, the Bank Secrecy Act. As discussed below, the Bureau has added a new comment clarifying that, prior to confirmation, servicers may request documents that the servicer reasonably believes are necessary to prevent

fraud or other criminal activity.[167]

For the reasons stated in part V.A., the final rule does not create a private right of action for potential successors in interest relating to confirmation determinations, nor does it provide a safe harbor from UDAAP claims relating to confirmation determinations. A trade association urged the Bureau more generally to protect servicers from RESPA liability as to non-obligor successors in the final rule. However, as explained in part V.A., confirmed successors in interest are borrowers for purposes of Regulation X subpart C and § 1024.17 and, as such, should enjoy the same protections as other borrowers, including, where applicable, a right of action under 12 U.S.C. 2605.

The final rule includes a new comment 38(b)(1)(vi)-1, which explains that a servicer may be notified of the existence of a potential successor in interest in a variety of ways. Comment 38(b)(1)(vi)-1 provides a non-exclusive list of examples of ways in which a servicer could be notified of the existence of a potential successor in interest, including that 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. The comment also explains that 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. The comment clarifies that 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. This comment addresses questions that commenters raised regarding

[167] Regulation X comment 38(b)(1)(vi)-2.

servicers' responsibilities in identifying and communicating with potential successors in interest.

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

The Bureau is finalizing this comment, renumbered as comment 38(b)(1)(vi)-2, with additional language to address concerns raised by commenters relating to the possibility of fraud or criminal activity. As finalized, comment 38(b)(1)(vi)-2 indicates that the documents a servicer requires to confirm that person's identity and ownership interest in the property 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).

Proposed comment 38(b)(1)(vi)-2 included examples illustrating documents that a servicer may require to confirm a potential successor in interest's identity and ownership interest in the property and that generally would be reasonable, subject to the relevant law governing each situation, in four common situations involving potential successors in interests. The Bureau is finalizing this proposed comment with a number of clarifying changes and renumbering it as comment 38(b)(1)(vi)-3.

Some industry commenters urged the Bureau not to finalize these examples and expressed concern that they might limit the information that servicers could request from potential successors in interest. Some trade associations stated that the type of documents

required to prove a transfer of ownership depends on State law and urged the Bureau not to finalize a regulation that could interfere or conflict with State law. These trade associations also suggested that servicers might need to request additional documents not described in the examples listed to protect against the possibility that the claimant is engaging in fraud, that a third party may claim an ownership interest in the property through adverse possession or an undisclosed transfer, that tenants by the entirety may have divorced, or that there has been a probate proceeding not required by applicable law.

Other commenters indicated that they found the examples identified in the proposed comment helpful. Several consumer advocacy groups stated in their comments that servicers continue to request documentation to prove the successor in interest's identity and ownership interest in the property that is unreasonable in the successor in interest's particular situation. For instance, a large number of elder advocates, including legal services attorneys and housing counselors, reported to one consumer advocacy group that they had been asked for probate documents despite having provided the servicer with a right of survivorship deed.

In light of the challenges that successors in interest continue to face, as described in part V.A., the Bureau believes that it is necessary to provide guidance on the documents a servicer would generally reasonably require to confirm a potential successor in interest's identity and ownership interest in the property. However, in light of the concerns expressed regarding the proposed examples, the Bureau has made adjustments to the comment to emphasize that the relevant law governing each situation may vary from State to State, that the examples are illustrative only, and that the examples illustrate documents that 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.

The Bureau appreciates commenters' concerns that there may be factual scenarios that appear similar to one of the examples listed in comment 38(b)(1)(vi)-3 where a servicer needs to request documents that are not identified in the example due to particular circumstances not discussed in the example. As comment 38(b)(1)(vi)-3 indicates, the examples are intended to provide general guidance, and a servicer may reasonably require additional or different documents when warranted by the circumstances. Any such requests must be tailored to and appropriate for the potential successor in interest's particular circumstances.

A number of industry commenters and consumer advocacy groups highlighted various ways in which the applicable law described in the examples is not consistent with the law of one or more particular States.[168] The Bureau believes that these comments reflect a misunderstanding of the purpose of the examples and how the term applicable law was used in proposed comment 38(b)(1)(vi)-2. Each of the examples in the comment discusses the law of a hypothetical jurisdiction. In using the term applicable law, the Bureau did not mean to suggest that any particular State law principle described applies universally. To clarify this point, the final commentary replaces "applicable law" with "the applicable law of the relevant jurisdiction" in each example provided.

The situations identified in comment 38(b)(1)(vi)-3 are:

1. *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

[168] For example, responding to one example in proposed comment 38(b)(1)(vi)-2 that mentioned an affidavit of heirship, a trade association commenter noted that California does not use an affidavit of heirship.

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. Comment 38(b)(1)(vi)-3 indicates that, 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. The comment also explains that it generally would not be reasonable for the servicer to require documentation of a probate proceeding because, in this situation, a probate proceeding is not required under the applicable law of the relevant jurisdiction.

2. 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. Comment 38(b)(1)(vi)-3 indicates that, 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. The comment also explains that it generally would not be reasonable for the servicer to require documentation of a probate proceeding because a probate proceeding is not required under the applicable law of the relevant jurisdiction to recognize the transfer of title.

3. *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. Comment 38(b)(1)(vi)-3 indicates that, 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. The comment indicates that, generally, it would not be reasonable for the servicer to require a deed because the applicable law of the relevant jurisdiction does not require a deed.

4. *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. Comment 38(b)(1)(vi)-3 indicates that, 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. The comment explains that it generally would not be reasonable, however, for the servicer to require additional documents.

Comment 38(b)(1)(vi)-3 provides specific guidance about what are reasonable documents to require from a potential successor in interest to confirm the person's status as a successor in interest in very common and straightforward situations. In those situations, the Bureau expects that servicers generally will not need potential successors in interest to produce any additional documents beyond those specified in comment 38(b)(1)(vi)-3. This comment does not cover all

possible situations involving successors in interest, however, and additional documents may be required in certain less straightforward situations or due to facts or legal requirements that are not addressed in the examples. The Bureau will continue to monitor implementation of these policies and procedures requirements to see if there are further clarifications in this area that would be helpful.

The final rule also includes new comment 38(b)(1)(vi)-4, which explains that, 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. The comment notes, for example, that, 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. Servicers should not generally, however, request documentation of a court determination or other resolution of litigation absent knowledge of such litigation.

Proposed comment 38(b)(1)(vi)-3 explained proposed § 1024.38(b)(1)(vi)(C)'s requirement that servicers maintain policies and procedures reasonably designed to ensure that the servicer can, upon the receipt of the documents that the servicer reasonably requires, promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. The proposed comment would have provided that, upon the receipt of the documents, the servicer's confirmation and notification must be sufficiently prompt so as not to interfere with the successor in interest's ability to apply for loss mitigation options according to the procedures provided in § 1024.41. The proposed

comment also would have provided that, in general, a servicer's policies and procedures must be reasonably designed to ensure that confirmation of a successor in interest's status occurs at least 30 days before the next applicable milestone provided in proposed comment 41(b)(2)(ii)-2.[169] The Bureau proposed comment 38(b)(1)(vi)-3 because it recognized that successors in interest may have difficulty pursuing loss mitigation options to avoid foreclosure when the servicer does not promptly confirm the successor in interest's identity and ownership interest in the property. Miscommunication and delay in the process of confirming successors in interest's identity and ownership interest in the property can prevent successors in interest from successfully applying for loss mitigation.

Various commenters objected to the linkage of confirmation in proposed comment 38(b)(1)(vi)-3 with the milestones in proposed comment 41(b)(2)(ii)-2. Some of these commenters noted that tying promptness to the next milestone could either result in an unreasonably long period or an unreasonably short one and predicted that it would lead to errors and confusion.

The final rule addresses these issues in comment 38(b)(1)(vi)-5, which clarifies servicers' obligations under § 1024.38(b)(1)(vi)(C) to maintain policies and procedures that are 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. In light of the concerns raised by commenters, comment 38(b)(1)(vi)-5 omits any reference to the milestones. Instead,

[169] Proposed comment 41(b)(2)(ii)-2 would have provided the following milestones: (1) 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; (b) The date that is the 120th day of the borrower's delinquency; (3) The date that is 90 days before a foreclosure sale; (4) The date that is 38 days before a foreclosure sale.

comment 38(b)(1)(vi)-5 clarifies that notification is not prompt for purposes of the requirement in § 1024.38(b)(1)(vi)(C) 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.

Legal Authority

The Bureau is issuing these amendments to § 1024.38 pursuant to its authority under section 19(a) of RESPA. As explained above, the servicing policies, procedures, and requirements set forth in these amendments are necessary to achieve the purposes of RESPA, including to avoid unwarranted or unnecessary costs and fees, to ensure that servicers are responsive to consumer requests and complaints, to ensure that servicers provide accurate and relevant information about the mortgage loan accounts that they service, and to facilitate the review of borrowers for foreclosure avoidance options. The Bureau believes that, without sound policies and procedures and without achieving certain standard requirements, servicers will not be able to achieve those purposes.

The Bureau is also issuing these amendments to § 1024.38 pursuant to its authority under section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial laws. Specifically, these amendments to § 1024.38 are necessary and appropriate to carry out the purposes under section 1021(a) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. The Bureau additionally is relying on its authority under section 1032(a) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the

costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

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

38(b)(2)(vi)

Proposed § 1024.38(b)(2)(vi) provided that a servicer must maintain policies and procedures reasonably designed to ensure that the servicer can promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of proposed § 1024.41(c)(4), discussed below.[170] The Bureau received no comments on proposed § 1024.38(b)(2)(vi) and is adopting the provision as proposed, for the reasons discussed below.

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

Through outreach efforts in advance of the proposal, the Bureau learned that servicers

[170] As discussed in the section-by-section analysis of § 1024.41(c)(4) below, the Bureau is adopting § 1024.41(c)(4) with several changes from the proposal.
[171] *See* comment 41(b)(1)-5.

cannot always obtain necessary third-party information in time to evaluate a borrower's complete loss mitigation application within 30 days of receipt, as required by § 1024.41(c)(1). Servicers and Federal agencies informed the Bureau that this can occur either because a servicer delays requesting the information, or because a third party delays providing it. Current § 1024.41 does not specifically address this circumstance—when a servicer is unable to obtain information not in the borrower's control by a date that will enable the servicer to make a determination as to which loss mitigation options, if any, to offer the borrower within 30 days of receiving a complete application as required by § 1024.41(c)(1).

As explained in the section-by-section analysis of new § 1024.41(c)(4), the Bureau is addressing these issues by adding requirements with respect to the servicer's obligation to pursue necessary information not in the borrower's control and the servicer's responsibilities if unable to obtain such information within 30 days of receiving a complete loss mitigation application. Servicers often need to access information from parties other than the borrower at different points during a loss mitigation application process, and § 1024.41(c)(4) (among other things) ensures that they pursue that information timely. Servicers' efficiency in obtaining such information will benefit borrowers by facilitating compliance with § 1024.41(c)(1)'s requirement to evaluate complete loss mitigation applications within 30 days.

The policies and procedures requirements in § 1024.38(b)(2)(vi) will facilitate compliance with the requirements for gathering information not in the borrower's control under § 1024.41(c)(4). Maintaining such policies and procedures will ensure that servicers have appropriate mechanisms in place to identify and obtain such information efficiently. Section 1024.38(b)(2)(vi) also contributes to the goals of § 1024.38(b)(2) more generally. Section 1024.38(b)(2) requires servicers to maintain policies and procedures regarding various aspects of

evaluation of loss mitigation applications, including (among others) document collection and proper evaluation. The Bureau believes that these and other requirements of § 1024.38(b)(2) facilitate servicer compliance with § 1024.41 and lead to loss mitigation processes that better protect consumers.[172] Requiring servicers to maintain policies and procedures regarding the identification and collection of information not in the borrower's control under § 1024.38(b)(2)(vi) similarly protects borrowers by facilitating compliance with § 1024.41(c)(4) and the evaluation timelines provided under § 1024.41(c)(1).

38(b)(3) Facilitating Oversight of, and Compliance by, Service Providers

38(b)(3)(iii)

The Bureau proposed and is adopting a new comment to § 1024.38(b)(3)(iii) to clarify the requirements for policies and procedures regarding servicers' communications with service provider personnel, including foreclosure counsel, as they relate to the prohibition in § 1024.41(g). As discussed in the section-by-section analysis of § 1024.41(g) below, the Bureau received no comments that raised concerns about the proposed comment.

Section 1024.39 Early Intervention Requirements for Certain Borrowers

39(a) Live Contact

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

[172] 77 FR 57199, 57248 (Sept. 17, 2012).

mitigation pursuant to § 1024.41. The Bureau is finalizing § 1024.39(a) substantially as proposed, with a change to clarify its applicability. The Bureau is finalizing comments 39(a)-1,-2, and -3 substantially as proposed, with certain revisions for clarity. The Bureau is finalizing comments 39(a)-4 and -5 with minor revisions for clarity.

Repeated Attempts to Establish Live Contact

Section 1024.39(a) currently requires a servicer to establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency. Current comment 39(a)-1 states that a borrower's delinquency begins "on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid . . . ."[173] The Bureau has always understood these provisions to require servicers to make repeated attempts to contact a borrower who remains delinquent for more than one billing cycle. The Bureau proposed to revise § 1024.39(a) to codify this interpretation and expressly require servicers to establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day after each payment due date for the duration of the borrower's delinquency.

As stated in the 2012 RESPA Servicing Proposal, the Bureau intended the live contact provisions to create an ongoing obligation for a servicer to attempt to communicate with a delinquent borrower. In its discussion of the decision to limit a servicer's obligation to provide written notice under § 1024.39(b)(1) to once every 180 days, the Bureau noted that it was not including a similar limitation in § 1024.39(a) because it expected a servicer to contact a borrower

[173] Current Comment 39(a)-1.

during each period of delinquency.[174] In the 2013 RESPA Servicing Final Rule, the Bureau confirmed that it expected servicers to attempt to make live contact on a recurring basis and stated that servicers must establish live contact or make good faith efforts to do so, "even with borrowers who are regularly delinquent, by the 36th day of a borrower's delinquency."[175] In the October 2013 Servicing Bulletin, the Bureau again clarified that servicers have an obligation to make good faith efforts to contact a borrower within 36 days of when a borrower first becomes delinquent "and for each of any subsequent billing periods for which the borrower's obligation is due and unpaid."[176] The Bureau still believes that borrowers who remain delinquent for more than one billing cycle benefit from receiving repeated live contact and that relieving a servicer of its obligations to establish live contact after the initial delinquent billing cycle would undermine the intent of § 1024.39(a).

To provide additional guidance, the Bureau proposed to revise and re-order comment 39(a)-1 and its subsections. First, the Bureau proposed to remove the language in current comment 39(a)-1.i. As discussed in the section-by-section analysis of § 1024.31, the Bureau proposed a new definition of delinquency applicable to all of subpart C, which would make the language in current comment 39(a)-1.i superfluous. Second, the Bureau proposed to revise current comment 39(a)-1 and 39(a)-1.i and add comment 39(a)-1.i.A and 39(a)-1.i.B with examples to illustrate how a servicer may comply with the recurring live contact obligation when a borrower is delinquent for one or more billing cycles. The Bureau also proposed to revise comment 39(a)-2 to codify guidance from the October 2013 Servicing Bulletin, which clarified

[174] 77 FR 57199, 57256 (Sept. 17, 2012).
[175] 78 FR 10696, 10795 (Feb. 14, 2013).
[176] October 2013 Servicing Bulletin at 5.

that servicers are permitted to combine their live contact attempts with their attempts to contact borrowers for other purposes, including, for example, by providing a borrower with information about available loss mitigation options when contacting the borrower for purposes of collection.[177]

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

The Bureau received several comments from industry and consumer advocacy group commenters expressing general support for the proposed revisions to § 1024.39(a). Two industry commenters stated that the proposed revisions would clarify the current requirements for early intervention and generally reflect common practices among credit unions.

A few industry commenters stated that the proposal would impose burdensome requirements on servicers because it would require them to comply with the live contact

[177] *Id*.

requirements under § 1024.39(a) every 36 days. These commenters expressed concern that the proposal could require such live contact efforts to continue even after a loan has been referred to foreclosure, and they noted that the foreclosure process can continue for years in judicial foreclosure States. One commenter expressed concern that the proposed revisions would not define what constitutes good faith efforts to establish live contact. Another industry commenter said that the proposal could require servicers to make live contact with borrowers in bankruptcy, which would be inconsistent with the goals of bankruptcy protection and could cause borrower confusion. This commenter also suggested that the live contact requirements could cause confusion for borrowers who are receiving State-mandated pre-foreclosure notices or the first notice or filing for foreclosure. This commenter urged the Bureau to restrict the live contact requirements of proposed § 1024.39(a) to the first 120 days of the borrower's delinquency.

The Bureau is finalizing § 1024.39(a) substantially as proposed, with a change to clarify its applicability. The Bureau is finalizing comments 39(a)-1,-2, and -3 substantially as proposed, with certain revisions for clarity. The Bureau is finalizing comments 39(a)-4 and -5 with minor revisions for clarity.

Section 1024.39(a) explains that, except as otherwise provided in § 1024.39, 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. It further provides that, promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate.

Some commenters expressed specific concern over the burden associated with the live contact requirements in situations where a loan has been referred to foreclosure, noting that the

foreclosure process may take several years. As discussed in more detail below, comment 39(a)-3 accounts for the burden associated with § 1024.39(a) where there is a prolonged delinquency. It clarifies that the length of a borrower's delinquency may be a factor to consider in the determination of what constitutes good faith efforts to establish live contact.

The Bureau declines to adopt additional exemptions to the live contact requirements based on the length of a borrower's delinquency, as requested by one commenter. Additional exemptions could harm borrowers by limiting their communications with servicers and their awareness of possible alternatives to foreclosure. The Bureau continues to believe that borrowers at all stages of delinquency benefit from live contact.

The Bureau notes that one commenter expressed concern over the live contact requirements in proposed § 1024.39(a) when a borrower is in bankruptcy. Section 1024.39 includes an exemption from the live contact requirements for borrowers in bankruptcy in § 1024.39(c). To clarify the applicability of the live contact requirements in § 1024.39(a) in light of the bankruptcy exemption in § 1024.39(c) and a similar one in § 1024.39(d) when a borrower has invoked certain rights under the FDCPA, the Bureau is finalizing § 1024.39(a) to explain that the live contact requirements of § 1024.39(a) apply, except as otherwise provided in § 1024.39.

The Bureau is finalizing comment 39(a)-1 substantially as proposed, with certain non-substantive revisions for clarity. Comment 39(a)-1 explains that § 1024.39 requires a servicer to establish or attempt to establish live contact no later than the 36th day of a borrower's delinquency. Comment 39(a)-1.i.A illustrates this provision through an example. Comment 39(a)-1.i.B explains that 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 and provides an illustrative example.

The Bureau is finalizing comment 39(a)-2 substantially as proposed, with certain changes for clarity. Comment 39(a)-2 explains that 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. Comment 39(a)-2 states that a servicer may rely on live contact established at the borrower's initiative to satisfy the live contact requirement in § 1024.39(a). Finally, it provides that 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.

The Bureau is finalizing comment 39(a)-3 with changes. Comment 39(a)-3 explains that 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. The comment explains that comment 39(a)-6 discusses the relationship between live contact and the loss mitigation procedures set forth in § 1024.41.

Final comment 39(a)-3 omits language from the proposal regarding the good faith efforts that might be sufficient where there is little or no hope of home retention, such as may occur in the later stages of foreclosure. The Bureau now believes it more appropriate to calibrate good faith efforts to the duration of the delinquency rather than a subjective judgment on the possibility of home retention, regardless of the stage of foreclosure.

The Bureau is declining to adopt a specific definition of what constitutes good faith efforts in comment 39(a)-3, as requested by one commenter. What constitutes good faith efforts is based on circumstances specific to the borrower and the borrower's mortgage loan obligation. The comment provides examples demonstrating the fact-specific nature of this determination.

The Bureau is finalizing comment 39(a)-4 as proposed. The final rule renumbers current comment 39(a)-3 as 39(a)-4, with no further changes. The final rule renumbers current comment 39(a)-4 as 39(a)-5, with a technical correction to add an omitted "to."

Relationship between Live Contact and Loss Mitigation Procedures

The Bureau also proposed to add comment 39(a)-6 to illustrate how a servicer could meet its early intervention live contact requirements when it is working with a borrower pursuant to the loss mitigation procedures set forth in § 1024.41. Proposed comment 39(a)-6 would have codified guidance the Bureau provided in its October 2013 Servicing Bulletin, explaining that, under current comment 39(a)-2, good faith efforts to establish live contact consist of "reasonable steps under the circumstances to reach a borrower . . . ." The Bureau provided several examples of reasonable steps, including the example of a servicer that has established and is maintaining live contact with a borrower "with regard to the borrower's completion of a loss mitigation

application and the servicer's evaluation of that borrower for loss mitigation options."[178]

Proposed comment 39(a)-6 therefore would have clarified that a servicer that has established and is maintaining ongoing contact with regard to a borrower's completion of a loss mitigation application, or in connection with the servicer's evaluation of the borrower's complete loss mitigation application, would comply with the requirements of § 1024.39(a). In addition, the proposed comment would have clarified that a servicer that has evaluated and denied a borrower for all available loss mitigation options has complied with the requirements of § 1024.39(a). The Bureau explained that, once a servicer has complied with the requirements of § 1024.41 with respect to a specific borrower, and has determined that the borrower does not qualify for any available loss mitigation options, continued live contact between a borrower and a servicer no longer serves the purpose of § 1024.39(a). Indeed, at that point, continued attempts by the servicer to establish live contact may frustrate or even harass a borrower who was recently denied for loss mitigation.

The Bureau explained, however, that a borrower who cures a prior delinquency but subsequently becomes delinquent again would benefit from the servicer resuming compliance with the live contact requirement. Therefore, proposed comment 39(a)-6 also would have clarified that a servicer is again subject to the requirements of § 1024.39(a) with respect to a borrower who becomes delinquent after curing a prior delinquency.

Several consumer advocacy group commenters expressed support for proposed comment 39(a)-6. The commenters stated that live contact is unnecessary when a borrower is in contact with a servicer with regard to a loss mitigation application and expressed agreement with the

[178] October 2013 Servicing Bulletin at 5.

Bureau's explanation that a servicer's repeated attempts to establish live contact may frustrate or even harass a borrower who was recently denied for loss mitigation. These commenters supported requiring a servicer to renew live contact for a borrower who experiences a delinquency subsequent to curing a prior delinquency.

The Bureau is finalizing comment 39(a)-6 with certain changes to improve clarity and consistency with other provisions in Regulation X. Comment 39(a)-6 explains that 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. It further provides that a servicer must resume compliance with the requirements of § 1024.39(a) for a borrower who becomes delinquent again after curing a prior delinquency.

The Bureau is changing the last sentence of proposed comment 39(a)-6 to improve clarity in the final rule and align language in Regulation X. Unlike the proposal, which referred to a borrower's "prior default," the final comment refers to a borrower's prior delinquency, as newly defined in § 1024.31.

39(b) Written Notice

39(b)(1) Notice Required

The Bureau proposed certain revisions to § 1024.39(b)(1) and its commentary to clarify the frequency with which a servicer must provide the written early intervention notice and to ensure consistency with the proposed revisions to the live contact requirements in § 1024.39(a).

Under the proposed revision, a servicer would have had to send a written notice to a delinquent borrower no later than the 45th day of the borrower's delinquency, but a servicer would not have had to send such a notice more than once in any 180-day period. If the borrower remains delinquent or becomes 45 days delinquent again after the 180-day period expires, the proposed revision would have required the servicer to provide the written notice again. The Bureau is adopting § 1024.39(b)(1) with revisions. The Bureau is finalizing comment 39(b)(1)-2 with certain changes for clarity, making a technical correction to comment 39(b)(1)-3, and finalizing comment 39(b)(1)-6 but renumbering it as comment 39(b)(1)-5 and making certain changes for clarity.

Current comment 39(b)(1)-1 references the definition of delinquency in current comment 39(a)-1.i. As explained in the section-by-section analysis of § 1024.39(a), the definition of delinquency included in current comment 39(a)-1.i and referenced in comment 39(b)(1)-1 states that a borrower's delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid. As with § 1024.39(a), the inclusion of the phrase "for a given billing cycle" in the definition of delinquency for purposes of § 1024.39(b)(1) creates a recurring obligation on the part of servicers to provide a delinquent borrower with a written notice. In contrast with the recurring obligation to make live contact under § 1024.39(a), however, servicers only have to comply with the requirement to send a written notice once in a 180-day period.[179] This is because, as the Bureau explained in the 2012 RESPA Servicing Proposal, the Bureau did not believe "that borrowers who are consistently

[179] 12 CFR 1024.39(b)(1).

delinquent would benefit from receiving the same written notice every month."[180]

As discussed in the section-by-section analysis of § 1024.31, the Bureau's proposed definition of delinquency in § 1024.31 did not use the phrase "for a given billing cycle." The Bureau proposed revisions to § 1024.39(b)(1) and comment 39(b)(1)-2 to preserve the recurring nature of the written notice requirement, as well as the limitation that a servicer has to send a written notice only once during any 180-day period. Under the proposed revision, a servicer would have been required to send a written notice to a delinquent borrower no later than the 45th day of the borrower's delinquency but no more than once in any 180-day period. If the borrower either remained delinquent or became delinquent again at some point after the 180-day period expires, the proposed revision would have required the servicer to provide the borrower with another written notice 45 days from the date of the borrower's most recent missed payment.

In addition, the Bureau proposed to clarify through a revision to comment 39(b)(1)-2 that a servicer would again be required to send written notice to a borrower who remains delinquent more than 180 days after the servicer sent the first notice. The Bureau proposed to revise the example in comment 39(b)(1)-2 to illustrate this concept. The proposal also made a minor technical change to comment 39(b)(1)-2 to correct an erroneous reference to § 1024.39(a), which should instead be a reference to § 1024.39(b).

Finally, the Bureau proposed to add comment 39(b)(1)-6 to clarify the obligation of a transferee servicer to provide the written notice required by § 1024.39(b). Proposed comment 39(b)(1)-6 stated that a transferee servicer is not required to provide a second written notice to a borrower who already received a written notice from the transferor servicer on or before the

[180] 77 FR 57199, 57257 (Sept. 17, 2012).

borrower's 45th day of delinquency. The comment would have further clarified, however, that a servicer would be required to comply with § 1024.39(b) regardless of whether the transferor servicer sent the borrower a written notice in the preceding 180-day period. In other words, if the transferor servicer provided a first written notice after an initial missed payment and, following the transfer, the borrower remains or becomes 45 days delinquent again, the transferee servicer would have to provide a written notice again no later than 45 days after the payment due date, regardless of whether or not 180 days had passed since the date the transferor servicer provided the first written notice to the borrower.

The Bureau proposed this clarification because it believed that the rationale that justified applying the 180-day limitation to mortgage loans serviced by a single servicer may not apply in the case of a loan whose servicing rights are transferred to another servicer. In the case of a transferred loan, the Bureau believed that a transferee servicer may provide additional and different information to a delinquent borrower and that a borrower would benefit from receiving this information sooner rather than later following a transfer. Accordingly, the Bureau believed it was appropriate to clarify that the 180-day limitation in § 1024.39(b)(1) would not apply where the prior notice triggering the 180-day waiting period was provided by the transferor servicer prior to transfer.

Several commenters expressed general support for the written notice requirements set forth in proposed § 1024.41(b)(1). As with proposed § 1024.39(a), several industry commenters stated that these requirements would provide further clarity and reflected common practice in the industry. One industry commenter and several consumer advocacy group commenters recommended that the 180-day limitation should not apply when borrowers cure a delinquency following receipt of the written notice but become delinquent again during the 180-day period

that follows. These commenters stated that requiring the written notice within 45 days of each delinquency would improve borrower access to timely information.

Several industry commenters suggested that that the written notice may be confusing, or provide limited benefit, when it is provided to seriously delinquent borrowers or borrowers engaged in loss mitigation. One industry commenter provided an example, stating that the proposal could result in a written notice being provided on day 225 of a borrower's delinquency, at which point a borrower may already be in foreclosure or completing a short sale or deed-in-lieu of foreclosure. This commenter recommended that a servicer only be required to provide a subsequent written notice if the borrower had been current for at least 180 days following the provision of the previous written notice. Another industry commenter requested an exemption from § 1024.39(b)(1) in situations where the scheduled foreclosure sale is within 37 days of the date a servicer would be required to provide the written notice or where no loss mitigation options are available to the borrower. This commenter stated that in such situations, provision of the written notice could cause borrower confusion. One industry commenter said that it would be unnecessary, and potentially confusing, for borrowers performing on a trial loan modification to be provided the written notice required by § 1024.39(b)(1).

Several consumer advocacy groups expressed support for proposed comment 39(b)(1)-6. They stated that borrowers would benefit if the 180-day limitation in § 1024.39(b)(1) did not apply where the prior written notice was provided by the transferor servicer. One of these commenters recommended that transferee servicers must provide the written notice within 15 days of the transfer date, stating that this would improve the borrower's ability to obtain certain foreclosure protections.

The Bureau is adopting § 1024.39(b)(1) with revisions. The Bureau is finalizing

comment 39(b)(1)-2 with certain changes for clarity, making a technical correction to comment 39(b)(1)-3, and finalizing comment 39(b)(1)-6 but renumbering it as comment 39(b)(1)-5 and making certain changes for clarity.

As finalized, § 1024.39(b)(1) explains that, except as otherwise provided in § 1024.39, a servicer shall provide to a delinquent borrower a written notice with the information set forth in § 1024.39(b)(2) 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. Final § 1024.39(b)(1) further explains that a servicer is not required to provide the written notice, however, more than once during any 180-day period. It provides that 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. Finally, it provides that, 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.

The Bureau is finalizing § 1024.39(b)(1) to add more clarity regarding when the written notice must be provided. The Bureau has always understood that servicers are required to provide the written notice with the information set forth in § 1024.39(b)(2) once every 180 days to borrowers who consistently carry a short-term delinquency.[181] When a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, the servicer must provide the written notice not later than 180 days after providing the

[181] 78 FR 10695, 10800 (Feb. 14, 2013).

prior written notice. A servicer need not provide the written notice more than once during that 180-day period, regardless of whether the borrower remains delinquent throughout the 180-day period or the borrower cures the delinquency but becomes 45 days delinquent again during the 180-day period. When a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, but later becomes 45 days delinquent, the servicer must provide the written notice no later than 45 days after the payment due date for which the borrower remains delinquent.

The Bureau declines to revise the 180-day limitation in § 1024.39(b)(1), as requested by some commenters. The Bureau continues to believe that the requirement to provide the written notice once every 180 days, as well as the live contact requirements set forth in § 1024.39(a), adequately address situations where a borrower experiences multiple delinquencies.

The Bureau also declines to exempt servicers from the written notice requirements where § 1024.39(b)(1) may require the servicer to provide the written notice close in time to a scheduled foreclosure sale or where the borrower may be performing on a temporary loss mitigation program. The Bureau notes that current comment 39(b)(2)-1 clarifies that servicers may include information on the written notice relevant to the circumstances specific to the borrower. Comment 39(b)(2)-1 explains that § 1024.39(b)(2) sets forth minimum content requirements for the written notice and that a servicer may provide additional information in the written notice that would be helpful or which may be required by applicable law or the owner or assignee of the mortgage loan. Accordingly, a servicer may include in the written notice additional, relevant information that would benefit borrowers even in the later stages of foreclosure or when performing on a temporary loss mitigation program.

The Bureau is making certain changes to proposed comment 39(b)(1)-2 to clarify the

requirements for providing a written notice during and after any 180-day period. As finalized, comment 39(b)(1)-2 provides that 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. Comment 39(b)(1)-2 provides an illustrative example.

The Bureau is revising final comment 39(b)(1)-3, which currently cross references comment 39(a)-4, to reflect the renumbering of the comments. Final comment 39(b)(1)-3 provides that 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.

The Bureau is adopting proposed comment 39(b)(1)-6 but renumbering it as comment 39(b)(1)-5 and making certain changes for clarity and to correct a typographical error. Final comment 39(b)(1)-5 provides that 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. Comment 39(b)(1)-5 further explains, however, that 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. It provides an example to illustrate this provision.

The Bureau declines to require, as suggested by one commenter, that transferee servicers provide the written notice within 15 days of the transfer date. Comment 39(b)(1)-5 is consistent with the timing of the notice required under § 1024.39(b)(1) for a borrower with a new delinquency, and clarifies an additional requirement on transferee servicers beyond that imposed

on servicers in the absence of a transfer. The Bureau is clarifying in final comment 39(b)(1)-5 that the 180-day limitation in § 1024.39(b)(1) does not apply where the prior written notice triggering the 180-day waiting period was provided by the transferor servicer prior to transfer.

Successors in Interest

Proposed § 1024.30(d) would have provided that a confirmed successor in interest must be considered a borrower for the purposes of the Mortgage Servicing Rules in Regulation X, including the early intervention requirements of § 1024.39. Proposed comment 39(b)(1)-5 would have provided that, where a servicer has already provided a written early intervention notice to a prior borrower under § 1024.39(b) before confirming a successor in interest's status, the servicer would not be required also to provide that notice to the unconfirmed successor in interest, but the servicer would be required to provide the confirmed successor in interest with any additional written early intervention notices required after confirming the successor in interest's status.

Several consumer advocacy group commenters suggested that the Bureau eliminate proposed comment 39(b)(1)-5. They urged the Bureau to indicate instead that the 180-day limitation does not apply to a successor in interest where the prior notice triggering the 180-day waiting period was provided to the transferor borrower.

Confirmation of a successor in interest does not restart the 180-day period specified by § 1024.39(b)(1) if the prior notice triggering the 180-day waiting period was provided to a transferor borrower. Section 1024.39(b)(1) provides that a servicer is not required to provide a written notice with the information set forth in § 1024.39(b)(2) more than once during any 180-day period. The Bureau believes that it would be unnecessarily burdensome to require servicers to provide to a confirmed successor in interest an additional copy of a written early intervention notice that servicer has already provided to a transferor borrower. The Bureau also believes that,

in many cases, confirmed successors in interest may have received the original notice that the servicer mailed to the transferor borrower. Further, confirmed successors in interest may obtain information from servicers using a request for information, to which servicers must respond.

The Bureau is not finalizing proposed comment 39(b)(1)-5. The Bureau is addressing in new § 1024.32(c)(4) the questions about whether servicers must provide confirmed successors in interest with duplicative copies of notices required by the Mortgage Servicing Rules in Regulation X, including § 1024.39(b).

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

The Bureau proposed to clarify when a servicer must include the disclosures under § 1024.39(b)(2)(iii) and (iv) in the written early intervention notice. Section 1024.39(b)(2)(iii) and (iv) state that, "if applicable," the written notice must include a statement providing a brief description of examples of loss mitigation options that may be available and either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer. The Bureau proposed to add a comment to clarify when such disclosures are "applicable" and when a servicer is therefore required to include them in the written early intervention notice. Proposed comment 39(b)(2)-4 would have provided that, if loss mitigation options are available, a servicer must include in the written notice the disclosures set forth in § 1024.39(b)(2)(iii) and (iv). Further, the proposed comment would have provided that loss mitigation options are available if the owner or assignee of a borrower's mortgage loan offers an alternative to foreclosure that is made available through the servicer. Additionally, the proposed comment would have provided that the availability of loss mitigation options does not depend upon a particular borrower's eligibility for those options but only on whether the owner or assignee of a borrower's mortgage loan generally offers loss mitigation options through the

servicer. Proposed comment 39(b)(2)-4 was generally intended to assist servicers in determining when they are exempt from providing the written notice under proposed § 1024.39(d)(1)(ii) or (d)(2)(ii) for, respectively, borrowers in bankruptcy or borrowers who have invoked cease communication protections under FDCPA section 805(c).

One industry commenter requested the Bureau further clarify when loss mitigation options are available. One consumer advocacy group raised concerns with proposed comment 39(b)(2)-4 not expressly stating that it is applicable to the exemption under proposed § 1024.39(d)(2)(ii) for borrowers who have invoked cease communication protections under FDCPA section 805(c).

The Bureau is not finalizing proposed comment 39(b)(2)-4. Although proposed comment 39(b)(2)-4 would have explained when the disclosures required by § 1024.39(b)(2)(iii) and (iv) are "applicable," the comment was intended to clarify whether a servicer would be exempt from providing the written notice under proposed § 1024.39(d)(1)(ii) for borrowers in bankruptcy or under proposed § 1024.39(d)(2)(ii) for borrowers who have invoked their cease communication protections pursuant to FDCPA section 805(c). The Bureau is finalizing revised explanations in comments 39(c)(1)-2 and 39(d)-1, to place the comments with the respective partial exemptions for borrowers in bankruptcy or borrowers who have invoked their cease communication rights, as detailed below in the section-by-section analyses of § 1024.39(c) and (d).

39(c) Conflicts with Other Law

Current § 1024.39(c) provides that nothing in § 1024.39 requires a servicer to communicate with a borrower in a manner otherwise prohibited by applicable law. Although the Bureau did not propose to address this paragraph in the proposal, for the reasons discussed below, the Bureau is removing current § 1024.39(c) from the final rule and renumbering the rest

of § 1024.39 accordingly.

The Bureau adopted current § 1024.39(c) as part of the 2013 RESPA Servicing Rule in response to industry commenters' concerns raised in response to the 2012 RESPA Servicing Proposal related to potential conflicts between the early intervention requirements and existing law, including State law, the Bankruptcy Code, and the FDCPA.[182] Following issuance of the 2013 RESPA Servicing Rule, the Bureau determined that it was appropriate to address more specifically the interplay between the early intervention requirements and the Bankruptcy Code as well as the FDCPA. The Bureau therefore issued the IFR in October 2013 to implement current § 1024.39(d)(1) and (2), which exempt servicers from complying with the early intervention requirements when the borrower is in bankruptcy or has invoked the FDCPA's cease communications protections, respectively.[183] In providing these exemptions, the Bureau did not modify § 1024.39(c).

In response to proposed § 1024.39(d)(2) to require that servicers provide a modified written early intervention notice to borrowers who have invoked their FDCPA cease communication protections, several industry commenters noted the interplay of state debt collection laws, which they stated may prohibit servicers from providing the written early intervention notice to borrowers who have invoked their cease communication rights even if it would be permissible under Federal law. One commenter explained that at least two States, Florida and West Virginia, prohibit debt collection communication directly with borrowers who are represented by attorneys, even when the borrower has not elected to cease communication.

[182] 78 FR 10695, 10806-07 (Feb. 14, 2013).
[183] 78 FR 62993 (Oct. 23, 2013).

As a result, some industry commenters requested a safe harbor from State law liability for sending the modified written early intervention notice that the Bureau proposed to require notwithstanding a borrower's invocation of the cease communication right. One industry commenter requested the Bureau provide an explicit safe harbor from the FDCPA that permits servicers to comply with all applicable State and local laws without risk of FDCPA liability.

After the close of the comment period, the Bureau conducted additional outreach to both servicers and consumer advocacy groups to further understand the scope of any such conflict between State debt collection laws and the proposal's requirement that servicers provide a modified written early intervention notice to borrowers who have provided a cease communication notification pursuant to FDCPA section 805(c).[184] The Bureau sought information related to whether the early intervention requirements under § 1024.39 conflict with State early intervention requirements, State cease communication laws, or State foreclosure laws.

Servicers generally reported not experiencing conflicts with State laws while meeting their early intervention requirements under § 1024.39. One servicer noted that West Virginia's debt collection laws require communication with counsel if a borrower is represented. Consumer advocacy groups also generally indicated that they are not encountering conflicts between State laws and the early intervention requirements under § 1024.39.

The Bureau concludes that removing current § 1024.39(c) regarding conflicts with other law is appropriate. Neither commenters nor the Bureau's additional outreach indicated any

[184] *See* Bureau of Consumer Fin. Prot., CFPB Bulletin 11-3, *CFPB Policy on Ex Parte Presentations in Rulemaking Proceedings* (Aug. 16, 2011), *available at* http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExPartePresentationsRulemakingProceedings.pdf. Materials pertaining to these presentations are filed in the record and are publicly available at http://www.regulations.gov. Summaries of the Bureau's outreach are filed in the record and are publicly available at http://www.regulations.gov.

specific conflict between State laws and the early intervention requirements under proposed § 1024.39(d)(2)(iii) as set forth in the proposal or as adopted in this final rule under new § 1024.39(d)(3). Industry commenters expressed concerns generally related to potential conflicts with State debt collection laws but did not point to any specific State laws posing an actual conflict with the Bureau's proposal. With respect to State laws that require that a servicer communicate with the borrower's representative instead of directly with a represented borrower, the Bureau reminds servicers that providing early intervention communications to a person authorized by the borrower to communicate with the servicer on the borrower's behalf is permitted under § 1024.39.[185]

The Bureau removes current § 1024.39(c) to provide servicers with clarity about their early intervention obligations. To the extent there may be any actual conflict between a State law and a servicer's requirements under § 1024.39, a servicer is required to comply with its obligations under § 1024.39. Additionally, as discussed in the section-by-section analyses of revised § 1024.39(c) and (d), the Bureau resolves the questions posed by the intersection of the early intervention requirements under § 1024.39 with the Bankruptcy Code and the FDCPA.

The Bureau reminds servicers of § 1024.5(c)(1), which states, in relevant part, that RESPA and Regulation X do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent that a State law is inconsistent with RESPA and Regulation X.[186] Comment 5(c)(1)-1 explains that State laws that are inconsistent with the requirements of RESPA or

[185] *See* current comment 39(a)-4 (renumbered in this final rule as comment 39(a)-5) and current comment 39(b)(1)-3.

[186] Section 1024.5 implements RESPA section 18 (12 U.S.C. 2616). Section 1024.5(c)(2) and (3) provide additional information on how any person may request the Bureau to determine if inconsistencies with State law exist.

Regulation X may be preempted, while State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. The Bureau believes that early intervention provides critically important benefits to borrowers and therefore, to the extent that a State law would prevent early intervention as required under § 1024.39, that State law is preempted. The Bureau knows of no such conflicts and notes that certain State law requirements, for example requiring communication through counsel where a borrower is represented, do not conflict with the requirement to provide early intervention. Where Regulation X affords a method of complying with both the State law and with the requirements of § 1024.39, servicers should avail themselves of that opportunity. Generally, State laws that give greater protection to consumers are not inconsistent with § 1024.39 and would not be preempted.

39(c) Borrowers in Bankruptcy

Under current § 1024.39(d)(1), a servicer is exempt from the requirements of § 1024.39 for a mortgage loan while the borrower is a debtor in bankruptcy under title 11 of the United States Code. The Bureau proposed to revise current § 1024.39(d)(1) to narrow the scope of the bankruptcy exemption from the early intervention requirements. The proposed revisions would have preserved the current exemption from the live contact requirements of § 1024.39(a) as it relates to a borrower in bankruptcy but would have required live contact for a borrower who is jointly liable on the mortgage loan with someone who is a debtor in a chapter 7 or chapter 11 bankruptcy case.[187] The proposal also would have partially removed the exemption from the

[187] "Consumer homeowners typically seek relief under either Chapter 7 or Chapter 13 of the Bankruptcy Code. Chapter 7 requires the debtor to surrender all nonexempt property for distribution to creditors. In return, the debtor's debts are discharged, with some exceptions. Chapter 13 permits debtors with regular income to keep their

written notice requirements of § 1024.39(b) for a borrower in bankruptcy and would have required a servicer to provide the written notice unless no loss mitigation options are available, the borrower's confirmed plan of reorganization provides for surrendering the property or avoidance of the lien securing the mortgage loan, the borrower files a Statement of Intention in the bankruptcy case identifying an intent to surrender the mortgage loan, or a court enters an order avoiding the lien securing the mortgage loan or lifting the Bankruptcy Code's automatic stay with respect to the property securing the mortgage loan. Additionally, the proposal would have required a servicer to resume compliance with the requirements of § 1024.39 with respect to a borrower who has not discharged the mortgage debt under certain conditions.

For the reasons discussed below, the Bureau is finalizing proposed § 1024.39(d)(1), but renumbering it as new § 1024.39(c)(1), and making certain adjustments to implement the partial exemption on a loan level and for debtors in any chapter of bankruptcy to address concerns raised by commenters. The Bureau is adopting modifications regarding the frequency of the written notice required under new § 1024.39(c)(1). The Bureau is also exempting a servicer from providing the written early intervention notice with regard to a mortgage loan for which any borrower on the mortgage loan invokes the FDCPA's cease communications protections

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

while any borrower on the mortgage loan is a debtor in bankruptcy. The Bureau is finalizing proposed comment 39(d)(1)-1 in new § 1024.39(c)(2) as proposed, with modifications to require a servicer to resume compliance with the early intervention requirements under certain conditions and subject to certain exemptions.

39(c)(1) Partial Exemption

Based upon its review of the comments received in response to the October 2013 IFR and its study of the intersection of the early intervention requirements and bankruptcy law, as stated in the proposal, the Bureau believed it would be appropriate to reinstate the early intervention requirements with respect to borrowers in bankruptcy under certain circumstances. The Bureau proposed to do so in this final rule because, as noted in the IFR, the Bureau believed that it would be preferable to use notice and comment rulemaking, rather than simply finalizing the IFR with modifications, to reinstate the early intervention requirements with respect to such borrowers.[188] The Bureau believed that this approach would allow stakeholders a more robust opportunity to consider and comment on the Bureau's specific proposal. The Bureau addressed in the proposal comments it received on this issue in response to the IFR, including those received after the IFR's official comment period ended.[189] As discussed further below, in light of those comments as well as the comments received in response to the proposal, the Bureau is finalizing the live contact exemption as proposed, with modifications to implement the exemption at the loan level and for debtors in any chapter of bankruptcy. The Bureau is also finalizing the proposed written notice partial exemption as proposed, with similar and additional

[188] 78 FR 62993, 62998 (Oct. 23, 2013).
[189] *See* 79 FR 74176, 74203-05 (Dec. 15, 2014).

modifications. The live contact and written notice exemptions are discussed in turn below.

Live Contact

The Bureau proposed to maintain the exemption from the live contact requirements with respect to a borrower who is in bankruptcy, has discharged personal liability for the mortgage loan, or shares liability on a mortgage loan with a person who is a debtor in a chapter 12 or chapter 13 bankruptcy case. As the Bureau explained in the proposal, when a debtor files for protection under chapter 12 or chapter 13, the Bankruptcy Code implements a co-debtor stay, which prohibits creditors from engaging in collection efforts against certain of the debtor's joint obligors, such as a joint obligor on the debtor's mortgage loan, even though the joint obligor has not filed for bankruptcy.[190] Because contacting a borrower covered by the co-debtor stay raises some of the same concerns as contacting a borrower covered by the automatic stay, the Bureau explained in the proposal that it may be appropriate to exempt servicers from compliance with § 1024.39(a) with respect to non-bankrupt borrowers who are jointly liable on a mortgage loan with a debtor in a chapter 12 or chapter 13 bankruptcy case. However, the proposed exemption would have excluded borrowers who are jointly liable on a mortgage loan with a debtor in a chapter 7 or chapter 11 case because the Bankruptcy Code does not prevent collection attempts against such joint obligors, and servicers do not violate the automatic stay by contacting them.[191]

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[190] 11 U.S.C. 1201(a) and 1301(a) (both stating that "[e]xcept as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless – (1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or (2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.").

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

This was a departure from current § 1024.39(d)(1), in which the Bureau crafted a broad exemption from § 1024.39, making the exemption applicable to any joint obligor of a debtor in bankruptcy, regardless of whether the joint obligor was in bankruptcy or protected against collection attempts by the co-debtor stay under 11 U.S.C. 1201(a) or 1301(a). The Bureau is finalizing this exemption from live contact as proposed, with modifications to apply the exemption on a loan level and for debtors in any chapter of bankruptcy.

Comments on Live Contact, Including Borrower-Specific and Chapter-Specific Exemption

The Bureau received comments from servicers, credit unions, consumer advocacy groups, trade associations, and the U.S. Trustee Program. Similar to comments received in response to the October 2013 IFR, commenters generally agreed that servicers should be exempt from the early intervention live contact requirements as to a borrower in bankruptcy or a borrower who has discharged personal liability for a mortgage loan. Industry commenters generally raised concerns with the proposed requirement that servicers provide live contact to non-debtor co-borrowers when a borrower files for chapter 7 or 11 bankruptcy, while supporting the loan-level exemption for borrowers who file under chapter 13. Numerous industry commenters strongly opposed a borrower-specific exemption in favor of a loan-level exemption, citing three major concerns. First, industry expressed concerns related to circumstances in which co-borrowers live together and only one files for bankruptcy. Servicers explained that they fear violating the automatic stay if the servicer's phone calls are answered by the debtor borrower

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Prods. v. U.S. Interstate Distrib. (In re Advanced Ribbons & Office Prods.), 125 B.R. 259, 263 (B.A.P. 9th Cir. 1991)).

instead of the non-debtor co-borrower. Second, servicers cited the burden of keeping track of which chapter of bankruptcy each borrower is in rather than just applying a single bankruptcy flag to the account. One commenter noted that bankruptcy cases commonly switch from one chapter to another, which under the proposal would affect whether the servicer would be required to comply with the early intervention requirements. Third, industry commenters explained that servicers' systems currently track mortgage loans at the loan level. Servicers explained that they would be required to undergo burdensome systems upgrades to change how they track mortgage loans to distinguish communications as between borrowers on the same loan. One industry commenter also stated that it would be misleading and potentially violate the automatic stay for a servicer to make live contact with the non-debtor co-borrower to discuss loss mitigation options because the property could not be disposed of without bankruptcy court permission. Therefore, the commenter stated, the risks to the servicer are high while offering no benefits to the non-debtor co-borrowers.

Consumer advocacy groups generally supported the proposal's approach to live contact for non-debtor co-borrowers and expressed their position that, under certain circumstances, live contact with a borrower in bankruptcy can be appropriate and would not violate the Bankruptcy Code's automatic stay. Consumer advocacy groups requested that the Bureau include commentary to the rule that would explain the Bureau does not take a position on whether early intervention efforts might violate the automatic stay or discharge injunction and that clarifies that the exemption from live contact with respect to borrowers in bankruptcy is permissive.

After the close of the comment period, the Bureau conducted additional outreach with servicers to gain insight into their mortgage processing systems and capabilities to implement proposed changes to the servicing of loans in bankruptcy. Servicers continued to express the

same three broad concerns with the proposal's approach as outlined above.

Final Rule

The Bureau is finalizing the live contact exemption as proposed, with modifications to implement the exemption at the loan level and for debtors in any chapter of bankruptcy. The Bureau is adopting an exemption from the live contact early intervention requirements for borrowers in bankruptcy and renumbering it as new § 1024.39(c)(1)(i) instead of as proposed in § 1024.39(d)(1)(i). New § 1024.39(c)(1)(i) provides that, 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, is exempt from the live contact early intervention requirements of § 1024.39(a). The Bureau has also modified the final commentary to align with and provide additional guidance on this provision.

Borrower-specific and chapter-specific exemption rationale. The Bureau considered commenters' concerns related to the difficulty of administering the proposal's borrower-specific approach. Although the proposal attempted to strike an appropriate balance by limiting the partial exemptions from § 1024.39 to only those borrowers protected by the Bankruptcy Code's automatic stay and discharge provisions, the Bureau is persuaded by the practical considerations industry commenters cited in favor of adopting a loan-level exemption. In particular, the Bureau recognizes the challenges presented by providing live or written early intervention to a non-debtor co-borrower who lives with the debtor borrower and the possibility of disputes about whether a servicer has violated the automatic stay if those communications inadvertently reach the wrong borrower. The Bureau also believes that applying the partial exemption from § 1024.39 with regard to a mortgage loan while any borrower on that loan is a debtor under any bankruptcy chapter generally simplifies the exemption, reduces servicer burden, and facilitates

servicer compliance.

Therefore, the Bureau adopts a loan-level exemption from the live contact early intervention requirements rather than a borrower-specific exemption as proposed. The final rule does not draw distinctions between the chapter of bankruptcy under which the borrower filed for purposes of the partial exemption. Instead, new § 1024.39(c)(1) applies the exemption with regard to a mortgage loan while any borrower on that loan is a debtor in bankruptcy under title 11 of the United States Code generally. Additionally, because this final rule does not adopt the borrower-specific approach in the proposal, the Bureau declines to adopt proposed comment 39(d)(1)(i)-1 related to live contact and proposed comment 39(d)(1)(ii)-1 related to a borrower's plan of reorganization under chapters 11, 12, and 13 of the Bankruptcy Code. Instead, the Bureau adopts comment 39(c)(1)-1 which explains that § 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.

Live contact exemption rationale. In addition to the issues identified in the comments, two other factors inform the Bureau's decision to maintain the exemption from the live contact early intervention requirements. First, as the Bureau explained in the proposal, live contact may be perceived as more intrusive and of less value to a borrower in bankruptcy. As discussed in the section-by-section analysis of § 1024.39(a), the live contact requirements are ongoing and generally require a servicer to make continued efforts to establish live contact with a borrower so long as a borrower remains delinquent. In addition, compliance with § 1024.39(a) is not limited to, and does not in every case require, a discussion of available loss mitigation options. Section 1024.39(a) requires a servicer to inform a borrower of loss mitigation options "if appropriate." More broadly, live contact provides servicers an opportunity to discuss the circumstances of a

borrower's delinquency,[192] and, based on this discussion, a servicer may determine not to inform a borrower of loss mitigation options. Current comment 39(a)-3.i.B provides an example of when a servicer makes a reasonable determination not to provide information about the availability of loss mitigation options to a borrower. In that example, the borrower has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.[193] As the comment demonstrates, live contact could serve as a reminder to a borrower who inadvertently missed a payment, or it could give the servicer an opportunity to discuss when the borrower would cure a temporary delinquency; it would not necessarily involve a discussion of loss mitigation options. Borrowers who seek protection under the Bankruptcy Code, however, may do so in part to obtain a reprieve from unwelcome creditor communications about outstanding payment obligations during which the borrower can reorganize financial obligations comprehensively rather than interacting with individual creditors. For such borrowers, a servicer's repeated attempts to establish live contact, which may not lead to a discussion of available loss mitigation options between the parties, may be of diminished value to the borrower.

Second, while some courts have determined that a creditor may properly contact a borrower in bankruptcy, including by telephone, to inform the borrower about loss mitigation options or to negotiate the terms of a loss mitigation agreement,[194] other courts have found that a

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[192] Comment 39(a)-2.
[193] This final rule renumbers this as comment 39(a)-4.i.B.
[194] *See, e.g.*, *In re Brown*, 481 B.R. 351, 360 (Bankr. W.D. Pa. 2012) (holding that creditor did not violate the automatic stay by making telephone calls to a borrower regarding foreclosure alternatives); *In re Silva*, No. 09-02504, 2010 WL 605578, at *1 (Bankr. D. Haw. Feb. 19, 2010) ("Nothing in the Bankruptcy Code prevents or prohibits a chapter 7 or chapter 13 debtor or its secured creditors from entering into communications or negotiations about the possibility of a loan modification."); *In re Medina*, No. 6:12–bk–00066–ABB, 2012 WL 2090419, at *1

creditor violated the automatic stay by making live contact with a borrower to discuss loss mitigation.[195] As the Bureau noted in the proposal, these violations appear to involve extreme facts, such as creditors making dozens of phone calls, some of which threatened legal action, to borrowers who had requested that the creditor stop contacting them and either had already decided to surrender the property or were not interested in the offered loss mitigation options.[196]

The Bureau does not believe that compliance with the live contact requirement under § 1024.39(a) would generally violate the stay. The Bureau is concerned, however, that, given the interactive and potentially unscripted nature of live contact, as well as the fact that live contact does not necessarily require a discussion of loss mitigation options, borrowers or courts may view a servicer's attempts to establish live contact as a communication prohibited by the Bankruptcy Code's automatic stay under certain circumstances. Accordingly, the Bureau concludes that it is appropriate to exempt servicers from engaging in live contact with borrowers in bankruptcy.

Consumer advocacy groups requested that the Bureau include commentary to explain that it does not take a position on whether early intervention efforts might violate the Bankruptcy Code and to clarify that the exemption from live contact with respect to borrowers in bankruptcy

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(Bankr. M.D. Fla. June 8, 2012) ("The automatic stay and the discharge provisions of the Bankruptcy Code do not prevent the parties from negotiating and entering into a loan modification post-petition.").

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

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

is permissive. The Bureau concludes that its statements in the IFR and in this final rule are sufficient and it declines to include the commentary requested by consumer advocacy groups. As the Bureau previously explained in the IFR and in the proposal, the Bureau does not take a position as to whether early intervention efforts might violate the Bankruptcy Code's automatic stay or discharge injunction. The partial exemption set forth in the final rule is indeed permissive, not prohibitive, and the Bureau once again encourages servicers that have been communicating with borrowers in bankruptcy about loss mitigation options to continue doing so. The Bureau believes that borrowers in bankruptcy may benefit from receiving tailored loss mitigation information that is appropriate to their circumstances.

Written Notice

The Bureau proposed to revise the exemption in current § 1024.39(d)(1) from the written early intervention notice requirements with respect to a delinquent borrower who is in bankruptcy or has discharged personal liability for the mortgage loan. The proposal would have limited the exemption to instances where there are no loss mitigation options available or where the borrower is surrendering the property or avoiding the lien securing the mortgage loan. Proposed § 1024.39(d)(1)(ii)(B) through (D) would have exempted a servicer from the written early intervention notice requirement in several situations where the borrower in bankruptcy surrenders the property securing the mortgage loan or avoids (*i.e.*, renders unenforceable) the lien securing the mortgage loan. First, proposed § 1024.39(d)(1)(ii)(B) would have provided that a servicer is exempt if the borrower's confirmed plan of reorganization provides for the borrower to surrender the property, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearages or the maintenance of payments due under the mortgage loan. Second, proposed § 1024.39(d)(1)(ii)(C)

would have provided that a servicer is exempt if the borrower files a statement of intention with the bankruptcy court that identifies an intent to surrender the property securing the mortgage loan. Third, proposed § 1024.39(d)(1)(ii)(D) would have provided that a servicer is exempt if the bankruptcy court enters an order providing for the avoidance of the servicer's lien or lifting the automatic stay with respect to the property securing the mortgage loan.

The Bureau is finalizing this exemption as proposed, with modifications to simplify triggering the exemption based on the availability of loss mitigation options and to apply uniformly the exemption on a loan level and for debtors in any chapter of bankruptcy. The Bureau is adopting modifications regarding the frequency of this modified written notice. The Bureau is also adding a new provision that exempts a servicer from providing the written early intervention notice with regard to a mortgage loan for which any borrower on the mortgage loan invokes the FDCPA's cease communications protections while any borrower on the mortgage loan is a debtor in bankruptcy.

Comments on Written Notice

The Bureau requested comment on the proposed partial exemption from the written early intervention notice, including the scope of the exemption, the criteria for qualifying for the exemption, and how communications could be tailored to meet the particular needs of borrowers in bankruptcy. Most industry commenters objected to the proposed requirement to provide the written early intervention notice, with certain exceptions, to a delinquent borrower who is in bankruptcy or has discharged personal liability for the mortgage loan. As explained above with respect to live contact, industry commenters raised concerns with the borrower-specific exemption and instead favored a blanket, loan-level exemption. Servicers commented that, while written communications may be more easily tailored to individual borrowers, servicers

cannot avoid situations where an early intervention letter or email reaches the wrong borrower (such as where one spouse routinely opens all the mail). In addition, servicers reported that they maintain a single address for providing written notices related to the mortgage loan and, while some servicers may be able to provide duplicate copies of notices to a second borrower at another address, they generally cannot automate a process for providing only some written notices to one borrower while providing other or modified notices to another borrower at a different address. Industry commenters also explained that servicers do not always know when co-borrowers live apart or, if so, the alternative mailing addresses and that, therefore, servicers would bear the burden of researching this information.

After the close of the comment period, the Bureau conducted additional outreach to servicers to gain insight into their mortgage processing systems and capabilities to implement proposed changes to the servicing of loans in bankruptcy. Servicers reiterated the system difficulties associated with tracking additional mailing addresses as well as the manual burden that would be required to provide communications to a co-borrower at a different address.

Several industry commenters objected to the proposed exemption's complexity, citing the multiple different events during the bankruptcy case that can trigger the exemption, before assessing each factor for each co-borrower. Servicers commented that they would incur significant burden to determine correctly when the exemption applies. One servicer commented that it would be very difficult to apply the exemption correctly and consistently. Industry commenters also stated that the compliance burden is unwarranted for the few borrowers they believe would be helped by early intervention. Industry commenters said that many borrowers in bankruptcy likely would have already received multiple early intervention notices prior to the bankruptcy and exhausted all of their loss mitigation options, making additional notices of little

value. Several industry commenters asserted more generally that the written early intervention notice offers minimal value to a borrower in bankruptcy and should therefore not be provided.

Several industry commenters noted the particular problems posed for borrowers in chapter 13. Delinquent borrowers may repay their arrearages over three to five years in chapter 13. Commenters explained that assessing the delinquency can be difficult because a missed payment may be due to a delay in the bankruptcy trustee forwarding funds to the servicer or the result of a dispute about how much the servicer is owed. Commenters also stated that providing the written notice at least once in every 180-day period as proposed could confuse a borrower who is making all payments due under the chapter 13 bankruptcy plan but contractually delinquent on the mortgage loan.

Additionally, numerous industry commenters stated that sending the notice could violate the automatic stay given the lack of a safe harbor and expressed concern about the prospect of litigation. One commenter noted that HUD's 2008 mortgagee letter required servicers to provide loss mitigation information to borrowers in bankruptcy only if the borrower had counsel who could receive the notice. Two other commenters explained that bankruptcy courts in Florida, for example, have adopted mortgage modification mediation procedures and prohibit written communication about the mediation outside the bankruptcy court portal. Some commenters contended that the Bureau was inappropriately attempting to interpret the Bankruptcy Code.[197]

The Bureau received comments from consumer advocacy groups, two industry members, and the U.S. Trustee Program generally supporting the proposal's requirement to provide the

[197] As in the IFR, in this final rule, the Bureau is not taking a position as to whether early intervention efforts might violate the Bankruptcy Code's automatic stay or discharge injunction.

written notice, with certain exceptions, to a delinquent borrower who is in bankruptcy or has discharged personal liability for the mortgage loan. Consumer advocacy groups generally favored the proposed borrower-specific exemptions from the written notice requirements. Several consumer advocacy groups supported the proposal on the basis that members of a particularly at-risk population who have difficulty meeting their financial obligations would receive loss mitigation information; one consumer advocacy group stated that the availability of loss mitigation options should not determine whether a borrower in bankruptcy is provided the written early intervention notice. Another consumer advocacy group stated that the proposal is consistent with FHA loss mitigation guidance and HAMP rules. A different consumer advocacy group supported the proposal but noted that, when completing bankruptcy court filings in several jurisdictions, debtors often must check a box identifying an intent to surrender their homes even when they actually plan to keep the property; as a result, these borrowers would not receive early intervention under the proposal. One trade association said it viewed the proposal's written notice requirements for borrowers in bankruptcy as reasonable when compared against permissible bankruptcy and loss mitigation options. The U.S. Trustee Program agreed with the proposal's approach, noting that debtors in bankruptcy have difficulty meeting their financial obligations and that therefore these debtors may often benefit substantially from opportunities for loss mitigation.

Comments on Timing of Written Notice

The Bureau requested comment on whether the timing of the written early intervention notice should be different for a borrower in bankruptcy, such as whether a servicer should be required to provide the written notice to a borrower in bankruptcy within 45 days after the bankruptcy case commences, rather than by the 45th day of the borrower's delinquency. One

industry commenter suggested requiring the notice within 45 days after the petition date at the point in time when the borrower is determining whether to keep the home. Another industry commenter suggested that, if the Bureau required a written early intervention notice for borrowers in bankruptcy, the Bureau should require just one written early intervention notice in bankruptcy for the life of the loan.

The Bureau conducted additional outreach on the timing of the written notice after the close of the comment period. One servicer stated that it currently provides loss mitigation information to the borrower, counsel, and bankruptcy trustee within one week of the bankruptcy filing, regardless of the period of the borrower's delinquency (if any), and considers this to be a best practice. This servicer explained that, even if the mortgage is current, it assumes a borrower who has filed for bankruptcy is experiencing some financial difficulty and wants to inform the borrower that help is available. Another servicer stated that it likely would be easier to provide a single written early intervention notice immediately following notification of a new bankruptcy. One consumer advocacy group advised that servicers subject to HUD's requirement to provide loss mitigation information appear to provide that information at different times, such that borrowers sometimes receive it months after filing for bankruptcy.

Comments on Overlap Between Borrowers in Bankruptcy and FDCPA

The Bureau proposed comment 39(d)(2)(iii)-2 to address the situation of a borrower in bankruptcy who has invoked cease communication rights under FDCPA section 805(c). The Bureau requested comment on whether it should require a servicer to provide the written early intervention notice to a borrower's representative, instead of the borrower, to the extent the FDCPA applies to a servicer's communications with a borrower in bankruptcy and the borrower has provided a notification pursuant to FDCPA section 805(c). The Bureau sought comment on

whether there may be a conflict between the language of proposed model clause MS–4(D) and applicable bankruptcy laws when a borrower has exercised cease communication rights under the FDCPA and is also a borrower in bankruptcy and on the scope of any such conflict.

Industry commenters said that most borrowers file for bankruptcy as a last resort, after all loss mitigation options have been exhausted. Consequently, they said, providing another written notice will do little for the borrower and possibly subject the servicer to liability under the Bankruptcy Code. Industry commenters stated that tracking whether the borrower has a representative, along with tracking FDCPA and bankruptcy case status, would increase servicer burden and the likelihood of mistakes. Industry commenters also noted that the model language in proposed Model Clause MS–4(D) could be inaccurate because the automatic stay is a legal impediment to foreclosure.[198]

Consumer advocacy groups, including a group of consumer bankruptcy attorneys, supported the Bureau's proposal to require a written early intervention notice when a borrower has both invoked the FDCPA's cease communication protections and is a debtor in bankruptcy. However, they opposed an exemption when the borrower is not represented. They explained that unrepresented borrowers have the same need for loss mitigation information as represented borrowers. They also stated that the written notice would not violate the Bankruptcy Code's automatic stay when sent directly to the borrower. Consumer advocacy groups expressed general concern that servicers will often erroneously conclude that borrowers are not represented.

[198] For a more general discussion of model clause MS–4(D), see the section-by-section analysis of Appendix MS–4 to Part 1024—Mortgage Servicing.

The U.S. Trustee Program commented that the modified written notice, including the proposed model language, may be seen by some bankruptcy judges or borrowers as violating the Bankruptcy Code's automatic stay even when sent to the borrower's representative. The commenter suggested that the Bureau consider modifying the proposed language in Model Clause MS–D(4) or exempting servicers from the requirement to provide a written early intervention notice unless the borrower requests it when the borrower has invoked the FDCPA's cease communication protections and is also a debtor in bankruptcy.[199]

Final Rule

In light of the comments received and for the reasons set forth below, the Bureau is adopting a partial exemption from the written early intervention notice for borrowers in bankruptcy and renumbering it as new § 1024.39(c)(1)(ii) and (iii) instead of as proposed in § 1024.39(d)(1)(ii), with modifications to implement the partial exemption on a loan level and for debtors in any chapter of bankruptcy and with modifications to the frequency of the written notice. As finalized, new § 1024.39(c)(1)(ii) provides that, 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, is exempt from the written early intervention notice requirements if no loss mitigation option is available or if any borrower on the mortgage loan has provided a cease communication notification pursuant to FDCPA section 805(c) with respect to that mortgage loan as referenced in § 1024.39(d). As explained above in the discussion of the live contact exemption, the Bureau also adopts a loan-level exemption from the written early intervention

[199] This final rule modifies the language in Model Clause MS–D(4), as explained in the section-by-section analysis of Appendix MS–4 to Part 1024—Mortgage Servicing.

notice requirements rather than a borrower-specific exemption as proposed. The final rule does not draw distinctions between the chapter of bankruptcy under which the borrower filed for purposes of the partial exemption. Instead, new § 1024.39(c)(1) applies the exemption with regard to a mortgage loan while any borrower on that loan is a debtor in bankruptcy under title 11 of the United States Code generally.

New § 1024.39(c)(1)(iii) provides that if the conditions of § 1024.39(c)(1)(ii) are not met, a servicer, with regard to that mortgage loan, must comply with the written early intervention notice requirements, as modified by § 1024.39(c)(1)(iii). Therefore, if any loss mitigation option is available and no borrower on the mortgage loan has invoked FDCPA section 805(c)'s cease communication protections, a servicer is required to provide the modified written early intervention notice as described in § 1024.39(c)(1)(iii). Section 1024.39(c)(1)(iii) also provides that, if a borrower is delinquent when the borrower becomes a debtor in bankruptcy, a servicer must provide the written notice 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 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. Section 1024.39(c)(1)(iii) further provides that the written notice may not contain a request for payment and that a servicer is not required to provide the written notice more than once during a single bankruptcy case. The final commentary has also been modified.

Written notice rationale. As the Bureau explained in the proposal, a primary value of the written early intervention notice to a delinquent borrower in bankruptcy is to inform the

borrower of potential loss mitigation options to avoid foreclosure. The Bureau considered comments that it should require the written early intervention notice for all borrowers in bankruptcy, regardless of whether any loss mitigation option is available. However, a notice that does not contain information related to loss mitigation options serves primarily as a payment reminder, which is of significantly diminished value to a borrower in bankruptcy and precisely the type of communication to a borrower in bankruptcy that the automatic stay is intended to prevent. Therefore, the Bureau concludes that it is not appropriate to require servicers to provide the written early intervention notice to borrowers in bankruptcy if no loss mitigation option is available. The final rule retains the exemption from § 1024.39(b) if no loss mitigation option is available or if any borrower on the mortgage loan has invoked the FDCPA's cease communication protections while requiring the provision of a modified form of the written early intervention notice to borrowers in bankruptcy if those conditions are not met.

To assist servicers in determining whether any loss mitigation option is available and thus whether the servicer is required to provide the modified written early intervention notice under new § 1024.39(c)(1)(iii), the Bureau is adopting new comment 39(c)(1)(ii)-1. New comment 39(c)(1)(ii)-1 states that in part, § 1024.39(c)(1)(ii) exempts a servicer from the requirements of § 1024.39(b) if no loss mitigation option is available. The comment then explains that 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. As explained in the section-by-section analysis of § 1024.39(b)(2), the Bureau is not adopting proposed comment 39(b)(2)-4, which would have explained when a loss mitigation option is available for purposes of § 1024.39(b) generally, but is instead adopting new comment 39(c)(1)(ii)-1 to explain when a

loss mitigation option is available for purposes of § 1024.39(c).

The Bureau believes that delinquent borrowers in bankruptcy would benefit from receiving the written notice required under § 1024.39(b) if any loss mitigation option is available. The Bureau believes that the content of the notice, including the statement providing a brief description of loss mitigation options that may be available from the servicer and the application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer, are of particular value to a delinquent borrower in bankruptcy. Borrowers who have filed for bankruptcy should not be denied an opportunity to obtain information about available loss mitigation options, as this information may be uniquely critical for borrowers in bankruptcy making decisions about how best to reduce, eliminate, or reorganize their debts. The Bureau understands that borrowers sometimes initially determine to surrender their property only to reconsider that decision upon receiving loss mitigation information.

Although industry commenters generally opposed providing a written early intervention notice to borrowers in bankruptcy, the Bureau concludes that requiring the notice, as modified in new § 1024.39(c)(1)(iii), strikes the appropriate balance for several reasons. First, the Bureau does not agree with those industry commenters who claimed that the written notice would be of little value to borrowers in bankruptcy. While it may be the case that some borrowers exhaust their loss mitigation options before bankruptcy, many borrowers file for bankruptcy precisely to avoid losing their home, and for those borrowers, continuing to receive information about available loss mitigation options is vital. Comments from consumer advocacy groups, including consumer bankruptcy attorneys, and the U.S. Trustee Program all emphasized the importance of providing loss mitigation information to borrowers in bankruptcy, noting that they are, by

definition, experiencing financial hardships. The Bureau believes that delinquent borrowers in bankruptcy would benefit from information about available loss mitigation options.

HUD, Treasury, and many local bankruptcy courts have similarly recognized that borrowers in bankruptcy have a need for loss mitigation assistance. In 2008, HUD issued guidance requiring servicers of FHA mortgage loans to provide loss mitigation information to bankrupt borrowers represented by counsel, while also recommending that servicers provide that information to pro se borrowers.[200] Although Treasury does not require servicers to solicit borrowers in bankruptcy actively for loss mitigation, it has made clear that such borrowers are eligible for HAMP.[201] Numerous bankruptcy courts, including in Florida, Nevada, New Jersey, New York, and Wisconsin, have adopted mortgage modification programs or procedures.

Second, the Bureau believes that this final rule appropriately addresses industry commenters' concerns that determining when the exemption applies could be particularly difficult or burdensome. The Bureau understands that servicers often review borrowers' initial court filings as part of their efforts in monitoring borrowers' bankruptcy cases, and the information servicers would have needed to determine whether or not an exemption applied, such as whether or not the borrower is represented and the chapter of bankruptcy under which

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[200] "[T]he Department understands that . . . waiting until a bankruptcy is discharged or dismissed before offering loss mitigation may be injurious to the interests of the borrower, the mortgagee and the FHA insurance funds." U.S. Dep't of Housing and Urban Dev., Mortgagee Letter 2008–32, *Use of FHA Loss Mitigation During Bankruptcy* (Oct. 17, 2008) *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/lmmltrs.

[201] "Borrowers in active Chapter 7 or Chapter 13 bankruptcy cases are eligible for [the Home Affordable Modification Program (HAMP)] at the servicer's discretion in accordance with investor guidelines, but servicers are not required to solicit these borrowers proactively for HAMP. Notwithstanding the foregoing, such borrowers must be considered for HAMP if the borrower, borrower's counsel or bankruptcy trustee submits a request to the servicer. However, if the borrower is also unemployed, the servicer must evaluate the borrower for [the Home Affordable Unemployment Program], subject to any required bankruptcy court approvals, before evaluating the borrower for HAMP." Making Home Affordable, *Making Home Affordable Program Handbook for Servicers of Non*-GSE *Mortgages*, Version 5.0 at 71 (Jan. 6, 2016), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_5.pdf.

relief is sought, is usually contained in those filings. Nonetheless, as explained above, the Bureau is finalizing new § 1024.39(c)(1)(iii) to take a uniform approach for borrowers in any chapter of bankruptcy under title 11 of the United States Code, thus obviating any need for servicers to distinguish the chapter of bankruptcy filed by the borrower. Moreover, as finalized, § 1024.39(c)(1)(iii) requires that a servicer provide the notice only once during a single bankruptcy case, further alleviating servicer burden. Additionally, new comment 39(c)-2 provides that § 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, and that, if necessary to comply with such law or court order, a servicer may adapt the requirements of § 1024.39 as appropriate.

Third, while industry commenters expressed concerns that providing the written early intervention notice to borrowers in bankruptcy would violate the automatic stay, courts have found no violation under similar circumstances. Of the handful of cases cited by industry commenters finding stay or discharge injunction violations for any reason related to a mortgage loan, all involved extreme facts and only one involved loss mitigation communications. In that case, the servicer had sent several ARM notices, two HAMP packets, and a letter offering workout options, but also engaged in collection attempts, such as making multiple phone calls requesting payment, after the borrower had long since surrendered the home and stopped making payments.[202] In finding a violation of the discharge injunction, the court noted that the totality of

[202] *See In re Bibolotti*, No. 4:11-CV-472, 2013 WL 2147949 (E.D. Tex. May 15, 2013). The other cases industry commenters cited did not involve loss mitigation notices or conduct that the proposal or final rule would require. *See In re Shinabeck*, No. 08-41942, 2014 WL 5325781 (Bankr. E.D. Tex. Oct. 20, 2014) (collection attempts continued even after borrower filed lawsuit alleging violations of the discharge injunction); *In re Draper*, 237 B.R. 502, 505–06 (Bankr. M.D. Fla. 1999) (debtor had asked not to receive periodic statements, which were inaccurate in

the servicer's collection efforts included at least 15 separate collection attempts and that the debtor had in fact vacated the home before filing for bankruptcy and moved to another address.[203] The final rule, in contrast, requires a single written notice containing information about available loss mitigation options, which may not include a request for payment. The Bureau is not aware of any reported decision in which a court sanctioned a servicer for providing a written notice about loss mitigation information with the content and frequency as adopted in this final rule. In fact, some industry commenters, consumer advocacy groups, bankruptcy attorneys, the U.S. Trustee Program, and two bankruptcy judges[204] all agreed that providing the written early intervention notice likely would not violate the automatic stay.

Additionally, the Bureau understands that, even after a borrower files for bankruptcy, a servicer is not categorically barred from communicating with the borrower.[205] Courts have found that, under appropriate circumstances, servicers may provide periodic statements, notices of change in payments, and other communications without violating the automatic stay.[206] As noted above, several courts have determined that a servicer may properly contact a borrower to

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any event); *In re Connor*, 366 B.R. 133, 136, 138 (Bankr. D. Haw. 2007) (debtor was surrendering his home and did not need periodic statements).

[203] *Bibolotti*, 2013 WL 2147949, at *1.

[204] As the Bureau explained, prior to the proposal, the Bureau conducted outreach to two bankruptcy judges who commented that a written notice compliant with § 1024.39(b) and containing a bankruptcy disclaimer would raise fewer concerns about the automatic stay than live contact because the notice does not contain any payment demand and because the nature of the notice is an invitation to apply for debt relief. 79 FR 74176, 74205 (Dec. 15, 2014).

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

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

inform the borrower about loss mitigation options or to negotiate the terms of a loss mitigation agreement.

The Bureau also does not believe that servicers' concerns about communicating with a borrower represented by counsel warrant a blanket exemption from providing the written early intervention notice to borrowers in bankruptcy. To the extent that a servicer is concerned about communicating with a borrower represented by counsel, it may communicate with the borrower's authorized representative instead.[207] New comment 39(c)-1 provides that, 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. The comment explains that, in general, bankruptcy counsel is the borrower's representative and that 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.[208]

As evidenced by the numerous jurisdictions that provide special bankruptcy court rules

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

[208] *See* current comments 39(b)(1)-3 and 39(a)-4 (renumbered in this final rule as comment 39(a)-5).

for loss mitigation,[209] the Bureau continues to believe that bankruptcy courts often encourage loss mitigation efforts and that bankruptcy courts are unlikely to sanction a servicer for sending notices required by Regulation X unless the servicer engaged in other, more aggressive collection attempts. To address further commenters' concerns about the automatic stay, the Bureau is finalizing § 1024.39(c)(1)(iii) to specify that the written notice may not contain a request for payment and require that a servicer provide the notice only once during a single bankruptcy case. As explained more fully in the section-by-section analysis of § 1024.39(d), the prohibition on making a payment request ensures that the written early intervention notice is purely informational and does not serve as a pretext for collection attempts. The Bureau is also revising existing comment 39(d)(1)-3 and renumbering it as comment 39(c)(1)(iii)-1 to provide that, 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 who is primarily liable on the obligation. This comment should clarify servicers' obligations when there are multiple borrowers on a mortgage loan and only one of them is in bankruptcy.

The Bureau also proposed comment 39(d)(1)(ii)-2 to clarify servicers' obligations when

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[209] *See, e.g.*, Bankr. S.D.N.Y., Loss Mitigation Program Procedures, *available at* http://www.nysb.uscourts.gov/pgh/lossmitigation/LossMitigationProcedures.pdf; Bankr. E.D.N.Y., *In re Adoption of Modified Loss Mitigation Program Procedures*, Gen. Order 582 (Sept. 9, 2011), *available at* http://www.nyeb.uscourts.gov/sites/nyeb/files/ord_582.pdf; Bankr. D.R.I., *Eighth Amended Loss Mitigation Program and Procedures*, *available at* http://www.rib.uscourts.gov/sites/default/files/programs_and_services/loss_mitigation/Appendix%20VII%20Loss%20Mitigation.pdf; Bankr. D. Vt., L.B.R. 4001-7, Mortgage Mediation and Loss Mitigation Program, *available at* http://www.vtb.uscourts.gov/sites/vtb/files/general-ordes/SO%2015-02%20-%20MM%20-%202.2.15%20FINAL%20with%20attachments.pdf; Bankr. D.N.J., *Loss Mitigation Program and Procedures*, *available at* http://www.njb.uscourts.gov/sites/default/files/forms/Loss_Mitigation_Program_and_Procedures.pdf; Bankr. M.D. Fla., *In re Administrative Order Prescribing Procedures for Mortgage Modification Mediation*, *Admin*. Order FLM 2015-1, *available at* http://pacer.flmb.uscourts.gov/administrativeorders/DataFileOrder.asp?FileID=43.

the FDCPA applies to a servicer's communications with a borrower who is a debtor in bankruptcy if that borrower has also invoked the cease communication protections of FDCPA section 805(c). The Bureau revises and renumbers proposed comment 39(d)(1)(ii)-2 as new comment 39(c)(1)(ii)-2, which illustrates application of the exemption in § 1024.39(c)(1)(ii). Final comment 39(c)(1)(ii)-2.i provides that, to the extent the FDCPA 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 (a cease communications notice), with regard to that mortgage loan, § 1024.39(c)(1)(ii) exempts a servicer from providing the written notice required by § 1024.39(b). New comment 39(c)(1)(ii)-2.ii provides an illustrative example of the application of this exemption.

Timing of written notice rationale. New § 1024.39(c)(1)(iii)(A) requires that a servicer provide the written notice not later than the 45th day after a delinquent borrower files a bankruptcy petition under title 11 of the United States Code. The Bureau believes that requiring servicers to provide a single notice for delinquent borrowers who file for bankruptcy without having to review the borrower's bankruptcy filings or the bankruptcy court's orders reduces servicer burdens compared to the proposed approach. The Bureau believes that delinquent borrowers will benefit by having the notice provided shortly after the bankruptcy filing when they are making decisions about whether to retain the property, even if they received a version of the early intervention notice prior to the bankruptcy filing. The final rule's approach is

consistent with HUD's 2008 FHA guidance, which requires servicers to provide loss mitigation information "upon receipt" of a borrower's filing.[210]

Overlap between borrowers in bankruptcy and FDCPA rationale. New § 1024.39(c)(1)(ii) provides that a servicer is exempt from the written early intervention notice requirements if § 1024.39(d) also applies with respect to that borrower's loan, meaning that a servicer subject to the FDCPA is exempt from providing the written early intervention notice with regard to a mortgage loan for which any borrower on the mortgage loan invokes the FDCPA's cease communications protections while any borrower on the mortgage loan is a debtor in bankruptcy. The Bureau agrees with commenters that there is tension between, on the one hand, the Bankruptcy Code's automatic stay, which prevents the servicer from pursuing foreclosure, and, on the other hand, a statement that the servicer may or intends to invoke its specified remedy of foreclosure, as required to be included under § 1024.39(d)(3)(i) in the notice to a borrower who has invoked the FDCPA's cease communication protections.[211]

The Bureau believes that any potential borrower harm resulting from this exemption is mitigated because § 1024.39(d)(3) requires that, if any loss mitigation option is available, servicers must provide the written early intervention notice to delinquent borrowers outside of bankruptcy, even if those borrowers have invoked their cease communication rights. If any loss mitigation option is available, a servicer is exempt from providing the written early intervention notice only with respect to a mortgage loan for which any borrower on the loan has invoked the

[210] U.S. Dep't of Housing and Urban Dev., Mortgagee Letter 2008–32, Use of FHA Loss Mitigation During Bankruptcy (Oct. 17, 2008) (HUD Mortgagee Letter 2008–32), *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/lmmltrs.

[211] *See* section-by-section analysis of § 1024.39(d)(3) for further discussion of the requirement that the written early intervention notice include a statement that the servicer may or intends to invoke its specified remedy of foreclosure.

FDCPA cease communication right and while any borrower on that mortgage loan is a debtor in bankruptcy. Consequently, many borrowers among that subset of delinquent borrowers who have invoked their cease communication rights while any borrower on the mortgage loan is a debtor in bankruptcy will nonetheless receive an early intervention notice, either because they received such a notice before exercising their cease communication rights or because they received the modified written early intervention notice required to be provided to all borrowers outside of bankruptcy if any loss mitigation option is available. As commenters noted, many borrowers will be more than 45 days delinquent upon filing for bankruptcy and so will have received a written early intervention notice before entering bankruptcy, if any loss mitigation option is available.

39(c)(2) Resuming Compliance

The Bureau also proposed to revise current comment 39(d)(1)-2 and redesignate it as comment 39(d)(1)-1 (and remove existing comment 39(d)(1)-1). The proposed comment would have provided that, with respect to any borrower who has not discharged the mortgage debt, a servicer must resume compliance with § 1024.39(a) and (b), as applicable, as of the first delinquency that follows the earliest of the following outcomes in the bankruptcy case: (1) The case is dismissed, (2) the case is closed, (3) the borrower reaffirms the mortgage loan under 11 U.S.C. 524, or (4) the borrower receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. Proposed comment 39(d)(1)-1 also clarified that the requirement to resume compliance with § 1024.39 would not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. The proposed revisions would have provided that, to the extent necessary to comply with such law or court order, a servicer may adapt the requirements of § 1024.39 as appropriate.

In addition, proposed comment 39(d)(1)-1 would have provided that compliance with § 1024.39(a) is not required with respect to any borrower who has discharged the mortgage debt under applicable provisions of the Bankruptcy Code but continues to make mortgage payments to avoid foreclosure of the lien and retain the home. As to borrowers who use such a ride-through option, the proposal would have imposed the same requirements on a servicer both during and after the bankruptcy case: The servicer would be exempt from the live contact requirements of § 1024.39(a), but the servicer would have to continue to comply with the written notice requirements of § 1024.39(b) unless one of the conditions in proposed § 1024.39(d)(1)(ii) was satisfied. If the borrower's bankruptcy case was revived, for example, through the court's reinstating a previously dismissed case or reopening the case, the servicer would be exempt again from the requirements of proposed § 1024.39(a). As discussed further below, the Bureau is adopting clarifications to proposed comment 39(d)(1)-1 and codifying it in new § 1024.39(c)(2) and its related commentary to explain when a servicer is required to resume compliance with the early intervention requirements.

Comments on Resuming Compliance

Commenters expressed varied opinions about whether a servicer should be required to resume compliance with § 1024.39 if a borrower discharged the mortgage loan. One industry commenter explained that a bankruptcy case can remain open following the borrower's discharge, that the property securing the servicer's lien may remain property of the bankruptcy estate, and that the automatic stay could continue to apply to the property. The commenter recommended that a servicer not be required to resume compliance until the bankruptcy case is complete. Conversely, consumer advocacy groups stated that servicers should be required to resume compliance with the early intervention requirements for borrowers in chapter 7

bankruptcy who use the ride-through option referenced above. These consumer advocacy groups suggested that, for simplicity of administration, if the servicer is required to send the borrower periodic statements after a bankruptcy discharge, then the servicer should also be required to attempt live contact and provide a written early intervention notice to the borrower if the loan becomes delinquent.

In response to the Bureau's specific request for comment as to whether servicers have had difficulties receiving notices regarding the dismissal or closing of a bankruptcy case or of the debtor's discharge, one servicer stated that it encounters such problems. Another industry commenter stated that servicers incur expenses in monitoring bankruptcy cases for a case closing or for discharge of the mortgage loan. Both commenters suggested that the obligation to resume compliance be contingent on the servicer receiving notice from the bankruptcy court or the borrower.

Specifically regarding ride-through borrowers, the U.S. Trustee Program commented that the criteria for resuming compliance with early intervention should be clarified to recognize borrowers who have received a discharge of personal liability but whose homes are still subject to valid liens. The U.S. Trustee Program stated that the Bureau should make clear that servicers must comply with the written early intervention notice requirements if the servicer retains a valid security interest in the property – even if the debtor has obtained a discharge of personal liability.

The Bureau conducted additional outreach with servicers about how they monitor bankruptcy cases after the close of the comment period. Several servicers stated that they learn of new bankruptcy filings through electronic subscription monitoring services. One credit union explained that it learns of new bankruptcy filings either through mailings from the bankruptcy court or directly from the credit union member. In either case, servicers stated that they

generally receive timely notice of new bankruptcy filings, in some cases within as little as one day of the filing. A number of servicers also explained that they track the status of bankruptcy cases electronically.

Final Rule

The Bureau is adopting clarifications to proposed comment 39(d)(1)-1 and codifying it in new § 1024.39(c)(2) and its related commentary. Specifically, part of proposed comment 39(d)(1)-1.i is finalized as new § 1024.39(c)(2)(i) with modifications and provides that, subject to certain exceptions in new § 1024.39(c)(2)(ii), a servicer that was exempt pursuant to § 1024.39(c)(1) must resume compliance with the early intervention requirements after the next payment due date that follows the earliest of the following events: the bankruptcy case is dismissed; the bankruptcy case is closed; and the borrower reaffirms personal liability for the mortgage loan. New § 1024.39(c)(2)(ii) finalizes part of proposed comment 39(d)(1)-1.ii with modifications and provides that, 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 is not required to resume compliance with the live contact early intervention requirements and must resume compliance with the written early intervention notice requirements if the borrower has made any partial or periodic payment on the mortgage loan after commencement of the borrower's bankruptcy case.

The Bureau considered whether the servicer's obligation to resume early intervention should be contingent on a servicer receiving notice that the bankruptcy case is dismissed or closed or that the borrower has reaffirmed personal liability for the mortgage loan. However, as the Bureau's outreach confirmed, servicers typically track the status of borrowers' bankruptcy cases already to ensure compliance with other Federal and State laws. Servicers generally have

procedures in place to monitor outcomes in bankruptcy cases and already bear any costs associated with monitoring bankruptcy case outcomes. Additionally, a servicer that participates in the bankruptcy case, such as by filing a proof of claim or seeking relief from the automatic stay to pursue foreclosure, should receive automatic electronic notification of all case activity. Therefore, the Bureau concludes that any additional compliance burdens associated with new § 1024.39(c)(2) will be minimal and that servicers have access to timely information about the bankruptcy case.

The Bureau adopts part of proposed comment 39(d)(1)-1.ii in new comment 39(c)(2)-1, which explains that, 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. New comment 39(c)(2)-1 provides an illustrative example applying this provision.

The final rule does not include the proposed language requiring servicers to resume compliance with the early intervention provisions when the borrower receives a discharge of the mortgage loan. The Bureau believes it would be more appropriate to require servicers to resume compliance once the bankruptcy case is complete. The Bureau understands that the time between a borrower's discharge of personal liability for the mortgage loan and the closing of a bankruptcy case is typically brief and that, therefore, not requiring early intervention during this period generally should not have significant adverse consequences for borrowers. Additionally, the property securing the mortgage loan may remain property of the bankruptcy estate after the borrower discharges personal liability for the loan, and the Bureau believes it would be more appropriate for a servicer to resume providing early intervention after the bankruptcy case is

complete with respect to both the borrower and the property.

The Bureau continues to believe that borrowers who exercise the ride-through option, like other borrowers who retain their homes, would benefit from early intervention. The Bureau is concerned, however, that in certain situations the borrower or bankruptcy court could view live contact as violating the discharge injunction. Therefore, with respect to a mortgage loan for which a borrower discharges personal liability, a servicer is not required to resume compliance with the live contact requirements of § 1024.39(a). The Bureau believes that, for the reasons discussed above, providing a written early intervention notice after the bankruptcy case to a borrower who has discharged personal liability for the mortgage loan is unlikely to raise similar concerns about the discharge injunction.[212] Accordingly, the final rule provides that, with respect to a borrower who has discharged personal liability for a mortgage loan, the servicer must resume compliance with § 1024.39(b) after the bankruptcy case concludes if the borrower has made any partial or periodic payment on the mortgage loan after commencement of the borrower's bankruptcy case. Consistent with comments the Bureau received from the U.S. Trustee Program regarding the ride-through option, the Bureau believes that a borrower's partial or periodic payment after commencement of the bankruptcy case indicates the borrower's desire to retain the property and therefore that the written early intervention notice may continue to be helpful under those circumstances. Even if a servicer were to return a borrower's partial

[212] In addition to the reasons discussed above, the Bureau notes that the written early intervention notice may fall within the exception to the discharge injunction set forth in section 524(j) of the Bankruptcy Code. See 11 U.S.C. 524(j) ("[A discharge injunction] does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—(1) such creditor retains a security interest in real property that is the principal residence of the debtor; (2) such act is in the ordinary course of business between the creditor and the debtor; and (3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.").

payment or hold it in suspense, the servicer would still be required to resume compliance with § 1024.39(b) after the bankruptcy case concludes pursuant to § 1024.39(c)(2)(ii)(B) because the borrower made the payment.

Legal Authority

The Bureau is exercising its authority under sections 6(j)(3) and 19(a) of RESPA to exempt servicers from the early intervention live contact requirements in § 1024.39(a) for a mortgage loan while any borrower on a mortgage loan is a debtor in bankruptcy under any chapter in title 11 of the United States Code. The Bureau exercises its authority under sections 6(j)(3) and 19(a) of RESPA to exempt a servicer from the written early intervention notice requirements in § 1024.39(b) if any borrower on the mortgage loan is a debtor in bankruptcy and no loss mitigation option is available or if § 1024.39(d) also applies with respect to that borrower's loan. The Bureau also exercises its authority under sections 6(j)(3) and 19(a) of RESPA to exempt a servicer from resuming compliance with § 1024.39(a) 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, and to require a servicer to resume compliance with § 1024.39(b) if the borrower has made any partial or periodic payment on the mortgage loan after commencement of the borrower's bankruptcy case. For the reasons discussed above, the Bureau does not believe that the consumer protection purposes of RESPA are furthered by requiring servicers to comply with § 1024.39(a) or (b) under those bankruptcy-related circumstances.

The Bureau is exercising its authority under sections 6(k)(1)(E), 6(j)(3), and 19(a) of RESPA to require that a servicer provide the written early intervention notice as set forth in § 1024.39(c)(1)(iii) not later than the 45th day after the borrower files a bankruptcy petition under title 11 of the United States Code or not later than the 45th day of the borrower's

delinquency, as applicable. The Bureau also exercises its authority under sections 6(k)(1)(E), 6(j)(3), and 19(a) of RESPA to require that a servicer resume compliance with § 1024.39(a) and (b) after the next payment due date that follows the earliest of the following events: the bankruptcy case is dismissed; the bankruptcy case is closed; or the borrower reaffirms personal liability for the mortgage loan. The Bureau believes that the early intervention rules under § 1024.39 provide necessary consumer protections and that servicers are capable of providing such protections without negative consequences for borrowers, including borrowers in bankruptcy. The Bureau finds, consistent with RESPA section 6(k)(1)(E), that § 1024.39(c)(1)(iii) and (c)(2) is appropriate to achieve the consumer protection purposes of RESPA, including to help borrowers avoid unwarranted or unnecessary costs and fees and to facilitate review of borrowers for foreclosure avoidance options. For the same reasons, § 1024.39(c)(1)(iii) and (c)(2) is authorized under section 6(j)(3) of RESPA as necessary to carry out section 6 of RESPA and under section 19(a) of RESPA as necessary to achieve the purposes of RESPA, including borrowers' avoidance of unwarranted or unnecessary costs and fees and the facilitation of review of borrowers for foreclosure avoidance options. For the reasons discussed above, the Bureau concludes that the consumer protection purposes of RESPA are furthered by requiring servicers to provide the written early intervention notice as set forth in § 1024.39(c)(1)(iii) and to resume compliance with § 1024.39(a) and (b) for borrowers in bankruptcy under the circumstances set forth in § 1024.39(c)(2).

39(d) Fair Debt Collection Practices Act—Partial Exemption

The Bureau proposed to revise the scope of the existing exemption from the early

intervention requirements for servicers subject to the FDCPA with respect to a borrower who has sent a notification pursuant to FDCPA section 805(c), as set forth in current § 1024.39(d)(2).[213] The proposal would have maintained the current exemption from the live contact requirements of § 1024.39(a) while partially removing the exemption from the written early intervention notice requirements of § 1024.39(b). The latter exemption would have been only partially removed in that it would remain in place for certain cases but would have added a requirement that a servicer provide a modified written notice if loss mitigation options are available. To the extent proposed § 1024.39(d)(2)(iii) would have required a servicer to provide a modified written notice, the proposal contemplated a safe harbor for the servicer from liability under the FDCPA. FDCPA section 805 provides limitations on communications with borrowers, including the cease communication provision under which a borrower may notify a debt collector that the borrower refuses to pay a debt or that the borrower wishes the debt collector to cease further communication with the consumer.

For the reasons discussed below, the Bureau is adopting proposed § 1024.39(d)(2) generally as proposed, renumbered as § 1024.39(d), with technical corrections and modifications to adopt it on a loan level. The Bureau is adopting these modifications to ease servicer burden and to facilitate servicer compliance, in a manner and for several reasons that parallel those explained in the section-by-section analysis of § 1024.39(c). The Bureau is also adding a new provision that exempts a servicer that is a debt collector from providing the written early

[213] This section-by-section analysis discusses final § 1024.39(d) generally in terms of a borrower's cease communication notification and its effect on a servicer's obligations under the early intervention requirements, but the provision applies equally to a borrower's notice to the servicer that the borrower refuses to pay a debt. *See* FDCPA section 805(c) ("If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt . . . .").

intervention notice with regard to a mortgage loan for which any borrower invokes the FDCPA's cease communication protections while any borrower on the mortgage loan is a debtor in bankruptcy.

Consistent with the discussion in this section-by-section analysis, the Bureau is issuing concurrently with this final rule an interpretive rule interpreting the FDCPA cease communication requirement in relation to the mortgage servicing rules. This interpretation constitutes an advisory opinion under FDCPA section 813(e) (15 U.S.C. 1692k(e)).[214] For the reasons discussed below, the Bureau is providing a safe harbor from liability under the FDCPA for the written notice that servicers that are debt collectors are required to provide under § 1024.39(d)(3), notwithstanding a borrower's invocation of the cease communication right. Additionally, the Bureau is providing a safe harbor from liability under the FDCPA for certain communications by a servicer to a borrower notwithstanding a borrower's invocation of the cease communication right.

Comments on Partially Removing Exemption Generally

The Bureau received comments on the proposed partial exemption from servicers, consumer advocacy groups, trade associations, credit unions, and the U.S. Trustee Program. Some industry commenters expressed concern with the Bureau's proposed approach, stating that it would be inconsistent to require that a servicer provide early intervention after receiving a borrower's cease communication notice. Two industry commenters stated that the better

[214] *See* Bureau of Consumer Fin. Prot., Official Bureau Interpretations: Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (Aug. 4, 2016), *available at* http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/safe-harbors-liability-under-fair-debt-collection-practices-act-certain-actions-taken-compliance-mortgage-servicing-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z.

approach would be for the FDCPA not to apply to mortgage loans at all and for early intervention requirements to apply equally to all mortgage borrowers. Another industry commenter explained that, to ease operational burdens, the exemption should apply to any loans that a servicer chooses to treat as subject to the FDCPA and for which the borrower has provided a cease communication notification.

Consumer advocacy groups generally supported the proposal, commenting that borrowers need and are interested in loss mitigation information notwithstanding invocation of their cease communication rights. Consumer advocacy groups explained that borrowers should not be forced to make a choice between exercising their rights under the FDCPA and receiving information about potential loss mitigation options.

Comments on Live Contact

Industry commenters generally supported the exemption from live contact for a borrower who has provided a cease communication notification. Consumer advocacy groups stated that the Bureau should clarify that the exemption does not apply if the borrower has initiated contact with the servicer and has sought assistance with a delinquency or requested information about potential loss mitigation options.

Comments on Written Notice

Industry commenters generally objected to the burden of providing a modified written early intervention notice on a modified schedule to a narrow subset of borrowers. They noted their difficulty in determining when the FDCPA applies to a mortgage loan and thus the difficulty they would have in determining when to send the modified notice.

Consumer advocacy groups generally supported a requirement that borrowers who invoke cease communication protections receive a written notice. However, consumer advocacy

groups commented that the availability of loss mitigation options should not be the condition that determines whether a borrower receives the written notice. They stated that a servicer may make a mistake in its determination as to whether a borrower who has provided a servicer a cease communication notification would be eligible for some loss mitigation options. Therefore, consumer advocacy groups supported requiring that servicers provide a written notice to all borrowers who have invoked cease communication rights, regardless of whether loss mitigation options are available.

Comments on Frequency of Written Notice

With respect to the frequency of the written early intervention notice, two industry group commenters indicated that, despite the option under the current rule to provide the early intervention notice no more than once in a 180-day period, servicers find it easier to provide the notice more frequently, sometimes monthly. The commenters suggested that the rule should allow servicers to provide a written notice monthly or once in connection with two missed payments during a calendar year to tie the notice requirement to a late payment rather than to the time between notices. The same commenters also said that a servicer should be permitted to provide a written notice upon the borrower's request.

On the other hand, consumer advocacy groups suggested that, in limited circumstances, the Bureau should permit a servicer to provide a written early intervention notice more than once during a 180-day period. They stated that a servicer should be required to provide a written notice more than once during any 180-day period if there has been a cure of a default and subsequent re-default by the borrower within the 180-day period.

Comments on Safe Harbor and Advisory Opinion

Industry commenters stated that the Bureau's overall proposed safe harbor approach

failed to take into account the fluid nature of discussions between servicers and borrowers in the loss mitigation context. These commenters stated that assessing a borrower's eligibility for loss mitigation may require asking the borrower to pay a reinstatement amount or otherwise make an immediate payment. One industry commenter stated that loss mitigation is itself a form of debt collection and that servicing personnel are trained to explore options for collection. This commenter suggested that, with respect to any specific borrower-initiated communication, the cease communication notice should be deemed temporarily or permanently withdrawn. Accordingly, industry commenters suggested the Bureau modify the safe harbor to cover more discussions of loss mitigation options.

Although consumer advocacy groups generally supported the proposal to require that a servicer provide a written early intervention notice to a borrower who has provided the servicer a cease communication notification, they opposed the proposed safe harbor from liability under the FDCPA. They stated that the proposal appeared to provide servicers with blanket FDCPA protection any time they provide a written notice required by proposed § 1024.39(d)(2)(iii), under all circumstances, regardless of what is contained in the notice. Consumer advocacy groups also expressed concern with the proposal's discussion of borrower-initiated communications in a separate advisory opinion interpreting the FDCPA cease communication requirement. Rather than issue a separate advisory opinion interpreting the FDCPA cease communication requirement, consumer advocacy groups requested that the Bureau issue guidance in Regulation X itself, either as an amendment to proposed § 1024.39(d)(2)(i) or in a comment. These consumer advocacy groups also opposed the Bureau's plan to provide servicers with a safe harbor from liability under the FDCPA for an act done or omitted in good faith in conformity with the advisory opinion.

Final Rule

For the reasons set forth below and in light of the comments received, the Bureau is adopting a partial exemption from the early intervention requirements for borrowers who have invoked their FDCPA cease communication protections as proposed in § 1024.39(d)(2), renumbered as § 1024.39(d), with technical corrections and modifications to adopt it on a loan level instead of a borrower-specific level. The Bureau is also adding a new provision that exempts a servicer that is a debt collector from providing the written early intervention notice with regard to a mortgage loan for which any borrower invokes the FDCPA's cease communication protections while any borrower on the mortgage loan is a debtor in bankruptcy.

As finalized, § 1024.39(d) provides that, with regard to a mortgage loan for which any borrower has provided a notification pursuant to FDCPA section 805(c), a servicer subject to the FDCPA with respect to that borrower's loan: (1) Is exempt from the live contact requirements of § 1024.39(a); (2) is exempt from the written notice requirements of § 1024.39(b) 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 § 1024.39(c); and (3) if those conditions are not met (meaning that any loss mitigation option is available and no borrower on the mortgage loan is a debtor in bankruptcy), must comply with the written notice requirements of § 1024.39(b), as modified by new § 1024.39(d)(3). Section 1024.39(d)(3) modifies the requirements of § 1024.39(b) under these circumstances to provide that, in addition to the information required pursuant to § 1024.39(b)(2), 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 may be used to comply with this requirement.[215] Revised § 1024.39(d)(3) also finalizes two other aspects of the proposed rule: (1) The written notice may not contain a request for payment, and (2) a servicer is prohibited from providing the written notice more than once during any 180-day period.

While many mortgage servicers are not subject to the FDCPA, mortgage servicers that acquired a mortgage loan at the time that it was in default are subject to the FDCPA with respect to that mortgage loan. The FDCPA generally grants consumers the right to bar debt collectors from communicating with them regarding a debt by sending a written cease communication notification pursuant to FDCPA section 805(c). Section 805(c) of the FDCPA provides that if a consumer refuses in writing to pay a debt or requests that a debt collector cease communicating with the consumer about the debt, the debt collector must discontinue communicating with the consumer, subject to enumerated exceptions. However, even after a borrower sends a servicer a cease communication notification, a servicer that is a debt collector is not categorically barred under the FDCPA from all communication with the borrower. FDCPA section 805(c) contains specific exceptions that allow further communications with the borrower with respect to a debt. As relevant here, the prohibition does not apply where a debt collector communicates with a consumer who has invoked the cease communication right to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor[216] or, where applicable, to notify the consumer that the debt collector or

[215] To assist servicers that are debt collectors in complying with the requirements of new § 1024.39(d)(3), the Bureau is adopting model clause MS–4(D), contained in appendix MS–4 to part 1024. A more detailed discussion of the model clause is contained in the section-by-section analysis of appendix MS.
[216] FDCPA section 805(c)(2).

creditor intends to invoke a specified remedy.[217]

The Bureau provisionally adopted the exemption in current § 1024.39(d)(2) in the IFR and indicated that the Bureau expected to explore the potential utility and application of such requirements in comparison to the FDCPA protections in the future.[218] The Bureau now partially removes the exemption to require that a servicer that is a debt collector provide a modified written early intervention notice if any loss mitigation option is available and no borrower on the mortgage loan is a debtor in bankruptcy. The Bureau is issuing simultaneously with this final rule an interpretive rule that constitutes an advisory opinion under FDCPA section 813(e) interpreting the section 805(c)(2) and (3) exceptions to the cease communication right. No liability arises under the FDCPA for an act done or omitted in good faith in conformity with an advisory opinion of the Bureau while that advisory opinion is in effect.[219] After careful consideration, the Bureau concludes that, because failure to provide the written early intervention notice required by § 1024.39(d)(3) is closely linked to a servicer's ability to invoke its specified remedy of foreclosure, the notice falls within the exceptions in FDCPA sections 805(c)(2) and (3).

39(d)(1)

The Bureau is adopting proposed § 1024.39(d)(2)(i) generally as proposed, renumbered as § 1024.39(d)(1), with modifications to adopt the exemption on a loan level. Accordingly, new § 1024.39(d)(1) maintains the current exemption from the live contact requirements of

[217] FDCPA section 805(c)(3).
[218] 78 FR 62993, 62998-99 (Oct. 23, 2013). As in the IFR, the Bureau is not making a determination as to the legal status of the requirements under § 1026.20(c) following receipt of proper cease communication requests at this time. Therefore, the Bureau continues to encourage servicers to provide ARM payment adjustment notices to the extent that the FDCPA permits. *See* 78 FR 62993, 62999 (Oct. 23, 2013).
[219] FDCPA section 813(e).

§ 1024.39(a) for a servicer subject to the FDCPA with respect to a borrower's mortgage loan for which any borrower has provided a cease communication notification under FDCPA section 805(c). For reasons similar to those explained in the section-by-section analysis of § 1024.39(c), the Bureau is adopting this partial exemption on a loan level to ease servicer burden and facilitate servicer compliance.

As the Bureau explained in the proposal, the Bureau understands that the nature of live contact and the information conveyed may be highly variable. The information conveyed, the manner for conveying that information, and whether any loss mitigation information is conveyed depends on the borrower's circumstances, the servicer's perception of those circumstances, and the servicer's exercise of reasonable discretion.[220] The servicer may contact the borrower in person, by telephone, or not at all, if the servicer's good faith efforts to reach the borrower fail.[221] By their nature, discussions or conversations resulting from live contact are not and cannot be closely prescribed.[222] Such variability is inconsistent with the narrow exceptions in FDCPA section 805(c)(2) and (3), which permit a debt collector to communicate further with a borrower for extremely limited purposes after a borrower has provided a servicer a cease communication notification. Because the information conveyed and the manner for conveying such information may be highly variable in the context of live contact, the Bureau concludes that requiring a servicer that is a debt collector to comply with the live contact requirements with regard to a mortgage loan for which a borrower has provided a notification pursuant to FDCPA section

[220] *See* current comment 39(a)-3.i, which this final rule renumbers as comment 39(a)-4.i.
[221] *See* current comment 39(a)-2 ("Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer."). This final rule moves this language into comment 39(a)-3.
[222] *See* 78 FR 10695, 10793 (Feb. 14, 2013).

805(c) is inappropriate and may put a servicer subject to the FDCPA with respect to that borrower's loan at risk of violating the FDCPA. The Bureau adopts no general rule about whether oral versus written communications are more likely to violate the FDCPA but notes only that the live contact requirements of § 1024.39(a) are less susceptible to standard, uniform delivery in compliance with the cease communication exceptions in FDCPA section 805(c)(2) and (3) than are the modified written early intervention notice requirements required under this final rule.

The Bureau also concludes that live contact may be of less value to a delinquent borrower who has properly invoked the FDCPA's cease communication protections. Compliance with the live contact requirements in § 1024.39(a) is not limited to, and does not in every case require, a discussion of available loss mitigation options. Section 1024.39(a) requires that a servicer inform the borrower about the availability of loss mitigation options, "if appropriate." More broadly, comment 39(a)-2 states that live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency, and, based on this discussion, a servicer may determine not to inform a borrower of loss mitigation options. As current comment 39(a)-3.i explains, servicers have discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. A servicer may determine that promptly informing the borrower about the availability of loss mitigation options is not appropriate under certain circumstances. Current comment 39(a)-3.i.B provides an example of a servicer's reasonable determination not to 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.[223] The purpose of such a conversation could be to remind a borrower who perhaps inadvertently missed a payment of a past due amount, or to give the servicer an opportunity to discuss when the borrower may cure a temporary delinquency, but the conversation need not involve a discussion of loss mitigation options.

The early intervention live contact requirement is a recurring obligation that generally requires servicers to make continued efforts to establish live contact with a borrower so long as a borrower remains delinquent.[224] A borrower who has provided a servicer a cease communication notification may perceive a servicer's early intervention live contact under § 1024.39(a) as an intrusive and unwanted communication. The Bureau concludes that repeated attempts to establish live contact, which may not lead to a discussion of available loss mitigation options, with a borrower who has instructed a servicer that is a debt collector to stop communicating with the borrower about the debt pursuant to the FDCPA may be unwanted and in contravention of the purposes of the FDCPA's cease communication protections. Therefore, the Bureau is finalizing proposed § 1024.39(d)(2)(i) in new § 1024.39(d)(1) to maintain the current exemption from the live contact requirements of § 1024.39(a) for a servicer subject to the FDCPA with respect to a borrower's mortgage loan for which any borrower has provided a cease communication notification under FDCPA section 805(c) with regard to that mortgage loan.

39(d)(2)

The Bureau is adopting proposed § 1024.39(d)(2)(ii), renumbered as § 1024.39(d)(2), to

[223] This final rule renumbers current comment 39(a)-3.i.B as comment 39(a)-4.i.B.
[224] *See* Bureau of Consumer Fin. Prot., CFPB Bulletin 2013-12, *Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf; section-by-section analysis of § 1024.39(a), *supra*.

exempt a servicer from the written notice requirements of § 1024.39(b) with regard to a mortgage loan for which any borrower has provided a notification pursuant to FDCPA section 805(c) 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 § 1024.39(c). In the limited circumstances where no loss mitigation option is available, the Bureau believes that the written notice may be of significantly less value to a borrower and is not as closely tied to the servicer's right to invoke foreclosure due to the limited impact of the dual tracking restrictions in the absence of loss mitigation options. The Bureau considered comments that it should require the written early intervention notice for all borrowers who have exercised cease communication rights under the FDCPA, regardless of whether any loss mitigation option is available. However, the Bureau concludes that it is not appropriate to require servicers that are debt collectors to provide the written early intervention notice to borrowers who have exercised their FDCPA cease communication rights if no loss mitigation option is available. In light of these considerations, if no loss mitigation option is available, the Bureau retains the exemption from the requirements of § 1024.39(b) for a servicer subject to the FDCPA with respect to a mortgage loan for which any borrower has provided a cease communication notification with regard to that mortgage loan. The Bureau adopts this exemption on a loan level to ease servicer burden and further facilitate servicer compliance as explained in the section-by-section analysis of § 1024.39(c).

Overlap Between Borrowers in Bankruptcy and FDCPA Rationale

Additionally, revised § 1024.39(d)(2) exempts a servicer from the written notice requirements of § 1024.39(b) with regard to a mortgage loan for which any borrower has provided a notification pursuant to FDCPA section 805(c) while any borrower on the mortgage

loan is a debtor in bankruptcy under title 11 of the United States Code as referenced in § 1024.39(c). Based on the comments received and for the reasons set forth in the section-by-section analysis of § 1024.39(c), the Bureau declines to finalize proposed comment 39(d)(2)(iii)-2, which would have explained that a servicer subject to the FDCPA with respect to a borrower who invokes the FDCPA's cease communication protections and is also a debtor in bankruptcy would only be required to provide the modified written early intervention notice if the borrower is represented by a person authorized to communicate with the servicer on the borrower's behalf. Comment 39(d)(2)-1 explains that to the extent the FDCPA 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. Comment 39(d)(2)-1 also cites the illustrative example in comment 39(c)(1)(ii)-1.ii for further guidance.

39(d)(3)

New § 1024.39(d)(3) provides that with regard to a mortgage loan for which any borrower has provided a notification pursuant to FDCPA section 805(c), a servicer subject to the FDCPA with respect to that borrower's loan must comply with the requirements of § 1024.39(b), as modified by new § 1024.39(d)(3), if the conditions of § 1024.39(d)(2) are not met. Therefore, if any loss mitigation option is available and no borrower on the mortgage loan is a debtor in bankruptcy, a servicer that is a debt collector is required to provide the modified written early intervention notice described in § 1024.39(d)(3). Section 1024.39(d)(3) modifies the

requirements of § 1024.39(b) under these circumstances to provide that, in addition to the information required pursuant to § 1024.39(b)(2), 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.[225] Revised § 1024.39(d)(3) also finalizes two other aspects from the proposed rule: (1) The written notice may not contain a request for payment, and (2) a servicer is prohibited from providing the written notice more than once during any 180-day period.

The Bureau concludes that, because failure to provide the written early intervention notice required by § 1024.39(d)(3) is closely linked to a servicer's ability to invoke its specified remedy of foreclosure, the notice falls within the exceptions to FDCPA section 805(c)(2) and (3). A servicer is legally required to provide a delinquent borrower with the written notice not later than the 45th day of the borrower's delinquency under current § 1024.39(b). As a general matter, this written notice must be provided well before the servicer may initiate foreclosure: in most cases, the servicer is legally required to wait until a borrower's mortgage loan obligation is more than 120 days delinquent, after the written notice has been sent, to make the first notice or filing to initiate the foreclosure process.[226] As the Bureau explained in the 2013 RESPA Servicing Final Rule, the purpose of the written notice is to provide more information to a borrower who has not cured by the 45th day of delinquency. Additionally, the written notice generally provides more information than likely would have been provided through live contact

[225] To assist servicers that are debt collectors in complying with the requirements of new § 1024.39(d)(3), the Bureau is adopting model clause MS–4(D), contained in appendix MS–4 to part 1024. A more detailed discussion of the model clause is contained in the section-by-section analysis of appendix MS.
[226] *See* § 1024.41(f)(1)(i); *but see* § 1024.41(f)(1)(ii) and (iii) ("The foreclosure is based on a borrower's violation of a due-on-sale clause; or The servicer is joining the foreclosure action of a subordinate lienholder.").

and provides the borrower with information that may be reviewed and discussed with a housing counselor or other advisor.[227]

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

The failure to provide a borrower with the written early intervention notice may impede a servicer's ability to invoke foreclosure, particularly if any loss mitigation option is available. For example, because failure to provide a borrower with the written early intervention notice may result in borrowers submitting requests for loss mitigation at a later point in time and presumably closer to the foreclosure sale, failure to provide the written early intervention notice may delay or otherwise interfere with the servicer's exercise of its specified remedy of foreclosure (for example, when the servicer is required to forego making a motion for judgment of sale or conducting the sale after receiving the borrower's complete loss mitigation application). In

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

addition, the Bureau understands that some States require documentation of a servicer's efforts to modify the loan or require a servicer to provide the borrower with information substantially similar to the written early intervention notice prior to initiating foreclosure or conducting a foreclosure sale (*e.g.*, California, Illinois). Therefore, when any loss mitigation option is available, the Bureau concludes that the written early intervention notice falls within the exceptions to FDCPA section 805(c)(2) and (3) because failure to provide the notice required by § 1024.39(d)(3) is closely linked to a servicer's ability to invoke its specified remedy of foreclosure. As discussed below, the Bureau is concurrently issuing an interpretive rule that explains that this interpretation is limited to the specific situation where a servicer that is a debt collector is required by § 1024.39(d)(3) to provide a modified written early intervention notice to a borrower who has invoked the cease communication right under FDCPA section 805(c). It is a narrow safe harbor, based only upon the interplay between these two specific Federal consumer protections—the early intervention requirements of § 1024.39 of Regulation X and the cease communication provision and statutory exceptions of section 805(c) of the FDCPA. All other provisions of the FDCPA, including the prohibitions contained in FDCPA sections 805 through 808, are unaffected by this interpretation and a servicer remains liable to the extent that anything in the notice violates any other provision of the FDCPA.[228]

If any loss mitigation option is available, as will generally be the case, the written early intervention notice may also be of significant value to borrowers, in addition to being closely linked to a servicer's ability to invoke its specified remedy of foreclosure. The Bureau has stated

[228] For example, servicers that are debt collectors must not: engage in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt; use any false, deceptive, or misleading representation or means in connection with the collection of a debt; or use unfair or unconscionable means to collect or attempt to collect any debt.

that the early intervention notice requirements were designed primarily to encourage delinquent borrowers to work with their servicers to identify options for avoiding foreclosure.[229] Specifically, the content of the written early intervention notice, including the statement providing a brief description of examples of loss mitigation options that may be available from the servicer and the application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer, may be of particular value and relevance to a delinquent borrower facing debt collection in informing the borrower of potentially available loss mitigation options.

Given its broad experience with consumers in debt, facing foreclosure, or dealing with other financial difficulties, the Bureau is issuing an interpretive rule that constitutes an advisory opinion under FDCPA section 813(e) explaining that, because failure to provide the written early intervention notice required by § 1024.39(d)(3) is closely linked to a servicer's ability to invoke its specified remedy of foreclosure, the Bureau concludes that the notice falls within the exceptions to FDCPA section 805(c)(2) and (3). The Bureau concludes that, in the limited circumstances where a servicer is subject to the FDCPA with respect to a borrower's mortgage loan and the borrower has invoked the cease communication right pursuant to FDCPA section 805(c) with regard to that mortgage loan, and where the servicer complies with the requirements of the modified written early intervention notice under § 1024.39(d)(3) of Regulation X, the modified written early intervention notice required under § 1024.39(d)(3) is within the statutory exceptions of FDCPA section 805(c)(2) and (3) and thus does not violate section 805(c) with respect to the mortgage loan.

[229] *Id.* at 10787.

The Bureau has also learned that consumer advocates, in some cases, may be advising borrowers to refrain from providing servicers cease communication notifications pursuant to FDCPA section 805(c) in order to preserve access to information about loss mitigation and to continue to receive early intervention communications from servicers. Borrowers should not have to choose between exercising their cease communication rights to be free from debt collection communications and obtaining information about potential loss mitigation options that could allow them to resolve the underlying delinquency.

The Bureau believes that servicers should be able to determine when the FDCPA applies to a mortgage loan. Regardless of the requirement in new § 1024.39(d)(3), servicers that are debt collectors must make this determination in order to comply with the FDCPA, including, for example, to provide the borrower a validation notice.[230] Additionally, the Bureau's servicer outreach confirmed that servicers are able to designate whether accounts in their systems are subject to the FDCPA. Identifying mortgage loans to which the FDCPA applies imposes no burdens beyond those required by existing law.

Servicers that are debt collectors may use model clause MS–4(D) in appendix MS–4 for the required statement that a servicer may or intends to invoke its specified remedy of foreclosure. As discussed in the section-by-section analysis of appendix MS–4 and in the FDCPA interpretive rule accompanying this final rule, use of this model clause or another statement in compliance with § 1024.39(d)(3)(i), on a written notice as required by and in compliance with the other requirements of § 1024.39(d)(3), provides a safe harbor from FDCPA

[230] *See* FDCPA section 809(a).

liability under section 805(c) for providing the required statement.[231] The Bureau believes that any operational burdens associated with including this statement on the written notice will be minimal.

The Bureau intends this interpretation for a servicer subject to the FDCPA with respect to a borrower who has invoked the FDCPA's cease communication protections to be limited to the precise parameters of the legal and factual situation described by the Bureau. Accordingly, the Bureau intends this interpretation to be narrow and based only upon the interplay between two specific Federal consumer protections—the early intervention requirements of § 1024.39 of Regulation X and the cease communication provision and statutory exceptions of section 805(c) of the FDCPA. The Bureau concludes that, in the limited circumstance where a mortgage servicer is subject to the FDCPA with respect to a borrower's mortgage loan, and the borrower has provided the servicer a cease communication notification with regard to that mortgage loan, the written early intervention notice falls within the exceptions to FDCPA section 805(c)(2) and (3) because failure to provide the notice required by § 1024.39(d)(3) is closely linked to a servicer's ability to invoke its specified remedy of foreclosure.

The Bureau reminds servicers that they may only rely on the exemptions in new § 1024.39(d)(1) and (2) if both the servicer is subject to the FDCPA with respect to a borrower, meaning that the servicer of a defaulted mortgage loan is also acting as a debt collector under section 803(6) of the FDCPA (*i.e.*, the servicer acquired the mortgage at the time that it was in default), and the borrower has properly provided the servicer a timely, written cease

[231] *See* comment appendix MS to part 1024-2 (describing permissible changes to the model forms and clauses in appendix MS to part 1024).

communication notification under section 805(c) of the FDCPA. Therefore, even if a servicer receives a written cease communication notification from a borrower, if the servicer is not also acting as a debt collector for purposes of the FDCPA with respect to that borrower's mortgage loan, the servicer must continue to comply with all of the early intervention requirements under § 1024.39 for that loan.

The Bureau has narrowly tailored this final rule and the accompanying interpretation to reduce the risk that servicers will circumvent a borrower's cease communication rights. Additionally, this final rule relates only to the modified written early intervention notice, while maintaining the exemption for early intervention live contact and the exemption for the written notice if no loss mitigation option is available. If no loss mitigation option is available or while any borrower on a mortgage loan is a debtor in bankruptcy if any borrower has invoked the cease communication right with respect to that loan, this final rule leaves the current exemption in place. Furthermore, this final rule requires that the modified written early intervention notice include a statement that the servicer may or intends to invoke its specified remedy of foreclosure, provides the written notice may not contain a request for payment, and prohibits a servicer from providing the written notice more than once during any 180-day period.

The Bureau considered comments that the Bureau should permit a servicer to provide the written notice more than once during any 180-day period for a borrower that cures and subsequently redefaults or that a servicer should be permitted to provide the written notice as often as monthly. However, the Bureau is concerned that a frequent, repeated notice may undermine a borrower's cease communication right. Limiting the final rule in this manner reduces the risk that the modified written early intervention notice will be used to undermine a borrower's cease communication right under FDCPA section 805(c). In response to one

commenter's suggestion that servicers should be permitted to provide the written notice upon a borrower's request even if that were to result in providing more than one notice in any 180-day period, the Bureau notes that under the final rule, a servicer is not prohibited from providing the written notice at the borrower's request and must do so under § 1024.36 if the borrower properly submits a request for information regarding the notice.

The Bureau also considered a commenter's request that the Bureau issue guidance in Regulation X itself interpreting the FDCPA cease communication requirement rather than issue a separate advisory opinion. In addition to issuing the interpretive rule, the Bureau is also providing guidance in Regulation X comment 39(d)-2. The same commenter opposed the Bureau's proposed advisory opinion that would have provided a safe harbor from liability under the FDCPA for an act done or omitted in good faith in conformity with that advisory opinion. The Bureau notes, as further discussed above, that the safe harbor is limited to the precise factual and legal situation described and that the safe harbor is only granted to the extent the communication is required by and in compliance with § 1024.39(d)(3). Moreover, the safe harbor is limited to the cease communication provision in FDCPA section 805(c) and does not extend to other sections of the FDCPA. The Bureau determines that the safe harbor is necessary to facilitate servicer compliance with this provision and ensure that borrowers receive information about potentially available loss mitigation options.

Final § 1024.39(d)(3) requires that servicers that are debt collectors provide a modified form of the written early intervention notice to borrowers who have exercised their cease communication rights. To assist servicers in determining whether any loss mitigation option is available, the Bureau is adopting new comment 39(d)-1. New comment 39(d)-1 explains that § 1024.39(d)(2) exempts a servicer that is a debt collector from providing the written notice

required by § 1024.39(b) if no loss mitigation option is available. New comment 39(d)-1 further provides that 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. As explained in the section-by-section analysis of § 1024.39(b)(2), the Bureau is adopting new comment 39(d)-1 instead of proposed comment 39(b)(2)-4.

The Bureau is finalizing proposed comment 39(d)(2)(iii)-1 in new comment 39(d)-2 with additional clarifications related to borrower-initiated communications as well as the restrictions contained in FDCPA sections 805 through 808. Revised comment 39(d)-2 offers servicers additional guidance on compliance with the modified written early intervention notice required by new § 1024.39(d)(3). As finalized, the comment explains that, to the extent the FDCPA applies to a servicer's communications with a borrower, a servicer does not violate FDCPA section 805(c) by providing the written notice required by § 1024.39(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. New comment 39(d)-2 also provides that a servicer does not 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). Finally, new comment 39(d)-2 notes that a servicer subject to the FDCPA must continue to comply with all other applicable provisions of the FDCPA, including other 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).

Borrower-initiated communications for purposes of loss mitigation after invocation of

cease communication rights. The Bureau is also issuing concurrently with this final rule an interpretive rule that constitutes an advisory opinion under FDCPA section 813(e) interpreting the cease communication provision of section 805(c) of the FDCPA in relation to the early intervention requirements of § 1024.39 of Regulation X. No liability arises under the FDCPA for an act done or omitted in good faith in conformity with an advisory opinion of the Bureau while that advisory opinion is in effect.[232]

Section 805(c) of the FDCPA empowers borrowers to direct debt collectors to cease contacting them with respect to a debt and thereby frees borrowers from the burden of being subject to unwanted communications regarding collection of a debt. Even after a borrower has invoked the cease communication right under section 805(c) of the FDCPA, the borrower may contact the servicer to discuss or apply for loss mitigation. For instance, as noted above, § 1024.39(d)(3) requires servicers that are debt collectors to provide a written early intervention notice to borrowers who have invoked the FDCPA's cease communication right if any loss mitigation option is available and no borrower on the mortgage loan is a debtor in bankruptcy under title 11 of the United States Code. The written notice must include a statement encouraging borrowers to contact the servicer.[233] The Bureau believes that, when borrowers respond to such a notice by contacting the servicer to discuss available loss mitigation options or otherwise initiate communication with the servicer concerning loss mitigation, such a borrower-initiated communication should not be understood as within the category of communication that borrowers generally preclude by invoking the cease communication right under FDCPA section

[232] FDCPA section 813(e).
[233] *See* 12 CFR 1024.39(b)(2)(i).

805(c). The Bureau therefore concludes that a borrower's invocation of the FDCPA's cease communication right does not prevent a servicer that is a debt collector from responding to borrower-initiated communications concerning loss mitigation.

Borrower-initiated communications are by their nature wanted communications. Moreover, borrower-initiated communications about loss mitigation options do not give rise to the burden of unwanted communications that FDCPA section 805(c) protects against and may provide valuable information to borrowers. Rather they are sought out by borrowers for this narrow purpose. Under the Bureau's interpretation, a borrower's cease communication notification pursuant to FDCPA section 805(c) should ordinarily be understood to exclude borrower-initiated communications with a servicer that is a debt collector concerning loss mitigation because the borrower has specifically requested the communication at issue to discuss available loss mitigation options. Accordingly, when a servicer that is a debt collector responds to a borrower-initiated communication concerning loss mitigation after the borrower's invocation of FDCPA section 805(c)'s cease communication protection, the servicer does not violate FDCPA section 805(c) with respect to such communications as long as the servicer's response is limited to a discussion of any potentially available loss mitigation option. For example, a servicer may discuss with a borrower any available loss mitigation option that the owner or assignee of the borrower's mortgage loan offers, instructions on how the borrower can apply for loss mitigation, what documents and information the borrower would need to provide to complete a loss mitigation application, and the potential terms or details of a loan modification program, including the monthly payment and duration of the program. These borrower-initiated communications, although variable, are unlikely to be perceived as within the scope of the cease communication request given the borrower's initiation of communications concerning loss

mitigation information.

However, the Bureau's interpretation does not protect a servicer that is a debt collector from using such borrower-initiated communications concerning loss mitigation as a pretext for debt collection in circumvention of a borrower's invoked cease communication right under FDCPA section 805(c). Seeking to collect a debt under the guise of a loss mitigation conversation is not exempt from liability under FDCPA section 805(c) under the Bureau's interpretation. Thus, in subsequently communicating with a borrower concerning loss mitigation, a servicer that is a debt collector is strictly prohibited from making a request for payment or a suggestion of payment that is not immediately related to any specific loss mitigation option. Some examples of impermissible communications include initiating conversations with the borrower related to repayment of the debt that are not for the purpose of loss mitigation, demanding that the borrower make a payment, requesting that the borrower bring the account current or make a partial payment on the account, or attempting to collect the outstanding balance or arrearage, unless such communications are immediately related to a specific loss mitigation option.[234] The Bureau reiterates that servicers that are debt collectors may not misuse borrower-initiated communications concerning loss mitigation as an opportunity or pretext to direct or steer borrowers to a discussion of repayment or collection of the debt in circumvention of a borrower's cease communication protection. Additionally, a servicer that is a debt collector may not begin or resume contacting the borrower in contravention of the cease communication notification, unless the borrower consents to limit a prior cease communication

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

request. As discussed above, all other provisions of the FDCPA, including restrictions on communications and prohibitions on harassment or abuse, false or misleading representations, and unfair practices as contained in sections 805 through 808 of the FDCPA, remain intact.

The Bureau considered concerns expressed by commenters related to the fluid nature of loss mitigation discussions with borrowers. The Bureau notes that this interpretation provides a safe harbor from FDCPA section 805(c) for servicers that are debt collectors communicating with the borrower in connection with a borrower's initiation of communications concerning loss mitigation. Preceding a borrower's loss mitigation application and during the evaluation process, a servicer that is a debt collector may respond to borrower inquiries about potentially available loss mitigation options and provide information regarding any available option. Similarly, if that borrower submits a loss mitigation application, the servicer's reasonable diligence obligations under § 1024.41(b)(1) require the servicer to request additional information from the borrower, including by contacting the borrower, and these communications by the servicer to complete a loss mitigation application do not fall within the cease communication prohibition. The servicer may also seek information that will be necessary to evaluate that borrower for loss mitigation, though the servicer may not seek a payment unrelated to the purpose of loss mitigation. Additionally, once the borrower's loss mitigation application is complete, a servicer's communications with a borrower in accordance with the procedures in § 1024.41 are not subject to liability under FDCPA section 805(c) because they arise from the borrower's application for loss mitigation. These communications include, for example, notifying the borrower of the servicer's determination of which loss mitigation options, if any, it will offer to the borrower, notifying the borrower of a denial for any trial or permanent loan modification option available, and notifying the borrower of whether the servicer will offer the borrower a loss mitigation

option based upon an appeal.

The Bureau considered one commenter's suggestion that, with respect to any specific borrower-initiated communication, the borrower's cease communication request should be considered temporarily or permanently withdrawn during this period. The Bureau declines to adopt this approach. Instead, as the Bureau explained in the proposal, the Bureau believes that a borrower's cease communication notification pursuant to the FDCPA should ordinarily be understood to exclude borrower-initiated communications with a servicer for the purposes of loss mitigation, because the borrower has specifically requested the communication at issue. As the Bureau explained in the October 2013 Servicing Bulletin, even if the borrower provides a cease communication notification during the loss mitigation application and evaluation process under § 1024.41, the borrower usually should be understood to have excluded the loss mitigation application and evaluation process under § 1024.41 from the general request to cease communication, and therefore a servicer that is a debt collector should continue to comply with the procedures under § 1024.41. Thus, only if the borrower provides a communication to the servicer specifically withdrawing the request for loss mitigation does the cease communication prohibition apply to communicating about the specific loss mitigation action.[235]

Commenters requested clarity regarding a servicer's request that a borrower make a payment as a requirement or condition of a loss mitigation program and whether those requests would be covered under the safe harbor from FDCPA liability. One commenter explained that a servicer may request that a borrower make a payment as part of a loss mitigation program,

[235] *See* Implementation Guidance for Certain Mortgage Servicing Rules, CFPB Bulletin 2013-12 (Oct. 15, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

including, for example, a reinstatement amount towards a repayment, forbearance, or trial modification plan. The Bureau understands that a servicer's discussions of an available loss mitigation option with a borrower may often require the servicer to assess a borrower's eligibility for a specific program and determine whether the borrower can afford to make a payment. The Bureau emphasizes, however, that the cease communication prohibition continues to apply to a servicer's communications with a borrower about payment of the mortgage loan that are outside the scope of loss mitigation conversations. The Bureau recognizes that in order for a borrower to engage in meaningful loss mitigation discussions with a servicer, the servicer may discuss repayment options, the borrower's ability to make a payment, and how much the borrower can afford to pay as part of a loss mitigation option for which the servicer is considering the borrower. Furthermore, the Bureau understands that any offer for a loan modification or repayment plan is likely to include a specific payment amount the borrower must pay under the terms of the loss mitigation agreement. Such communications, as long as for the purpose of loss mitigation, are permissible because they should not be understood as within the scope of the cease communication request.

Legal Authority

The Bureau is exercising its authority under sections 6(j)(3) and 19(a) of RESPA to exempt from the early intervention live contact requirements in § 1024.39(a) a servicer that is subject to the FDCPA with respect to a mortgage loan for which any borrower has exercised the FDCPA's cease communication right with regard to that mortgage loan. For the reasons discussed above, the Bureau concludes that the consumer protection purposes of RESPA would not be furthered by requiring compliance with § 1024.39(a) at a time when a borrower has specifically requested that the servicer stop communicating with the borrower about the debt.

Accordingly, the Bureau implements new § 1024.39(d)(1) pursuant to its authority under sections 6(j)(3) and 19(a) of RESPA.

The Bureau is also exercising its authority under sections 6(j)(3) and 19(a) of RESPA to exempt from the written early intervention notice requirements in § 1024.39(b) a servicer that is subject to the FDCPA with respect to a mortgage loan for which any borrower has exercised the FDCPA's cease communication right with regard to that mortgage loan if no loss mitigation option is available or while any borrower on the mortgage loan is a debtor in bankruptcy. For the reasons discussed above, the Bureau concludes that the consumer protection purposes of RESPA would not be furthered by requiring compliance with § 1024.39(b) at a time when a borrower has specifically requested that the servicer stop communicating with the borrower about the debt and no loss mitigation option is available, or while any borrower on the mortgage loan is a debtor in bankruptcy. Accordingly, the Bureau implements new § 1024.39(d)(2) pursuant to its authority under sections 6(j)(3) and 19(a) of RESPA.

The Bureau is exercising its authority under section 6(k)(1)(E) of RESPA to add new § 1024.39(d)(3). The Bureau has authority to implement requirements for servicers to provide information about borrower options pursuant to section 6(k)(1)(E) of RESPA. In order for borrowers to have a meaningful opportunity to avoid foreclosure, they must timely receive information about loss mitigation options and the foreclosure process, housing counselors and State housing finance authorities, and disclosures encouraging servicers to work with borrowers to identify any appropriate loss mitigation options.[236]

The Bureau also exercises its authority to prescribe rules with respect to the collection of

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

debts by debt collectors pursuant to section 814(d) of the FDCPA, 15 U.S.C. 1692l(d). Pursuant to this authority, the Bureau is clarifying a borrower's cease communication protections under the FDCPA. Section 805(c) of the FDCPA sets forth both the cease communication requirement and its exceptions. Under section 805(c)(2) and (3) of the FDCPA, a borrower's cease communication request does not prohibit a debt collector from communicating with the borrower to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor or, where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy. For the reasons given above, the Bureau is interpreting section 805(c)(2) and (3) of the FDCPA to require a servicer to provide the written early intervention notice if any loss mitigation option is available and no borrower on the mortgage loan is a debtor in bankruptcy. The Bureau concludes that because the written early intervention notice will generally be closely linked to the invocation of foreclosure, such a notice informs a borrower that the servicer may invoke or intends to invoke the specified remedy of foreclosure and thus falls within the scope of the exceptions under section 805(c)(2) and (3) of the FDCPA. Accordingly, the Bureau implements new § 1024.39(d)(3) pursuant to its authority under section 6(k)(1)(E) of RESPA and section 814(d) of the FDCPA.

Section 1024.40 Continuity of Contact

40(a) In General

As explained in the section-by-section analysis of § 1024.31, the Bureau is adopting a single definition of delinquency that will apply to all provisions in subpart C of Regulation X. The proposal explained that the Bureau was removing the definitions of delinquency from the commentary to §§ 1024.39(a) and (b) and 1024.40(a). The Bureau omitted from its proposal any

specific amendments to current comment 40(a)-3. The Bureau is revising comment 40(a)-3 to replace the current definition of delinquency in comment 40(a)-3 with a cross-reference to § 1024.31.

Section 1024.41 Loss Mitigation Procedures

41(b) Receipt of a Loss Mitigation Application

Successors in Interest

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

A number of consumer advocacy groups suggested that the Bureau should eliminate the option to review loss mitigation applications prior to confirmation. These groups noted that loan modification rules imposed by the Making Home Affordable Program, the Federal Housing Administration, Fannie Mae, and Freddie Mac require a showing of proof of ownership of the

home for a simultaneous modification and assumption.[237] A trade association also stated that the vast majority of servicers do not have loss mitigation options available for successors in interest. The Bureau notes that the loss mitigation requirements referenced by these commenters may change over time. Further, even if the review process set forth in comment 41(b)-1.i is not used often, the comment confirms that Regulation X does not prohibit servicers from considering successors in interest for loss mitigation prior to confirmation when appropriate. In some circumstances, consideration of potential successors in interest for loss mitigation options prior to confirmation may expedite full formal evaluation of those successors in interest upon confirmation. Comment 41(b)-1.i clarifies that Regulation X allows servicers to review and evaluate loss mitigation applications from potential successors in interest prior to confirmation in accordance with the procedures set forth in § 1024.41, even though servicers are not required to do so.

Comment 41(b)-1.i also explains how an evaluation of a potential successor in interest's loss mitigation application is treated for purposes of the duplicative request limitation in § 1024.41(i). 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

[237] These commenters also advocated that the servicer's 30-day timeframe to review the complete application should start to run from the date the successor in interest provides the necessary proof of successor status, rather than from the date a servicer confirms this status. As comment 41(b)-1.ii explains, the final rule instead requires servicers, for purposes of § 1024.41, to treat loss mitigation applications from potential successors in interest that the servicer elects not to review and evaluate prior to confirmation as if the application had been received on the date that the servicer confirmed the successor in interest's status. This ensures that servicers have adequate time to review the loss mitigation application once they have confirmed the applicant's status as a successor in interest.

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. This provision is an exception to the general rule that servicers may only invoke § 1024.41(i)'s limitation on duplicative requests with respect to borrowers who have had a complete loss mitigation application reviewed by that servicer in compliance with the requirements of § 1024.41. Ordinarily, as a potential successor in interest is not yet treated as a borrower for all purposes of § 1024.41, the potential successor in interest's loss mitigation application would not count as a duplicative request. If the servicer's evaluation of loss mitigation options available to the person would 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, however, § 1024.41(i)'s limitation on duplicative requests does not apply to that application, and the servicer would consequently have to comply with § 1024.41's procedures for any subsequent loss mitigation application submitted by the potential successor in interest upon confirmation.

A number of consumer advocacy groups asked the Bureau to clarify that a previous loss mitigation application submitted by the transferor borrower rather than the successor in interest should not make a successor in interest's request duplicative for purposes of § 1024.41(i). Under the final rule, each confirmed successor in interest is a borrower for purposes of § 1024.41(i) and is not the same borrower as the transferor borrower. Except as specified in comment 41(b)-1, the duplicative request limitation applies to confirmed successors in interest in the same way that it applies to other borrowers under § 1024.41(i), as amended by this final rule.

Proposed comment 41(b)-1.ii stated that, if a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate it before

confirming that person's status, upon such confirmation the servicer must review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41. The proposed comment indicated that, 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. For the reasons that follow, the Bureau is finalizing comment 41(b)-1.ii with this commentary as proposed and additional commentary to clarify the operation of the loss mitigation procedures with respect to successors in interest.

Several industry commenters requested clarification regarding whether the principal residence requirement applicable to § 1024.41 applies to confirmed successors in interest. In proposing the rule, the Bureau indicated that the exemptions and scope limitations in the Mortgage Servicing Rules in Regulation X, including the principal residence requirement in § 1024.30(c), would also apply to the servicing of a mortgage loan with respect to a confirmed successor in interest. As finalized, comment 41(b)-1.ii explains that the procedures set forth in § 1024.41 apply only if the property is the confirmed successor in interest's principal residence and § 1024.41 is otherwise applicable.

As finalized, comment 41(b)-1.ii also indicates that the servicer must preserve the loss mitigation application and all documents submitted in connection with the application. Although some industry commenters expressed concern about the burden of having to preserve loss mitigation applications during the confirmation process, the Bureau concludes that it would be much more burdensome to require successors in interest to resubmit an entire loss mitigation application upon confirmation. As the Bureau indicated in the proposal, successors in interest may be unduly burdened if required to resubmit identical documents simply because the servicer has confirmed the successor in interest's status. The Bureau continues to believe that requiring

servicers to preserve loss mitigation applications received from potential successors in interest is preferable, so that servicers can review and evaluate those loss mitigation applications expeditiously upon confirming the successor in interest's status.

Comment 41(b)-1.ii clarifies that servicers must preserve any loss mitigation application received from a potential successor in interest in order to facilitate the servicer's timely review and evaluation of the application upon confirmation of the successor in interest's status in accordance with the procedures of § 1024.41 and to ensure that the confirmed successor in interest does not have to resubmit the same loss mitigation application. 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.

Another industry commenter asked the Bureau to confirm that servicers can request updated documents if they receive loss mitigation documents prior to confirming a successor in interest and those documents are expired or near expiration on the date of confirmation. As finalized, comment 41(b)-1.ii explains that, 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). This comment clarifies servicers' obligations with respect to loss mitigation applications received during the confirmation process that the servicer elects not to review or evaluate until confirmation.

41(b)(1) Complete Loss Mitigation Application

The Bureau proposed to revise two comments under § 1024.41(b)(1). First, the Bureau proposed to revise comment 41(b)(1)-1 to clarify that, in the course of gathering documents and

information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information pertaining to a particular loss mitigation option after receiving information confirming that the borrower is ineligible for that option. Second, the Bureau proposed to revise comment 41(b)(1)-4.iii, which relates to a servicer's obligation to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application when a servicer offers a borrower a short-term loss mitigation option based on an evaluation of an incomplete loss mitigation application.

For the reasons set forth below, the Bureau is adopting both comment 41(b)(1)-1 and comment 41(b)(1)-4.iii with revisions to the proposal. The Bureau is also adopting minor revisions to the introductory text to comment 41(b)(1)-4 for clarity. This section-by-section analysis discusses comment 41(b)(1)-1. Comment 41(b)(1)-4, including the revisions to comment 41(b)(1)-4.iii, is addressed in the section-by-section analysis of § 1024.41(c)(2)(iii) within the discussion of reasonable diligence in the context of short-term loss mitigation options offered based upon an evaluation of an incomplete loss mitigation application.

Existing § 1024.41(b)(1) requires a servicer to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. The provision defines a complete application as an application for which a servicer has received all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. Current comment 41(b)(1)-1 explains that a servicer has the flexibility to establish the type and amount of information that it will require from borrowers applying for loss mitigation options. The Bureau explained in the 2013 RESPA Servicing Final Rule that servicers have the flexibility to determine application requirements consistent with the variety of borrower circumstances or owner or assignee requirements that servicers must evaluate and to

ensure that individual borrowers are not obligated to provide information or documents that are unnecessary and inappropriate for a loss mitigation evaluation.[238] In exercising reasonable diligence to obtain a complete application under § 1024.41(b)(1), therefore, a servicer may determine that an application is complete even when the borrower has not submitted certain information, so long as that information is irrelevant with respect to that particular borrower.

In advance of the proposal, the Bureau learned from servicers and consumer advocacy groups that some servicers have been attempting to collect a large number of documents from borrowers, including many documents that may be required for some borrowers but are irrelevant to determining whether a particular borrower is eligible for any loss mitigation option. The Bureau explained in the proposal that the good faith exercise of reasonable diligence under § 1024.41(b)(1) does not require the collection of unnecessary documents. Collection of documents or information after the servicer has confirmed that such documents cannot affect the outcome of an evaluation unnecessarily burdens both the servicer and the borrower and hinders efforts to complete the loss mitigation application.

Therefore, the Bureau proposed to amend comment 41(b)(1)-1. As proposed, the comment would have clarified that (1) a servicer may stop collecting a borrower's application materials for a particular loss mitigation option upon receiving information confirming that the borrower is ineligible for that option, (2) the servicer must continue its efforts to obtain documents and information that pertain to all other available options, and (3) a servicer may not stop collecting documents for a particular loss mitigation option based solely on the borrower's stated preference for a different option.

[238] *See* 78 FR 10695, 10824 (Feb. 14, 2013).

The Bureau received comments from industry stakeholders and consumer advocacy groups on the proposed amendments. Additionally, the Bureau conducted outreach with several servicers to learn more about how the proposed revisions would affect borrowers and servicers.

No commenters opposed the first two elements of the proposal—that a servicer may stop collecting application materials for a loss mitigation option upon learning that the borrower is ineligible for that option, and that the servicer must continue to pursue materials relating to all other available options. Several industry commenters and consumer advocacy groups opined that those elements would reduce unnecessary burden by clarifying that servicers do not need to collect application materials relating to loss mitigation options for which a borrower is ineligible. A trade association stated that the proposal would work in conjunction with the new written notice of complete application, under proposed § 1024.41(c)(3), to encourage best efforts from servicers in obtaining application materials from borrowers to complete an application.

Commenters' views on the third element of the proposal, that a servicer may not stop collecting application materials for a particular loss mitigation option based solely on the borrower's stated preference for a different option, were more diverse. Industry commenters generally objected to the third element of the proposal. For example, a servicer and a trade association stated that the proposal could conflict with FHA's loss mitigation waterfall, which the commenters stated requires a borrower to express interest in certain loss mitigation options to be eligible. The commenters suggested that requiring servicers to collect application materials relating to all available loss mitigation options would be burdensome, would cause borrowers to disengage, or would complicate the working relationship between borrowers and servicers. One servicer stated during outreach that doing so when a borrower already has a purchase contract could jeopardize the sale. Several servicers the Bureau spoke with during outreach reported that

some of their borrowers have a purchase contract at the outset of the loss mitigation application process, although one servicer stated that its borrowers rarely do.

Industry commenters also stated that this third element of the proposal appeared to conflict with statements by the Bureau in a webinar in 2013. In that webinar, the Bureau explained that the mortgage servicing rules permit investors to set their own loss mitigation eligibility criteria, such that a servicer may deny a borrower for a loan modification if the investor provides that a borrower must be interested in remaining in the home to be eligible for a modification and the borrower has indicated that there is no such interest.

Some commenters made specific recommendations for amending the rule. For example, some industry trade associations recommended that servicers should be permitted to stop collecting application materials for a loan modification if the borrower indicates a need to sell the property, saying that such a borrower essentially has rejected a loan modification. A government-sponsored enterprise recommended allowing servicers greater flexibility when borrowers express a preference for a short sale and said the rule should allow borrowers to move toward a short sale while concurrently working to complete an application for retention options. The commenter suggested that, because the short sale process is lengthy, additional delay that stems from the requirement to complete an application may harm such borrowers.

Servicers informed the Bureau that relatively few borrowers request a short sale at the outset of a loss mitigation application. One servicer stated that borrowers who request short sales are typically significantly delinquent. Servicers said that most borrowers who do make such a request are approved for a short sale. However, the percentage of borrowers seeking a short sale who ultimately sell the property through a short sale varied greatly from servicer to servicer—estimates ranged from approximately 28% to approximately 85%.

During outreach, the Bureau asked several servicers about borrowers' ability to access other loss mitigation options if they pursue a short sale from the outset. Most of those servicers indicated that they discuss other loss mitigation options with borrowers who request a short sale at the outset of the application process. One suggested that it does not describe in detail all available options if the borrower states the intent not to retain the home. Most of the servicers stated that they process the application according to the borrower's preference, that they continue to work with these borrowers to pursue other loss mitigation solutions when a short sale is unsuccessful, and that, when borrowers change their minds during the loss mitigation application process, the servicer will process their applications accordingly. No servicers said that they did not work with borrowers when a short sale falls through or when borrowers change their minds. One servicer stated that, the longer a delinquency lasts, the less likely borrowers generally are able to obtain loss mitigation.

The Bureau also asked servicers about the documentation requirements for different loss mitigation options. Most servicers stated that they generally collect application materials sufficient to evaluate the borrower for both retention options and non-retention options, but servicers varied in how diligently they pursue documents supporting home retention options when the borrower requests a short sale. Among the reasons servicers gave for collecting documents for retention and non-retention options were investor requirements and a concern that borrowers may not understand their options. Some servicers explained that their collection of documents for home retention options when a borrower has requested a short sale may be more *pro forma*. One servicer indicated that, when a borrower requests a short sale, the servicer's collection of documents for home retention options is limited to providing the borrower with a list of all such documents; the servicer does not continue to make active attempts to collect

documents to support a review for retention options if the borrower wants a short sale. Another servicer stated that it collects a complete application package when the borrower requests loss mitigation but, if the borrower provides a short sale contract, the servicer evaluates only for a short sale. One servicer stated that it does not collect application materials for home retention options at all if the borrower is uninterested in those options.

Consumer advocacy groups strongly supported the third element of the proposal, stating that reviewing a borrower for all available loss mitigation options would limit steering, address uneven access to information between borrowers and servicers, and provide borrowers with better access to home retention options.

The Bureau is revising comment 41(b)(1)-1 to clarify the prohibition against a servicer ceasing efforts to collect documents and information based upon a borrower's stated preference. The comment retains the key elements of the proposal but is restructured and edited for clarity. As revised, comment 41(b)(1)-1 provides that 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. The comment provides that, in the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information 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. The comment clarifies that 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. The comment then states that 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.

Comment 41(b)(1)-1 provides two examples for further clarity. The first example, slightly revised from the proposal, assumes that a particular loss mitigation option is only available for borrowers whose mortgage loans were originated before a specific date. The example explains that, 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.

The new second example in comment 41(b)(1)-1 clarifies how a borrower's stated preference might affect a loss mitigation application. The example assumes that 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. The example then explains that, 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 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. The example in comment 41(b)(1)-1.ii is intended to clarify how borrower preference can affect the way in which the servicer might exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application as required under § 10241.41(b)(1). The Bureau believes that guidelines established by owners or assignees of mortgage loans similarly generally do not allow borrower preference alone to drive the servicer's conduct but generally require both the borrower's expressed preference and the borrower's submission of additional information. The Bureau notes that the comment merely offers an example and does not create a new standard for compliance.

As revised, comment 41(b)(1)-1 does not alter a servicer's overall obligation to collect application materials it requires to evaluate a borrower for all available loss mitigation options before conducting the evaluation. It is, however, intended to clarify that a servicer has flexibility to determine which documents and information it needs to evaluate a borrower for each option. Servicers must exercise reasonable diligence to obtain a complete application, which includes all the information that the servicer requires from the borrower in evaluating the application for all options available to the borrower. The documents and information that satisfy this requirement for a given option may change depending on the information a servicer receives during the application process. If a servicer receives documents and information that render a borrower ineligible for a given option regardless of any additional information, the servicer is not required to continue collecting application materials for that option. For example, if a servicer receives information confirming that a borrower is ineligible for a loan modification, the servicer may no longer need to collect detailed information about the borrower's income if it does not require income information to evaluate the application for any other available loss mitigation option,

such as a short sale. Within the confines of the rule, servicers may organize the collection of application materials accordingly, in a way that minimizes unnecessary burden.

Notwithstanding the above, the borrower's stated preference, without more, may not be the basis on which a servicer stops collecting application materials. In exercising reasonable diligence to obtain a complete application, a servicer may not stop collecting application materials relating to a home retention option, for example, solely because a borrower states a preference for a short sale or states a more general preference not to retain the property. Revised comment 41(b)(1)-1 is intended to clarify that servicers have sufficient flexibility under § 1024.41 to stop collecting documents or information after confirming that such application materials cannot affect the outcome of an evaluation, but that this determination cannot be based on a borrower's stated preference alone.

In finalizing these revisions, the Bureau sought to balance the ability of a borrower to indicate a preference for or against a loss mitigation option early in the process, thus allowing servicers the opportunity to collect application materials more efficiently during the application process, with the overarching goals of the 2013 Mortgage Servicing Final Rules to prevent unnecessary foreclosures.

The Bureau recognizes that, under final comment 41(b)(1)-1, some borrowers may be required to submit some additional documentation relating to loss mitigation options that they have indicated they do not want before the servicer can evaluate the application for the borrowers' preferred option under the rule. Nonetheless, the Bureau believes that the additional documentation that some borrowers may need to submit as a result of the rule, which the Bureau understands from outreach to be minimal in many instances, is justified. While the Bureau realizes that this approach may present some additional burden to both borrowers and servicers,

the Bureau believes, for the reasons below, that it will produce the most efficient and optimal outcomes for borrowers and servicers alike in the long run.

Borrowers applying for loss mitigation are often operating under substantial financial distress and with limited information, and they may not be situated to make an optimal choice at the outset of the application process. Permitting servicers to stop collecting documents on the basis of a borrower's preference alone might allow servicers to influence inappropriately the borrower's preference during communications with the borrower toward the option that most benefits the servicer, even if it is not optimal for the borrower. Moreover, the Bureau notes that, even in situations in which borrowers are making fully informed, independent choices as to which options they prefer, borrowers sometimes do not ultimately obtain that option.

For example, the Bureau understands that the short sale process frequently takes months to complete. Over this time, a borrower's preferences may change, whether because the borrower comes to a better understanding of other available loss mitigation options or otherwise decides against seeking a short sale. Moreover, an attempted short sale may ultimately be unsuccessful, for a variety of reasons. As noted above, servicers report widely varying rates of successful short sales, in some cases less than one in three. If a borrower ultimately is not successful in securing a short sale, the delinquency will have increased in the meantime, possibly making any alternate loss mitigation option more difficult to achieve. If the servicer has also stopped collecting documents or information to support an evaluation of other loss mitigation options, the borrower could be left with a greater delinquency and greater need for evaluation for all available loss mitigation options but without the protections of § 1024.41.

As noted above, some commenters asserted that proposed comment 41(b)(1)-1 was in conflict with statements the Bureau made during a webinar in 2013. In the webinar, the Bureau

explained that the mortgage servicing rules permit investors to set their own loss mitigation eligibility criteria, such that a servicer may deny a borrower for a loan modification if the investor criteria provide that a borrower must be interested in remaining in the home to be eligible for a modification and the borrower has indicated that there is no such interest. The Bureau believes that any perceived conflict between final comment 41(b)(1)-1's provision that servicers may not stop collecting documents based solely on the borrower's preference and the webinar's indication that investor criteria may include the borrower's preference, is theoretical. The Bureau is not aware of owner or assignee guidelines that render borrowers ineligible for a loss mitigation option solely because of the borrower's stated preference. Although some such guidelines may use a borrower's preference in addition to some other factor as an eligibility criterion, borrower preference alone generally does not appear to be the basis for determining that a borrower is ineligible.

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

41(b)(2)(i) Requirements

Proposed comment 41(b)(2)(i)-1 would have clarified the timelines on which a servicer must review and acknowledge a borrower's loss mitigation application when no foreclosure sale has been scheduled as of the date the loss mitigation application is received. For the reasons discussed below, the Bureau is adopting comment 41(b)(2)(i)-1 with minor revisions to improve clarity.

Under § 1024.41(b)(2)(i), if a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, the servicer must: (1) promptly review the application to determine if it is complete; and (2) within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the application, notify the borrower in writing that the application was

received, state whether it is complete or incomplete, and if the application is incomplete, state the additional documents and information needed to complete the application.

Section 1024.41(b)(2)(i) does not expressly address whether this requirement applies when an application is received before a foreclosure sale is scheduled.[239] As the Bureau explained in the proposal, the Bureau believes that, in that scenario, the application was still received "45 days or more before a foreclosure sale," and the requirements of § 1024.41(b)(2)(i) still apply. To codify this interpretation, the Bureau proposed to add new comment 41(b)(2)(i)-1 to clarify that, for purposes of § 1024.41(b)(2)(i), if a foreclosure sale has not been scheduled as of the date an application is received, the application shall be treated as if it were received at least 45 days before a foreclosure sale. The proposal would have clarified that servicers must comply with all of the requirements of § 1024.41(b)(2)(i) even when no foreclosure sale has been scheduled as of the date a servicer receives a borrower's loss mitigation application.

The Bureau received several comments supporting proposed comment 41(b)(2)(i)-1. For example, a national trade association commented that the proposal adds clarity for both servicers and borrowers. A consumer advocacy group was similarly supportive.

The Bureau is adopting comment 41(b)(2)(i)-1 substantially as proposed, with minor, non-substantive revisions for clarity. As the Bureau explained in the proposal, the comment is intended to provide certainty to servicers and borrowers.

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

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

Section 1024.41(b)(2)(ii) requires a servicer to include on the loss mitigation application acknowledgment notice required under § 1024.41(b)(2)(i)(B) a reasonable date by which the borrower should submit additional documents and information necessary to make the loan application complete. Current comment 41(b)(2)(ii)-1 clarifies how servicers should set that date, taking into consideration specific milestones that correspond to specific protections under § 1024.41. Proposed comments 41(b)(2)(ii)-1 through -3 would have further clarified that servicers have significant flexibility in selecting the reasonable date. Generally stated, the proposal would have clarified that servicers may select any date that it determines both maximizes borrower rights under § 1024.41 and allows the borrower a reasonable period of time to obtain and submit the documents and information. Although the proposed comments would have provided that a servicer should not select a reasonable date that is later than the nearest of the four milestones associated with the specified protections of § 1024.41, they also would have clarified that a servicer may select a reasonable date that is earlier than the nearest remaining milestone. For the reasons discussed below, the Bureau is adopting comments 41(b)(2)(ii)-1 through -3 with substantial revisions. As revised, the comments provide more specific guidance about how a servicer selects a reasonable date in compliance with § 1024.41(b)(2)(ii).

The Bureau sought comment on three aspects of the proposal: whether the proposal would provide servicers with sufficient guidance under § 1024.41(b)(2)(ii) in setting a reasonable date for the return of documents and information that maximizes borrower protections; whether to address those situations where the nearest remaining milestone will not occur for several months based on the date of a scheduled foreclosure sale and the documents the borrower has already submitted at the time the servicer selects the reasonable date under

§ 1024.41(b)(2)(ii); and whether to adopt a less flexible standard that would leave servicers with little or no discretion in setting a reasonable date under § 1024.41(b)(2)(ii) and, if so, what would constitute an appropriate standard under such an approach.

Several commenters supported the proposal. A credit union stated that the proposal would provide clear and transparent procedures beneficial to credit unions and borrowers. An industry trade association stated that the flexibility that the proposal would afford servicers in selecting a reasonable date would benefit both servicers and borrowers, particularly because each borrower's application is unique.

Some industry commenters supported an even more flexible approach. One servicer said that a reasonable date that is later than the nearest milestone could provide borrowers with even greater protections. Another cautioned that setting a return date as little as eight days away could create borrower confusion and panic and argued that servicers should have complete flexibility to select the date. This commenter also requested that the Bureau create a safe harbor for compliance with § 1024.41(b)(2)(i)(B), through the use of a model form with language describing the milestones.

In contrast, other industry commenters and some consumer advocacy groups recommended limiting servicer discretion in selecting a reasonable date. These industry commenters stated that a flexible approach would be difficult to apply and would open servicers to various risks, such as litigation, monetary penalties, or reputational harm. Industry commenters also expressed concern that borrowers are less likely to be responsive if they have too much time to submit documents and that a longer time to completion can increase the delinquency, thereby decreasing the likelihood of successful loss mitigation. Industry commenters expressed varying opinions about the right length of time to afford borrowers,

ranging from 14 days to 45 days. One servicer recommended that the final rule allow servicers limited discretion to select a reasonable date between 30 and 45 days away. Another servicer recommended a two-tiered approach, with borrowers permitted 30 days to submit documents and then an additional 30 days to complete the application as long as the borrower has submitted some of the outstanding documents that the servicer requested by the end of the first 30-day period.

Consumer advocacy groups that recommended limiting servicer discretion suggested different approaches. One consumer advocacy group recommended selecting a reasonable date that is between seven and 30 days away. Other consumer advocacy groups recommended requiring the reasonable date to be no more than 30 days away if the nearest milestone is 45 days or more in the future. These commenters suggested that these timeframes would, for example, reduce processing times, borrower discouragement, and documents going stale and that borrowers would rarely, if ever, need more than 30 days to provide the requested information.

Several industry commenters expressed concern with tracking the milestones and maximizing borrower rights in the selection of a reasonable date. Industry commenters cited litigation risk and the operational difficulties in tracking when documents go stale, among other matters. One industry commenter stated that servicers must manually track when documents will go stale to comply with the first milestone in the list, the date by which any document or information that a borrower submitted will be considered stale or invalid pursuant to any requirements applicable to any available loss mitigation option.

The Bureau is adopting comments 41(b)(2)(ii)-1 through -3 with substantial revisions to the proposal. The final rule provides servicers with more specific guidance on how to select a reasonable date than the proposal would have provided. As explained in more detail below, the

commentary explains that 30 days from the date the servicer provides the notice under § 1024.41(b)(2)(i)(B) is generally a reasonable date. If a milestone will occur within 30 days, however, the commentary specifies that the reasonable date must be no later than the earliest of the milestones, subject to a minimum of seven days, so that borrowers can return application materials. The Bureau believes that these clearer guidelines should aid compliance and improve borrower protections.

Comment 41(b)(2)(ii)-1 provides that, 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. Comment 41(b)(2)(ii)-2 states that, 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 four milestone dates. The dates are the same as the milestones in the proposal and in existing comment 41(b)(2)(ii)-1: (1) 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; (2) the date that is the 120th day of the borrower's delinquency; (3) the date that is 90 days before a foreclosure sale; and (4) the date that is 38 days before a foreclosure sale. Comment 41(b)(2)(ii)-3 clarifies that 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).

As explained above, the proposal would have expressly stated that a servicer may select any date that it determines both maximizes borrower rights under § 1024.41 (in consideration of the milestones) and allows the borrower a reasonable period of time to obtain and submit the

applicable documents and information. The final rule commentary, in contrast, states that a date that is 30 days after the date the servicer provides the written notice is generally compliant. The reasonable date must be no later than the nearest remaining milestone even if it will occur earlier than 30 days, subject to a minimum of seven days after the servicer provides the borrower with the notice. This increased specificity should afford borrowers sufficient time to obtain and submit application materials while reducing lengthy timelines for returning documents, which can lead to borrower disengagement, increased delinquency, or a diminished likelihood that the borrower will obtain a loss mitigation option. The Bureau believes that borrowers will rarely need more than 30 days to obtain and submit application materials. Further, as revised, the commentary to § 1024.41(b)(2)(ii) still preserves borrower protections under § 1024.41 by expressly prohibiting servicers from selecting a reasonable date that is later than the four milestone dates after which various protections end under the rule, subject to the seven-day minimum. In general, as each milestone passes before an application is complete, borrowers enjoy fewer protections under § 1024.41. A reasonable date too close to the next milestone would place consumers at risk of losing those protections. The Bureau believes this provision should increase borrowers' opportunity to complete their applications before any future milestones have passed. The Bureau also notes that servicers already must track the upcoming milestones to comply with § 1024.41.

The Bureau declines to adopt a more flexible standard than proposed, as some commenters suggested. As the Bureau explained in the proposal, and as both industry and consumer advocacy group commenters noted, servicers could select a date that is too far in the future under a more flexible standard. A date that is too far in the future would not be reasonable, and borrowers might be discouraged from promptly providing the requested

documents and information.

Based on the comments received, the Bureau believes that the revisions may reduce industry burden, litigation risk, and the possibility of reputational harm associated with determining on a case-by-case basis what constitutes a reasonable date. Also, the Bureau understands that some servicers already provide a 30-day period for borrowers to obtain and submit documents and information necessary to complete a loss mitigation application, so the burden of amending business practices to comply with the final rule should be limited for these servicers. Although servicers may have to incur some costs to program their systems to ensure that the date selected complies with the revised comment, the Bureau believes the final rule will substantially benefit borrowers.

The Bureau is not adopting one commenter's suggestion to require a servicer to describe the milestones on the written notice under § 1024.41(b)(2)(i)(B). The Bureau believes this information would introduce significant burden for servicers. The Bureau also believes the additional information would not provide borrowers any significant benefit and could risk distracting borrowers from focusing on the critical information.

Finally, the Bureau reiterates that, pursuant to § 1024.41(b)(2)(ii), the reasonable date is not a hard deadline for the borrower to return the documents to the servicer.[240] As the Bureau explained in the 2013 RESPA Servicing Final Rule, servicers may still accept documents after the reasonable date, and the borrower may still be able to submit a complete loss mitigation application, even if the borrower does not submit the requested information by the reasonable

[240] *See* 78 FR 10695, 10826 (Feb. 14, 2013).

date.[241]

41(c) Evaluation of Loss Mitigation Applications

41(c)(1) Complete Loss Mitigation Application

The Bureau proposed and is adopting a minor technical revision to § 1024.41(c)(1) to facilitate the addition of § 1024.41(c)(4), discussed below. The Bureau also sought comment as to whether the applicable timelines set forth in § 1024.41 allow borrowers sufficient time to accept or reject a loss mitigation offer if they complete a loss mitigation application near the foreclosure sale date. The Bureau did not make any specific proposal to address those concerns. The Bureau is not adopting any further revisions to § 1024.41(c)(1) to address those concerns at this time.

In response to the Bureau's request for comment, several commenters expressed concerns about the timing requirements in § 1024.41. A trade association suggested that a borrower may have little time to respond to a loss mitigation offer if the borrower submitted a complete loss mitigation application 38 days before a foreclosure sale and the servicer responds 30 days later notifying the borrower of which options the servicer will offer. A consumer advocacy group expressed concern that the amount of time the rule allows a borrower to respond to a loss mitigation offer or to exercise appeal rights is shortened by the amount of time it takes the borrower to receive the determination letter. Other consumer advocacy groups stated that the timing and method of communicating offers and appeals present problems for borrowers, including sometimes facing shorter response and appeal timeframes than intended, in part because of the delay in receiving a decision by standard (not first class) mail or because servicers

[241] 78 FR 10695, 10826 (Feb. 14, 2013).

sometimes backdate documents.

Commenters recommended different approaches for addressing their concerns about the timing requirements discussed above. A consumer advocacy group said that the Bureau should require servicers to mail notices promptly and should carve out additional time in the loss mitigation timeline for a servicer to mail the notices to the borrower. A trade association recommended that the Bureau consider allowing the borrower less time to decide whether to accept a loss mitigation offer or increasing the number of days before a foreclosure sale a servicer must receive a complete loss mitigation application and still be required to evaluate the application. A servicer requested a separate, 10-day timeframe to mail the determination letter, arguing that the additional time would permit servicers to obtain third-party information and ensure that the borrower receives the most accurate determination possible. The commenter also stated that a 10-day delay in mailing the determination letter would not harm the borrower because the servicer already contacts the borrower at the end of the existing 30-day evaluation period to inform the borrower of its determination.

Consumer advocacy groups recommended that the Bureau address timing problems by prohibiting servicers from backdating documents and regulating further the manner in which notices are delivered. For example, these commenters suggested requiring servicers to provide notices via first class mail; adding three days to certain timing deadlines if a notice is not sent by first class mail; providing that the time a borrower has to respond to a loss mitigation offer begins only when the borrower receives the decision notice; setting forth specific mailing requirements and deadlines; specifying how servicers must construe timing requirements under applicable deadlines; or requiring that notices display the same date as the date the notice is placed in the mail, even if a vendor sends the notice.

Consumer advocacy groups also advocated requiring servicers to postpone a foreclosure sale when they offer a borrower a loss mitigation option after receiving the complete loss mitigation application on or near the 38th day before the sale. They said that servicers can simply conduct the sale later if the borrower rejects the offer and that the slight inconvenience that this would cause does not justify denying the borrower's application simply because the offer and acceptance might be communicated by mail. Some industry commenters suggested that the rule's current structure may not pose timing problems in some cases. One state trade association stated that the 30-day evaluation timeline does not cause problems for its members because evaluations typically take less than 30 days. A servicer generally endorsed the timing and method of communicating loss mitigation offers and appeals and stated that servicers will take measures to provide borrowers with foreclosure protections when they receive a complete loss mitigation application more than 37 days before a scheduled foreclosure sale. However, one servicer stated that, although servicers take measures to provide foreclosure protections upon receiving a complete loss mitigation application more than 37 days before a foreclosure sale, the servicer cannot guarantee that the sale will be postponed.

The Bureau is not taking action on these issues at this time. The comments received suggest that, when servicers comply with the existing timing requirements, borrowers are protected from the most serious harms and that servicers are, in the main, able to comply with those timing requirements. The Bureau notes that, under § 1024.38(b)(1)(i), a servicer must maintain policies and procedures that are reasonably designed to ensure that the servicer can provide accurate and timely disclosures to a borrower as required by Regulation X's mortgage servicing rules, including § 1024.41, or other applicable law. Particularly when a scheduled foreclosure sale places pressure on a loss mitigation application timeline, the Bureau encourages

servicers to provide borrowers with notices in the most efficient and effective manner possible to maximize the likelihood that the borrower can obtain loss mitigation and avoid foreclosure and unnecessary fees. Servicers must ensure that their policies and procedures are reasonably designed to provide accurate and timely disclosures to borrowers in all circumstances, even when a foreclosure sale has been scheduled. The Bureau will continue monitoring the market for these and related issues.

The Bureau is making a technical correction that redesignates a comment to § 1024.41(d) as new comment 41(c)(1)-4. The 2013 Mortgage Servicing Final Rules added a comment to § 1024.41(d) that provides that 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(d), unless otherwise prohibited by applicable law.[242] Because § 1024.41(d) requires that certain disclosures be made in a notice sent pursuant to § 1024.41(c)(1), the Bureau sought to redesignate this comment as comment 41(c)(1)-4 in the September 2013 Mortgage Final Rule but inadvertently redesignated it instead as comment 41(d)-(c)(1)(4).[243] The Bureau is now removing comment 41(d)-(c)(1)(4) and replacing it with new comment 41(c)(1)-4. New comment 41(c)(1)-4 is identical to the comment that it replaces, except that the Bureau is making a technical, clarifying change that substitutes "notice required under § 1024.41(c)(1)" for "notice required under § 1024.41(d)."

[242] 78 FR 10696, 10897 (Feb. 14, 2013).
[243] 78 FR 60381, 60438 (Oct. 1, 2013).

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

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

Proposed § 1024.41(c)(2)(iii) would have allowed servicers to offer borrowers short-term repayment plans, as described in the proposal, based upon an evaluation of an incomplete loss mitigation application. This would have been an exception to the general rule under § 1024.41(c)(2), which generally prohibits a servicer from evading the requirement to evaluate a complete loss mitigation application by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete application. Section 1024.41(c)(2)(iii) currently allows such an exception for short-term forbearance programs but does not specifically address short-term repayment plans. The proposal also would have set forth certain protections for borrowers with either or both of these short-term loss mitigation options, including limitations on dual tracking and a requirement that the servicer clearly specify the payment terms and duration of the program or plan in writing and provide that information to the borrower before the program or plan begins. Finally, the proposal would have described in commentary to § 1024.41(b)(1) a servicer's obligation to collect a borrower's application materials in the context of a short-term program or plan offered pursuant to § 1024.41(c)(2)(iii).

The Bureau received numerous comments on the proposal. Many consumer advocacy group and industry commenters expressed support for the proposal generally but expressed concern with specific elements of the proposal, as discussed below. Comments on most aspects of the proposal are summarized here, but comments relating to the proposed description of a servicer's reasonable diligence obligations under comment 41(b)(1)-4 are addressed below in this section-by-section analysis, under the heading Reasonable Diligence.

Consumer advocacy groups generally stated that the final rule should extend borrowers protections in addition to those existing for short-term forbearance plans. They recommended (1) tolling, during a borrower's short-term repayment plan, the 120-day pre-foreclosure period under § 1024.41(f)(1)(i) during which servicers must not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; (2) prohibiting servicers from scheduling a foreclosure sale while the borrower is performing pursuant to a short-term repayment plan offered under § 1024.41(c)(2)(iii); and (3) requiring servicers to provide borrowers information necessary to understand that more affordable loss mitigation options may be available if the borrower completes the application.

Many comments addressed the proposed requirement that servicers clearly specify the payment terms and duration of the program or plan in writing and provide that information to the borrower before the program or plan begins. Consumer advocacy groups stated that providing this information in writing would be important because the agreements sometimes suggest that they are an initial step to a loan modification and borrowers sometimes believe erroneously that the short-term forbearance program or short-term repayment plan is a loan modification. The commenters said that, as a result, borrowers sometimes believe either that they need not apply for loss mitigation or that defaulting on the short-term option would render them ineligible for a loan modification. Consumer advocacy groups therefore recommended requiring servicers additionally to state in writing that the offer is being made based on a limited application and that, regardless of the outcome of the short-term program or plan, the borrower may seek a full loss mitigation review in the future.

Some industry commenters, including servicers and national trade associations, expressed concerns about the proposed requirement to clearly specify the terms and duration of the

program or plan in writing before the program or plan begins. They recommended allowing the program or plan to begin before servicers must provide written information about the program or plan, as is common industry practice. Commenters stated that requiring servicers to provide written information before the program or plan begins could create ambiguity as to when a program or plan begins and delay the start of the program or plan. One servicer noted that some borrowers can make their first plan payment over the phone upon accepting the offer and that prohibiting a servicer from accepting such payment before providing the written information could lead to additional costs to the borrower. One servicer requested that the Bureau address how servicers would clearly specify the payment terms and duration when there may be a change in payment during the short-term repayment plan. The servicer stated that this could occur, for example, when the interest rate may change during the plan or when there may be an increase to the borrower's escrow payment during the plan.

The proposal also would have required that the short-term repayment plans permitted under § 1024.41(c)(2)(iii) must bring the loan current. One trade association expressly supported the proposal to require that such a plan cure the delinquency.

Many commenters discussed the proposed limitations on the maximum arrearage and maximum repayment period for such short-term repayment plans. Several industry commenters and consumer advocacy groups supported the proposed limitations from both a borrower protection and an operational vantage point. A credit union stated that the proposed limitations on arrearage and repayment period would not create operational difficulties for its affiliate lenders. A trade association stated that the most effective short-term repayment plans last between three and six months. During outreach, some servicers similarly stated that their repayment plans typically last no more than six months, depending on the borrower's

circumstance or investor requirements. A servicer supported the six-month maximum repayment period for short-term repayment plans and noted that servicers can offer longer repayment plans, lasting up to 12 months, based on a complete application. Other industry commenters opposed the proposed limitations. Some industry commenters suggested that borrowers should have unlimited time to repay an arrearage under a short-term repayment plan and noted that borrowers may need more than six months to pay off the arrearage. Several industry commenters recommended allowing a repayment period of up to 12 months, suggesting that repayment plans of 12 months would be consistent with guidelines established by owners or assignees. A servicer suggested the Bureau leave it to investors to define repayment plan limitations, given that this involves an assessment of the risk of ultimate repayment. A government-sponsored enterprise stated that the Bureau should not limit the size of the arrearage or the repayment period, as long as the servicer discloses to the borrower that the plan would eliminate the delinquency upon completion and that the borrower may submit a complete application and as long as the servicer resumes efforts to obtain a complete application if the borrower defaults on the short-term repayment plan. Several industry commenters suggested aligning the maximum repayment durations for short-term repayment plans and short-term payment forbearance programs, noting that short-term payment forbearance programs currently may be offered regardless of the amount of time a servicer allows the borrower to make up the missing payments.[244] One servicer requested clarification that, in accordance with informal guidance the Bureau issued in 2013, a servicer may offer a short-term repayment plan and a short-term payment forbearance program simultaneously, as long as the combined arrangement does not incorporate more than six months

[244] *See* comment 41(c)(2)(iii)-1.

of payments past due.

Servicers the Bureau spoke with during outreach reported varying cure rates for borrowers in their repayment plans. None of these servicers estimated a cure rate significantly higher than 50%. Two servicers stated that a significant proportion of their borrowers who do not complete a repayment plan fail within the first month or two. Servicers participating in the Bureau's outreach indicated that they encourage borrowers who fail to complete a repayment plan to apply for other loss mitigation options.

Industry commenters expressed other miscellaneous concerns about the proposal. For example, a trade association stated that a short-term repayment plan offered under § 1024.41(c)(2)(iii) might be considered a troubled-debt restructuring and could therefore result in increased burden and expense. A trade association cautioned against the Bureau expanding the proposal to require a servicer to provide a short-term solution if the borrower fails to complete a loss mitigation application.

The Bureau is adopting § 1024.41(c)(2)(iii) generally as proposed to permit explicitly servicers to offer short-term repayment plans based upon an evaluation of an incomplete loss mitigation application. The final rule includes revisions, however, as to the contents and timing of the written information that servicers must provide to borrowers. The final rule requires servicers to provide more information than the proposal and specifies that a servicer must provide a written notice promptly after offering the program or plan. The Bureau is also adopting commentary that describes what constitutes a short-term payment forbearance program and a short-term repayment plan for purposes of § 1024.41(c)(2)(iii), clarifies the application of § 1024.41 to such programs or plans, and clarifies various aspects of the written notice requirement. The Bureau is also adopting revisions to comment 41(b)(1)-4.iii, which clarifies a

servicer's obligation under § 1024.41(b)(1) to exercise reasonable diligence when 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. Among other things, these revisions to comment 41(b)(1)-4.iii clarify that a servicer must immediately resume exercising reasonable diligence to obtain a complete application if a borrower defaults on a short-term repayment plan.

The Bureau continues to believe that allowing servicers to offer short-term repayment plans based on an evaluation of an incomplete loss mitigation application can substantially benefit borrowers and servicers. It offers a relatively efficient way for borrowers to address temporary hardships without exhausting those protections under § 1024.41 determined as of the date a complete loss mitigation application is received. The same rationale underpins the existing exception for short-term forbearance programs under § 1024.41(c)(2)(iii). Although nothing in § 1024.41 requires a servicer to offer such forbearance programs or repayment plans based upon an incomplete application, § 1024.41(c)(2)(iii) permits servicers to offer temporary assistance to qualifying borrowers who may need only to address short-term financial difficulty.

However, the Bureau also notes that, without appropriate safeguards, permitting a servicer to offer loss mitigation based upon an evaluation of an incomplete application could have adverse consequences for a borrower. If a servicer inappropriately diverts a borrower into a loss mitigation program based upon an incomplete application, it could exacerbate the borrower's delinquency and put the borrower at risk of losing the opportunity to complete the application and receive the full protections of § 1024.41. A borrower who is offered a short-term payment forbearance program or short-term repayment plan may be experiencing a hardship for

which other, longer-term loss mitigation solutions might be more appropriate for a particular borrower's circumstance.

As revised and adopted in final form, § 1024.41(c)(2)(iii) contains three key elements. First, it provides that, notwithstanding the rule's general prohibition against offering a loss mitigation option based upon an evaluation of an incomplete application, 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. Second, it provides that, promptly after offering a payment forbearance program or a repayment plan under § 1024.41(c)(2)(iii), 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 offered program or plan.[245] Third, it prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or moving for foreclosure judgment or order of sale or conducting a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program or repayment plan offered pursuant to § 1024.41(c)(2)(iii). The final rule also specifies that a servicer may offer a short-term payment

[245] In the 2013 RESPA-TILA Servicing Amendments, the Bureau declined to require servicers to include similar disclosures in the written notification required under § 1024.41(b)(2)(i)(B), stating that servicers should have flexibility to provide the disclosures at the appropriate time. 78 FR 60381, 60400 (Sept. 12, 2013). The Bureau believes that it is appropriate for borrowers to receive these disclosures in the written notice provided at the time a borrower receives an offer for a short-term forbearance program or short-term repayment plan under § 1024.41(c)(2)(iii).

forbearance program in conjunction with a short-term repayment plan pursuant to § 1024.41(c)(2)(iii).

The final rule retains the proposed disclosures relating to the payment terms and duration of the program or plan, which the Bureau believes should reduce misunderstandings between servicers and borrowers, including those that may result in borrowers making incorrect payments. Comment 41(c)(2)(iii)-5, discussed below, clarifies these requirements.

The final rule also requires several additional disclosures that were not proposed. Many of these disclosures are specified in current comment 41(b)(1)-4.iii as part of a servicer's obligation to exercise reasonable diligence. The Bureau is removing those specific disclosures from final comment 41(b)(1)-4.iii, as they would be duplicative of the new written notice requirements in final § 1024.41(c)(2)(iii). Final § 1024.41(c)(2)(iii) also introduces a new disclosure, that other loss mitigation options may be available.

After considering the comments, the Bureau believes that allowing a short-term payment forbearance program or short-term repayment plan to begin immediately following an oral offer is appropriate. The Bureau understands that some servicers already allow a short-term payment forbearance program or repayment plan to begin upon offer. Allowing commencement of the program or plan immediately upon an oral offer may benefit some borrowers by reducing the accrual of late fees, negative credit reporting, and the accumulation of further delinquency. Entering the short-term repayment plan also triggers the protections of § 1024.41(c)(2)(iii), which forbids the servicer from making the first notice or filing required under applicable law for any judicial or non-judicial foreclosure process, moving for foreclosure judgment or order of sale, or conducting a foreclosure sale.

The Bureau continues to believe, however, that borrowers will benefit from receiving a

written notice describing the program or plan. The final rule therefore requires servicers to provide a written notice promptly after offering a payment forbearance program or a repayment plan under § 1024.41(c)(2)(iii), unless the borrower has rejected the offer. The Bureau continues to believe that receiving the written notice promptly will assist borrowers in understanding the terms and consequences of the program or plan and will allow borrowers to address any discrepancies more quickly. The Bureau notes that § 1024.41(c)(2)(iii) does not require servicers to provide the written notice if the borrower has rejected the offer. A notice after the borrower has rejected the offer would provide little benefit to the borrower and could introduce unnecessary burden for the servicer.

The Bureau is not adopting some commenters' suggestions to toll the loss mitigation timelines under § 1024.41 or to prohibit servicers from scheduling a foreclosure sale while a borrower is performing under a short-term repayment plan offered under § 1024.41(c)(2)(iii). The Bureau believes that the protections extended under § 1024.41(c)(2)(iii) and (b)(1) are sufficient. As detailed below, a short-term repayment plan for purposes of § 1024.41(c)(2)(iii) must have terms under which a borrower would be able to repay all past due payments over a specified period of time to cure the delinquency; and while a borrower is performing under such a plan, servicers may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, move for foreclosure judgment or order of sale, or conduct a foreclosure sale. Further, if the borrower fails to comply with the plan, servicers must immediately resume exercising reasonable diligence to obtain a complete application, as described in revised comment 41(b)(1)-4.iii. The Bureau will continue to monitor the marketplace regarding the sufficiency of these protections. The Bureau also is not addressing, as one commenter suggested, whether short-term repayment plans offered under

§ 1024.41(c)(2)(iii) might be considered troubled-debt restructurings.

The Bureau is adopting comments 41(c)(2)(iii)-1 through -4 substantially as proposed, with non-substantive revisions to improve clarity. Comment 41(c)(2)(iii)-1 clarifies what constitutes a short-term payment forbearance program for purposes of § 1024.41(c)(2)(iii). Comments 41(c)(2)(iii)-2 and -3 clarify that various protections under § 1024.41 apply notwithstanding a servicer's offer of a short-term payment forbearance program or short-term repayment plan under § 1024.41(c)(2)(iii). Comment 41(c)(2)(iii)-2 explains that, although § 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. The comment includes several examples of the protections. Comment 41(c)(2)(iii)-3 clarifies that the servicer must still comply with all applicable requirements in § 1024.41 if the borrower completes a loss mitigation application.

As finalized, comment 41(c)(2)(iii)-4 clarifies that repayment plans for purposes of § 1024.41(c)(4)(iii) have terms under which a borrower would repay all past due payments over a specified period of time to bring the mortgage loan account current. Repayment plans that are not intended to cure the delinquency risk merely prolonging the delinquency with consequent borrower harm, including negative credit reporting and a diminished ability to qualify for other loss mitigation options. Comment 41(c)(2)(iii)-4 explains that a short-term repayment plan for purposes of § 1024.41(c)(2)(iii) is one that 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.

The Bureau also believes that these specific limitations, to three months of past due

payments and a repayment period of six months, reduce the risk of borrower harm. Allowing more than three months of past due payments or longer repayment periods could result in a higher default rate, and borrowers' prospects for loss mitigation may be diminished by a default on a short-term repayment plan. As noted above, servicers that the Bureau spoke with during outreach informed the Bureau that their borrowers in repayment plans frequently do not result in a cure; none of these servicers reported cure rates higher than approximately 50%.

Moreover, borrowers in short-term repayment plans under § 1024.41(c)(2)(iii) are at risk of losing various protections under § 1024.41. In general, the longer a delinquency exists without the borrower completing an application, the fewer borrower protections § 1024.41 is likely to provide if the borrower later completes the application. For example, certain protections apply only if the borrower completes a loss mitigation application more than a certain number of days before a scheduled foreclosure sale. As a result, a borrower could exit an unsuccessful short-term repayment plan to face a scheduled foreclosure sale with no right under § 1024.41 to have a complete loss mitigation application evaluated or to have the denial of loan modification options subject to appeal.

Given these potentially serious consequences for borrowers who are in short-term repayment plans based on an evaluation of an incomplete loss mitigation application, the Bureau believes that the limitations in the final rule, as explained by comment 41(c)(2)(iii)-4, are necessary. The final rule affords servicers sufficient flexibility to address borrowers' temporary hardships, while also ensuring that borrowers facing more substantial hardship will not lose time and protections under § 1024.41 by agreeing to a repayment plan that they may have little chance of completing.

The Bureau notes that nothing in § 1024.41 prevents a servicer from offering a repayment

plan that exceeds the durational limitations set forth in comment 41(c)(2)(iii)-4. Rather, the rule simply prohibits a servicer from doing so without obtaining a complete loss mitigation application and evaluating the borrower for all available options. As discussed below, the Bureau is also revising comment 41(b)(1)-4.iii, which clarifies a servicer's obligation under § 1024.41(b)(1) to act with reasonable diligence in obtaining documents and information to complete a loss mitigation application when the servicer offers the borrower a short-term payment forbearance program or short-term repayment plan under § 1024.41(c)(2)(iii).

The Bureau is also adopting new comment 41(c)(2)(iii)-5 to clarify the written notice requirement for short-term loss mitigation options under § 1024.41(c)(2)(iii). Comment 41(c)(2)(iii)-5.i notes that § 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. The comment explains that, 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. The Bureau believes that these guidelines clarify a servicer's obligations under § 1024.41(c)(2)(iii) and may help borrowers better understand short-term programs or plans offered based upon incomplete applications.

One commenter noted that servicers will not always know precisely how a borrower's payments will change during a short-term payment forbearance program or short-term repayment plan. New comment 41(c)(2)(iii)-5.ii clarifies how a servicer may comply with the requirement in this circumstance. The comment describes how a servicer complies when, at the time a

servicer provides the written notice, 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 may change). The comment states that, in such circumstances 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. The comment provides an illustrative example.

The Bureau is also adopting new comment 41(c)(2)(iii)-6 to clarify the requirement that a servicer must provide the written notice promptly after offering a short-term payment forbearance program or short-term repayment plan. The comment explains that, generally, a servicer acts promptly to provide the written notice if the servicer provides it 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. The comment also clarifies that a servicer may provide the written notice at the same time the servicer offers the borrower the program or plan. Finally, the comment states that a written offer that contains all the required elements of the written notice also satisfies § 1024.41(c)(2)(iii).

Reasonable Diligence

The Bureau is also revising the introductory text to comment 41(b)(1)-4 and the substance of comment 41(b)(1)-4iii to clarify a servicer's obligation under § 1024.41(b)(1) to act

with reasonable diligence in obtaining documents and information to complete a loss mitigation application when the servicer offers the borrower a short-term payment forbearance program or short-term repayment plan under § 1024.41(c)(2)(iii). Current comment 41(b)(1)-4 describes the reasonable diligence obligation generally. The comment states that a servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Comments 41(b)(1)-4.i through -4.iii clarify reasonable diligence for purposes of § 1024.41(b)(1) in specific circumstances. Comment 41(b)(1)-4.iii clarifies the standard when a servicer offers a short-term payment forbearance programs under § 1024.41(c)(2)(iii). Proposed revisions would have extended the comment to include short-term repayment plans.

The Bureau received many comments discussing the proposed amendments to a servicer's reasonable diligence obligations with respect to short-term loss mitigation options offered under § 1024.41(c)(2)(iii). Some consumer advocacy groups said that the Bureau should strengthen the applicable reasonable diligence standard a servicer must employ to obtain a complete application from the borrower. Under the proposal, servicers generally would have been allowed to suspend such efforts until near the end of the program or plan. The commenters recommended a rule that more clearly states that a servicer's reasonable diligence obligations resume if a borrower defaults on a short-term repayment plan and requires servicers to provide the borrower with a written notice stating that the borrower may submit a complete application and be considered for all loss mitigation options. These consumer advocacy groups stated that these protections are critical because a borrower might default on a repayment plan months before the plan will terminate under the terms of the agreement. They also suggested that additional protections are essential because the consequences of default for these borrowers

could be severe.

Some industry commenters suggested, conversely, that the Bureau limit the applicable reasonable diligence requirements. For example, a trade association said that a full loss mitigation review under § 1024.41 is not necessary for all borrowers and that requiring servicers nonetheless to continue reasonable diligence and other applicable communication requirements under § 1024.41 assumes that borrowers are uninformed, would frustrate some borrowers, and would lead to negative perceptions of customer service. One servicer recommended suspending reasonable diligence requirements for borrowers in short-term repayment plans while continuing to require reasonable diligence for borrowers in short-term forbearance programs. This servicer suggested that reasonable diligence should be suspended for short-term repayment plans because, unlike short-term forbearance programs, short-term repayment plans are expected to bring the loans current. Another servicer advocated against requiring servicers to provide borrowers who receive a short-term repayment plan with information about remaining items needed to complete the application, reasoning that the plans are designed to cure delinquencies and borrowers would receive necessary information if they default on the plan.

As finalized, comment 41(b)(1)-4 contains minor revisions to the introductory text to improve clarity. Revised comment 41(b)(1)-4.iii contains several elements, which provide non-exhaustive descriptions of a servicer's reasonable diligence obligations during different phases of a short-term loss mitigation option offered under § 1024.41(c)(2)(iii).

First, comment 41(b)(1)-4.iii explains that a servicer exercises reasonable diligence by providing the borrower the written notice pursuant to § 1024.41(c)(2)(iii). The Bureau is not adopting proposed language that would have directed the servicer to inform the borrower, as part of its reasonable diligence obligations, that the offer of a payment forbearance program or

repayment plan was based on an evaluation of an incomplete application, as the final rule incorporates that information as an express requirement in the written notice setting forth the terms and duration of the program or plan under § 1024.41(c)(2)(iii).

Second, as revised, comment 41(b)(1)-4.iii provides that, 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. Suspending reasonable diligence efforts to complete an application during a performing short-term payment forbearance program or short-term repayment plan may avoid borrower frustration and unnecessary burden, but servicers must resume those efforts immediately in the specified circumstances because of the substantial consequences borrowers may face in the absence of a complete application. Many of § 1024.41's protections do not apply until a borrower completes an application, and borrowers are generally at risk of losing additional protections under § 1024.41 the longer a delinquency lasts while an application remains incomplete. Borrowers who default on short-term loss mitigation option under § 1024.41(c)(2)(iii) may be particularly at risk. While § 1024.41(c)(2)(iii) prohibits servicers from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, moving for foreclosure judgment or order of sale, or conducting a foreclosure sale, those protections may no longer apply once a borrower is not performing under a short-term loss mitigation option. Borrowers do not receive the similar protections available under § 1024.41(f)(2) or (g) until they complete an application and, by the time of default on the short-term loss mitigation option, they may have

lost the possibility of obtaining those protections if they completed the application within 37 days of a scheduled foreclosure sale. The Bureau therefore believes it is vital that servicers not delay in resuming efforts to assist the borrower in completing an application, upon either the borrower's request or the borrower's failure of compliance with the short-term loss mitigation option.

Third, as revised, comment 41(b)(1)-4.iii makes more explicit that, 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. This aspect of the comment applies only to a short-term payment forbearance program and not to a short-term repayment plan as proposed because short-term repayment plans must be designed to cure the delinquency under comment 41(c)(2)(iii)-4. Consequently, as some commenters noted, as long as a borrower is performing under such a plan and does not request further assistance, requiring a servicer to engage in efforts to collect a complete loss mitigation application could create unnecessary burden and frustrate the borrower.

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

Current § 1024.41(c)(2)(iv) provides that, among other things, if a borrower submits all the missing documents and information as stated in the notice required pursuant to § 1026.41(b)(2)(i)(B), or no additional information is requested in such notice, an application shall be considered facially complete. If a servicer later discovers additional information or corrections to a previously submitted document are required to complete the application, certain protections under § 1024.41 that apply as of the date on which a servicer receives a complete

application continue to run from the date the application became facially complete and continue until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application during this period, the servicer must treat the application as complete as of the date it was facially complete, for purposes of certain provisions under § 1024.41 and as of the date the application was actually complete for the purposes § 1024.41(c).

The Bureau proposed three revisions to § 1024.41(c)(2)(iv). First, the Bureau proposed a minor technical change to correct the erroneous reference to § 1026.41(b)(2)(i)(B), which should refer to § 1024.41(b)(2)(i)(B). Second, the Bureau proposed to provide that an application becomes facially complete when, in addition to the conditions described above, a servicer is required, under proposed § 1024.41(c)(3)(i), to send the borrower a notice of complete application. Section 1024.41(c)(3) requires servicers to provide a written notice informing the borrower, among other things, when the loss mitigation application becomes complete. However, the Bureau recognizes that, in certain circumstances, servicers might require additional documents or information from a borrower after sending a notice of complete application under § 1024.41(c)(3)(i). To clarify the status of an application in this circumstance, the Bureau proposed to extend expressly the facially complete application status described in § 1024.41(c)(2)(iv) to an application when the servicer is required to provide the notice of complete application under proposed § 1024.41(c)(3).

Third, the Bureau proposed to provide that, if a servicer requests the required additional information or corrections to a previously submitted document, and the borrower timely submits those materials to complete the application as described in 1024.41(c)(2)(iv), the application shall be considered complete as of the date it first became facially complete for purposes of specified provisions in § 1024.41, and as of the date the application was actually complete for the

purposes § 1024.41(c). In proposing this revision, the Bureau recognized that an application may become complete more than once during a single cycle.

The Bureau received several comments on the proposed amendments. Consumer advocacy groups supported maintaining the initial date of completion as the date on which dual tracking protections under § 1024.41 begin to apply, saying that doing so should limit incentives for servicers to promote delay and seek additional fees from borrowers. They also expressed concern about ongoing servicer delays in the loss mitigation application and evaluation processes. One trade association commented that the proposal could harm servicers by providing borrowers with additional time to submit application materials without affording servicers a similar extension. The group suggested that the Bureau lengthen the amount of time a servicer has to evaluate a complete loss mitigation application.

The Bureau is finalizing § 1024.41(c)(2)(iv) substantially as proposed, with minor revisions. Under the revisions to § 1024.41(c)(2)(iv), a loss mitigation application is facially complete once the servicer receives the complete application, regardless of when the servicer determines that the application is complete. As a result, the protections under § 1024.41 that begin when an application becomes facially complete are in effect when a borrower submits all the missing documents and information as stated in the notice required under § 1024.41(b)(2)(i)(B), when no additional information is requested in such notice, or once the servicer is required to provide the borrower a written notice of complete application pursuant to § 1024.41(c)(3)(i).

Revised § 1024.41(c)(2)(iv) also requires that, if a 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 purposes of § 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application. Further, if the borrower timely submits those materials to complete the application, the servicer must treat the application as complete as of the date it first became facially complete for the purposes of § 1024.41(d), (e), (f)(2), (g), and (h), and as of the date the application was actually complete for the purposes of § 1024.41(c). Finally, a servicer that complies with § 1024.41(c)(2)(iv) will be deemed in the final rule to have fulfilled its obligation to provide an accurate notice under § 1024.41(b)(2)(i)(B).

Various protections under § 1024.41 depend on the timing of a complete application. For example, evaluation requirements, certain dual tracking protections, and appeal rights apply only if the servicer received a complete application a certain number of days before a foreclosure sale. Tying the date of completion to the date an application first became facially complete for purposes of specified provisions in § 1024.41 ensures that borrowers do not lose the protections associated with those provisions because a servicer has requested additional information. The protections apply as though the application was complete as of the original date it became facially complete.

As the Bureau explained in the proposal, the amendments to § 1024.41(c)(2)(iv) are intended to provide both borrowers and servicers with certainty about whether and when various protections apply under § 1024.41 when a servicer requires additional information for an application that the borrower previously completed. Also, continuing borrower protections under § 1024.41 encourages servicers to process loss mitigation applications efficiently.

To the extent that § 1024.41(c)(2)(iv) allows borrowers additional time to complete an application without providing corresponding extensions for servicers, as one commenter

suggested, the Bureau believes that this is appropriate. The Bureau believes that borrowers have strong incentives not to delay the provision of application materials and expects servicers to be actively engaged with borrowers in all stages of the loss mitigation application process. If a borrower is actively engaged in the loss mitigation application process and has completed an application, the servicer should not be permitted to make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process or to move for foreclosure judgment or order of sale or conduct a foreclosure sale, as applicable, until the servicer evaluates the borrower for loss mitigation. The Bureau continues to believe that the loss mitigation rules afford servicers sufficient time to evaluate a complete application and does not believe that an extension is justified.

Nothing in § 1024.41(c)(2)(iv) alters the servicer's ability to request additional information or corrections to a previously submitted document that are required to complete the application. The Bureau recognizes that there are circumstances where servicers may need to request additional information or corrections to a previously submitted document when required to evaluate the borrower pursuant to § 1024.41(c)(1) and owner or assignee requirements. When they do so unnecessarily, however, it can prolong application timelines, increase costs for borrowers, and leave borrowers unsure of their application status. Repeated requests for additional documents and information by servicers could impede borrower protections under the rules. The Bureau will continue to monitor the market in this area.

41(c)(3) Notice of Complete Application

The Bureau proposed to require a servicer to provide a written notice of complete loss mitigation application under new § 1024.41(c)(3). The Bureau is adopting § 1024.41(c)(3) largely as proposed but with several revisions to the contents and timing of the written notice.

In advance of the proposal, the Bureau learned from consumer advocacy groups that, during the loss mitigation application process, borrowers are frequently uncertain about whether an application was complete. Current § 1024.41 requires a servicer to notify a borrower that an application is complete only if the application is complete when the servicer provides the notice acknowledging receipt of an application under § 1024.41(b)(2)(i)(B). The Bureau learned from pre-proposal outreach efforts that applications are rarely complete at that stage. Many borrowers who completed an application might not receive any notice specifying that the application was complete. Because the foreclosure protections under § 1024.41(f)(2) and (g)[246] are triggered based on when the borrower submits a complete loss mitigation application, clarity as to when the application is complete is vital.

Proposed § 1024.41(c)(3)(i) would have required a servicer to provide a borrower a written notice, including specific information, promptly upon receiving the borrower's complete application. As proposed, the notice would have informed the borrower of: the application's completion; the date the servicer received the complete application; whether a foreclosure sale was scheduled as of the date the servicer received the complete application and, if so, the date of that scheduled sale; and the date the borrower's foreclosure protections began under § 1024.41(f)(2) and (g), as applicable, with a concise description of those protections. The notice also would have included a statement that the servicer expects to complete its evaluation

[246] Subject to certain limitations, § 1024.41(f)(2) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process if a borrower submits a complete application during the pre-foreclosure review period set forth in § 1024.41(f)(1) or before the servicer has made the first notice or filing, and § 1024.41(g) prohibits a servicer from moving for foreclosure judgment or order of sale, or conducting a foreclosure sale, if the borrower completes a loss mitigation application after the servicer has made the first notice or filing but more than 37 days before a foreclosure sale. In general, neither provision applies if the servicer has denied the application and no appeal is available; the borrower rejects all loss mitigation options offered by the servicer; or the borrower fails to perform under an agreement on a loss mitigation option.

within 30 days of the date it received the complete application and a statement that, although the application is complete, the borrower may need to submit additional information at a later date if the servicer determines that it is necessary. Finally, the notice would have informed the borrower, if applicable, of the borrower's rights to appeal the servicer's determination to deny the borrower for any trial or permanent loan modification under § 1024.41(h).

Proposed § 1024.41(c)(3)(ii) stated that a servicer need not provide the notice of complete application in three circumstances: if the servicer has already notified the borrower under § 1024.41(b)(2)(i)(B) that the application is complete and the servicer has not subsequently requested additional information or a corrected version of a previously submitted document from the borrower to complete the application, the application was not complete or facially complete more than 37 days before a foreclosure sale, or the servicer has already provided a notice approving or denying the application under § 1024.41(c)(1)(ii). These exceptions were intended to avoid unnecessary burden on servicers and prevent borrower confusion due to the receipt of conflicting or redundant information.

The Bureau also proposed commentary to explain certain aspects of the notice requirement under proposed § 1024.41(c)(3). Proposed comment 41(c)(3)(i)-1 would have explained that, generally, a servicer complies with the requirement to provide a borrower with written notice promptly by providing the notice within five days of receiving a complete application. However, the Bureau recognized that servicers might sometimes require more than five days to determine whether a loss mitigation application is complete. In the proposal, the Bureau explained its belief that the general five day standard would provide servicers with sufficient flexibility to make an accurate determination but prevent undue delay. Proposed comment 41(c)(3)(i)-2 would have provided that the date the borrower's protections began under

§ 1024.41(f)(2) and (g) must be the date on which the application became either complete or facially complete, as applicable.

Proposed comment 41(c)(3)(i)-3 would have explained that § 1024.41(c)(3)(i) requires a servicer to send a notification, subject to the exceptions under § 1024.41(c)(3)(ii), every time a loss mitigation application becomes complete. The proposed comment further would have clarified that, if after providing a notice under § 1024.41(c)(3)(i) a servicer requests additional information or corrections to a previously submitted document required to complete the application in accordance with § 1024.41(c)(2)(iv), the servicer might have to provide an additional notice under § 1024.41(c)(3)(i) if the borrower submits the additional information or corrected documents to complete the application. The Bureau explained in the proposal that requiring a servicer to send an additional notice under these circumstances would help ensure that a borrower has accurate and current information about the status of the loan and when to expect a servicer to complete the evaluation.

The Bureau explained in the proposal that requiring servicers to provide borrowers with the information in the notice of complete application under proposed § 1024.41(c)(3)(i) would ensure that borrowers are informed of the next steps in the evaluation process. The Bureau explained its belief that receiving notice of when to expect an offer or denial would permit the borrower to make better-informed decisions. Additionally, the Bureau stated that requiring the notice of complete application to indicate the date that the servicer received a complete application would help both servicers and borrowers in determining which protections apply under § 1024.41. The Bureau also indicated that the proposed disclosure that the servicer may need additional or updated information from the borrower after determining that the application was complete would reduce borrower confusion when and if the servicer requests such additional

information.

The Bureau sought comment on whether the notice of complete application required under proposed § 1024.41(c)(3) should include additional or different disclosures than those listed above. The Bureau also sought comment on whether it should finalize a stricter timing requirement for providing the notice than proposed under § 1024.41(c)(3)(i) and, if so, what the specific number of days should be.

Numerous commenters, including servicers, trade associations, and consumer advocacy groups, expressed general support for the proposal to require servicers to provide a notice of complete application to borrowers. A trade association stated that requiring servicers to provide a notice of complete application would operate in conjunction with proposed comment 41(b)(1)-1, which, in part, would have clarified that servicers can generally stop collecting application materials for a given loss mitigation option upon learning that the consumer is ineligible for that option, to alleviate unnecessary burden on borrowers while concurrently requiring servicers to engage in best efforts to collect loss mitigation application materials from borrowers. One servicer commented that the notice of complete application as proposed would provide borrowers with more clarity about the loss mitigation process. A number of consumer advocacy groups urged the Bureau to base the onset of foreclosure protections on the submission of an initial application but stated that, if the Bureau retains the current approach to § 1024.41, it should require servicers to provide a notice of complete application to borrowers, to address borrower uncertainty and unjustified denials. One trade association stated that a notice of complete application would alert borrowers to critical protections and deadlines under State and Federal rules. Several commenters expressed general support for the notice but took issue with other elements of the proposal; those comments are addressed in the discussion of the relevant

elements below.

Some commenters addressed cost-benefit considerations of requiring servicers to provide a notice of complete application. Several said that requiring the notice would not create significant additional burden for servicers, for example, because some jurisdictions already require servicers to send such notices. However, other commenters stated that the benefit to borrowers of receiving a notice of complete application would not justify the additional cost, burden, or risk for servicers. Some industry commenters suggested that the notice would not significantly benefit borrowers because they have other means to secure relevant information, they will have been in contact with servicers, or they might find the notice confusing due to the various other notices they receive relating to the delinquency and their rights. Industry commenters also stated that the new notice requirement would increase servicer cost or burden, as well as the risk of servicer liability. One trade association suggested that the additional cost of the notice requirement would make credit more expensive.

Some commenters addressed the proposed requirement to provide the written notice promptly, generally within five days of receiving the complete application. Consumer advocacy groups argued that the timing requirement should be short and inflexible because a flexible standard invites delay. Consumer advocacy groups also stated that a five-day standard would encourage servicers to evaluate complete applications earlier. They stated that it would not burden servicers or result in undue delay because the standard would align with the standard in § 1024.41(b)(2)(i)(B). One consumer advocacy group noted that, because servicers may need additional time in some cases, the Bureau should finalize a maximum time limit to reduce confusion and delay.

Numerous industry commenters requested that servicers have more than five days to

provide the notice. Some said that a five-day standard would not leave servicers with sufficient time to review the application and determine whether it is complete, with one industry trade association saying that the standard would suffice only if the disclosures were generic and requesting 10 or 15 days to provide the notice. One servicer said that the notice should not state whether the application is complete but that servicers should be required to send a notice each time a borrower submits application materials to acknowledge receipt and specify which items remain outstanding.

Commenters also addressed the content of the written notice. Consumer advocacy groups stated that requiring the notice to contain the disclosures proposed under § 1024.41(c)(3)(i)(A) through (F) would create a bright-line, written record of when dual tracking protections begin and when other requirements under § 1024.41 apply. Several industry commenters recommended that the notice contain only standard disclosures that servicers do not need to adjust for each individual borrower, to reduce compliance burdens. For example, several servicers said that the notice should focus on informing the borrower of the application status, as borrowers can obtain the other information elsewhere. One of these servicers stated that the notice should include the following generic disclosures: that the application is complete; that the servicer expects to complete its evaluation within 30 days; that additional information may later be required; that, if additional information is required, the servicer will complete its evaluation within 30 days of receiving that additional information; and that the servicer will take measures to provide foreclosure protections.

A trade association expressed concern that the proposed contents of the written notice could potentially mislead some borrowers and result in FDCPA litigation. The association stated that: (1) State laws sometimes offer protections that the written notice under proposed

§ 1024.41(c)(3)(i) would not disclose, so the written notice could suggest that borrowers have fewer protections than they actually have; (2) the proposed disclosures might mislead borrowers into believing that a servicer cannot execute a foreclosure sale even after denying the application, particularly when a servicer is statutorily required to send a separate notice of sale; (3) borrowers could be misled by a notice containing both foreclosure-related disclosures and a statement that the application is complete; and (4) the Bureau could alleviate these concerns by drafting specific language for the notice under § 1024.41(c)(3)(i) and by introducing a safe harbor for the notices under the FDCPA.

Several commenters took issue with proposed § 1024.41(c)(3)(i)(C) in particular, which would have required servicers to disclose the date of a scheduled foreclosure sale as of when the servicer received the complete application. A servicer argued that disclosing the sale date is unnecessary because the borrower receives notification of the sale date when the sale is scheduled and postponed. Several trade associations suggested that the sale date disclosure might create difficulties when servicers are not in control of the sale date, such as when the servicer has filed a motion in court to postpone the sale but the court has yet to respond, when the sheriff responsible for delivering the notice of sale schedules the sale shortly after the servicer issues the notice under § 1024.41(c)(3), or when the sheriff has already scheduled the sale but delays informing the servicer. In these circumstances, the notice under § 1024.41(c)(3)(i) could be misleading or incorrect. A trade association further opposed disclosing a scheduled foreclosure sale date on the notice because State law may control how the delivery of sale date information must be displayed, although the association was unaware of specific conflicts with State law. The trade association also stated that, more generally, determining the foreclosure sale date at a particular point in time is often not straight-forward,

and it expressed concern that an incorrect statement of sale date could invalidate the sale and lead to attorney and trustee liability. Consumer advocacy groups suggested that a final rule adopting the notice requirement should require a statement whether a scheduled foreclosure sale has been canceled or postponed.

Other commenters raised miscellaneous other issues relating to specific proposed disclosures. A trade association recommended that the Bureau clarify how servicers must describe the borrower's foreclosure protections under proposed § 1024.41(c)(3)(i)(D), saying it would be difficult for servicers to determine which protections apply at a given moment and how to describe those protections, particularly given the various protections that State law may provide. Several commenters expressed concerns about the disclosure proposed under § 1024.41(c)(3)(i)(G) relating to a borrower's appeal rights. One servicer said that the proposed disclosure would be particularly confusing to borrowers. Another servicer stated that information about a borrower's appeal rights is more appropriate in a loss mitigation determination letter provided under § 1024.41(c)(1)(ii) than at the time the servicer receives the complete application.

One consumer advocacy group supported proposed comment 41(c)(3)(i)-3, which would have clarified that servicers must provide a notice of complete application to borrowers each time an application becomes complete. The commenter stated that this requirement would avoid borrower uncertainty that occurs when a servicer fails to inform the borrower when the application is complete. Several industry commenters supported the requirement of a notice of complete application while opposing the proposal to require the servicer to send additional notices every time the borrower's application becomes complete. A servicer said that additional notices after the first notice would be unnecessary because a borrower's foreclosure protections

under § 1024.41 begin when the application becomes facially complete and last through any appeal. A credit union suggested that receiving additional notices would confuse borrowers and result in unnecessary inquiries.

Commenters made other recommendations relating to the proposed notice of complete application. Consumer advocacy groups and a trade association recommended requiring servicers to provide the notice of complete application to the servicer's foreclosure counsel where applicable to prevent improper foreclosure filings. A trade association requested that the Bureau issue a model form for the notice. One consumer advocacy group argued that servicers should provide a list of borrower rights and protections under Regulation X. Consumer advocacy groups recommended that the Bureau require servicers to document the need for additional information after the application becomes complete or facially complete to curb dilatory tactics.

The Bureau is adopting § 1024.41(c)(3) and related commentary with several revisions to the content and timing of the written notice. First, the Bureau is revising the disclosures that a written notice must contain pursuant to § 1024.41(c)(3)(i). As revised, § 1024.41(c)(3)(i) requires that the written notice set forth the following information: (1) that the loss mitigation application is complete; (2) the date the servicer received the complete application; (3) that the servicer expects to complete its evaluation within 30 days of the date it received the complete application; (4) that the borrower is entitled to certain foreclosure protections because the servicer has received the complete application and, 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, if the

servicer has made such first notice or filing, that the servicer has begun the foreclosure process, and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application; (5) 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 (6) that the borrower may be entitled to additional protections under State or Federal law. Although these disclosures do not contain exclusively generic disclosures as some commenters requested, the Bureau has minimized the degree to which servicers will need to tailor the disclosures to individual borrowers or make complex determinations about a borrower's protections or application status.

The first three of these disclosures were included in the proposal, although the Bureau has made several non-substantive revisions to improve clarity. The remaining disclosures have been substantially revised or are new. First, for example, the disclosures relating to a borrower's foreclosure protections now consist of one of two standardized disclosures, depending on the foreclosure status. The proposal would have required servicers to state the date on which the borrower's protections began under § 1024.41(f)(2) and (g) and to describe those protections concisely. As one commenter noted, servicers may have had difficulty determining which protections apply at a given moment and how to describe those protections, particularly given the various protections that State law may provide. As revised (and as clarified in comment 41(c)(3)(i)-2, discussed further below), the disclosures provide borrowers with sufficient information about the status of the foreclosure and their foreclosure protections under Regulation X but eliminate much of the burden and risk that the proposal may have introduced. The Bureau

believes that receiving these disclosures will help borrowers understand their rights. Although the revised disclosures do not restate verbatim the protections of § 1024.41(f)(2) and (g), the Bureau believes that they alert borrowers to the main contours of the foreclosure protections. While commenters expressed concern that disclosing these dual tracking protections would lead borrowers to believe that a servicer cannot execute a foreclosure sale even after denying the application, the Bureau believes that this is unlikely. The notice must expressly state that the servicer cannot take the applicable actions with respect to foreclosure before evaluating the application. The Bureau believes the notice will effectively communicate to the borrower that the dual tracking protections may end.

The Bureau is also revising the proposed disclosure relating to a servicer's potential need for additional information notwithstanding the complete application. Under § 1024.41(c)(3)(i)(E) as adopted, the written notice must disclose 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. Servicers sometimes request additional application materials from borrowers after an application becomes complete, and pursuant to § 1024.41(c)(2)(iv) a borrower might lose protections under § 1024.41 if the borrower fails to respond timely to such requests. Borrowers should be alerted to the possibility that servicers may require them to submit additional documents even after notifying them that an application is complete and that they will need to respond in a timely way to those requests for additional documents.

The Bureau also has decided, in response to concerns raised by commenters, to require an

additional disclosure in § 1024.41(c)(3)(i)(F), stating that the borrower may be entitled to additional protections under State or Federal law. Disclosing only the foreclosure protections described above could suggest that borrowers have fewer protections than they in fact have under all applicable laws. This could discourage borrowers from researching or enforcing those other protections. Thus, the Bureau is adopting the new disclosure under § 1024.41(c)(3)(i)(F) to ensure that borrowers are aware that protections set forth on the written notice may not be an exhaustive enumeration of their legal rights and protections.

The Bureau has decided not to adopt two other proposed disclosures. The first of these is whether a foreclosure sale was scheduled as of the date the servicer received the complete application and, if so, the date of that scheduled sale. The second is the proposed disclosure that, if applicable, the borrower will have the opportunity to appeal the servicer's determination to deny the borrower for any trial or permanent loan modification pursuant to § 1024.41(h).

The Bureau is not requiring the first of these disclosures because, although the disclosure may have benefited some borrowers and enhanced servicers' ability to track borrowers' protections under § 1024.41, the Bureau believes that the operational complexities, costs of compliance, and resulting potential legal risks do not justify its inclusion. The Bureau understands that third parties sometimes schedule the foreclosure sale date, and that the date is sometimes subject to change. In these circumstances, servicers may have difficulty timely determining and disclosing the date accurately. The Bureau believes that borrowers generally receive the sale date disclosure on other notices and are often able to confirm the sale date through third parties or public records. The Bureau also expects that servicers, in the course of their loss mitigation communications with borrowers, ordinarily communicate the foreclosure sale date to borrowers. The Bureau may revisit requiring disclosure of the foreclosure sale date

at a later time if the Bureau learns that borrowers in fact have difficulty ascertaining the scheduled foreclosure sale date. As the Bureau is not requiring servicers to disclose the date of a scheduled foreclosure sale, it also is not requiring servicers to disclose whether the sale date has been canceled or postponed, as consumer advocacy groups recommended. Again, the Bureau expects that this is information that servicers do ordinarily communicate to borrowers, and the Bureau will continue to monitor this area for consumer harm.

The second disclosure the Bureau is not requiring, as noted above, is the proposed language relating to a borrower's appeal rights. The Bureau has concluded that disclosing whether a borrower will have appeal rights under § 1024.41(h) on a notice of complete application would be premature. Borrowers will have just completed the application at this stage, and they may not have the opportunity to exercise their appeal rights for more than a month in some instances; they also in some cases never have any need to exercise their appeal rights and thus will not need the information at all. Borrowers still will learn of their appeal rights when the information is more salient: if and when an evaluation leads to a denial of a loan modification option and the servicer provides the written notice of determination pursuant to § 1024.41(c)(1)(ii).

The Bureau is also revising the amount of time a servicer has after receiving a complete application to provide a written notice to provide servicers with greater clarity and (in most cases) slightly more time for compliance. Proposed § 1024.41(c)(3)(i) would have required servicers to provide the notice promptly upon receiving a complete loss mitigation application, and proposed comment 41(c)(3)(i)-1 would have clarified that providing the notice within five calendar days would generally satisfy the requirement. Some commenters said that servicers should have more than five calendar days to provide the notice under § 1024.41(c)(3)(i) because

it would be difficult to comply with the proposed requirements within that timeframe. As adopted in final form, the section requires servicers to provide the notice within five days, excluding legal public holidays, Saturdays, and Sundays. To ensure that servicers do not delay, this bright-line standard is more prescriptive than the proposal, but it should allow servicers in most cases slightly longer to comply with the requirement than the proposal would have allowed. In conjunction with limiting the complexity of the disclosures as described above, the Bureau believes that this new standard of five days (excluding legal public holidays, Saturdays, and Sundays) should afford servicers sufficient time to review a borrower's application for completion and produce an accurate written notice of complete application. Additionally, the Bureau notes that this timeframe aligns with the timeframe afforded to servicers to provide written notification of a borrower's application status under § 1024.41(b)(2)(i)(B).

At the same time, the Bureau does not believe that it would be appropriate to extend the time frame further. Some borrowers may need evidence that their loss mitigation application is complete to forestall a foreclosure action that would violate § 1024.41(g). As consumer advocacy groups noted in comments to the proposal, a more flexible standard could result in delay and the consequent reduction of borrower protections. Therefore, the Bureau declines to adopt the longer timelines for providing the notice that some commenters suggested.

The Bureau is adopting § 1024.41(c)(3)(ii) substantially as proposed, with minor revisions to improve clarity. Section 1024.41(c)(3)(ii) provides that a servicer is not required to provide a notice pursuant to § 1024.41(c)(3)(i) under three circumstances: (1) the servicer has already provided the borrower a notice under § 1024.41(b)(2)(i)(B) 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 § 1024.41(c)(2)(iv); (2) the application was not complete or facially complete more than 37 days before a foreclosure sale; or (3) the servicer has already provided the borrower a notice regarding the application under § 1024.41(c)(1)(ii). As the Bureau explained in the proposal, these exceptions are intended to avoid unnecessary burden on servicers and prevent borrower confusion due to the receipt of conflicting or redundant information. The Bureau received no comments on this aspect of the proposal.

Proposed comment 41(c)(3)(i)-1 is no longer necessary, as it would have clarified the requirement that servicers must provide the notice under § 1024.41(c)(3)(i) promptly. As explained above, § 1024.41(c)(3)(i), as adopted, requires the servicer to provide the notice within five days (excluding Saturdays, Sundays, and legal holidays) after receiving a complete loss mitigation application. Thus, the Bureau is adopting entirely different content in new comment 41(c)(3)(i)-1. New comment 41(c)(3)(i)-1 clarifies that a servicer complies with § 1024.41(c)(3)(i)(B) (which requires the servicer to disclose on the written notice of complete application the date the servicer received the complete loss mitigation application) by disclosing the most recent date the servicer received the complete loss mitigation application. The comment provides an example illustrating this principle. The comment also includes a cross-reference to comment 41(c)(3)(i)-3, which discusses a servicer's obligation to provide additional notices.

The Bureau is adopting new comment 41(c)(3)(i)-1 to ensure that servicers understand that the section requires them to disclose the most recent date an application became complete, not the date the application initially became complete or facially complete. Consumer advocacy groups and servicers have informed the Bureau that servicers frequently require borrowers to submit additional information or corrected versions of previously submitted documents several

times during the application process, both before and after an application becomes complete. Requiring the disclosure of the most recent date of completion will ensure that borrowers receive current information about the status of an application.

The Bureau is also significantly revising comment 41(c)(3)(i)-2. Proposed comment 41(c)(3)(i)-2 would have clarified proposed disclosures relating to the date on which a borrower's protections began under § 1024.42(f) and (g). As described above, the Bureau is not adopting those disclosures and is therefore replacing the substance of proposed comment 41(c)(3)(i)-2 in its entirety. New comment 41(c)(3)(i)-2 instead clarifies that the two disclosures in § 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, as described in § 1024.41(f). The comment also includes a cross-reference to comment 41(f)-1 for a description of whether a document is considered the first notice or filing under applicable law.

The Bureau is adopting comment 41(c)(3)(i)-3 substantially as proposed, with minor revisions to improve clarity. It explains that, 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. The comment provides an example illustrating this requirement. The comment also includes a cross-reference to comment 41(c)(3)(i)-1, which clarifies that a servicer complies with § 1024.41(c)(3)(i)(B) (which requires the servicer to disclose on the written notice of complete application the date the servicer received the complete loss mitigation application) by disclosing the most recent date the servicer received the complete loss mitigation application.

Although commenters disagreed as to the merits of providing additional notices of

complete application after the servicer receives additional information or corrected documents, the Bureau continues to believe that such notices are warranted to ensure that borrowers receive information regarding the current status of their applications and when their dual tracking protections begin. Particularly given that the notices will suggest to borrowers that failure to respond to follow-up requests could cause the consumer to lose certain foreclosure protections, the Bureau believes that it is important for borrowers to receive further updates about application status. In addition, because some servicers already provide a written notice of complete application to borrowers, they should incur only limited increases in their costs of compliance. The Bureau has also minimized the degree to which servicers will need to tailor the disclosures to individual borrowers or make complex determinations about a borrower's protections or application status.

The Bureau is not adopting a requirement that servicers provide a notice of complete application to servicers' foreclosure counsel. Some commenters recommended this requirement as a means to reduce improper foreclosure filings that harm all parties. As discussed in the section-by-section analyses of § 1024.41(g), servicers must provide prompt instruction to foreclosure counsel upon receipt of a complete loss mitigation application. Similarly, as discussed in the section-by-section analysis of § 1024.38(b)(3)(iii), servicers must have policies and procedures reasonably designed to ensure that servicer personnel promptly inform foreclosure counsel that the servicer has received a complete application, among other things. The Bureau notes that the rule does not prohibit a servicer from voluntarily providing the notice of complete application required under § 1024.41(c)(3) to foreclosure counsel. Doing so may be part of an effective procedure for informing foreclosure counsel about a borrower's loss mitigation application status as part of servicers' efforts to comply with § 1024.41(g). The

Bureau believes, however, that it is appropriate to permit servicers discretion in determining alternative means for compliance with §§ 1024.38(b)(3)(iii) and 1024.41(g) and therefore is not requiring servicers to provide the notice of complete application to foreclosure counsel. Whatever method a servicer chooses to instruct foreclosure counsel how to comply with § 1024.41(g), the servicer remains responsible for ensuring compliance with § 1024.41(g).

The Bureau is also not providing a safe harbor under the FDCPA for the written notice. The Bureau believes that the specific required disclosures in the notice, particularly as they have been further tailored in the final rule, should not prompt the filing of baseless FDCPA cases.

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

The Bureau proposed to amend § 1024.41(c)(1) and to add § 1024.41(c)(4) to address a servicer's obligations with respect to information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer a borrower. Among other things, the proposal would have introduced standards governing a servicer's attempts to collect information not in the borrower's control, prohibited a servicer from denying the application because it lacks such information, and required servicers to provide a written notice if a delay in receiving third-party information precludes the servicer from making the determination within 30 days of receiving the complete application. Certain aspects of the proposal would have addressed third-party information, that is, information from a party other than the borrower or servicer, while other aspects would have addressed information not in the borrower's control, which could include third-party information or information within the servicer's control. For the reasons set forth below, the Bureau is adopting § 1024.41(c)(1) as proposed and is adopting § 1024.41(c)(4) largely as proposed but with revisions to the denial prohibition and the written notice requirement.

Under existing § 1024.41(c)(1), a servicer generally must evaluate a borrower's timely complete loss mitigation application within 30 days of receipt. A complete loss mitigation application includes all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.[247] Thus, a loss mitigation application is considered complete under the current rule notwithstanding whether a servicer requires additional information that is within the control of the servicer or a third-party and not in the control of the borrower, such as investor approval, property tax information, or homeowner association payoff information.[248] While the rule is clear that servicers generally must exercise reasonable diligence in obtaining documents and information from a borrower to complete the application,[249] the rule currently does not address a servicer's obligations with respect to obtaining required information from other parties, including the servicer itself or third-parties.

Delay in obtaining non-borrower information that the servicer requires to determine which loss mitigation options, if any, it will offer a borrower could result in increased fees and negative credit reporting for borrowers and could increase a borrower's delinquency, thereby decreasing the likelihood of successful loss mitigation. It also could disrupt servicers' payments to investors. Servicers can obtain information within their own control at will, but the Bureau learned during pre-proposal outreach that they do not always timely receive third-party information, sometimes because the servicer did not request the information promptly, and sometimes because the party with the information delays in providing it. The Bureau understands that servicers sometimes do not receive necessary third-party information for 15 or

[247] 12 CFR 1024.41(b)(1).
[248] *See* comment 41(b)(1)-5.
[249] *See* 1024.41(b)(1) and comment 41(b)(1)-4.

30 days after the initial 30-day evaluation period.

Servicers informed the Bureau before the proposal that they were unsure how to remain in compliance with § 1024.41 when lacking necessary third-party information at the end of the 30-day evaluation period. According to servicers, they have adopted different approaches. In pre-proposal outreach, the Bureau learned that some wait until the third-party provides the information before making any decision on the application, even if it results in a delay beyond the 30 days provided for in § 1024.41(c)(1). One servicer told the Bureau it sends denial notices to borrowers in these circumstances but also informs borrowers that it will reevaluate the application upon receipt of the third-party information. The Bureau explained in the proposal that, although neither of these solutions appears to preclude a borrower from receiving loss mitigation, neither provides borrowers with clear information about the status of the application, and the latter practice may erode borrower protections under § 1024.41. The Bureau expressed concern in the proposal that the absence of clear information about the status of the loss mitigation application may cause borrowers to abandon their pursuit of loss mitigation, or to be uncertain about their loss mitigation options and how they may pursue their rights under § 1024.41.

To address these concerns, the Bureau proposed amendments to § 1024.41 that would have required servicers to exercise reasonable diligence to gather necessary information not in the borrower's control and would have introduced requirements for when third-party delay prevents a servicer from completing the loss mitigation evaluation within 30 days of receiving a complete application. First, the Bureau proposed to amend § 1024.41(c)(1) to provide an exception to the general requirement that a servicer must evaluate a complete loss mitigation application received more than 37 days before a foreclosure sale within 30 days of receiving it

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

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

determination until the servicer receives the documentation or information.

The Bureau also proposed comments 41(c)(4)(i)-1 and -2 to explain a servicer's obligations under proposed § 1024.41(c)(4)(i)'s reasonable diligence standard with respect to gathering information not in the borrower's control. The proposed comments would have described a servicer's reasonable diligence obligations upon receipt of a complete loss mitigation application and provided for a heightened standard where a servicer has not received third-party information within 30 days of a complete application.

The Bureau sought comment on proposed § 1024.41(c)(4) to understand better the cause of delay in servicers receiving non-borrower information necessary to determine which loss mitigation options, if any, to offer a borrower. This information could include information within the servicer's control or third-party information. The Bureau sought comment on how servicers and third-parties contribute to the delay, as well as which categories of non-borrower information most frequently result in delay. Finally, the Bureau sought comment on whether to limit the amount of time that a servicer must exercise reasonable diligence in attempting to obtain information not in the borrower's control.

The Bureau received comments on various elements of proposed § 1024.41(c)(4) and engaged in additional outreach. Among other things, as described in greater detail below, commenters addressed the nature of the delay in obtaining necessary third-party information, the proposed requirement that servicers exercise reasonable diligence in obtaining information not in the borrower's control, the proposed prohibition on denying an application solely due to missing non-borrower information, and the proposal to require a written notice if the servicer cannot make a determination on the application within 30 days.

Several servicers reported that they request information from third parties at different

stages of the application process, depending on the type of information. For example, some servicers stated that they wait to receive a complete application from the borrower before requesting certain information from a third party, such as valuation information, a title report, or investor approval. Some servicers reported that they request necessary third-party information shortly after receiving a borrower's application or complete application. One servicer stated that it may request some third-party information, such as title information or a credit report, upon receipt of a borrower's initial application, but that it typically waits to request other information, such as valuation information or real estate tax information, until it receives a complete application.

Several servicers stated that significant delay in obtaining necessary third-party information generally is rare. Several servicers stated that they sometimes find it difficult to obtain timely information from the local taxing authority in certain jurisdictions, timely approval from the mortgage insurance company or investor on the loan, or timely appraisal or valuation information. One servicer expressed difficulty in obtaining information about State loss mitigation programs, tax return information from the IRS, or approval from bankruptcy courts or trustees. Another servicer stated that it has had difficulty obtaining information from local taxing authorities but was still able to proceed in the review process by using estimates based on information from its escrow department. Some servicers noted that, although third parties sometimes delay the provision of necessary information, they always ultimately provide it.

Several commenters discussed the proposed requirement that servicers must exercise reasonable diligence in obtaining 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. Consumer advocacy groups supported this element of the proposal, stating that it, in conjunction

with the written notice requirement under proposed § 1024.41(c)(4)(i), would enhance transparency and accountability. However, a trade association stated that the requirement that a servicer must seek missing third-party information as quickly as possible after the first 30 days lacked clarity.

Some commenters addressed the prohibition in proposed § 1024.41(c)(4)(ii)(A) on denying a complete loss mitigation application solely because the servicer has not received documents or information not in the borrower's control. Several industry and consumer advocacy groups supported the prohibition. One servicer said that a denial at this stage would disadvantage otherwise engaged borrowers and could lead to ongoing requests for loss mitigation from borrowers that already should have received a loss mitigation determination. A consumer advocacy group stated that borrowers could misunderstand the denial as a denial on the merits of the application, which they said could lead to avoidable foreclosures. Another servicer recommended that the Bureau not limit the amount of time a servicer must exercise reasonable diligence in attempting to obtain third-party information.

Several industry commenters expressed concern that the denial prohibition would conflict with ECOA, which requires creditors to send notification of action taken within 30 days of receiving a completed application. Some of those commenters recommended that the Bureau either clarify that complying with the denial prohibition under proposed § 1024.41(c)(4) does not violate ECOA or allow servicers to deny the complete loss mitigation application due to a lack of third-party information, provided that they later make an offer, if appropriate, upon receipt of the third-party information. Another commenter requested that the Bureau clarify what constitutes a reasonable time for servicers to wait for third-party information.

Consumer advocacy groups and one servicer expressed support for the written notice

under § 1024.41(c)(4)(ii)(B). The servicer argued that the notice would provide greater clarity for borrowers in loss mitigation. Some consumer advocacy groups maintained that the proposed written notice requirement would prompt the servicer to seek third-party information more quickly and keep a written record of its efforts to obtain the third-party information, help borrowers understand the application process, and perhaps help expedite the return of the third-party information where appropriate.

Several servicers stated, however, that the proposed written notice requirement would be costly. One servicer stated that one-time costs related to implementing the new notice requirement would be around $2,000 for its third-party vendor, in addition to internal costs for legal services, business process, and technology, and that the necessary implementation would take approximately 60 to 90 days. This commenter also asserted that the proposed content requirements of the written notice would be unlikely to be of much use to borrowers. Other servicers suggested that the benefits of the notice would not outweigh the costs because, for example, borrowers would have other means to secure relevant information. Servicers also expressed other concerns, including that the written notice would confuse or overwhelm a borrower or negatively affect credit availability generally by increasing the cost of servicing. One servicer opposed the notice on the grounds that it would increase the number of inquiries borrowers submit.

Several commenters opposed specific disclosure elements of the proposed notice. One servicer stated that disclosing the specific documents or information that the servicer lacks, as proposed under § 1024.41(c)(4)(ii)(B)(*2*), may prompt borrowers to contact the third-party to obtain the information. A servicer recommended not requiring disclosure of the name of the third party because such disclosure would sometimes not expedite the process and could cause

consternation among all stakeholders. Two industry commenters opposed requiring disclosure of the date on which the servicer first requested the missing third-party information, as proposed under § 1024.41(c)(4)(ii)(B)(*3*). One stated that the disclosure would be of little use to borrowers and would increase burden, and the other maintained that it would introduce operational complexities because servicers' systems do not capture that information.

A consumer advocacy group recommended that the notice state whether a scheduled foreclosure sale will be postponed. Several industry commenters said that the notice should contain only generic disclosures, such as the following: that the servicer has received the information it requires from the borrower and is prepared to evaluate the application, that the servicer needs additional information from a third-party, that the servicer has requested such additional information, and that the borrower can contact the servicer for more information. One trade association said that a generic disclosure would prevent unnecessary costs and stated that servicers' systems do not necessarily capture the date a servicer requests the information from the third party. Another trade association stated that a notice containing more specific disclosures would not be of much use to borrowers and would expose servicers to the risk of making mistakes, some of which could cause borrowers undue anxiety.

Two industry commenters opposed the proposed requirement in comment 41(c)(4)(ii)-1 that, notwithstanding delay in receiving information from any third party, servicers must complete all possible steps in the evaluation process within 30 days of receiving a complete application, including by taking all steps mandated by mortgage insurance companies, guarantors, owners, and assignees. A servicer stated that the proposed comment appeared to require servicers to make conditional approvals or piecemeal determinations, which it said would be impractical. A government-sponsored enterprise said that it is not clear what steps a servicer

would have to take before receiving the missing third-party information, especially given that such information is often necessary to evaluate the application.

Various industry commenters expressed more general concerns about proposed § 1024.41(c)(4). A credit union opposed what it referred to as the expansion of consumer rights relating to third-party information. A trade association expressed concern that, in the future, the Bureau will attempt to regulate when a bank may make a determination on a loss mitigation application absent third-party information, instead of allowing banks to determine whether such third-party information is necessary. One commenter requested clarification of what constitutes documents or information not in the borrower's control.

Several commenters made specific recommendations about how to accommodate a delay in receiving necessary third-party information. One consumer advocacy group recommended that the Bureau require servicers to postpone a foreclosure sale when a complete application is received more than 37 days before the sale but where necessary third-party information remains outstanding. One servicer requested 10 additional days to provide borrowers with the determination letter pursuant to § 1024.41(c)(1)(ii), saying this additional period would permit the servicer to obtain third-party information and would not harm the borrower because, once the underwriting process is complete, a representative of that servicer already calls to update the borrower as to the determination and appeal rights.

The Bureau is adopting § 1024.41(c)(1) as proposed and is adopting § 1024.41(c)(4) and associated commentary with the revisions described below. As revised, the final rule provides guidance for servicers and protections for borrowers when a servicer lacks required non-borrower information under certain circumstances. As revised, § 1024.41(c)(4)(i) sets forth a servicer's reasonable diligence requirements with respect to information not in the borrower's

control, that is, third-party information or information within the servicer's control. It provides that, 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.

Revised comments 41(c)(4)(i)-1 and -2 clarify the reasonable diligence requirements at different stages of the application process. The Bureau is finalizing comment 41(c)(4)(i)-1 largely as proposed, with minor revisions to improve clarity and accuracy. The comment reiterates the reasonable diligence requirements set forth in § 1024.41(c)(4)(i) and provides that, at a minimum and without limitation, a servicer must request such documents or information from the appropriate party 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, to the extent practicable, 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). The Bureau notes that some servicers already take steps to do this by, for example, requesting certain information not in the borrower's control as soon as the borrower submits the initial application and requesting other such information within a week of the borrower's submission of all information and documents within the borrower's control.

The Bureau is making more substantive revisions to comment 41(c)(4)(i)-2, which clarifies the reasonable diligence standard when the servicer lacks required third-party information 30 days after receiving a complete application. The Bureau continues to believe that it is appropriate to require servicers to intensify efforts to obtain outstanding third-party information at this stage but believes that the proposed standard, requiring servicers to attempt to obtain documents or information from the appropriate person as quickly as possible, may not

have provided servicers sufficient guidance. Thus, revised comment 41(c)(4)(i)-2 provides that, if a servicer has not received the required documents or information from a party other than the borrower or the servicer within 30 days of receiving a complete loss mitigation application, 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. The Bureau believes that this standard is clearer for servicers than the proposed standard would have been and prompts servicers to complete the application process as close as possible to the 30-day evaluation period set forth in § 1024.41(c)(1).

The Bureau also notes that comment 41(c)(4)(i)-1 applies with respect to any type of non-borrower information, including third-party information or information within the servicer's control, whereas comment 41(c)(4)(i)-2 applies only when the servicer lacks third-party information. The reason for this distinction is that comment 41(c)(4)(i)-2 applies only after 30 days have passed since the servicer received the complete application, and § 1024.41(c)(4)(ii) (described below) contemplates servicers exceeding the 30-day mark only when the servicer lacks information from a third-party, not the servicer. Servicers should not exceed the 30-day timeline for lack of accessing information within their own control.

As noted above, the Bureau is limiting the prohibition on denying an application due to a servicer lacking required third-party information. Like the proposal, § 1024.41(c)(4)(ii)(A)(*1*) provides that 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. However, unlike

the proposal, the Bureau is adopting an exception to this prohibition under § 1024.41(c)(4)(ii)(A)(*2*). Section 1024.41(c)(4)(ii)(A)(*2*) provides that, 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 § 1024.41(c)(1), 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 § 1024.41(c)(1)(ii). The provision also states that, when providing the written notice, the servicer must provide the borrower with a copy of the written notice required by § 1024.41(c)(4)(ii)(B). As described below, that notice includes disclosures about the cause of the delay.

The Bureau stresses that the reasonable diligence standard that a servicer must satisfy before denying an application under § 1024.41(c)(4)(ii)(A)(*2*) is the heightened standard in comment 41(c)(4)(ii)-2, described above. Borrowers should not lose the opportunity for loss mitigation at this stage due to missing third-party information unless a servicer is absolutely unable to obtain the information. Due to the significant harm of denial, the Bureau expects servicers to redouble efforts to obtain such information.

Nonetheless, the Bureau is adopting this exception because, in the highly unlikely event that a servicer is unable to obtain third-party information, it would be harmful to borrowers, servicers, and investors if the servicer was never able to deny the complete loss mitigation application. In this circumstance, borrowers would remain in uncertain status while waiting on a

decision for an indefinite amount of time, and § 1024.41(g) may prohibit a servicer from ever foreclosing on the loan, even if the borrower did not resume making payments.

The Bureau expects that this exception will apply in exceedingly rare circumstances. Based on its outreach to servicers and government-sponsored enterprises, the Bureau is unaware of any instance in which a servicer has been unable to obtain information from a third-party that it requires to make a determination as to which loss mitigation options, if any, to offer the borrower after receiving a complete loss mitigation application from the borrower. As several commenters noted, and as the Bureau explained in the proposal, it would be unjust and significantly harmful to deny an engaged borrower who has completed a loss mitigation application solely because of a third party's delay. The Bureau continues to believe that, whenever possible, the borrower should not lose the opportunity for loss mitigation solely because of such delay. Among other harms, a borrower in this circumstance might lose the opportunity to obtain loss mitigation and thereby avoid foreclosure; and such a borrower may not have another opportunity to apply for loss mitigation with the protections of § 1024.41, pursuant to § 1024.41(i). Further, as one commenter pointed out, some borrowers may attempt to re-apply for loss mitigation following a denial due to the servicer lacking required third-party information, which could produce additional, unnecessary burden for borrowers and servicers.

The Bureau believes that two aspects of the denial prohibition exception provided in § 1024.41(c)(4)(ii)(A)(*2*) should mitigate the risks to borrowers associated with allowing servicers to deny an application due solely to the servicer lacking required third-party information. First, the exception applies only if, in accordance with requirements established by the owner or assignee of the mortgage loan, a servicer cannot evaluate the borrower without the information. For example, there may be instances in which investors may be willing to waive

requirements for specific third-party information that servicers must otherwise obtain, in which case servicers should promptly pursue such waivers and evaluate the borrower upon receipt. Second, when sending a denial letter, the servicer must also send a copy of the written notice under § 1024.41(c)(4)(ii)(B), which describes generally the missing information and the servicer's efforts to obtain it. Receiving this information may enable borrowers to better protect their rights, including when filing an appeal after a denial, if appropriate. Also, upon receiving the notice of the missing information, some borrowers may be able to help acquire the information. The Bureau will monitor the industry to ensure that servicers do not inappropriately exploit this exception to the denial prohibition.

The Bureau declines to provide more specific guidance, as one commenter requested, as to how long a servicer must exercise reasonable diligence to attempt to obtain required third-party information before the servicer may deny the application. Reasonable diligence depends on the facts and circumstances of a particular loss mitigation application, and the Bureau is concerned that any specific deadline could negatively affect a servicer's efforts to obtain outstanding third-party information. The Bureau understands that, although § 1024.41(c)(4)(ii)(A)(*2*) will rarely apply, the response time of third parties will vary depending on the type of information or the identity of the third party, among other factors. However, the Bureau reiterates that servicers must intensify reasonable diligence efforts when lacking required third-party information after 30 days have passed, pursuant to comment 41(c)(4)(ii)-2, described above.

The Bureau notes that the denial prohibition does not prevent a servicer from complying with Regulation B § 1002.9(a)(1)(i), as some commenters suggested. Although servicers may be required to provide Regulation B § 1002.9(a)(1) notices relating to a borrower's loss mitigation

application in certain circumstances, the denial prohibition under final § 1024.41(c)(4)(ii)(A) will not prevent a servicer from complying with the requirement in Regulation B § 1002.9(a)(1)(i) to provide such notices within 30 days after receiving a completed application because compliance with Regulation B and Regulation X requirements may operate on different timelines. Under Regulation B § 1002.2(f), a completed application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested. Regulation B's definition of application permits flexibility in determining what type and amount of information are required from applicants for different types of credit, and the information requirements for a completed application for different types of credit, including information from third parties.[250] Although a loss mitigation application may be considered complete under § 1024.41(b)(1) notwithstanding whether a servicer requires additional information that is not in control of the borrower, such an application may not yet be a completed application under Regulation B § 1002.2(f) if the creditor regularly obtains and considers information from third parties for that type of credit requested, and therefore a creditor would not yet be required to comply with Regulation B § 1002.9(a)(1)(i) for such an application.[251]

The Bureau is also adopting § 1024.41(c)(4)(ii)(B) with certain revisions. In addition to adopting revisions to improve clarity, the Bureau is amending the contents of the written notice that a servicer must provide a borrower if a servicer is unable to make a determination within the 30-day evaluation period under § 1024.41(c)(1) because the servicer lacks required documents or

[250] *See* 12 CFR 1002.2(f), comments 2(f)-1, -2, and -6.
[251] See 12 CFR 1024.41(b)(1), comment 41(b)(1)-5; 12 CFR 1002.9(a)(1)(i), comment 9(a)(1)-1.

information from a party other than the borrower or the servicer. Under § 1024.41(c)(4)(ii)(B), the written notice must inform the borrower 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; of the specific documents or information that the servicer lacks; that the servicer has requested such documents or information; and that the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information. These disclosures inform borrowers of their application status.

Section 1024.41(c)(4)(ii)(B) retains the proposed requirement that the written notice disclose the specific documents or information that the servicer lacks and therefore does not contain entirely generic disclosures as recommended by some commenters. The Bureau believes providing this information in the notice may increase borrower understanding of the notice. The Bureau also believes that requiring this disclosure may limit the need for borrowers to make additional requests for information of the servicer prompted by uncertainty or lack of information about the status of an application. By providing borrowers timely, accurate information about the status of their applications, the notice could result in fewer inquiries to the servicer as to the status of a borrower's loss mitigation application. Finalizing an entirely generic notice would have inappropriately placed the onus on the borrower to obtain the relevant information from the servicer. Borrowers are unlikely to know what third-party information a servicer requires unless the servicer affirmatively tells them.

The Bureau acknowledges commenters' concerns about borrowers contacting third parties. The Bureau believes that, if borrowers can easily contact a third-party, such as a homeowner's association or their local taxing authority, they may be able to make their own

attempts to obtain the missing information and could help expedite the process. The Bureau further notes that § 1024.41(c)(4)(ii)(B) does not require servicers to disclose the specific third-party from which they lack information, but only the specific information they lack. This should insulate many third-parties that may not be prepared for borrower communications, such as title companies or investors, from receiving them. Although some borrowers may contact their servicers to determine the specific identity of the third-party, on balance, these requests should not result in a significantly greater number of requests for information, as one commenter suggested, given that the Bureau expects that the provision of the written notice should reduce borrowers' overall need to make such requests.

The final rule does not require that the written notice disclose the date on which the servicer first requested the documentation or information during the current loss mitigation application, as proposed § 1024.41(c)(4)(ii)(B)(*3*) would have required. The Bureau believes that such a disclosure may have promoted compliance by making it easier for servicers and borrowers to determine whether the servicer exercised reasonable diligence in obtaining third-party information as § 1024.41(c)(4)(i) requires. However, upon consideration of the comments received, the Bureau is eliminating the proposed requirement because it may offer limited value for borrowers while imposing burden on servicers.

The Bureau declines to adopt other disclosures for the written notice as some commenters recommended. For example, the Bureau is not adopting a consumer advocacy group's recommendation that the notice state whether a foreclosure sale date will be postponed. Servicers may include such a disclosure, but the Bureau declines to mandate it. The Bureau believes that requiring this disclosure would add significant operational complexity for servicers with limited benefit to borrowers. The Bureau believes that borrowers who are concerned about

the timing of the foreclosure sale may contact their servicers to obtain the information and notes that affected borrowers will already have certain foreclosure protections and are likely to have received notification of those protections. Among other protections, if § 1024.41(g) applies with respect to the complete application, a servicer is prohibited from moving for foreclosure judgment or order of sale, or conducting a foreclosure sale, unless certain conditions apply.[252] In addition, if a servicer must provide the notice of complete application to the borrower pursuant to § 1024.41(c)(3)(i), that notice will already have informed the borrower generally about these foreclosure protections. Although servicers are not required to inform borrowers in the notice under § 1024.41(c)(4)(ii)(B) whether they will postpone a foreclosure sale, this lack of disclosure should not significantly affect borrowers' ability to protect their interests.

The Bureau is also not adopting commenters' recommendation that the Bureau include a disclosure prompting the borrower to contact the servicer for more information. Commenters recommended this disclosure as part of a written notice that would contain only generic disclosures. Servicers may include such a disclosure, but the Bureau declines to mandate it. The Bureau believes that borrowers generally already know how to contact their servicers and notes that many servicers include contact information on all correspondence.

As revised, § 1024.41(c)(4)(ii)(B) requires servicers to provide the written notice (when required under the rule) within the 30-day determination period identified in § 1024.41(c)(1) or promptly thereafter. This timing requirement differs from the proposal, which would have

[252] Specifically, the servicer is prohibited from moving for foreclosure judgment or order of sale or conducting a foreclosure sale unless: (1) the servicer has sent the borrower a notice pursuant to § 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation option and the appeal process under § 1024.41(h) is not applicable, the borrower has not requested an appeal within 14 days, or the servicer has denied the borrower's appeal; (2) the borrower rejects all loss mitigation options offered by the servicer; or (3) the borrower fails to perform under an agreement on a loss mitigation option.

required servicers to provide the written notice promptly if, 30 days after a complete application is received, the servicer is unable to make a determination on the application because the servicer lacks documents or information from a third party. Requiring servicers to provide the written notice within this 30-day period or promptly thereafter should more timely apprise borrowers of their application status.

Although servicers will incur costs to provide a notice to borrowers under § 1024.41(c)(4)(ii)(B), the Bureau is requiring it because it will provide substantial benefit to affected borrowers, as described above. To the extent that any additional cost may negatively affect the cost or availability of credit, as one commenter suggested, the Bureau believes that such impact will be negligible, in part because servicers have reported that inability to evaluate a loss mitigation application because of the lack of third party data is extremely uncommon. The incremental cost of providing the notice should be small.

The Bureau is not adopting one commenter's recommendation to allow servicers 10 additional days to obtain required third-party information and to provide the written notice of which loss mitigation options, if any, to offer to a borrower as required under § 1024.41(c)(1)(ii). As the Bureau explained when adopting § 1024.41(c)(1), a 30-day evaluation timeline is an industry standard.[253] In most cases, servicers should be able to complete the evaluation within this timeframe. Adding 10 days could lead to unnecessary delay, which could increase costs for the borrower during the application process. Further, even if the Bureau were to add 10 days, the extension still may not suffice. As described above, the Bureau understands that servicers sometimes do not receive necessary third-party information for 15 or 30 days after the initial 30-

[253] 78 FR 10695, 10826.

day evaluation period.

The Bureau is revising § 1024.41(c)(4)(ii)(C) to specify that, if a servicer must provide a notice required by § 1024.41(c)(4)(ii)(B), the servicer must not provide the borrower a written notice stating the servicer's determination pursuant to § 1024.41(c)(1)(ii) until the servicer receives the required documents or information referenced in § 1024.41(c)(4)(ii)(B)(*2*), except as provided under § 1024.41(c)(4)(ii)(A)(*2*). As described above, § 1024.41(c)(4)(ii)(A)(*2*) allows a servicer to deny an application for lack of third-party information in certain circumstances.

Section 1024.41(c)(4)(ii)(C) further provides that, upon receiving such third-party documents or information, the servicer must promptly provide the borrower with the written determination notice required under § 1024.41(c)(1)(ii). The provision is intended to ensure that servicers do not delay providing the determination notice. The Bureau also understands that servicers generally already provide the determination notice promptly upon receiving the third-party information that the servicers required. The Bureau proposed this provision as comment 41(c)(4)(ii)(C)-1 but is incorporating it into the regulatory text of § 1024.41(c)(4)(ii)(C) and eliminating the comment.

The Bureau is adopting comment 41(c)(4)(ii)-1 with certain revisions to improve clarity. That comment provides that, 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. The comment further provides that such steps may include requirements imposed on the servicer by third parties, such as mortgage insurance companies, guarantors, owners, and assignees. The comment also provides an example explaining that, 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.

In other words, a servicer should not rely on the fact that it lacks third-party information as a reason to delay its evaluation. The Bureau believes that a servicer should be prepared to make a determination on a complete loss mitigation application upon receipt of the missing third-party information and make its determination as possible to the 30-day evaluation period set forth in § 1024.41(c)(1). As the Bureau explained in the proposal, any unnecessary delay of the evaluation process because of delayed third-party information increases the risk of harm to borrowers. For example, such delay increases the risk that a borrower's documents would go stale, possibly deferring the evaluation further while the hardship worsens, thereby reducing the likelihood that the servicer will offer the borrower a loss mitigation option. It also increases the likelihood that a borrower will incur additional fees or negative credit reporting or become disengaged from the loss mitigation process. To the extent that this comment results in servicers determining internally that a borrower is conditionally approved for loss mitigation pending receipt of the third-party information, or results in servicers making piecemeal determinations, as one commenter suggested, the Bureau believes that this is could result in improved outcomes for borrowers and is appropriate.

In response to one commenter's concern that comment 41(c)(4)(ii)-1 will not provide sufficient clarity as to the steps that a servicer must take before receiving the third-party information, the Bureau notes that the rule sets forth no standard list of steps that a servicer must

take to evaluate any application. Servicers must take whatever steps they can in the evaluation process without having the missing third-party information. This is a fact-specific determination dependent on, among other things, investor requirements and what information the servicer is lacking. For example, when a servicer is waiting to receive investor approval, the Bureau expects the servicer to complete its evaluation subject only to investor approval.

The Bureau is also adopting new comment 41(c)(4)(ii)-2, which provides that § 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. The comment further clarifies that § 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. This comment clarifies that § 1024.41(c)(4)(ii)(A)(*2*) addresses only whether a servicer is permitted to deny a complete loss mitigation application due to a lack of necessary third-party information and that the rule does not speak to when a servicer is permitted to make an offer after receiving a complete loss mitigation application.

The Bureau declines to define further what constitutes documents or information not in the borrower's control, as one commenter requested. A servicer must already determine what documents and information it requires from a borrower to complete a loss mitigation application. Whether documents and information are outside of the borrower's control will depend on the facts and circumstances of each case.

41(f) Prohibition on Foreclosure Referral

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

Section 1024.41(f)(1) generally prohibits a servicer from making the first notice or filing required by applicable law to begin the foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent, but it includes an exception in § 1024.41(f)(1)(iii) allowing a servicer to make the first notice or filing when the servicer is joining the foreclosure action of a subordinate lienholder. The Bureau proposed to revise § 1024.41(f)(1)(iii) to provide a parallel exception when a servicer is joining the foreclosure action of a superior lienholder. The Bureau is adopting § 1024.41(f)(1)(iii) as proposed.

In the September 2013 Mortgage Final Rule, the Bureau explained that, if a borrower is current on a mortgage secured by a senior lien but is being foreclosed on by a subordinate lienholder, it would be appropriate for the servicer of the mortgage secured by the superior lien to join the foreclosure action, even though the borrower may not be delinquent on the mortgage secured by the superior lien, because the first notice or filing would not be based upon a borrower's delinquency in this circumstance.[254]

The Bureau did not then consider the situation in which the servicer is joining the foreclosure action of a superior lienholder. After the issuance of the September 2013 Mortgage Final Rule, servicers asked the Bureau why the same rule does not apply to a foreclosure initiated by both a junior and a senior lienholder. In the proposal, the Bureau stated its belief that the same rationale justifies expanding the current exemption to circumstances in which the servicer is joining the foreclosure action of a superior lienholder. The Bureau explained that it

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

would be appropriate for the servicer of the mortgage secured by the subordinate lien to join the foreclosure action, even though the borrower may not be delinquent on the mortgage secured by the subordinate lien, because the first notice or filing would not be based upon a borrower's delinquency with respect to the serviced loan. Further, the Bureau explained that expanding the exemption seems to present only minimal borrower protection concerns because the borrower would already be facing a foreclosure action on the property.

The proposed rule aimed to help servicers by making clear that the servicer of a subordinate lien may participate in the existing foreclosure action on a superior lien. The servicer's participation in the foreclosure action of a superior lienholder may allow the servicer to represent its interests in the existing foreclosure action more fully under some circumstances. Additionally, it may sometimes be necessary, when the same servicer is responsible for both the superior and subordinate liens, for the servicer to initiate foreclosure on the subordinate lien as part of the foreclosure action on the superior lien, to clear title to the property for the subsequent owner.[255]

The Bureau received numerous comments on proposed § 1024.41(f)(1)(iii). Commenters included servicers, trade associations, and credit unions. All commenters supported the proposal.

The Bureau is adopting § 1024.41(f)(1)(iii) as proposed to allow a servicer to make the first notice or filing before the loan obligation is 120 days delinquent when the servicer is joining

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

the foreclosure action of a superior lienholder.

41(g) Prohibition on Foreclosure Sale

Under § 1024.41(g), if a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing, but more than 37 days before a foreclosure sale, the servicer is prohibited from moving for foreclosure judgment or order of sale, or conducting a foreclosure sale, unless the borrower's loss mitigation application is properly denied, withdrawn, or the borrower fails to perform on a loss mitigation agreement.[256] Servicers and consumer advocacy groups had both expressed a desire for clarification of the prohibition on the conduct of a sale and whether a servicer was ever excused from the prohibition while a loss mitigation application was pending. To clarify the prohibition on the conduct of a foreclosure sale, the Bureau proposed to revise existing comments 41(g)-1 and -3 and add new comment 41(g)-5, as well as commentary to clarify the requirements for policies and procedures regarding communications with service provider personnel, including foreclosure counsel, under § 1024.38(b)(3)(iii) as they relate to the prohibition under § 1024.41(g).

For the reasons discussed below, the Bureau has substantially revised the proposed provisions. The Bureau believes that its final language is consonant with both the original rule and the proposal in affirming the absolute nature of the prohibition on conduct of a foreclosure sale. The Bureau is (1) not adopting the proposed revision to existing comment 41(g)-1 that would have required dismissal in certain circumstances, but instead is leaving the comment in its

[256] Specifically, the servicer is prohibited from moving for foreclosure judgment or order of sale or conducting a foreclosure sale unless: (1) the servicer has sent the borrower a notice pursuant to § 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation option and the appeal process under § 1024.41(h) is not applicable, the borrower has not requested an appeal within 14 days, or the servicer has denied the borrower's appeal; (2) the borrower rejects all loss mitigation options offered by the servicer; or (3) the borrower fails to perform under an agreement on a loss mitigation option.

existing form; (2) adopting a revised comment 41(g)-3 clarifying servicers' responsibilities when acting through foreclosure counsel, with modifications to the proposal; (3) adopting new comment 41(g)-5 clarifying the prohibition on conduct of a foreclosure sale, with modifications to the proposal; and (4) adopting new comment 38(b)(3)(iii)-1 regarding communications with service providers, including foreclosure counsel, during the pendency of a foreclosure, with minor changes to the proposal. The Bureau is clarifying that the prohibition on conduct of a sale during the pendency of a loss mitigation application is absolute and that the servicer is not excused from compliance because it acts through a service provider, including foreclosure counsel. The Bureau recognizes that, to avoid the illegal conduct of a sale, servicers may need to dismiss foreclosure proceedings in some circumstances. As discussed below, the Bureau believes that dismissals to avoid conduct of an illegal foreclosure sale are rare. The Bureau believes that these clarifications will substantially assist servicers and their service providers in compliance with the rule.

Background

As noted above, § 1024.41(g)'s prohibition applies to two distinct types of actions in the foreclosure process: moving for judgment or an order of sale and *conducting* a foreclosure sale. A servicer's obligations under § 1024.41(g) will vary depending on whether the foreclosure is non-judicial (requires no court action) or judicial (requires court action or order). If the applicable foreclosure procedure is non-judicial and does not require any court proceeding or order, then § 1024.41(g)'s prohibition on moving for judgment or order of sale is inapposite. Thus, in a non-judicial proceeding, when there is no court action, where § 1024.41(g) applies, it addresses only the conduct of a sale and not a non-existent court proceeding. However, where the foreclosure process requires court action or a court order and § 1024.41(g) is applicable, a

servicer must comply with both the prohibition against moving for judgment or order of sale and the prohibition against conducting a foreclosure sale.

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

As the Bureau noted in the proposal, since the Mortgage Servicing Rules went into effect,

borrowers have not always received the benefits of the protections intended by § 1024.41(g), specifically, that borrowers who timely submit a complete loss mitigation application would not lose their homes at a foreclosure sale while evaluation of that application was pending with the servicer. These instances of foreclosure proceedings continuing in spite of § 1024.41(g)'s prohibitions may occur for several reasons, including impeded communications between servicers and their counsel, confusion about the reasonable steps framework, and difficulties managing judicial expectations

The Bureau has received reports that counsel retained by servicers to conduct the foreclosure proceeding sometimes have lacked current and accurate information about whether borrowers' loss mitigation applications are complete. Foreclosure counsel in some situations may not be taking adequate steps to avoid a judgment or order of sale and may fail to seek the delay or continuance of a sale when necessary to provide adequate time for the servicer to evaluate the loss mitigation application. The Bureau has also received reports that, in some cases, foreclosure counsel may not represent accurately to the court the status of the loss mitigation application. Some reports indicated that even when servicers, through their foreclosure counsel, took some steps to avoid a judgment or sale, they may not have been impressing sufficiently upon the courts the significance of § 1024.41(g)'s prohibition on sale. Consequently, some borrowers lost their homes at foreclosure sales despite their timely submission of complete loss mitigation applications to the servicer.

The Bureau also has received a substantial number of inquiries concerning what steps a servicer must take to comply with § 1024.41(g) where a court orders a foreclosure sale date that does not afford sufficient time for the servicer to complete the evaluation process required by § 1024.41. Some inquirers suggested that the "reasonable steps" framework in comment 41(g)-

1, applicable only to pre-sale activities in a judicial proceeding, such as a motion for judgment or order of sale, might apply to the conduct of the sale, in spite of the absolute prohibition on conduct of a sale contained in § 1024.41(g).

The Bureau had learned that some courts have ruled on a pending dispositive motion and set a date for the foreclosure sale despite the servicer's attempts through counsel to delay the ruling or order as required under § 1024.41(g). In many cases, the initially scheduled foreclosure sale date set by the court may not have provided the servicer adequate time to complete the loss mitigation evaluation and appeals process. Servicers indicated that, in some instances, courts have required that the foreclosure continue to a sale even when the servicer needs additional time to complete the loss mitigation process. Media accounts as well as reports from consumer advocacy groups suggested that some courts might have been refusing to continue cases when presented with a motion to do so, although the Bureau was not able to confirm the extent of that practice or distinguish between its prevalence when the servicer, as distinct from the borrower, was the moving party.[257]

Based upon the reports and information received, the Bureau was concerned that the absence of express commentary requiring a servicer to take affirmative steps to delay the sale may have encouraged some servicers to fail to instruct foreclosure counsel appropriately and, further, might have led courts to discount servicer obligations under the rule, depriving borrowers of the important consumer protections against dual tracking that are provided under § 1024.41. Accordingly, the Bureau proposed several revisions to commentary to address

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

servicers' obligations in instructing foreclosure counsel, the general nature of the reasonable steps obligation, and the absolute prohibition on conducting a foreclosure sale pending review of a complete loss mitigation application, even if a motion for judgment or order of sale was excused as a violation of the rule because of the servicer's reasonable steps to prevent entry of such a motion.

Proposed Rule

The Bureau proposed to revise two existing comments and add two comments to clarify the operation of § 1024.41(g). As proposed, revised comment 41(g)-1 generally retained the existing comment with regard to the nature of servicers' duty to avoid moving for judgment or order of sale. Revised comment 41(g)-1 would have added new language clarifying that, if, upon receipt of a complete loss mitigation application, a servicer or its foreclosure counsel failed to take reasonable steps to avoid a ruling on a pending motion for judgment or the issuance of an order of sale, the servicer would have to dismiss the foreclosure proceeding if necessary to avoid the sale. Proposed new comment 41(g)-5 would have clarified that § 1024.41(g) prohibits a servicer from conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings, and that servicers must take reasonable steps to delay the sale until one of the conditions under § 1024.41(g)(1) through (3) is met.

The Bureau also proposed to revise existing comment 41(g)-3 to clarify servicers' obligations under § 1024.41(g) when acting through foreclosure counsel. And the Bureau proposed related comment 38(b)(3)(iii)-1 to clarify that policies and procedures required under § 1024.38(b)(3)(iii) to facilitate sharing of information with service provider personnel responsible for handling foreclosure proceedings must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings

that the servicer has received a complete loss mitigation application.

Thus, under the proposal, where a servicer failed to take reasonable steps to avoid a ruling on a dispositive motion to avoid issuance of a judgment or an order of sale, or to delay the foreclosure sale, or where the servicer's foreclosure counsel fails to take such steps, the § 1024.41(g) commentary specified that the servicer would have to dismiss the foreclosure proceeding if necessary to avoid completing the foreclosure during the pendency of the loss mitigation evaluation.

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

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

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

§ 1024.41(g)'s prohibition against the conduct of a foreclosure sale. The Bureau proposed comment 41(g)-5 to clarify a servicer's obligations under the prohibition and indicated that it was not proposing a new requirement or interpretation.

The Bureau noted in proposing these clarifications that, in some jurisdictions, it may be difficult for a servicer to delay a foreclosure sale after entry of foreclosure judgment or issuance of an order of sale and that courts may be reluctant to delay foreclosure proceedings when lengthy foreclosure backlogs create added pressure to expedite dockets. The Bureau stated its belief that, even in these situations, reasonable steps to delay the sale are available to servicers and to courts administering foreclosure proceedings. Proposed comment 41(g)-5 would have provided a non-exclusive explanation of what such reasonable steps might include: requesting that a court or the official conducting the sale re-schedule or delay the sale or remove the sale from the docket, or place the foreclosure proceeding in any administrative status that stays the sale. The Bureau sought comment on what reasonable steps may be available to servicers to delay the conduct of a foreclosure sale under different foreclosure procedures.

Proposed comment 41(g)-3 would have explained that § 1024.41(g)'s prohibitions on moving for judgment or order of sale or conducting a sale may require a servicer to take steps through foreclosure counsel and that a servicer is not relieved of its obligations under § 1024.41(g) because the foreclosure counsel's actions or inaction cause a violation. The proposal noted that proposed revisions to comment 41(g)-3 were consistent with the Bureau's understanding of servicers' responsibilities under the Mortgage Servicing Rules whenever service providers are involved, including the policies and procedures requirements under § 1024.38(b)(3). Proposed comment 41(g)-3 further would have explained that, if a servicer has received a complete loss mitigation application, the servicer must promptly instruct counsel not

to make a dispositive motion for foreclosure judgment or order of sale; to take reasonable steps, where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and to take reasonable steps to delay the conduct of a foreclosure sale until the servicer satisfies one of the conditions in § 1024.41(g)(1) through (3). Proposed comment 41(g)-3 would have provided the following examples of instructions that § 1024.41(g) might require: instructing counsel to move for a continuance with respect to the deadline for filing a dispositive motion or to move for or request that the foreclosure sale be stayed, otherwise delayed, or removed from the docket, or that the foreclosure proceeding be placed in any administrative status that stays the sale. In the proposal, the Bureau noted that the list was not meant to be exhaustive and sought comment on whether there are other helpful illustrative examples.

The Bureau stated its belief in the proposal that the proposed revisions to comment 41(g)-3 would provide servicers, their foreclosure counsel, and courts with greater clarity with respect to the operation of § 1024.41(g)'s prohibition. The Bureau noted, as it had in earlier guidance regarding service providers, that the fact that an entity enters into a business relationship with a service provider does not absolve the entity of responsibility for complying with Federal consumer financial law to avoid consumer harm.[258] The Bureau stated in the proposal that codifying this principle in comment 41(g)-3 would ensure that servicers understand their obligations with respect to instructing foreclosure counsel promptly to take steps required by § 1024.41(g). The Bureau acknowledged that, when a servicer receives a loss mitigation application shortly before a court hearing or while a dispositive motion is pending, timely

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

communication with foreclosure counsel may require expedited procedures but that timely communication in such situations would present neither a novel nor an insurmountable challenge.

The Bureau also proposed a related comment 38(b)(3)(iii)-1, which would have explained that a servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly instruct foreclosure counsel to take any step required by § 1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale or conducting a foreclosure sale. The Bureau explained that proposed comment 38(b)(3)(iii)-1 was designed to help ensure that foreclosure counsel are timely informed of the status of loss mitigation applications and can more effectively seek delay from a court of the issuance of an order or a foreclosure sale. Having policies and procedures to instruct foreclosure counsel timely to take the actions required by § 1024.41(g) would help servicers efficiently handle communication with a servicer's foreclosure counsel and ensure that counsel accurately represent the status of loss mitigation applications and the obligations of servicers under § 1024.41(g) to courts handling foreclosure proceedings.[259]

In the proposal, the Bureau noted that, although the proposed commentary clarifications would not alter existing requirements under § 1024.41(g), the Bureau had considered the potential burdens for servicers in dismissing a foreclosure proceeding, in particular in jurisdictions where significant foreclosure backlogs exist or when a subsequent foreclosure brought by a servicer may encounter procedural challenges or defenses. Nonetheless, the Bureau

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

stated its belief that dismissal would be appropriate in the limited circumstances contemplated by the proposal where a servicer fails to take reasonable steps to avoid a ruling or issuance of an order or to delay the sale to protect borrowers from the dual tracking harms that § 1024.41(g) aims to prevent. The Bureau noted that dismissal would be required only when necessary to avoid a violation of § 1024.41(g), *i.e.*, conduct of the foreclosure sale while a loss mitigation evaluation is pending, or to mitigate the harm to the borrower arising from the servicer's prior violation of § 1024.41(g) in failing to take reasonable steps to delay a foreclosure sale. Thus, only those servicers that fail to act to delay issuance of the order or judgment would incur any costs related to dismissal. The Bureau stated its belief that expressly clarifying that dismissal may be required would encourage servicers to take reasonable steps to avoid foreclosure sales. The Bureau sought comment on whether the clarification was adequate or whether additional clarification was necessary to protect borrowers from foreclosure.

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

Finally, the Bureau requested comment on whether the incorporation into the regulation text of any elements of the proposed commentary would aid servicers in complying with

§ 1024.41(g). The Bureau stated that the proposed commentary would provide help in interpreting and complying with § 1024.41(g). However, the Bureau also recognized that incorporation in the regulation text itself could aid servicers, borrowers, and courts in applying the prohibition.

Comments

The Bureau received comments on the proposed revisions and additions to the commentary from several industry commenters and consumer advocacy groups. Commenters generally agreed that the conduct of a foreclosure sale during a loss mitigation evaluation causes significant consumer harm and should be avoided. However, commenters expressed a number of concerns about the Bureau's proposed clarifications.

Several commenters discussed the nature and extent of the reasonable steps required to avoid having to dismiss foreclosure proceedings under proposed comments 41(g)-1 and -5, which would have required dismissal, if necessary to avoid the sale, when a servicer fails to take reasonable steps to avoid issuance of a judgment or an order of sale, or fails to take reasonable steps to delay the foreclosure sale. Many commenters suggested that the inference taken from the proposed commentary changes was that a servicer that took reasonable steps would never be obligated to dismiss a foreclosure proceeding, even if the sale was conducted before any condition in § 1024.41(g)(1) through (3) was met. Several industry commenters requested that the Bureau expressly clarify that, if a servicer takes reasonable steps, dismissal would not be required. One industry commenter requested that the commentary further clarify that servicers would not be required to take all reasonable steps, but only some reasonable steps. This commenter expressed concern that absent such clarification, servicers would seek unnecessary

dismissals of foreclosure proceedings because they believed they could not otherwise comply with § 1024.41(g).

Some commenters discussed the difficulties of determining what constitutes reasonable steps in light of the varied procedures that apply in different jurisdictions. One industry commenter recommended that the commentary make clear that any examples of reasonable steps were only illustrative and not an exhaustive list. A consumer advocacy group expressed concern that the proposal would permit a sale where servicers make only token efforts to meet the reasonable steps standard and would effectively nullify the protections under § 1024.41(g). Commenters did not provide any additional examples of reasonable steps to avoid or delay a sale that the Bureau might include in the commentary.

Several, but not all, commenters addressing this issue indicated that servicers are able to obtain delays of foreclosure proceedings and comply with § 1024.41(g). A consumer advocacy group noted that courts routinely enforce other types of delays or stays in foreclosure proceedings, such as those required by the Bankruptcy Code or the Servicemembers Civil Relief Act. This commenter suggested that it was appropriate to place upon servicers the burden of educating courts about the requirements of § 1024.41(g) rather than borrowers, who often appear pro se in foreclosure proceedings. One industry commenter suggested that, following judgment or issuance of an order in a foreclosure proceeding, servicers have the ability to comply with § 1024.41(g) by either not scheduling the foreclosure sale or cancelling an already scheduled sale. Another trade association recommended that servicers be required to provide to foreclosure counsel a copy of the written notice of complete application that proposed § 1024.41(c)(3) would have required servicers to provide to borrowers after receipt of a complete application. Some industry commenters suggested that courts may not be willing to grant motions filed by

foreclosure counsel and that servicers should not be held accountable when courts refuse to honor requests to delay issuance of an order or judgment. The consumer advocacy group that noted the ease with which courts grant other types of stays in foreclosure proceedings expressed concern that the proposal appeared to condone State court refusals to enforce Federal law and suggested the Bureau adopt a policy of intervening in State court proceedings to ensure that § 1024.41(g) was properly enforced.

A number of industry commenters discussed the potential burden to servicers, investors, and borrowers that might result from any dismissal requirement. Generally, these commenters noted that dismissal may result in lengthy delays (especially in States with significant backlogs), costs, and potential procedural challenges to subsequent actions. In particular, commenters suggested that statutes of limitation might bar a subsequent action or that dismissal may affect the enforceability of the mortgage lien or note. Another industry commenter suggested that the Bureau should provide an exception to the dismissal requirement that permits the servicer, in those jurisdictions that provide for post-sale confirmation proceedings, to take steps to invoke § 1024.41(g)'s protections on behalf of the borrower.

Some industry commenters expressed concern that borrowers may face financial and emotional costs when foreclosures are dismissed and then re-filed if the borrower's loss mitigation application is ultimately denied. Some of these industry commenters also suggested that a dismissal requirement might create an incentive for borrowers to delay engagement in the loss mitigation process. One industry commenter suggested the Bureau adopt a one-year time limit for borrowers to submit a complete loss mitigation application under § 1024.41 to prevent such strategic attempts to delay foreclosure.

Consumer advocacy group commenters supported mandating dismissal broadly, suggesting it would aid enforcement of § 1024.41(g)'s prohibitions and protect borrowers from the further harms that result from conduct of a sale during the pendency of a loss mitigation evaluation.

Commenters did not raise any specific objections to the proposed revisions to comment 41(g)-3 or to proposed comment 38(b)(3)(iii)-1. One consumer advocacy group commenter supported the revisions to comment 41(g)-3, suggesting that it would clarify a servicer's responsibility for the actions of foreclosure counsel.

Final Rule

The Bureau is not adopting the proposed revisions to comment 41(g)-1 and is adopting a revised new comment 41(g)-5. The Bureau has decided to adopt the proposed commentary regarding instructions to foreclosure counsel largely as proposed in both comment 41(g)-3 and 38(b)(3)(iii)-1 concerning related policies and procedures. As discussed below, the Bureau believes that its approach in the final rule is in accord with the original final rule and the Bureau's proposal in restating the absolute prohibition on conduct of a sale.

In light of the comments received, the Bureau believes that the proposed revisions to comment 41(g)-1 would not further the purposes of § 1024.41(g). Proposed comment 41(g)-1 would have explained that, where a servicer or counsel retained by the servicer fails to take reasonable steps to avoid a ruling on or issuance of an order with respect to a dispositive motion pending at the time a complete loss mitigation application was received, the servicer must dismiss the foreclosure proceeding if necessary to avoid the sale. The Bureau believes that the uncertainty expressed by commenters concerning the extent and nature of reasonable steps and the circumstances that would require dismissal of foreclosure proceedings illustrates that the

proposed revisions to comment 41(g)-1 might have harmed borrowers by appearing to allow for deviation from the absolute nature of § 1024.41(g)'s prohibition of the conduct of a foreclosure sale.

The Bureau is concerned with the inference commenters took from the proposed revision of comment 41(g)-1 and proposed comment 41(g)-5 that, where a servicer takes reasonable steps, but the sale goes forward in spite of these steps, a servicer is relieved of any responsibility for the conduct of the sale. Proposed comments 41(g)-1 and 41(g)-5 would have expressly addressed only situations where servicers fail to take reasonable steps. The purpose of both proposed comments was to emphasize that servicers must take reasonable steps to avoid conduct of the foreclosure sale absent one of the conditions under § 1024.41(g)(1) through (3) being met. By proposing to clarify that, when servicers fail to take reasonable steps to avoid a ruling on a pending dispositive motion or to delay a foreclosure sale, servicers would be required to dismiss if necessary to avoid the sale, the Bureau did not intend to permit the conduct of the sale when the servicer has not met one of the conditions under § 1024.41(g)(1) through (3). That interpretation would have been inconsistent with the text of § 1024.41(g), which imposes an absolute prohibition on the conduct of a sale. For similar reasons, the Bureau also declines to read an exception into § 1024.41(g)'s prohibition against the conduct of the sale based upon any post-sale confirmation process that may apply in certain jurisdictions.[260]

[260] In addition to being inconsistent with § 1024.41(g)'s text and purpose, the Bureau believes it would impose significant costs and risks on borrowers. Even where post-sale confirmation or other procedure might be available to cancel or reverse a sale, permitting sales to be conducted may impose significant costs on borrowers. At least one commenter suggested that borrowers themselves would have to move for the court to overturn sales. In addition, where a sale is to a third-party, there may be no recourse for the borrower.

For these reasons, the Bureau is not adopting the proposed revisions to comment 41(g)-1. Similarly, comment 41(g)-5, as adopted, also does not discuss any dismissal requirement with respect to servicers that fail to take reasonable steps to delay a foreclosure sale. The Bureau is concerned that an express dismissal requirement, even if only when dismissal is necessary to avoid a sale, would be unworkable in the absence of an exhaustive list of reasonable steps that a servicer could take to prevent the sale short of dismissal. As commenters generally explained, what constitutes a reasonable step in a particular proceeding would depend on the specific facts, circumstances, and procedures of the jurisdiction. The dismissal requirement as proposed thus would have been based on an ultimately subjective test that varied based not only on the particular circumstances of the foreclosure proceeding but also the rules of an individual court. The Bureau is also concerned, as some commenters indicated, that some servicers may have believed in certain circumstances that whatever steps they may take may not have met the reasonable steps standard if finalized as proposed and that these servicers may thus have elected to dismiss the foreclosure proceeding unnecessarily to avoid a subsequent violation. The Bureau is equally concerned that without providing an exhaustive list of reasonable steps, and specifying that servicers would have to take all of those steps to comply with § 1024.41(g), the proposed commentary might have been interpreted to permit evasion of the rule and excuse a servicer from dismissal in order to prevent a sale. In either case, the Bureau is concerned that the proposed reasonable steps requirement may have led to litigation that would not further the purpose of the rule itself and may have eventually eroded borrower protections or led to uneven application of the rule across and within jurisdictions.

At the same time, the Bureau is also declining to adopt, as some commenters suggested, any interpretation that § 1024.41(g) does not require dismissal to avoid a sale if the servicer takes

any or all other reasonable steps to delay a ruling on a pending dispositive motion, issuance of an order, or conduct of the sale. The Bureau believes such an interpretation would be inconsistent with the text and purpose of § 1024.41(g). As the Bureau explained in the proposal, protecting borrowers from foreclosure during the loss mitigation evaluation process is the central and fundamental protection under § 1024.41(g). The Bureau did not propose to alter the regulation text but to interpret and clarify it in commentary. While the Bureau believes, as discussed below, that servicers have many options available to them for avoiding a sale short of dismissal, dismissal may in some instances be necessary to avoid violation of § 1024.41(g), particularly if the servicer has, in fact, failed to take reasonable steps to avoid the sale in a timely way. Moreover, even if the Bureau were to adopt a standard that dismissal is not required where a servicer has taken reasonable steps, the rule would still lack clarity regarding what steps are reasonable. This uncertainty would leave servicers subject to litigation over the reasonable steps standard, and borrowers subject to different outcomes and harm, based upon different interpretations of what is reasonable.

The Bureau believes that the purposes of § 1024.41(g) will be better served by a clear, unequivocal interpretation than a vague, but still prescriptive, and fact-specific standard that in some cases might ultimately result in the very outcome that § 1024.41(g) prohibits. As adopted, final comment 41(g)-5 provides a clear interpretation of what § 1024.41(g) requires: The servicer may not permit the conduct of the sale unless one of the conditions under § 1024.41(g)(1) through (3) is met.

The Bureau believes that the means to prevent foreclosure sales should be readily available to servicers. In jurisdictions where there is no court action required, the Bureau understands that servicers exercise significant, if not entire, control over the conduct of the sale.

Where courts are involved, procedures are generally available to delay proceedings and, in many jurisdictions, to delay the conduct of the sale specifically. As the plaintiff in the proceeding, a servicer generally has a determinative voice as to the timing and nature of any court-ordered remedies, including a foreclosure sale. Servicers may be able to minimize any difficulties obtaining necessary delays through timely communication with counsel and, through counsel, with the court, as to the status of the loss mitigation application and the servicer's obligations under § 1024.41. And, as consumer advocacy groups noted, such delays are not novel in court proceedings. For example, delays or stays are available in other contexts, such as when a borrower is protected by bankruptcy law.

While the reasonable steps language in the proposed revision to comment 41(g)-1 and in proposed comment 41(g)-5 would have provided some guidance to servicers about how to comply with § 1024.41(g), the Bureau believes that the reasonable steps language would not have adequately protected servicers from post hoc evaluations of whether the specific steps taken by the servicer or its foreclosure counsel were reasonable. The Bureau believes comment 41(g)-5, as adopted, will provide greater clarity and aid servicers through courts to prevent the foreclosure sale.

In addition, the Bureau believes that, because proposed comment 41(g)-5 would have addressed the prohibition against conducting the sale, retaining any reasonable steps language in that comment would have been subject to much more litigation than the existing dispositive motion reasonable steps language in comment 41(g)-1. Unlike existing comment 41(g)-1, which addresses an earlier stage in the foreclosure proceeding that is less detrimental to a borrower's ownership of the home, comment 41(g)-5 addresses the foreclosure sale, which often operates as the final step in the foreclosure process and may be difficult to overturn under State laws that do

not provide that a violation of Regulation X is a basis for such a reversal.[261] As a result, the Bureau believes that borrowers may be more likely to challenge a foreclosure sale as a violation of § 1024.41(g) than an entry of judgment.

The Bureau recognizes that there may be limited situations where servicers, despite their attempts to prevent foreclosure sales, may need to dismiss a foreclosure proceeding to avoid a violation of § 1024.41(g) and then may re-file if the borrower ultimately does not qualify for, or perform on, a loss mitigation option. The Bureau also recognizes that this approach imposes costs on servicers and borrowers. As the Bureau noted in preamble to the proposal, these costs could be significant in an individual case but are unlikely to be significant overall. The Bureau believes, as supported by many commenters, that servicers are usually able to stop the foreclosure sale by using any of several other means short of dismissal. The Bureau also believes the benefit to borrowers of providing an unequivocal explanation of § 1024.41(g) that reduces the risk of untimely foreclosure sales during pending loss mitigation evaluations outweighs the risks or costs to servicers of these atypical situations. The Bureau believes that clarifying that any conduct of the sale violates § 1024.41(g), making the ramifications of failure to prevent a sale from occurring clear to all stakeholders, including State courts, will make these scenarios less likely to occur.

The Bureau is also adopting revisions to proposed comment 41(g)-3, with changes to address issues raised by comments received. As adopted, comment 41(g)-3 explains that the prohibitions against moving for judgment or order of sale or conducting a sale may require a

[261] The Bureau also notes that, though some commenters suggested a post-sale remedy to alleviate servicer concerns, purchase at the sale by a third-party purchaser may make the sale irrevocable under State law.

servicer to act through foreclosure counsel retained by the servicer in a foreclosure proceeding. The comment explains that, if a servicer has received a complete loss mitigation application, the servicer promptly must instruct counsel 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. The comment further provides that a servicer is not relieved of its obligations because foreclosure counsel's action or inaction caused a violation.

The Bureau believes it is appropriate to clarify that a servicer's responsibilities under § 1024.41(g) are not relieved upon foreclosure counsel's action or inaction. The additional language that the proposal would have added to comment 41(g)-3 addressing reasonable steps is no longer necessary in light of the changes to comment 41(g)-5.

The Bureau is adopting related comment 38(b)(3)(iii)-1 as proposed, with minor revisions. The Bureau believes that comment 38(b)(3)(iii)-1 will help to ensure that servicers effectively communicate with foreclosure counsel. The Bureau received no comments that raised concerns about new comment 38(b)(3)(iii)-1.

One industry commenter suggested that the Bureau require servicers to send foreclosure counsel a copy of the notice, which proposed § 1024.41(c)(3) would have required the servicer to send to borrowers after the servicer receives a complete application. As discussed in the section-by-section analysis of § 1024.41(c)(3), the Bureau is adopting a rule that requires servicers to provide borrowers with a notice of complete application but is not requiring servicers to send a copy of the notice to foreclosure counsel. As revised, comment 41(g)-3 requires servicers to provide prompt instruction to foreclosure counsel upon the receipt of a complete loss mitigation

application. Comment 38(b)(3)(iii)-1 explains that the policies and procedures of the servicer must be reasonably designed to ensure that servicer personnel promptly inform foreclosure counsel that the servicer has received a complete loss mitigation application and promptly instruct counsel to take any step required by § 1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale. The Bureau believes that these comments clarify the obligation of servicers under § 1024.41(g) to ensure that foreclosure counsel is informed and has the necessary information to take appropriate steps in foreclosure proceedings to comply with § 1024.41(g). As noted in the section-by-section discussion of § 1024.41(c)(3), the Bureau is not requiring servicers to provide to foreclosure counsel the notice of complete application required by § 1024.41(c)(3). While providing a copy of the notice may be part of an effective procedure for informing foreclosure counsel about a borrower's loss mitigation application status, the notice's required contents are designed to inform borrowers about the status of their loss mitigation applications and, by themselves, may not provide sufficient instruction to foreclosure counsel for compliance purposes. Whatever method a servicer chooses to communicate with foreclosure counsel, the servicer remains responsible for ensuring compliance with § 1024.41(g). The Bureau believes that it is appropriate to permit servicers discretion in determining alternative means for compliance with §§ 1024.38(b)(3)(iii) and 1024.41(g).

41(i) Duplicative Requests

Currently, § 1024.41(i) requires a servicer to comply with the requirements of § 1024.41 for only a single complete loss mitigation application for a borrower's mortgage loan account. Section 1024.38(b)(2)(v) requires a servicer to maintain policies and procedures designed to ensure that the servicer can properly evaluate a borrower for all loss mitigation options "for

which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. . . ." In effect, therefore, unless investor guidelines require them to do so, servicers are not required to comply with the loss mitigation provisions in § 1024.41 if they previously complied with those requirements with respect to the same borrower's prior complete loss mitigation application.

The Bureau proposed to revise § 1024.41(i) to provide that servicers are required to comply with the requirements of § 1024.41 unless (1) the servicer has previously complied with § 1024.41 for a borrower's complete loss mitigation application and (2) the borrower has been delinquent at all times since the borrower submitted that complete application. Thus, as revised, the provision would require servicers to follow the requirements of § 1024.41 again when a borrower has previously enjoyed those protections with respect to a complete loss mitigation application but since then has become current and subsequently become delinquent on the loan once again. The Bureau believed that requiring servicers to comply with § 1024.41 again in these circumstances would serve an important consumer protection purpose by extending the protections of § 1024.41 and promoting the use of uniform loss mitigation procedures for all borrowers. At the same time, the Bureau's proposed revision to § 1024.41(i) would have limited the scope of servicers' obligations to comply with § 1024.41 for a borrower's subsequent loss mitigation application and preserved servicer and borrower incentives to dedicate appropriate resources to an initial loss mitigation application. The Bureau is finalizing § 1024.41(i) substantially as proposed, with certain non-substantive changes for clarity.

When the Bureau first proposed § 1024.41 in the 2012 RESPA Servicing Proposal, it sought comment on whether a borrower should be entitled to a renewed evaluation for a loss mitigation option if an appropriate time period had passed since the initial evaluation or if there

had been a material change in the borrower's financial circumstances. Industry commenters at that time generally supported the Bureau's proposal to limit a servicer's obligation to comply with § 1024.41 to once over the life of a borrower's loan. Consumer advocacy groups, however, said that the Bureau should require servicers to review a subsequent loss mitigation submission when a borrower has demonstrated a material change in the borrower's financial circumstances.[262]

In the 2013 RESPA Servicing Final Rule, the Bureau agreed that there are circumstances in which it is appropriate to reevaluate borrowers in light of a material change in financial circumstances.[263] The Bureau also acknowledged that many owners or assignees of mortgage loans already require servicers to consider material changes in a borrower's financial circumstances.[264] However, the Bureau noted that "significant challenges exist to determine whether a material change in financial circumstances has occurred[,]" and that, in contrast to investor guidelines, § 1024.41 gives borrowers a private right of action to enforce its procedures.[265] In addition, the Bureau believed that limiting the loss mitigation procedures of § 1024.41 to a single complete loss mitigation application would provide borrowers with appropriate incentives to submit all relevant information up front and allow servicers to dedicate resources to those applications most likely to qualify for loss mitigation options.[266] Accordingly, in the 2013 RESPA Servicing Final Rule, the Bureau required servicers to comply with the loss mitigation procedures in § 1024.41 only once over the life of a mortgage loan for any borrower.

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[262] *See* 78 FR 10695, 10836 (Feb. 14, 2013).
[263] *Id*.
[264] *Id*.
[265] *Id*.
[266] *Id*.

Since the publication of the 2013 RESPA Servicing Final Rule, the Bureau has received numerous requests to revise this provision and require servicers to reevaluate borrowers who have experienced a change in financial circumstances and might therefore benefit from subsequent review of a new loss mitigation application under the requirements of § 1024.41. Industry monitoring efforts, outreach to stakeholders, and reports from consumer advocacy groups suggested that current § 1024.41(i) might unfairly disadvantage a borrower who experiences multiple hardships over the life of a loan.

In advance of the proposal, the Bureau understood that a borrower might greatly benefit from the protections of § 1024.41 for loss mitigation applications submitted in connection with subsequent hardships. Moreover, the Bureau believed that requiring servicers to reevaluate borrowers in certain circumstances under the requirements of § 1024.41, in and of itself, would not place a significant additional burden on servicers because many servicers already do so. However, the Bureau continued to have concerns with requiring reevaluations under § 1024.41 when there has been a "material change in financial circumstances," because of the challenges of prescribing with sufficient clarity what may constitute such a "material change."

Based on this analysis, the Bureau proposed to revise the current rule to require servicers to reevaluate borrowers under § 1024.41 in certain circumstances. However, as the Bureau explained in the 2013 RESPA Servicing Final Rule, the Bureau believed that a servicer's obligation to reevaluate borrowers under § 1024.41 should be limited in scope. Accordingly, proposed § 1024.41(i) would have provided that servicers would be required to comply with § 1024.41 unless the servicer had previously complied with § 1024.41 for a borrower's complete loss mitigation application and the borrower had been delinquent at all times since the borrower submitted that complete application. In other words, a servicer would have been required to

comply with § 1024.41, even if it had previously complied with § 1024.41 for a borrower's complete loss mitigation application, for a borrower who had been current on payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application. This revision was intended to preserve borrower and servicer incentives to reach a timely, efficient, and effective resolution to a borrower's hardship the first time a borrower applies for loss mitigation.

In addition, the Bureau believed that proposed § 1024.41(i) would base a servicer's obligation to reevaluate a borrower under § 1024.41 on an objective, bright-line test. One of the Bureau's concerns about the suggestions to require reevaluations under § 1024.41 when there has been a "material change in financial circumstances" was that the standard would be dependent upon a servicer's subjective determination. The Bureau believed that the challenges in implementing and enforcing such a standard would outweigh any intended benefit to borrowers. However, the Bureau believed that an easy-to-administer standard such as the one in proposed § 1024.41(i) could promote servicer compliance. The Bureau also believed that proposed § 1024.41(i) may encourage consistent implementation of the mortgage servicing rules by discouraging servicers from applying different loss mitigation procedures outside of the framework of § 1024.41 if a borrower has been previously evaluated under § 1024.41.

For purposes of this proposal, the Bureau assumed that a permanent modification of a borrower's mortgage loan obligation effectively cures the borrower's pre-modification delinquency. The Bureau further assumed that a borrower who is performing under a permanent modification would not meet the definition of delinquency that the Bureau proposed to add to § 1024.31. The Bureau sought comment on whether there are types of permanent loan modifications or other circumstances for which these assumptions would be inaccurate.

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

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

The Bureau received a number of comments from industry and consumer advocacy group commenters in response to proposed § 1024.41(i). Several industry commenters stated that there was no need to require servicers to comply with the loss mitigation provisions in § 1024.41 for a borrower's subsequent loss mitigation application. They expressed the view that, if a borrower is eligible for loss mitigation, and the investor is willing to offer loss mitigation, the servicer will make loss mitigation options available to the borrower pursuant to its own policies. One industry commenter recommended that borrowers be required to demonstrate changed circumstances before a servicer would be required to comply with § 1024.41 for a borrower's subsequent loss mitigation application.

The majority of industry commenters that discussed § 1024.41(i) recommended that a borrower's right to a reevaluation under § 1024.41 should be contingent on the borrower being

current for a minimum time period following the borrower's last submitted complete loss mitigation application. These commenters recommended periods that ranged from six months to five years. Many of these commenters said that requiring a borrower to be current for a minimum time period would discourage borrowers from abusing foreclosure protections and limit the burden and costs associated with the requirements set forth in the proposal. Several of these industry commenters also suggested that the rule should limit the number of times that a servicer must evaluate a borrower for loss mitigation options pursuant to § 1024.41 over the life of the loan. They stated that such a limit would provide clear expectations for borrowers and servicers. One industry commenter stated that the proposal would impose costs in the form of substantial technology changes, staffing adjustments, new training, and vendor expenses.

Numerous consumer advocacy groups supported the proposal's requirement that servicers be required to comply with the loss mitigation requirements set forth in § 1024.41 for a borrower's loss mitigation application unless the borrower had been delinquent at all times since submitting the prior complete loss mitigation application. Several consumer advocacy groups stated that the proposal provided a reasonable limitation on the applicability of § 1024.41(i). The majority of consumer advocacy groups recommended additional circumstances under which servicers should be required to comply with § 1024.41 for a borrower's subsequent loss mitigation application. For example, many consumer advocacy groups recommended that servicers be required to comply with § 1024.41 with respect to a borrower's subsequent loss mitigation application when the borrower had experienced a change in financial circumstances, or when more than a year had passed since the borrower's submission of the prior complete loss mitigation application, even if the borrower had not brought the loan current in the interim. Many of these commenters also recommended that the Bureau require any voluntary evaluation

of a loss mitigation application to be completed in accordance with § 1024.41. One consumer advocacy group stated that the proposal failed to account for borrowers in temporary loss mitigation programs, and several commenters requested that the Bureau specify when a borrower is no longer delinquent for purposes of § 1024.41(i).

As noted in the section-by-section analysis of § 1024.31, one industry commenter expressed concern with the proposal's treatment of a borrower as delinquent until such time as the outstanding payment is made. The commenter stated that a borrower performing on a permanent loan modification may not have made all outstanding payments and therefore would be considered delinquent under the proposal, contrary to the Bureau's assumption that a borrower who is performing on a permanent loan modification would not meet the Bureau's proposed definition of delinquency.

The Bureau is adopting § 1024.41(i) substantially as proposed, with non-substantive changes for clarity. The Bureau is adopting comments 41(i)-1 and -2 with revisions. The Bureau understands that current § 1024.41(i) might unfairly disadvantage a borrower who experiences multiple hardships over the life of a loan. Final § 1024.41(i) serves an important consumer protection purpose by extending the protections of § 1024.41 to loss mitigation applications submitted in connection with subsequent hardships and promoting the use of uniform loss mitigation procedures for all borrowers in such circumstances. At the same time, final § 1024.41(i) limits the scope of servicers' obligations to comply with § 1024.41 for a borrower's subsequent loss mitigation application and preserves servicer and borrower incentives to dedicate appropriate resources to an initial loss mitigation application.

As finalized, § 1024.41(i) explains that a servicer must comply with the requirements of § 1024.41 for a borrower's loss mitigation application, unless the servicer has previously

complied with the requirements of § 1024.41 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. In other words, a servicer is required to comply with § 1024.41, even if it had previously complied with § 1024.41 for a borrower's complete loss mitigation application, for a borrower who has been current on payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application.

The Bureau is finalizing § 1024.41(i) substantially as proposed to provide an objective, bright-line standard. In doing so, the Bureau weighed many of the same factors that it considered when finalizing the 2013 RESPA Servicing Final Rule. The Bureau sought to balance access to the consumer protections afforded by § 1024.41 with a recognition of the potential burden an unlimited requirement to comply with § 1024.41's requirements for any subsequent loss mitigation application could have on servicers. In particular, the Bureau continues to have concerns with requiring reevaluations under § 1024.41 when there has been a "material change in financial circumstances," given the difficulty of defining an objective standard for a "material change in financial circumstances."

Thus, final § 1024.41(i) ensures that, where a borrower receives a loss mitigation option, complies with its terms, and later experiences a new hardship, the borrower will benefit from having the protections of the § 1024.41 loss mitigation procedures for a subsequent loss mitigation application, as well as the private right to enforce them. However, § 1024.41(i) limits servicers' obligations under § 1024.41 with respect to a borrower's subsequent loss mitigation application if the borrower has not been current on the loan at any time since submitting the prior application. Section 1024.41(i) preserves borrower and servicer incentives to reach a timely,

efficient, and effective resolution to a borrower's hardship. Additionally, to the extent servicers already reevaluate borrowers who submit subsequent loss mitigation applications pursuant to the procedures set forth in § 1024.41, as suggested by some commenters, final § 1024.41(i) should not impose a significant additional burden on servicers.

The Bureau has decided not to adopt a requirement that a borrower must have remained current for a specified period of time before the servicer is again required to comply with § 1024.41. Any such requirement would limit the important consumer protections of § 1024.41 with respect to certain borrowers submitting subsequent loss mitigation applications. Moreover, in the absence of a clear consensus among commenters as to how long a borrower should remain current, or consistent objective criteria for determining an appropriate period of time, the Bureau believes it is appropriate to require servicers to comply with the procedures under § 1024.41 once a borrower has come current, regardless of how long the borrower remains current.

The Bureau believes that any increase in the burden on servicers associated with final § 1024.41(i) should be limited. Current § 1024.41 requires that servicers evaluate a borrower for the loss mitigation options available to the borrower, but it does not require servicers or investors to offer any particular loss mitigation options.[267] The Bureau understands that many investor guidelines already include some form of a minimum time current requirement for some loss mitigation options. Final § 1024.41(i) does not preclude investors from continuing to apply such requirements, although it does require that the servicer comply with § 1024.41 in evaluating the

[267] *See* § 1024.41(b)(1), (c)(1)(i), (c)(2)(i).

borrower for any loss mitigation options that may be available.[268] Further, because servicers are not required to comply with § 1024.41 when a borrower has been delinquent at all times since submitting the previous application, the Bureau believes the risk that borrowers would repeatedly apply for loss mitigation only to delay foreclosure, as was suggested by some commenters, is de minimis.

The Bureau is declining to require that servicers comply with § 1024.41(i) for subsequent applications from borrowers who have been delinquent at all times since their last application. The Bureau notes that several commenters requested that servicers be required to comply with § 1024.41 when a borrower submits a subsequent loss mitigation application after a certain time period had passed or when conducting voluntary reviews of a loss mitigation application not otherwise subject to § 1024.41. Such additional conditions would require servicers to comply with § 1024.41 even in situations where the borrower has been delinquent at all times since submitting the prior application and could reduce servicers' willingness to undertake voluntary loss mitigation efforts. The Bureau believes final § 1024.41(i) strikes an appropriate balance between providing additional consumer protections and limiting the scope of servicers' obligations to comply with § 1024.41 for subsequent loss mitigation applications. Section 1024.41(i) preserves borrower and servicer incentives to reach a timely, efficient, and effective resolution to a borrower's hardship, thereby limiting the costs for both borrowers and servicers.

The Bureau also declines to adopt a requirement that servicers comply with § 1024.41 based on a borrower's demonstrated change in financial circumstances, as some commenters

[268] For example, Fannie Mae servicing guidelines provide that a "mortgage loan that was previously modified and that becomes 60 or more days delinquent within the first 12 months of the effective date of the mortgage loan modification is ineligible for a mortgage loan modification." Fannie Mae 2012 Servicing Guide at 706-17.

recommended. The Bureau explained in the proposal and in the 2013 RESPA Servicing Final Rule that determining whether a material change in financial circumstances has occurred could pose significant implementation and enforcement challenges that that would outweigh any intended benefit to borrowers.[269] The Bureau believes that a broader change in financial circumstances standard could also pose such challenges. This standard would be dependent upon a servicer's subjective determination of what constitutes a change in financial circumstances. It could also increase litigation risk for servicers, given that borrowers may pursue a private right of action to enforce the procedures set forth in § 1024.41. However, as the Bureau has previously explained, and as noted by industry commenters, where a borrower has experienced a positive change in circumstances investors do in some instances require servicers to evaluate the borrower for loss mitigation options.[270] Nothing in this final rule is meant to discourage or detract from those requirements.

As noted above, one commenter said the proposal did not clearly explain how proposed § 1024.41(i) would apply to a borrower performing on a temporary loss mitigation program while others requested further clarity on the determination of delinquency for purposes of § 1024.41(i). As discussed in the section-by-section analysis of § 1024.31, the revised definition of delinquency in § 1024.31 applies to all of subpart C of Regulation X and thus applies for purposes of determining the applicability § 1024.41(i). A temporary loss mitigation program does not modify the existing loan contract. A borrower may continue to accumulate a delinquency according to the loan contract for the duration of the temporary loss mitigation

[269] 78 FR 10695, 10836 (Feb. 14, 2013); 79 FR 74175, 74227 (Dec. 15, 2014).
[270] *See id*.

program. Accordingly, a borrower performing under a temporary loss mitigation program may be delinquent for purposes of § 1024.41(i). This is distinct from a borrower performing under a permanent loss mitigation agreement, which does modify the existing loan contract. When a borrower is making payments required by the terms of a permanent loss mitigation agreement and therefore performing under the modified contract, the borrower would not meet the definition of delinquency in § 1024.31 and thus would not be delinquent for purposes of § 1024.41(i). The Bureau notes that the timing of a borrower's conversion to a permanent modification from a trial modification is often a question of State contract law and investor requirements, apart from the requirements of Regulations X and Z. State contract law and investor requirements may therefore be dispositive as to whether a borrower is performing under a permanent or temporary loss mitigation agreement for purposes of § 1024.41(i). The Bureau further notes that nothing in § 1024.41(i) prevents a servicer from considering a borrower for loss mitigation after a default on a temporary loan modification. The Bureau understands that many servicers currently do so, and some investors may require such reconsideration.

The Bureau proposed to revise the current § 1024.41(i) commentary, which addresses servicers' obligations following the transfer of servicing rights, in light of proposed § 1024.41(k) addressing the same issue. As discussed in the section-by-section analysis of § 1024.41(k), the Bureau proposed to move the balance of comment 41(i)-1, as revised, as well as comment 41(i)-2, as revised, into proposed § 1024.41(k) and proposed new commentary thereto. The Bureau proposed to preserve the portion of comment 41(i)-1 that obligates a transferee servicer to comply with § 1024.41 regardless of whether a transferor servicer previously evaluated a borrower's complete loss mitigation application.

The Bureau is renumbering comment 41(i)-1 as 41(i)-2 and making certain changes, as

discussed in more detail below, and is adopting comment 41(i)-1 with revisions. Final comment 41(i)-1 explains that, 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. It further explains that, for example, 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. The Bureau is finalizing this comment to clarify that, where § 1024.41(i) applies, a servicer must comply with the requirements of § 1024.41 anew for a subsequent application submitted by a borrower irrespective of the servicer's compliance with § 1024.41 for the borrower's prior complete application. Under § 1024.41(i), a servicer's previous compliance with § 1024.41 regarding a prior complete application submitted by the borrower does not relieve the servicer of any obligations or otherwise affect its requirement to comply with § 1024.41 regarding a subsequent application submitted by the borrower.

As finalized, comment 41(i)-2 explains that § 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. It clarifies that a transferee servicer and a transferor servicer 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. As finalized, comment 41(i)-2 clarifies that a borrower has the right to an evaluation under § 1024.41 with regard to a complete loss mitigation application received by the transferee servicer after a servicing transfer, even if the borrower would not have had this right in the absence of the transfer.

41(k) Servicing Transfers

The Bureau proposed to add new § 1024.41(k) to clarify a transferee servicer's obligations and a borrower's protections under § 1024.41 where a loss mitigation application is pending at the time of a servicing transfer. Proposed § 1024.41(k) would have provided that, subject to certain exceptions, a transferee servicer must comply with § 1024.41's requirements within the same timeframes that were applicable to the transferor servicer, based on the date the transferor servicer received the borrower's application or the date the borrower made the appeal. Specifically, the exceptions would have allowed transferee servicers additional time to comply with, for example, the otherwise applicable requirements: (1) To review promptly a loss mitigation application and provide an acknowledgment notice within five days of the transferor servicer's receipt of the loss mitigation application; (2) to evaluate the borrower for loss mitigation options and provide a notice of its determination within 30 days of the transferor servicer's receipt of a complete loss mitigation application; and (3) to evaluate the borrower's

appeal and provide a notice of its determination within 30 days of the borrower making an appeal to the transferor servicer. As discussed in more detail in the section-by-section analyses of § 1024.41(k)(1) through (5), the Bureau is finalizing the proposed provisions addressing transfers with several revisions. As revised, the timeframes for transferee servicer compliance under the final rule generally are based on the transfer date, rather than on the date the transferor servicer received a loss mitigation application or the borrower made an appeal to the transferor servicer.

Currently, § 1024.41 addresses transfers through the commentary. Comment 41(i)-1 provides that, among other things, documents and information transferred to a transferee servicer may constitute a loss mitigation application to the transferee servicer and may cause the transferee servicer to be required to comply with § 1024.41 with respect to a borrower's mortgage loan account. Comment 41(i)-2 states that a transferee servicer must obtain documents and information a borrower submitted in connection with a loss mitigation application and that a transferee servicer should continue the evaluation of a complete loss mitigation application to the extent practicable. Finally, comment 41(i)-2 also states that, for purposes of specific subsections in § 1024.41, if a loss mitigation application is complete as to a transferee servicer, the transferee servicer is considered to have received the documents and information constituting the complete application as of the date the transferor servicer received the documents and information. Comment 41(i)-2 is designed to ensure that a servicing transfer does not deprive a borrower of protections to which a borrower was entitled from the transferor servicer.[271]

Existing § 1024.41 and comments 41(i)-1 and -2 generally require a transferee servicer to stand in the shoes of the transferor servicer with respect to a loss mitigation application pending

[271] 78 FR 10695, 10837 (Feb. 14, 2013). *See also* 79 FR 63295, 63298 (Oct. 23, 2014).

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

In advance of the proposal, the Bureau had received questions about a transferee servicer's responsibilities in the event that continuing the evaluation of a complete loss mitigation application is not practicable. The Bureau had also received questions about the timeframes in which a transferee servicer must act and whether a transferee servicer must provide notices to a borrower if the transferor servicer already provided the same notices. The Bureau believed that servicers and borrowers would benefit from greater clarity regarding a transferee servicer's obligations and a borrower's protections under § 1024.41, including with respect to certain situations not currently addressed in § 1024.41 and comments 41(i)-1 and -2, particularly how transferee servicers should handle a pending appeal of a denial of a loan modification option, a pending offer of a loss mitigation option, and pending applications that are facially complete or become complete as of the transfer date.

Additionally, through outreach and industry monitoring efforts, the Bureau had learned from servicers that complying with certain of § 1024.41's requirements could be especially difficult in the transfer context. Servicers reported that the necessary coordination between the transferee and transferor servicer to ensure timely compliance was particularly challenging for the comparatively short timeframes required by, for example, the acknowledgment notice under

§ 1024.41(b)(2)(i)(B). The Bureau has always believed that there is a risk of borrower harm in the context of servicing transfers. However, the Bureau also recognizes that there are many reasons for transfers, that excluding loans in active loss mitigation from transfers is logistically challenging and could impede transfers, and that transfers may sometimes result in improved borrower outcomes. The Bureau proposed limited exceptions to the general timeframe requirements of § 1024.41 for transferee servicers to balance the competing considerations of the facilitation of transfers and the prevention of borrower harm from a transfer.

The Bureau proposed § 1024.41(k) to clarify the requirements applicable to loss mitigation applications pending at the time of a servicing transfer. Proposed § 1024.41(k) would have provided that, subject to certain exceptions, a transferee servicer must comply with § 1024.41's requirements within the same timeframes that were applicable to the transferor servicer. The proposed exceptions would have included up to a five-day extension of time for a transferee servicer to provide the written notice required by § 1024.41(b)(2)(i)(B) and a provision ensuring that a transferee servicer that acquires servicing through an involuntary transfer has 30 days from the date the transferor received the complete application or 15 days after the transfer date, whichever is later, to evaluate a borrower's pending complete loss mitigation application. The proposal also would have provided that, if a borrower's appeal under § 1024.41(h) is pending as of the transfer date, a transferee servicer must evaluate the appeal pursuant to § 1024.41(h) if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal; a transferee servicer that is unable to evaluate an appeal would be required to treat the appeal as a complete loss mitigation application and evaluate the borrower for all loss mitigation options available to the borrower from the transferee servicer.

Proposed comment 41(k)-1 would have provided that a loss mitigation application is considered pending if it was subject to § 1024.41 and had not been fully resolved before the transfer date. The comment also would have clarified that a pending application is considered a pending complete application if, as of the transfer date, the application was complete under the transferor servicer's criteria. Proposed comment 41(k)-1 sought to avoid ambiguity about whether a loss mitigation application that was fully resolved by a transferor servicer required new compliance with § 1024.41 by the transferee servicer.

Section 1024.38(b)(4) sets forth the Bureau's expectations of a transferor servicer: The Bureau expects transferor servicers to have policies and procedures designed to ensure the timely transfer of relevant information and to facilitate the transferee servicer's compliance with § 1024.41, among other matters. Section 1024.38(b)(4) requires a transferor servicer to have policies and procedures reasonably designed to ensure that it can timely transfer all information and documents in its possession or control related to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred. Section 1024.38(b)(4) further specifies that a transferor servicer's policies and procedures must be reasonably designed to ensure that the documents and information are transferred in a form and manner that "enables a transferee servicer to comply with . . . applicable law." The Bureau explained that the transferor servicer shares responsibility for enabling a transferee servicer to comply with § 1024.41(k)'s requirements and ensuring that borrowers will not be adversely affected by a servicing transfer. The Bureau did not propose to impose any specific requirements in § 1024.41(k) with respect to transferor servicers and instead continued to rely on § 1024.38(b)(4) to ensure that transferor servicers assist transferee servicers in timely compliance with § 1024.41. The Bureau expects that policies and procedures that are

designed to ensure the timely and accurate transfer of documents and information in accord with § 1024.38(b)(4) will result in such timely and accurate transfer of documents and information in the vast majority of cases.

The Bureau did not receive comments in response to proposed comment 41(k)-1 and is finalizing it as proposed. Comment 41(k)-1 provides that, 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. It explains that, 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. It further explains that 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

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

notwithstanding the transfer. The Bureau is adopting § 1024.41(k)(1)(i) substantially as proposed.

The purpose of proposed § 1024.41(k)(1)(i) was to ensure that a transfer does not adversely affect a borrower who is pursuing loss mitigation options. A borrower generally has no control over whether and when a mortgage loan is transferred to another servicer. As the Bureau has previously observed, there is heightened risk inherent in transferring mortgage loans that are in the process of loss mitigation.[272] In the proposal, the Bureau expressed its belief that holding a transferee servicer to the same standards and timelines as a transferor servicer helps mitigate the risk of consumer harm.

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

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

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

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

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

Finally, proposed comment 41(k)(1)(i)-3 would have clarified that a transferee servicer is not required to provide any notice required by § 1024.41 with respect to a particular loss

mitigation application if the transferor servicer provided the notice to a borrower before the transfer. This comment was intended to address questions about whether a transferee servicer must resend a notice already provided by the transferor servicer as to a particular application.

Proposed § 1024.41(k)(1)(ii) provided that, for purposes of § 1024.41(k), the transfer date is the date on which the transfer of servicing responsibilities from the transferor servicer to the transferee servicer occurs. Proposed comment 41(k)(1)(ii)-1 would have provided that the transfer date corresponds to the date the transferee servicer will begin accepting payments relating to the mortgage loan, which already must be disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).[273] Proposed comment 41(k)(1)(ii)-1 further clarified that the transfer date is not necessarily the sale date for the transaction. The Bureau explained that the proposed definition was consistent with the definition Fannie Mae employs in its servicing guide[274] and reflected the industry's common understanding of the term.

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

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[273] Section 1024.33(b)(4)(iv) requires the notice of transfer to include "The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days."

[274] *See* Fannie Mae, Servicing Guide Announcement SVC-2014-06, at 1 (May 9, 2014), *available at* https://www.fanniemae.com/content/announcement/svc1406.pdf.

The Bureau received several comments on the general requirement that the transferee servicer must comply with § 1024.41 within the timeframes that were applicable to the transferor servicer, based on the date the transferor servicer received the loss mitigation application. One industry commenter recommended that transferee servicers be permitted to restart the § 1024.41 timeframes for compliance following transfer, so long as the extension of time did not adversely affect the rights of borrowers. Another industry commenter expressed agreement that transfers should not affect a borrower's loss mitigation application or efforts to avoid foreclosure. However, it stated that it would be difficult for transferee servicers to comply with proposed § 1024.41(k)(1)(i) when a loan is transferred with a pending loss mitigation application. This commenter suggested that transferee servicers should not be required to comply with the § 1024.41 timeframes that were applicable to the transferor servicer because the transferee servicer's access to the loan level information necessary to evaluate pending loss mitigation applications is delayed while data is uploaded and loan files are imaged. One industry commenter expressed concern that requiring transferee servicers to adhere to the same § 1024.41 timeframes as transferor servicers would require transferee servicers to obtain detailed information on the loans being transferred prior to the transfer date, which may raise privacy concerns.

Most consumer advocacy group commenters expressed support for the proposal to require transferee servicers to adhere generally to the same timeframes that were applicable to transferor servicers. Several of these commenters explained that, currently, transferee servicers often require applicants to re-submit previously submitted documents, in effect starting anew with a loss mitigation application upon transfer. Numerous consumer advocacy groups also recommended that the Bureau require transferor servicers to provide transferee servicers with all

documents and information that had previously been provided by a borrower to support a loss mitigation application, as well as detailed lists of loans with pending loss mitigation applications. These commenters explained that the absence of a private right of action in current § 1024.38(b)(4) renders it ineffective for consumers in addressing the problems associated with transfers where a borrower is pursuing loss mitigation. Several of these commenters also suggested that transferee servicers should be required to send borrowers written notice on the status of their loss mitigation application, regardless of whether the transferor had provided other notices pursuant to § 1024.41.

The Bureau is finalizing § 1024.41(k)(1)(i) and comments 41(k)(1)(i)-1.i, -1.ii, -2, and -3 with revisions. The Bureau is adding new comment 41(k)(1)(i)-1.iii. The Bureau is adopting § 1024.41(k)(1)(ii) and comment 41(k)(1)(ii)-1 with revisions.

Final § 1024.41(k)(1)(i) explains that, except as provided in § 1024.41(k)(2) through (4), 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 § 1024.41 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. Section 1024.41(k)(1)(i) further provides that all rights and protections under § 1024.41(c) through (h) to which a borrower was entitled before a transfer continue to apply notwithstanding the transfer. The Bureau's proposal addressed § 1024.41(e) through (h) but it did not specifically address § 1024.41(c) and (d) because a servicer must comply with § 1024.41(c), and as applicable, § 1024.41(d), to satisfy its requirements under § 1024.41(g). For additional clarity, the Bureau is specifying in the final rule that the rights and protections applicable to borrowers under § 1024.41(k)(1)(i) include those in § 1024.41(c) and (d).

Section 1024.41(k)(1)(i) is consistent with the Bureau's current interpretation of comments 41(i)-1 and -2 as generally requiring the transferee servicer to "stand in the shoes" of the transferor servicer. Accordingly, § 1024.41(k)(1)(i) protects borrowers who are pursuing loss mitigation options from being adversely affected when there is a servicing transfer. Borrowers will benefit from a general rule that, subject to certain exceptions, a transferee servicer must comply with the requirements of § 1024.41 within the same timeframes that were applicable to the transferor servicer.

The Bureau declines to extend the general timeframe for transferee servicers set forth in § 1024.41(k)(1)(i) in response to commenter concerns over the ability of transferee servicers to comply with § 1024.41 within the timeframes applicable to transferor servicers. The Bureau recognizes that, under certain circumstances, it may be difficult for transferee servicers to comply with timeframes that would have been applicable to transferor servicers. Servicers should prepare for and mitigate these challenges by implementing comprehensive policies and procedures to facilitate the transfer of information. To give servicers additional time where necessary, the Bureau proposed specific exceptions in § 1024.41(k)(2) through (4) to the general loss mitigation timeframes for transferee servicers established in § 1024.41(k)(1)(i). As described in greater detail in the section-by-section analyses of § 1024.41(k)(2) through (4), the Bureau is finalizing § 1024.41(k)(2) through (4) with timeframes generally based on the transfer date, rather than on the date the transferor received a loss mitigation application or the borrower made an appeal. The Bureau notes that the timeframe extensions in § 1024.41(k)(2) through (4) provided to transferee servicers apply only with respect to loans that are being transferred during the loss mitigation application, evaluation, and appeal process. Transferee servicers remain subject to all generally applicable requirements and timeframes of § 1024.41 with respect to loss

mitigation applications received directly by the transferee servicer, outside of the transfer process. Because the exceptions to § 1024.41(k)(1)(i) provide servicers flexibility in situations where compliance with § 1024.41 in the timeframes applicable to the transferor servicer may be especially difficult, the Bureau is not revising the general framework set forth in § 1024.41(k)(1)(i), which requires a transferee servicer to comply with § 1024.41 for most purposes as if it were the same entity as the transferor servicer. The Bureau continues to believe that it is incumbent on both the transferor servicer and transferee servicer to ensure a smooth transition for borrowers and prevent borrower harm during servicing transfers.

The Bureau is finalizing several revisions to comment 41(k)(1)(i)-1.i. Final comment 41(k)(1)(i)-1.i explains that, 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).

Comment 41(k)(1)(i)-1.i further provides that 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). Comment 41(k)(1)(i)-1.i explains that, 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. Finally, it states that any such application shall be subject to the timeframes for compliance set forth in § 1024.41(k).

The Bureau is finalizing comment 41(k)(1)(i)-1.i to describe more clearly the specific obligations of transferor servicers in connection with a transfer of loan servicing. The proposal did not address specific requirements for transferor servicers under § 1024.41(k). However, the Bureau believes that reiterating the specific obligation inherent in § 1024.38(b)(4) for transferor servicers under new comment 41(k)(1)(i)-1.i will address certain consumer protection concerns raised by commenters. Several consumer advocacy group commenters observed that, notwithstanding § 1024.38(b)(4), transferee servicers often require applicants to re-submit previously submitted documents, in effect starting over with a loss mitigation application upon transfer. The Bureau believes that requiring borrowers to re-submit previously submitted documents and otherwise restart the loss mitigation application process is generally inconsistent with the intended effect of § 1024.38(b)(4). Transferor servicers share responsibility under the regulation for ensuring that borrowers are not adversely affected by a servicing transfer. Comment 41(k)(1)(i)-1.i now specifies that transferor servicers must timely transfer 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).

Final comment 41(k)(1)(i)-1.i also provides further clarity on the obligations and timeframes applicable to a transferee servicer that receives a loss mitigation application as a result of a transfer when the transferor servicer was not required to comply with § 1024.41 with respect to that application. Transferee servicers have an obligation to review the documents and information that the transferor servicer provides to the transferee servicer to assess whether those documents and information constitute a loss mitigation application. If so, the transferee servicer must comply with § 1024.41, even if the transferor servicer was not required to do so for that application.

The Bureau believes that there are limited circumstances under which a transferor servicer would not have been required to comply with § 1024.41 for a particular application, for example, an application submitted to the transferor servicer but subject to the limiting provision against duplicative applications in § 1024.41(i). The comment clarifies that a transferee servicer must comply with § 1024.41 for such an application, which includes the requirement to engage in reasonable diligence to complete the application pursuant to comment 41(k)(1)(i)-1.ii. The Bureau acknowledges that this requirement means that a transferee servicer may be required to review documents and information that the borrower submitted to the transferor servicer well before the transfer date. Nonetheless, the Bureau believes that it is beneficial to borrowers if the transferee servicer treats the documents submitted to the transferor servicer as an application subject to § 1024.41. Doing so affords borrowers the protections of § 1024.41 sooner, which preserves important borrower protections. Additionally, as the investor and the loss mitigation options offered by that investor may change concurrently with the servicing transfer, borrowers could benefit by having those different loss mitigation options made available to them at an earlier date. Moreover, a transferee servicer's review of the documents and information submitted to a transferor servicer by a borrower obviates the need for the borrower to start over in the loss mitigation application process upon transfer, as many commenters allege continues to happen. The Bureau recognizes that, in some instances, the transferee servicer may still discover, upon reviewing the information and documents constituting the application, as part of its review and notice required under § 1024.41(b)(2)(i), that the application includes stale or invalid documents pursuant to any requirements applicable to any loss mitigation option available to the borrower. The Bureau acknowledges that, in those circumstances, the servicer would appropriately request that the borrower update the documents and information.

Final comment 41(k)(1)(i)-1.i explains that, 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. The Bureau is adding a new sentence in the comment explaining that any such application is subject to the timeframes for compliance set forth in § 1024.41(k). This change clarifies that, for example, if a transferee servicer is required to comply with § 1024.41 but the transferor servicer was not, the transferee servicer must provide the acknowledgment notice required by § 1024.41(b)(2)(i)(B) within the timeframe set forth in § 1024.41(k)(2)(i), rather than within the timeframe required by § 1024.41(b)(2)(i)(B). This treatment allows a transferee servicer the necessary time to comply with § 1024.41 under the slightly-extended timeframes provided for transferee servicers in § 1024.41(k).

The Bureau declines to adopt a further revision to comment 41(k)(1)(i)-1.i, as requested by some commenters, to require specifically that transferor servicers provide transferee servicers a list of loans that will be transferred that have pending loss mitigation applications. Final comment 41(k)(1)(i)-1.i provides clear guidance that transferor servicers must timely transfer 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). The Bureau recognizes that the provision of a list of loans with pending loss mitigation applications by the transferor servicer to the transferee servicer could help the transferee servicer comply with its obligations and mitigate the risk a servicing transfer poses to borrowers with pending loss mitigation applications. Although transferor servicers may wish to provide such a list under policies and procedures adopted pursuant § 1024.38(b)(4), the Bureau is not specifying such a requirement in this rule. The Bureau wishes to allow transferor and transferee servicers the

flexibility to develop and implement the specific practices that best support compliance for their specific organizations and circumstances.[275]

The Bureau is making certain non-substantive revisions to comment 41(k)(1)(i)-1.ii to clarify transferee servicers' responsibilities when an application is facially complete. The Bureau is finalizing comment 41(k)(1)(i)-1.ii to explain that 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. Comment 41(k)(1)(i)-1.ii further provides that, in the transfer context, reasonable diligence includes ensuring that a borrower is informed of any changes to the application process, such as a change in the address to which the borrower should submit documents and information to complete the application, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application. The proposal did not expressly include an obligation to exercise reasonable diligence to complete facially complete applications. The final rule clarifies that the obligation pertains to both incomplete and facially complete applications.

The Bureau is adopting new comment 41(k)(1)(i)-1.iii. This comment explains that a borrower may provide documents and information necessary to complete an application to a transferor servicer after the transfer date. It further provides that, 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. The Bureau is finalizing similar language regarding borrower appeals and borrower acceptances or rejections of

[275] *See* 79 FR 63295, 63299 (Oct. 23, 2014).

pending loss mitigation offers in comments 41(k)(4)-1 and 41(k)(5)-1, respectively. The Bureau believes new comment 41(k)(1)(i)-1.iii clarifies the Bureau's expectation that a transfer should not adversely affect a borrower who is pursuing loss mitigation options, even if a borrower provides documents and information to the transferor servicer after the transfer date. This comment parallels other language in § 1024.41(k).

The Bureau is finalizing comment 41(k)(1)(i)-2 with certain revisions. Comment 41(k)(1)(i)-2 explains that, 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, and includes a cross-reference to comment 41(k)(1)(i)-1.iii. It explains that 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. Comment 41(k)(1)(i)-2 further explains that, if an application was complete with respect to the transferor servicer, but is not complete with respect to the transferee servicer, the transferee servicer must treat the application as facially complete under § 1024.41(c)(2)(iv) as of the date the application was complete with respect to the transferor servicer.

Final comment 41(k)(1)(i)-2 clarifies the applicability of the rights and protections in § 1024.41(c) through (h) where a borrower submits documents and information that constitute a complete application for the transferee servicer to the transferor servicer after the transfer date. The Bureau seeks to ensure that a borrower who submits a complete application to the transferor servicer after the transfer date does not lose rights or protections to which the borrower would

have been entitled had the borrower submitted the complete application to the transferee servicer. Comment 41(k)(1)(i)-2 also includes a cross-reference to new comment 41(k)(1)(i)-1.iii, which clarifies that a borrower may provide documents and information necessary to complete the application to the transferor servicer after the transfer date and the transferor and transferee servicer obligations regarding the transfer of such documents and information. The final rule clarifies that the rights in § 1024.41(c) and (d) apply in such situations to parallel the changes finalized in § 1024.41(k)(1)(i). The final rule also includes citations to § 1024.41(c)(2)(iv) where there is a discussion of a facially complete application. These changes to final comment 41(k)(1)(i)-2 clarify that the facially complete applications discussed in comment 41(k)(1)(i)-2 are those applications that meet the criteria of § 1024.41(c)(2)(iv).

Final comment 41(k)(1)(i)-3 provides that 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. The Bureau is declining to require transferee servicers to provide borrowers a duplicative notice, or to provide a new notice under § 1024.41 explaining the additional documents and information necessary to complete the application, as suggested by several consumer advocacy groups. A transferee servicer's obligations under § 1024.41 generally, and § 1024.41(k) specifically, should ensure that borrowers are kept updated as to the status of their loss mitigation application. For example, under comment 41(k)(1)(i)-1.ii, transferee servicers must exercise reasonable diligence to complete a loss mitigation application, which includes keeping borrowers informed of any changes to the application process or any documents and information needed to complete the application.

Additionally, § 1024.41(b)(2)(i)(B) already requires servicers that receive an incomplete application more than 45 days before a scheduled foreclosure sale to provide a notice of the additional documents and information needed to complete the application. Finally, as explained in the section-by-section analysis of § 1024.41(c)(3), servicers will be required to provide borrowers a written notice within five days (excluding legal holidays, Saturdays, and Sundays) of receipt of a complete loss mitigation application.

The Bureau is finalizing revisions to § 1024.41(k)(1)(ii), which defines transfer date for the purposes of § 1024.41(k), to incorporate language from proposed comment 41(k)(1)(ii)-1 directly in the regulation text. As finalized, § 1024.41(k)(1)(ii) defines transfer date as 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 Bureau did not receive any comments on its proposed definition of transfer date in § 1024.41(k)(1)(ii). The Bureau believes that linking the definition of transfer date in § 1024.41(k)(1)(ii) directly to a date the servicer has already disclosed to the borrower on the notice of the transfer of loan servicing pursuant to § 1024.33(b)(4)(iv) will improve the ability of servicers and borrowers to track this date and monitor compliance with § 1024.41 generally and specifically the timeframes established in § 1024.41(k)(2) through (4).

The Bureau is finalizing revisions to comment 41(k)(1)(ii)-1 to reflect the revised definition of transfer date set forth in § 1024.41(k)(1)(ii). Comment 41(k)(1)(ii)-1 explains 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). It further explains that 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. As the Bureau explained in the proposal, the proposed definition of transfer date is consistent with the definition Fannie Mae employs in its servicing guide and reflects the industry's common understanding of the term.

Additionally, the Bureau is further clarifying in comment 41(k)(1)(ii)-1 that 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. The Bureau believes it is appropriate to clarify the distinction between the transfer date and the effective date of the transfer of servicing, as the date the transferee servicer begins accepting payments may be earlier than the effective date of transfer. RESPA section 6(i)(1) defines "effective date of transfer" as the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan. Accordingly, if the transfer date is June 10, but the borrower's payment is first due to the transferee servicer on July 1, the effective date of transfer would be July 1. However, the Bureau understands that transferee servicers may begin accepting payments on June 10. For purposes of § 1024.41(k)(1)(ii), therefore, June 10 is the transfer date.

41(k)(2) Acknowledgment Notices

Proposed § 1024.41(k)(2) would have provided that, if a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the notice required by § 1024.41(b)(2)(i)(B) has not expired as of the transfer date, the transferee servicer must provide the notice within 10 days (excluding legal public holidays, Saturdays, or Sundays) after the date the transferor servicer received the application. As discussed below, the Bureau is adopting proposed § 1024.41(k)(2) with several substantial revisions.

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

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

Information the Bureau gathered through its outreach and industry monitoring efforts in advance of the proposal confirmed that a transferee servicer often has difficulty providing the notice required by § 1024.41(b)(2)(i)(B) within five days after the transferor servicer received a loss mitigation application. The Bureau understood that a transferee servicer typically requires several days to load a mortgage loan file and related information onto its systems and to access this information. Consequently, a transferee servicer may be unable to integrate this information and accurately review a loss mitigation application within the five-day time period specified in § 1024.41(b)(2)(i)(B), particularly for applications received several days before transfer. As a result, in this situation a transferee servicer acting diligently and in good faith may still be unable

to comply timely with the requirements of § 1024.41(b)(2)(i)(B).

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

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

The Bureau also believed that this proposed extension would facilitate transferee servicers' compliance with § 1024.41(b)(2)(i)(B) while not materially affecting most borrowers. The existence and the extent of a borrower's protections under § 1024.41(e) through (h) are determined as of the date on which a servicer receives a borrower's complete application; extending the time for a transferee servicer to comply with § 1024.41(b)(2)(i)(B) could delay, but

in most cases would not prevent, a borrower from obtaining those protections. Moreover, the proposed extension was for a relatively brief period of time, and the Bureau did not believe that a short delay in providing the § 1024.41(b)(2)(i)(B) notice would significantly lengthen the loss mitigation application, evaluation, and appeal process. Finally, the Bureau believed that allowing a transferee servicer some additional time to review a borrower's initial loss mitigation application might result in more accurate determinations and statements in the notice required under § 1024.41(b)(2)(i)(B) regarding the documents and information needed to complete an application, which would ultimately benefit borrowers.

Nonetheless, the Bureau recognized in the proposal that a delay in providing the § 1024.41(b)(2)(i)(B) notice could affect a borrower in certain circumstances, particularly when a servicer receives an incomplete loss mitigation application shortly before the dates tied to certain foreclosure protections, 90 and 38 days before a foreclosure sale. In that instance, a borrower has an interest in completing the application as soon as possible to preserve the maximum protections available under § 1024.41(e) through (h). Allowing a transferee servicer additional time to provide a borrower with a written notification of the documents and information required to complete an application could shorten the amount of time borrowers have to obtain and submit the documents and information necessary to complete an application, potentially reducing the ability of borrowers to complete the application in time to obtain certain foreclosure protections under § 1024.41 that are triggered by the receipt of a complete application by a specified date.

The Bureau requested comment on whether borrowers currently have difficulty in obtaining and submitting required documents and information to complete an application that the servicer received shortly before the 90th or 38th day before a foreclosure sale and whether the

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

The Bureau received several comments on proposed § 1024.41(k)(2). Industry commenters asserted that the proposed five-day extension would not provide enough time for servicers to provide the notice required by § 1024.41(b)(2)(i)(B) and recommended longer timeframes. One industry commenter specifically stated that the lag time between the transfer date and the date on which the transferee servicer has access to the loan level information necessary to provide the § 1024.41(b)(2)(i)(B) notice would make compliance with proposed § 1024.41(k)(2) difficult. Industry commenters recommended that transferee servicers be provided an extension of 10 or 25 days. Other industry commenters recommended that transferee servicers be permitted to comply with § 1024.41(k)(2) within 15 business days from the transfer date or 30 days from the transfer date.

Consumer advocacy group commenters expressed concern with the potential effect on borrowers resulting from the proposal's five-day extension. These commenters stated that the notice required by § 1024.41(b)(2)(i)(B) is critical for borrowers seeking to submit complete

applications and meet the deadlines for certain foreclosure protections. They cautioned that the extension of the timeframe for transferee servicers to provide this notice could result in borrowers completing applications past the 90th or 38th day before a scheduled foreclosure sale, and thereby losing certain foreclosure protections under § 1024.41(e) through (h) and the right to an evaluation under § 1024.41(c). These commenters recommended limiting any extension of the timeframe for transferee servicers in § 1024.41(k)(2) to five days, as proposed.

Some consumer advocacy groups suggested that, in light of the proposed extension for transferee servicers in § 1024.41(k)(2), the Bureau should provide borrowers additional time to complete an application when § 1024.41(k)(2) applies. These commenters recommended that, when § 1024.41(k)(2) applies, all of the time periods under § 1024.41(c) and § 1024.41(e) through (h) should be extended by 10 days. One industry commenter recommended that transferee servicers should be required to continue a pending foreclosure sale if necessary to maintain the loss mitigation deadlines and borrower protections under § 1024.41, assuming an extension to the timeframe proposed in § 1024.41(k)(2).

Finally, some consumer advocacy groups expressed concern that the proposal addressed only situations where the time period to provide the § 1024.41(b)(2)(i)(B) notice had not expired as of the transfer date. These commenters recommended that the rule also require transferee servicers to send the notice required by § 1024.41(b)(2)(i)(B) if the transferor servicer was required to send this notice prior to the transfer date but failed to do so.

For the reasons explained below, the Bureau is adopting § 1024.41(k)(2) with several substantial changes to the proposal. Final § 1024.41(k)(2)(i) explains that, if a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the notice required by § 1024.41(b)(2)(i)(B) has not expired as of the transfer date 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. As discussed in more detail below, in an effort to reduce the borrower harms created by the extension in the timeframe applicable to transferee servicers, the Bureau is adding new § 1024.41(k)(2)(ii) and new comments 41(k)(2)(ii)-1 through -3 to adjust the timeframes for certain borrower rights and foreclosure protections where § 1024.41(k)(2)(i) applies.

The Bureau understands that, when a loan is transferred, it generally takes several days to board documents onto the transferee servicer's systems. During this transition period, the transferee servicer cannot access the loan level data and documents necessary to send the acknowledgment notice or to evaluate applications and appeals. Transferee servicers are also unable to assess transferor servicers' compliance during this period of time when the documents are being boarded onto transferee servicer's systems. Transferor servicers may have difficulty sending the acknowledgment notice or completing a loss mitigation evaluation when an application is received shortly before transfer. As a result, transferee servicers may experience difficulty ensuring compliance with timeframes applicable to the transferor servicer based on the date the transferor servicer received the loss mitigation application, even with the five-day extension in proposed § 1024.41(k)(2). The Bureau believes that finalizing a timeframe for compliance in § 1024.41(k)(2)(i) that is based on the transfer date, rather than on the date the transferor servicer received the application, better accounts for the transition period inherent to transfers.

The final rule, by taking into account the transition period inherent to transfers, effectively allows transferee servicers subject to § 1024.41(k)(2)(i) approximately the same time to comply as servicers subject to the general five day timeframe in § 1024.41(b)(2)(i)(B).

Although servicers are generally only permitted five days to provide the notice required by § 1024.41(b)(2)(i)(B), transferee servicers must also account for the several-day transition period that occurs when there is a transfer of servicing rights. In starting the timeframe for compliance at the transfer date, and providing only an additional five days to comply, the Bureau means to ensure that transferee servicers are able to comply with the requirements of § 1024.41(b)(2)(i)(B) within the approximate timeframes generally applicable to servicers absent the complicating factors of a transfer.

The Bureau expects that the final rule will have a limited effect on most borrowers. The time extension permitted for transferee servicers is modest and should limit the number of borrowers who have difficulty obtaining the foreclosure protections because of a transferee servicer's delay. More importantly, because the existence and the extent of a borrower's rights and protections under § 1024.41(c) through (h) are determined as of the date on which a servicer receives a borrower's complete application, extending the time for a transferee servicer to comply with § 1024.41(b)(2)(i)(B) could delay, but in most cases should not prevent, a borrower from obtaining those rights and protections. Moreover, the Bureau believes that tying compliance under § 1024.41(k)(2)(i) to the transfer date will make it easier for borrowers and servicers alike to track the transferee servicer's compliance, as the transfer date is disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).

As discussed in the section-by-section analysis of § 1024.41(k)(1), comment 41(k)(1)(i)-3 clarifies that 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. Thus, the transferee servicer is not required to provide the notice required under § 1024.41(b)(2)(i)(B) if the transferor servicer has provided it. The Bureau does not believe that

a duplicative notice requirement in this context would provide a significant additional benefit to borrowers because, as comment 41(k)(1)(i)-1.ii clarifies, a transferee servicer must exercise reasonable diligence to complete a loss mitigation application following the transfer, which includes ensuring that a borrower is informed of any changes to the application process and which documents and information are necessary to complete the application. Adopting this requirement would also impose an additional burden on transferee servicers. Thus, final § 1024.41(k)(2)(i) explains that the requirements of § 1024.41(k)(2)(i) apply if a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the notice required by § 1024.41(b)(2)(i)(B) has not expired as of the transfer date and the transferor servicer has not provided such notice.

Similarly, the Bureau is declining to adopt a requirement that the transferee servicer provide the notice required by § 1024.41(b)(2)(i)(B), if the time period for providing that notice had expired as of the transfer date, even if the transferor servicer has not provided it. Pursuant to final comment 41(k)(1)(i)-1.ii, transferee servicers must exercise reasonable diligence to complete any incomplete applications, including those for which a transferor servicer has failed to provide the notice required by § 1024.41(b)(2)(i)(B). Similarly, as provided in § 1024.41(k)(3), a transferee servicer would be expected to evaluate any complete applications received by the transferor servicer, even if the transferor servicer had not provided the notice required by § 1024.41(b)(2)(i)(B).

The Bureau is adding new § 1024.41(k)(2)(ii) to mitigate potential borrower harm caused by the extended timeframe for transferee servicers finalized in § 1024.41(k)(2)(i). Although the Bureau believes that § 1024.41(k)(2)(i) should have a limited effect on most borrowers, it recognizes that any delay in the receipt of the notice required by § 1024.41(b)(2)(i)(B) may

affect the ability of some borrowers to complete an application before certain deadlines under § 1024.41. For example, where a transferor servicer receives a borrower's application shortly before the borrower's loan becomes more than 120 days delinquent or shortly before day 90 or day 38 before a foreclosure sale, the delayed provision of the notice required by § 1024.41(b)(2)(i)(B) may make it more difficult for a borrower to obtain and submit required documents and information to complete an application prior to those milestones, which could dictate whether, among other things, a servicer is required to evaluate a borrower's application within 30 days, a borrower obtains appeal rights, or certain foreclosure protections apply. Additionally, the Bureau recognizes that borrowers generally benefit by obtaining the foreclosure protections of § 1024.41 at an earlier date. The Bureau is adding new § 1024.41(k)(2)(ii) because it believes the extended timeframe for transferee servicers under § 1024.41(k)(2)(i) should not limit a borrower's opportunity to obtain certain critical rights and foreclosure protections.

The Bureau is finalizing § 1024.41(k)(2)(ii)(A) to provide that a transferee servicer that must provide the notice required by § 1024.41(b)(2)(i)(B) under § 1024.41(k)(2) 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 § 1024.41(b)(2)(ii), notwithstanding § 1024.41(f)(1). Section 1024.41(k)(2)(ii)(A) further explains that, for purposes of § 1024.41(f)(2), a borrower who submits a complete loss mitigation application on or before the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii) shall be treated as having done so during the pre-foreclosure review period set forth in § 1024.41(f)(1). Section 1024.41(k)(2)(ii)(A) addresses the potential situation where a borrower might have less time to complete an application during the 120-day pre-foreclosure

review period because of the extended timeline for transferee servicers to provide the notice required by § 1024.41(b)(2)(i)(B).

Generally, under § 1024.41(f)(1)(i) and (f)(2), a servicer is permitted to make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process if a borrower's mortgage loan obligation is more than 120 days delinquent and the borrower has not submitted a complete application during this pre-foreclosure review period. Thus, absent § 1024.41(k)(2)(ii)(A), and assuming the borrower did not submit a complete application during the 120-day pre-foreclosure review period, the servicer could otherwise feasibly file for foreclosure on the day when the borrower becomes 121 days delinquent. Under § 1024.41(k)(2)(ii)(A), however, the transferee servicer may 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 § 1024.41(b)(2)(ii). If the borrower submits a complete loss mitigation application on or before the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii), then for purposes of § 1024.41(f)(2), the borrower shall be treated as having done so during the pre-foreclosure review period set forth in § 1024.41(f)(1). Accordingly, § 1024.41(k)(2)(ii)(A) prevents a borrower from losing part of the 120-day pre-foreclosure review period to complete an application because of the extended timeline for transferee servicers to provide the § 1024.41(b)(2)(i)(B) notice that is set forth in § 1024.41(k)(2)(i). The Bureau is adopting new comment 41(k)(2)(ii)-1.i to provide an illustrative example.

As discussed in more detail in the section-by-section analysis of § 1024.41(b)(2)(ii), a reasonable date is at least seven days from the date the servicer provides the § 1024.41(b)(2)(i)(B) notice and generally 30 days after the date the servicer provides the

§ 1024.41(b)(2)(i)(B) notice. Additionally, the reasonable date must be no later than the earliest remaining milestone,[276] subject to the minimum seven day requirement. So, for example, if the date that is the 120th day of the borrower's delinquency is the earliest remaining milestone, and that date is 15 days from the date the notice required by § 1024.41(b)(2)(i)(B) is provided, the reasonable date must be at least seven days from the date the § 1024.41(b)(2)(i)(B) notice is provided and not later than the date that is the 120th day of the borrower's delinquency. Accordingly, new § 1024.41(k)(2)(ii) requires transferee servicers to provide borrowers additional time to complete an application and obtain certain rights and protections only in situations where a milestone either occurs before the notice under § 1024.41(b)(2)(i)(B) is provided or less than seven days from when the notice is provided. The Bureau is adding new comment 41(k)(2)(ii)-3 to clarify the determination of the correct reasonable date where no milestones remain.

The Bureau is adding new § 1024.41(k)(2)(ii)(B) to address situations where borrowers who are provided the notice required under § 1024.41(b)(2)(i)(B) by transferee servicers pursuant to § 1024.41(k)(2)(i) submit a complete loss mitigation application 37 days or less before a scheduled foreclosure sale. Specifically, § 1024.41(k)(2)(ii)(B) provides that a transferee servicer that must provide the notice required by § 1024.41(b)(2)(i)(B) under § 1024.41(k)(2) shall comply with § 1024.41(c), (d), and (g) if the borrower submits a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the

[276] As revised, comment 41(b)(2)(ii)-1 sets forth the following four milestones for servicers setting the reasonable date: (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; or (iv) the date that is 38 days before a foreclosure sale.

foreclosure sale but on or before the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii). Section 1024.41(c) establishes requirements for a servicer's evaluation of a complete loss mitigation application received more than 37 days before a foreclosure sale, and § 1024.41(d) includes certain requirements, as applicable, for the notice a servicer must provide pursuant to § 1024.41(c). Section 1024.41(g) limits a servicer's ability to proceed with a foreclosure sale until certain conditions are met where a borrower submits a complete loss mitigation application more than 37 days before a foreclosure sale.

Thus, § 1024.41(k)(2)(ii)(B) addresses situations where the extended timeline provided to transferee servicers to provide the § 1024.41(b)(2)(i)(B) notice under § 1024.41(k)(2)(i) could limit a borrower's opportunity to complete an application and obtain the rights and protections afforded under § 1024.41(c), (d), and (g). It requires transferee servicers to comply with these provisions if the borrower submits a complete application on or before the reasonable date, notwithstanding that this date is 37 days or less before a scheduled foreclosure sale. New comment 41(k)(2)(ii)-1.ii provides an illustrative example of this provision. As explained in new comment 41(k)(2)(ii)-2, discussed in more detail below, where a borrower submits a complete application more than 37 days before a scheduled foreclosure sale, a transferee servicer must comply with the otherwise applicable requirements of § 1024.41. The Bureau believes that § 1024.41(k)(2)(ii)(B) reduces potential harm from the extended timeline for transferee servicers in § 1024.41(k)(2)(i) and in particular affords a borrower a reasonable opportunity to complete an application and obtain the rights and protections of § 1024.41(c), (d), and (g).

The Bureau recognizes that § 1024.41(k)(2)(ii)(B) requires transferee servicers to provide certain borrowers rights and protections in situations where compliance with § 1024.41(c), (d), and (g) would not otherwise be required. Depending on the circumstances,

§ 1024.41(k)(2)(ii)(B) may provide certain borrowers more time to complete an application and obtain the rights and protections under § 1024.41(c), (d), and (g) than if the borrower's loan had not been transferred. Under § 1024.41(k)(2)(ii)(B) transferee servicers will, for example, be required to comply with § 1024.41(g) by delaying a foreclosure sale within a shorter period of time prior to a scheduled foreclosure sale than they would generally be required to do. However, the Bureau expects that such instances will be rare, as § 1024.41(k)(2)(ii)(B) applies only where a transferee servicer provides the notice required by § 1024.41(b)(2)(i)(B) to a borrower pursuant to § 1024.41(k)(2)(i) and the borrower submits a complete application 37 days or less before a foreclosure sale but on or before the reasonable date disclosed under § 1024.41(b)(2)(ii).

The Bureau believes that this approach appropriately balances mitigating consumer harm and imposing burden on transferee servicers. Requiring compliance with existing § 1024.41(c), (d), and (g), rather than establishing a separate standard for evaluating applications and providing dual tracking protections, as the Bureau considered, eases any compliance burden on transferee servicers associated with § 1024.41(k)(2)(ii)(B). Transferee servicers can further minimize any delay and associated burden by working proactively with transferor servicers to expedite the provision of the notice required under § 1024.41(b)(2)(i)(B). Because the rule currently requires that the notice under § 1024.41(b)(2)(i)(B) be provided within five days of the receipt of the loss mitigation application, without regard to transfer, the Bureau believes that some servicers may have already developed standardized data protocols to identify affected loan files and expedite delivery of the required notice. Accordingly, the Bureau believes § 1024.41(k)(2)(ii) strikes an appropriate balance to limit borrower harm associated with the extended timeline in § 1024.41(k)(2)(i) while limiting the compliance burden on transferee servicers.

As part of striking this balance, the Bureau has decided not to preserve a borrower's opportunity to obtain appeal rights under § 1024.41(h) if the 90-day milestone passes before the transferor or transferee servicer receives the borrower's complete loss mitigation application. Appeal rights afford borrowers an important safeguard against servicer error in the evaluation of complete loss mitigation applications. However, for the likely few number of borrowers who may be affected by the extended timeframe in § 1024.41(k)(2)(i), the Bureau has prioritized preventing transferee servicers from taking critical foreclosure actions to the detriment of those borrowers immediately following transfer, while limiting the effect of § 1024.41(k)(2)(ii) on the otherwise applicable timeframes set forth in the loss mitigation rules and potentially complicating compliance. The Bureau notes that, even absent appeal rights under § 1024.41(h), borrowers may still submit a notice of error under § 1024.35 relating to the loss mitigation or foreclosure process and to the servicing of the loan, and servicers must comply with the applicable provisions of § 1024.35 regarding such notices of error.

The Bureau is adding new comment 41(k)(2)(ii)-2 to address the applicability of other loss mitigation provisions in light of new § 1024.41(k)(2)(ii). Comment 41(k)(2)(ii)-2 explains that § 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). It further explains that § 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. Comment 41(k)(2)(ii)-2

explains that § 1024.41(k)(2)(ii) provides additional protections for borrowers but does not remove any protections, and clarifies that 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 90 days or more before a foreclosure sale. It further explains that 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). Section 1024.41(k)(2)(ii) provides certain borrowers an opportunity to obtain rights and protections under § 1024.41(c), (d), and (g) if they submit a complete loss mitigation application 37 or fewer days before a foreclosure sale but on or before the reasonable date disclosed on the notice required by § 1024.41(b)(2)(i)(B). Comment 41(k)(2)(ii)-2 clarifies that § 1024.41(k)(2)(ii)(B) does not detract from or otherwise affect any other requirements under § 1024.41.

The Bureau is also finalizing new comment 41(k)(2)(ii)-3 to address the determination of the reasonable date when no milestones remain. As explained in more detail in the section-by-section analysis of § 1024.41(b)(2)(ii), § 1024.41(b)(2)(ii) commentary explains that the reasonable date generally must be no later than the earliest milestone, that 30 days is generally reasonable, and that the reasonable date must never be less than seven days after the § 1024.41(b)(2)(i)(B) notice is provided to the borrower. As noted above, this generally means that when the nearest remaining milestone is between seven days and 30 days away from the date the notice required by § 1024.41(b)(2)(i)(B) is provided, the reasonable date must be no later than the date of that milestone. However, where a transferee servicer provides a borrower the notice required by § 1024.41(b)(2)(i)(B) 37 or fewer days before a foreclosure sale, no milestones remain. Comment 41(k)(2)(ii)-3 explains that, 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. Comment 41(k)(2)(ii)-3 explains that the other requirements of § 1024.41(b)(2)(ii) continue to apply and clarifies that, 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). Section 1024.41(k)(2)(ii) establishes additional borrower rights and protections determined in relation to the reasonable date disclosed pursuant to § 1024.41(b)(2)(ii). Thus, comment 41(k)(2)(ii)-3 clarifies that § 1024.41(k)(2)(ii) does not affect the transferee servicer's obligation to determine the reasonable date in accordance with the § 1024.41(b)(2)(ii) commentary.

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

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

revisions. Final § 1024.41(k)(3) establishes a timeframe for transferee servicer compliance that is 30 days from the transfer date and does not include the proposed exceptions.

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

Proposed comment 41(k)(3)(i)-2 addressed the reverse situation in which a borrower's loss mitigation application was incomplete based upon the transferor servicer's criteria prior to transfer but the transferee servicer determines that the application is complete based upon its own criteria. In that case, the proposed comment would have clarified that the application is

considered a pending loss mitigation application complete as of the transfer date for purposes of § 1024.41(k)(3), but complete as of the date the transferor servicer received the documents and information constituting the complete application for purposes of § 1024.41(e) through (h). This comment was intended to avoid uncertainty about the timeframe in which the transferee servicer must evaluate a complete application and the date on which the borrower obtained protections under § 1024.41.

Proposed § 1024.41(k)(3)(ii)(A) set forth the first proposed exception to the requirement to comply with § 1024.41(c)(1) and (4) within 30 days of the date the transferor servicer received the complete application. This proposed exception addressed involuntary transfers of servicing. The Bureau understood that a servicer that acquires servicing as a result of an involuntary transfer is less likely to be able to plan properly for a transfer. Additionally, involuntary transferee servicers may be more likely to receive loans from a failing or bankrupt servicer, which in turn may be more likely to have failed to maintain adequate records regarding borrowers' mortgage loans. Therefore, proposed § 1024.41(k)(3)(ii)(A) would have allowed a servicer that acquires servicing as a result of an involuntary transfer to comply with the applicable requirements of § 1024.41(c)(1) and (4) within 30 days of the date the transferor servicer received a complete loss mitigation application, or within 15 days of the transfer date, whichever is later. Proposed § 1024.41(k)(3)(ii)(B) would have provided that a transfer is involuntary when an unaffiliated investor or a court or regulator with jurisdiction requires, with less than 30 days advance notice, the transferor servicer to transfer servicing to another servicer and the transferor servicer is in breach of, or default under, its servicing agreement for loss mitigation related-servicing performance deficiencies or is in receivership or bankruptcy.

The second proposed exception, in proposed § 1024.41(k)(3)(iii), concerned instances

where a transferee servicer's completion of the evaluation within the timeframes set forth in proposed § 1024.41(k)(3)(i) or (ii)(A), as applicable, was impracticable under the circumstances. The Bureau understood that, due to the unique circumstances and complications that may arise in connection with a transfer, there may be times when, despite the transferee servicer's good faith efforts, it may be impracticable to comply with the timing requirements of § 1024.41(k)(3)(i) or (ii)(A). In that situation, proposed § 1024.41(k)(3)(iii) would have required a transferee servicer to comply with the applicable requirements of § 1024.41(c)(1) and (4) within a reasonably prompt time after expiration of the applicable time period in § 1024.41(k)(3)(i) or (ii)(A). The Bureau expected that, in most circumstances, it would be practicable for a transferee servicer to evaluate a complete application within the prescribed timeframes and that an extension would not be necessary or appropriate. The Bureau also proposed comment 41(k)(3)(iii)-1, which would have clarified that, for purposes of § 1024.41(k)(3)(iii), a servicer that complies with the applicable requirements of § 1024.41(c)(1) and (4) within five days after the expiration of the applicable timeframe in proposed § 1024.41(k)(3)(i) or (ii)(A) would generally be considered to have acted within a "reasonably prompt time."

The Bureau sought comment on the treatment of complete applications pending at transfer. In particular, the Bureau sought comment on whether it is ever necessary or appropriate to give transferee servicers an extension of time to evaluate complete applications. If an extension were necessary or appropriate, the Bureau sought comment on which factors and circumstances, including but not limited to involuntary transfers, might require an extension, the appropriate length of any extension, and the burden transferee servicers should have to meet to demonstrate a need for the extension. The Bureau also sought comment on what obstacles transferee servicers currently face in obtaining and evaluating pending loss mitigation

applications and the problems faced by borrowers who have applications pending at the time of a servicing transfer, as well as whether an extension of time to comply with § 1024.41 following a transfer would ameliorate or exacerbate those problems.

The Bureau received a number of comments in response to proposed § 1024.41(k)(3). Many industry commenters recommended that proposed § 1024.41(k)(3)(i) be revised to provide transferee servicers an extension of time to evaluate a pending complete application, with several recommending that transferee servicers be permitted 30 days from the transfer date to comply with § 1024.41(c)(1) and (4). Several other industry commenters requested an extension of the timeframe in § 1024.41(k)(3)(i) but did not recommend a specific timeframe. A few industry commenters stated that the transition period inherent to transfers would make compliance with proposed § 1024.41(k)(3)(i) difficult. One industry commenter stated that the timeframe in the proposal was not feasible, even with the potential for a five-day extension under proposed § 1024.41(k)(3)(iii). This commenter further stated that proposed § 1024.41(k)(3) would either effectively stop the transfer of servicing for most loans with pending loss mitigation applications or greatly increase the number of errors made by transferee servicers in evaluating these applications. Another industry commenter explained that proposed § 1024.41(k)(3) would place a significant administrative and cost burden on transferee servicers.

Several industry commenters that recommended an extension of the timeframe in proposed § 1024.41(k)(3)(i) discussed the potential impact such an extension could have on borrowers. One industry commenter asserted that providing transferee servicers adequate time to evaluate an application would benefit borrowers, and noted that borrower foreclosure protections would continue to apply during the evaluation period. One commenter expressed the view that an extension to § 1024.41(k)(3)(i) would not adversely affect borrower foreclosure protections

because generally a pending foreclosure proceeding is paused until the transferee servicer has evaluated the complete application. Another industry commenter suggested that the Bureau should extend the timeframe in proposed § 1024.41(k)(3)(i) and could require that servicers postpone pending foreclosure sales to maintain the current § 1024.41 loss mitigation timelines.

Several industry commenters expressed concern over transferee servicers' ability to comply with the 30-day timeframe applicable to the transferor servicer in proposed § 1024.41(k)(3)(i) where most of the 30-day period had passed prior to transfer. These commenters recommended that the Bureau revise the proposal to provide a transferee servicer an extension of time to comply with § 1024.41(c)(1) and (4) where most of the 30-day timeframe had passed prior to transfer.

Industry commenters generally supported the exception for involuntary transfers in proposed § 1024.41(k)(3)(ii). However, several of these commenters stated that an extension should be provided for all transferee servicers, not just those evaluating applications following an involuntary transfer. One industry commenter stated that requiring transferee servicers to comply within the same timeframes applicable to transferor servicers would be difficult for both voluntary and involuntary transfers.

The consumer advocacy groups that commented on the exception in proposed § 1024.41(k)(3)(iii), where compliance was not practicable, expressed concern that this proposed exception was not sufficiently definite and could create a compliance gap. These commenters recommended that the Bureau incorporate language from the proposal's preamble into comment 41(k)(3)(iii)-1, indicating that this exception would only be applicable in unusual circumstances and that generally it would be practicable for transferee servicers to evaluate an application within the otherwise applicable timeframes. These consumer advocacy groups also stated that

§ 1024.41(k)(3)(iii) should incorporate language from the proposed commentary into the regulation text and require compliance within five days of the expiration of the otherwise applicable timeframes. Finally, these commenters recommended that comment 41(k)(3)(iii)-1 provide examples of when it would be impracticable for transferee servicers to comply within the otherwise applicable timeframes.

Several consumer advocacy groups recommended revisions to the proposed § 1024.41(k)(3) commentary. They stated that comment 41(k)(3)(i)-1 should be revised to prohibit transferees from requesting that borrowers resubmit information in the transferee servicer's required format or make clerical corrections to an application. One consumer advocacy group recommended that proposed comment 41(k)(3)(i)-1 should require transferee servicers to treat applications considered complete by the transferor servicer as complete, rather than facially complete. This commenter suggested that, if the transferee servicer requires more information to evaluate the application, the 30-day evaluation period under § 1024.41(c)(1) should be extended and there should be a required pause in foreclosure activities under § 1024.41(f) and (g). This commenter also recommended that a transferee servicer treat the borrower as if a complete loss mitigation application was pending at transfer and should not determine it has received the full loan file following transfer until the transferor servicer has certified that it has provided the transferee servicer the entire loan file, including any loss mitigation applications or loss mitigation options offered, or 60 days have passed following the transfer date and neither the transferor servicer or borrower has indicated the existence of a pending loss mitigation application or plan. It stated that this requirement would ensure that foreclosure sales are not conducted while the transferee servicer is unaware of any pending loss mitigation applications or agreements between the borrower and the transferor servicer.

Consumer advocacy groups also recommended that comment 41(k)(3)(i)-2 be revised to provide borrowers the right to an evaluation under § 1024.41(c)(1) based on the date the transferor servicer received the application, even if the application was first complete upon transfer to the transferee servicer.

For the reasons explained below, the Bureau is finalizing changes to § 1024.41(k)(3). Final § 1024.41(k)(3) establishes a timeframe for transferee servicer compliance that is 30 days from the transfer date, whether the transfer is voluntary or involuntary. Based on the timeframe finalized in § 1024.41(k)(3), the Bureau believes the exceptions proposed in § 1024.41(k)(3)(ii) and § 1024.41(k)(3)(iii) are no longer necessary. The Bureau is therefore renumbering proposed § 1024.41(k)(3)(i) as § 1024.41(k)(3), and is not adopting proposed § 1024.41(k)(3)(ii) or § 1024.41(k)(3)(iii). The Bureau is renumbering comments 41(k)(3)(i)-1 and -2 as comments 41(k)(3)-1 and -2, and is making minor changes to those comments. The Bureau is not adopting proposed comment 41(k)(3)(iii)-1.

The Bureau has concluded that proposed § 1024.41(k)(3)(i) could have posed compliance difficulties for transferee servicers. The Bureau notes that extending the evaluation date for transferee servicers does not reduce borrower rights and protections in § 1024.41(c) through (h). The existence and extent of those rights and protections are determined as of the date a complete application is received (in this case, by the transferor servicer, prior to the transfer date). The rights and protections, once determined as of the date the transferor servicer received the complete application, continue during the evaluation period and are not diminished by any delay in the conduct of the evaluation by the transferee servicer. However, the Bureau recognizes that both borrowers and servicers are generally best served by an efficient and timely evaluation of loss mitigation options and that borrowers, in particular, face increased delinquency and credit

reporting harms when an evaluation is delayed. Nonetheless, balancing the difficulties faced by transferee servicers in completing the evaluation of a transferred loss mitigation application and the harm delayed evaluations occasion borrowers, the Bureau is finalizing § 1024.41(k)(3) to provide that, 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 § 1024.41(c)(1) and (4) within 30 days of the transfer date.

Similar to final § 1024.41(k)(2)(i) with regard to transferee servicers' provision of § 1024.41(b)(2)(i)(B) notices, final § 1024.41(k)(3) provides a bright-line standard for the applicable timeframe for transferee servicers to comply with § 1024.41(c)(1) and (4) regarding the evaluation of complete applications and applicable notice requirements. The Bureau believes that determining compliance with § 1024.41(k)(3) based on the transfer date, rather than based on the date the transferor servicer received the application, as proposed, should make it easier for borrowers and servicers alike to track compliance. As discussed in the section-by-section analysis of § 1024.41(k)(2), the transfer date is disclosed on the notice of transfer of loan servicing provided to borrowers pursuant to § 1024.33(b)(4)(iv).

In light of the expansion in timelines beyond the proposed rule, the Bureau believes that all transferee servicers should be able to comply with § 1024.41(k)(3) without reliance on the proposed exceptions for involuntary transfers or situations where compliance with the otherwise applicable timeframes would be impracticable. Accordingly, the Bureau is not finalizing the proposed exceptions in § 1024.41(k)(3)(ii) and (iii) and clarifications in proposed comment 41(k)(3)(iii)-1 and is removing references to these exceptions in § 1024.41(k)(3).

The Bureau recognizes that the transition period associated with transfers, a several-day period following transfer in which the transferee servicer may not have access to the loan-level information, may effectively shorten the actual time that transferee servicers will have following transfer to comply with the applicable requirements of § 1024.41(c)(1) and (4). Although this transition period may result in a transferee servicer having fewer days to comply with § 1024.41(c)(1) and (4) than would a servicer in the absence of a transfer, final § 1024.41(k)(3) balances transferee servicer interests in having sufficient time to comply against borrower interests in a prompt evaluation of a loss mitigation application. As explained above, even with a several-day transition period, § 1024.41(k)(3) should generally provide transferee servicers more time to evaluate a borrower's application than the proposal would have provided by triggering the evaluation timeframe based on the transfer date, rather than the date the transferor received the application. Moreover, several industry commenters recommended the adoption of a 30-day timeframe for compliance, measured from the transfer date.

The Bureau also recognizes that this delay necessarily imposes costs on borrowers, even if their rights and foreclosure protections under § 1024.41 are not curtailed. In general, the longer the borrower must wait for an evaluation, the more the borrower's outstanding delinquency increases. As discussed in the section-by section analysis of § 1024.41(b)(2)(ii), industry commenters have stated that an increase in the delinquency can decrease the likelihood of successful loss mitigation. Borrowers may face other harms due to an extended evaluation period as well, such as continued adverse credit reporting. While the Bureau is persuaded by industry commenters that transferee servicers should have 30 days from the transfer date to evaluate a complete application, any further extension for transferee servicers could result in borrower harm and is not necessary to enable transferee servicer compliance.

As discussed in the section-by-section analysis of § 1024.41(k)(1), the Bureau is finalizing commentary to limit the impact on borrowers of any additional delays resulting from final § 1024.41(k)(3). Final comment 41(k)(1)(i)-2 provides that, for purposes of the borrower rights and protections under § 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. The borrower rights and protections under § 1024.41(c) through (h) begin as of the date the transferor servicer receives a complete application, and extending the timeframe for transferee servicer evaluations will not affect the timing of these protections. As noted above, the Bureau recognizes that § 1024.41(k)(3) could extend the amount of time that a borrower must wait for an evaluation, that the amount of the borrower's obligation that is past due may increase during this extended timeframe, and that the borrower may suffer harm as a result. Nevertheless, the Bureau believes this approach provides an appropriate balance to limit borrower harm while facilitating transferee servicer compliance. The Bureau also believes providing transferee servicers appropriate time to comply with § 1024.41(c)(1) and (4) may improve transferee servicers' ability to evaluate applications fairly and efficiently, which would ultimately benefit borrowers.

The Bureau is renumbering proposed comments 41(k)(3)(i)-1 and -2 as 41(k)(3)-1 and -2 and is finalizing these comments with revisions. Comment 41(k)(3)-1 explains that, 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. It further provides that 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.

The Bureau is finalizing comment 41(k)(3)-1 without the proposed language pertaining to a transferee servicer's request that a borrower resubmit the same information in the transferee servicer's specified format or make clerical corrections to the application and without the proposed language pertaining to the borrower's failure to do so. While the Bureau recognizes that servicers may occasionally ask for such resubmission of the same previously submitted information in certain circumstances, the Bureau does not believe that such requests should be the norm. Such requests could be burdensome to borrowers or possibly mislead them. For example, the Bureau is concerned that such requests may lead borrowers to believe erroneously that their application is incomplete as to the transferee servicer.

While the Bureau is concerned that a transferee servicer's requests that the borrower resubmit the same information in the transferee servicer's specified format or make clerical corrections to the application may be burdensome or misleading to borrowers, the Bureau is not prohibiting transferees from requesting that borrowers do so, as suggested by some consumer advocacy groups. Although the Bureau generally discourages such requests, the Bureau believes that, in the limited circumstances where, for example, a transferee servicer determines that a clerical correction to a previously submitted document is required based on its criteria for evaluating loss mitigation applications, or that resubmission in the transferee servicer's specified format would speed the evaluation based on the servicer's systems capabilities, servicers should

be able to request such clerical corrections or resubmissions. The Bureau will continue to monitor whether these requests raise consumer protection concerns.

Comment 41(k)(3)-1 does not change the general requirements regarding facially complete applications under § 1024.41(c)(2)(iv), including the standard for when an application is considered complete or facially complete. For example, 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 requests that the borrower resubmit the same information in the transferee servicer's specified format, such a request would not render the application facially complete, as opposed to complete, because it is not a request for additional information or corrections to a previously submitted document (reformatting does not constitute a correction). Thus, a request for previously submitted information in the transferee servicer's specified format does not justify an extension of the 30-day timeframe in § 1024.41(k)(3) for a transferee servicer's evaluation of a borrower's complete application. A transferee servicer that does not receive the same previously submitted information in its specified format still must comply timely with § 1024.41(k)(3).

The Bureau is not revising the treatment of applications as facially complete where a transferee servicer determines additional information or a correction to a previously submitted document is required, as suggested by one consumer advocate commenter. Comment 41(k)(3)-1 provides that an application is considered facially complete under § 1024.41(c)(2)(iv) as of the date it was first facially complete or complete, as applicable, to the transferor servicer. An application that is facially complete under § 1024.41(c)(2)(iv) is treated as complete for the purposes of § 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application. Accordingly, the current foreclosure protections provided to borrowers

when an application is considered facially complete address concerns about a transferee servicer taking an action otherwise prohibited by § 1024.41(f)(2) or (g) in such situations.

The Bureau also declines to adopt one commenter's suggestion to require the transferor servicer to certify that it has provided the transferee servicer the entire loan file, or to require that 60 days pass following the transfer date, before the transferee servicer may conclude that the entire loan file has been transferred. Section 1024.38(b)(4)(i) requires a transferor servicer to maintain policies and procedures reasonably designed to ensure the timely transfer of all information and documents in its possession or control relating to the transferred mortgage loan in a form and manner that ensures the accuracy of the documents and information transferred. Comment 38(b)(4)(i)-2 further clarifies that this policies and procedures requirement imposes an affirmative obligation on the transferor servicer with respect to the transfer of any information reflecting the current status of discussions with a borrower regarding loss mitigation options and any agreements entered into with a borrower on a loss mitigation option.[277] Additionally, as discussed above, comment 41(k)(1)(i)-1.i explains that 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). This comment clarifies the obligation of transferor servicers to transfer timely, and transferee servicers to obtain, documents and information submitted by a borrower in connection with a loss mitigation application. Accordingly, the Bureau believes that additional requirements pertaining to a transferee

[277] *See* 79 FR 63295, 63295-96 (Oct. 23, 2014) (discussing policies and procedures that may contribute to meeting the requirements of § 1024.38(b)(4)).

servicer's determination that it has a complete loan file are not necessary to ensure borrowers are afforded the rights and protections to which they are entitled under § 1024.41.

The Bureau is adopting proposed comment 41(k)(3)(i)-2, renumbered as comment 41(k)(3)-2, with certain changes for clarity. Under comment 41(k)(3)-2, 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), and the transferee servicer must comply with the applicable requirements of § 1024.41(c)(1) and (4) within 30 days of the transfer date. The comment further provides that, 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, and includes a cross-reference to 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.

The Bureau did not specifically address in proposed comment 41(k)(3)(i)-2 the requirements of § 1024.41(c) and (d), the compliance timeframe under § 1024.41(k)(3), or the date disclosed on the notice of complete application required under § 1024.41(c)(3). As discussed in the section-by-section analysis of § 1024.41(k)(1), the proposal did not specifically address § 1024.41(c) and (d) because a servicer must comply with § 1024.41(c), and as applicable, § 1024.41(d), to satisfy its requirements under § 1024.41(g). For additional clarity, the Bureau is finalizing comment 41(k)(3)-2 to specify the applicability of § 1024.41(c) and (d) under § 1024.41(k)(3). The Bureau is also clarifying in final comment 41(k)(3)-2 that the date

disclosed on the notice of complete application under § 1024.41(c)(3) is distinct from the date on which the 30-day evaluation timeframe under § 1024.41(k)(3) begins.

The Bureau notes that some consumer advocacy groups requested that borrowers be provided the right to an evaluation under § 1024.41(c)(1) based on the date the transferor servicer received the application, even if the application was first complete upon transfer to the transferee servicer. Final § 1024.41(k)(3) establishes a 30-day evaluation timeframe from the transfer date for all complete applications, including those first complete upon transfer to the transferee servicer. Additionally, comment 41(k)(3)-2 provides that, where an application is first complete upon transfer, the application is complete as of the date the transferor servicer received the documents and information constituting the complete application for purposes of § 1024.41(c) through (h). Thus, the transferee servicer must comply with § 1024.41(c) through (h) regarding the complete application. The transferee servicer must treat those rights and protections as attaching as of the date the transferor servicer received the documents and information constituting the complete application, even if the application was incomplete based on the transferor servicer's criteria. The transferor servicer's actions regarding a loss mitigation application that was incomplete based on the transferor servicer's criteria but complete based on the transferee servicer's criteria do not affect the transferee servicer's obligations under § 1024.41(c) through (h). For example, if the transferor servicer moved for foreclosure judgment or order of sale prior to the transfer date, but the documents and information constituting a complete application to the transferee servicer were received by the transferor servicer more than 37 days before the foreclosure sale, the transferee servicer is required to comply with § 1024.41(g) regarding that complete application. As discussed in the section-by-section analysis of § 1026.41(g), comment 41(g)-5 provides that, 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).

Finally, the Bureau is not adopting proposed comment 41(k)(3)(iii)-1, which would have clarified the proposed exception in § 1024.41(k)(3)(iii). As the Bureau is not adopting the proposed exceptions in § 1024.41(k)(3)(iii), proposed comment 41(k)(3)(iii)-1 is not necessary.

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

Proposed § 1024.41(k)(4) would have provided that, if a borrower timely appeals a transferor servicer's denial of a loan modification option under § 1024.41(h), a transferee servicer must evaluate the appeal if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal. A transferee servicer that is unable to evaluate an appeal would have been required to treat the borrower's appeal as a pending complete loss mitigation application and comply with the requirements of § 1024.41 for such an application. Proposed § 1024.41(k)(4) would have applied if a borrower made an appeal before the transfer date and the appeal remained pending as of the transfer date or if the period for making an appeal under § 1024.41(h) had not expired as of the transfer date and a borrower subsequently made a timely appeal. The Bureau is finalizing proposed § 1024.41(k)(4)(i) with revisions. Final § 1024.41(k)(4)(i) provides that, if a transferee servicer is required under § 1024.41(k)(4) to make a determination on an appeal, the transferee servicer must complete its determination and provide the notice required by § 1024.41(h)(4) within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later.

The Bureau believed that a transfer should not deprive a borrower of the right to appeal a servicer's denial of a loan modification option. The terms of loan modification programs are complex, and the Bureau believed that, as with any complex process, servicers may make

mistakes in evaluating borrowers' complete applications. In addition, investors or guarantors may transfer servicing to a new servicer precisely because they believe the new servicer is better able to evaluate borrowers for loss mitigation options. In that case, both a borrower and an investor or guarantor might benefit from the new servicer attempting to determine whether the transferor servicer mistakenly denied the borrower for a loan modification option.

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

The Bureau also recognized, however, that a transferee servicer may not always be able to determine whether a transferor servicer incorrectly denied the borrower for a loan modification option. For example, the transferee servicer may not have sufficient information about the evaluation criteria used by the transferor servicer, in particular when the transferor

servicer denied a borrower for a loan modification option that the transferee servicer does not offer, or when the transferee servicer receives the mortgage loan file through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer does not have sufficient information to evaluate the appeal. The Bureau expected that such circumstances would be rare, that transferee servicers would generally be able to evaluate borrowers' appeals, and that borrowers would not be disadvantaged as a result of transfers. In those limited circumstances, however, proposed § 1024.41(k)(4)(ii) would have required the transferee servicer to treat the appeal as a pending complete loss mitigation application and evaluate the borrower for all options available to the borrower from the transferee servicer. For purposes of § 1024.41(c) or (k)(3), as applicable, such a pending complete loss mitigation application would have been considered complete as of the date the appeal was received. For purposes of § 1024.41(e) through (h), such a pending complete loss mitigation application would have been considered facially complete as of the date the application was facially complete with respect to the transferor servicer.

The Bureau explained in the proposal its belief that, in cases where the transferee servicer cannot evaluate the appeal, requiring the transferee servicer to reevaluate the borrower for all loss mitigation options that may be available to the borrower preserves the benefits of the appeal process for borrowers. Furthermore, the Bureau believed that the proposed requirement would not impose substantial burdens on transferee servicers because a transferee servicer is already required to comply with the requirements of § 1024.41, regardless of whether the borrower received an evaluation of a complete loss mitigation application from the transferor servicer, as explained by comment 41(i)-2.

Proposed comment 41(k)(4)-1 noted that a transferee servicer may be unable to evaluate

an appeal when, for example, the transferor servicer denied a borrower for a loan modification option that the transferee servicer does not offer or when the transferee servicer receives the mortgage loan file through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer lacks sufficient information to evaluate the appeal. The proposed comment would have clarified that, if a transferee servicer is required to treat the appeal as a pending complete application, the transferee servicer must permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer, in addition to the loss mitigation options, if any, that the transferee servicer determined to offer the borrower based on its own evaluation of the borrower's complete loss mitigation application.

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

The Bureau received several comments in response to proposed § 1024.41(k)(4). Industry commenters generally requested an extension to the proposed timeframe for transferee

servicers to determine appeals. Some industry commenters stated that the transition period inherent to transfers could make compliance with proposed § 1024.41(k)(4) difficult. As with proposed § 1024.41(k)(3)(i), certain industry commenters also expressed concern about situations where the transfer date occurs near the end of the 30-day determination period applicable to the transferor servicer. One industry commenter recommended that the Bureau revise proposed § 1024.41(k)(4) to provide transferee servicers 30 days from the transfer date to comply. This commenter stated that borrowers would continue to have foreclosure protections while the servicer was making its determination on an appeal.

Several industry commenters also discussed proposed § 1024.41(k)(4) in relation to borrower foreclosure timelines and protections. One industry commenter suggested that the timeframe for transferee servicer compliance in proposed § 1024.41(k)(4) should be extended and that transferee servicers could be required to postpone any pending foreclosure sales to maintain the structure of the current loss mitigation timelines. Another industry commenter expressed concern with the current borrower timelines for submitting an appeal and accepting a loss mitigation offer because of the potential for borrower confusion where there is a servicing transfer. This commenter suggested that borrowers be provided 30 days from the transfer date to make an appeal. This commenter further stated that, if the transferee servicer is able to determine an appeal, but not within 30 days of the date the borrower made the appeal to the transferor servicer, the transferor servicer should make sure that the borrower receives foreclosure protections during this extended timeframe.

The Bureau solicited comment as to whether a pending appeal should ever or always be treated as a pending loss mitigation application. One industry commenter stated that, if the transferee servicer can determine the appeal, it should be treated as an appeal to avoid any

further delay. One industry commenter stated, however, that because each servicer may have different loss mitigation review criteria, it would be difficult for a transferee servicer to evaluate an appeal based on the transferor servicer's criteria. This commenter suggested that the appeal be treated as a complete loss mitigation application. One consumer advocacy group stated that, because of the time it takes for transferee servicers to obtain loan documents from the transferor servicer, it could be difficult for a transferee servicer to evaluate an appeal timely. The commenter suggested that, if the transferee servicer is unable to evaluate an appeal timely, the appeal should be treated as a complete loss mitigation application. Another consumer advocacy group expressed support for the Bureau's proposal to permit transferee servicers to treat a borrower's pending appeal as a complete loss mitigation application when they are unable to evaluate an appeal.

The Bureau is finalizing proposed § 1024.41(k)(4) with revisions. Final § 1024.41(k)(4)(i) provides that, if a transferee servicer is required under § 1024.41(k)(4) to make a determination on an appeal, the transferee servicer must complete the determination and provide the notice required by § 1024.41(h)(4) within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later. Based on this finalized timeframe, the Bureau believes the exception for situations where compliance would have been impracticable in proposed § 1024.41(k)(4)(i) is no longer necessary. The Bureau is therefore not adopting this proposed exception. The Bureau is adding new comment 41(k)(4)-1 to explain that 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 and to clarify transferor and transferee servicer obligations in such situations. The Bureau is renumbering proposed comment 41(k)(4)-1 as

41(k)(4)-2 and making certain revisions for clarity. The Bureau is not adopting proposed comment 41(k)(4)-2.

To improve consistency between § 1024.41(h)(4) and (k)(4), the final rule uses the term "determination," rather than "evaluation," when discussing appeals. Section 1024.41(h)(4) sets forth the requirements for a servicer's determination of an appeal, while § 1024.41(c)(1) sets forth the requirements for a servicer's evaluation of a complete loss mitigation application. The final rule implements this change and includes conforming changes throughout § 1024.41(k)(4).

The Bureau is finalizing § 1024.41(k)(4) with certain changes to improve clarity. Section 1024.41(k)(4) provides that, if a transferee servicer acquires the servicing of a mortgage loan for which an appeal of a transferor servicer's determination pursuant to § 1024.41(h) 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. Section 1024.41(k)(4) does not prohibit the transferee servicer from evaluating the borrower for any loss mitigation options it offers in addition to determining the appeal, when it is able to determine the appeal. The Bureau believes that if the transferee servicer offers additional loss mitigation options to those offered by the transferor servicer and subject to the appeal, the transferee servicer could, in addition to determining the appeal, also evaluate for any loss mitigation options it offers. Proposed § 1024.41(k)(4) would have required a transferee servicer to evaluate the appeal if it were able to determine whether to offer the borrower the loan modification options subject to the appeal. Proposed § 1024.41(k)(4)(ii) would have required a transferee servicer that is unable to evaluate an appeal to treat the appeal as a pending complete loss mitigation application and comply with the requirements of § 1024.41 for such application. The

final rule explains both of these requirements in § 1024.41(k)(4), rather than explaining them separately in § 1024.41(k)(4) and (k)(4)(ii), as proposed.

The Bureau believes that proposed § 1024.41(k)(4)(i) may have posed compliance difficulties for transferee servicers by requiring a determination on an appeal within 30 days of the date the borrower made the appeal. The Bureau is finalizing changes to § 1024.41(k)(4)(i) to explain that, if a transferee servicer is required under § 1024.41(k)(4) to make a determination on an appeal, the transferee servicer must complete the determination and provide the notice required by § 1024.41(h)(4) within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later.

The Bureau notes that, as discussed in the section-by-section analysis of § 1024.41(k)(3), the existence and the extent of a borrower's rights and protections under § 1024.41(c) through (h) are established based on the date the transferor servicer receives a complete application. Extending the time for a transferee servicer to make a determination on an appeal will not affect the date these protections begin. Further, neither the transferor nor the transferee servicer may take an action prohibited by § 1024.41(f)(2) or (g) until it has made a determination on the borrower's appeal. However, the Bureau recognizes that a borrower's delinquency continues during the time when a transferee servicer is determining an appeal, and that the changes in final § 1024.41(k)(4)(i) may extend the duration of the borrower's delinquency by an additional 30 days. In general, the longer the borrower must wait for a determination, the more the borrower's outstanding delinquency increases. Nonetheless, the Bureau believes that final § 1024.41(k)(4)(i) strikes an appropriate balance to limit borrower harm caused by delayed determinations while accounting for difficulties faced by transferee servicers in determining

appeals of a transferor servicer's determination of a loss mitigation application and facilitating transferee servicer compliance.

As with final § 1024.41(k)(2)(i) and (k)(3), § 1024.41(k)(4)(i) establishes a bright-line standard for transferee servicer compliance with the requirement to determine and provide notice on an appeal pursuant to § 1024.41(h). The Bureau believes borrowers and servicers can track compliance based on the transfer date, as this date is disclosed on the notice of transfer of loan servicing provided to borrowers pursuant to § 1024.33(b)(4)(iv).

Final § 1024.41(k)(4)(i) generally provides transferee servicers a greater amount of time to comply than under the proposal. Proposed § 1024.41(k)(4)(i) would have generally required transferee servicers to provide the notice required by § 1024.41(h)(4) within 30 days of the date the borrower made the appeal. The final rule establishes a longer timeframe for compliance, in most cases, by providing transferee servicers up to 30 days from the transfer date to comply with § 1024.41(h)(4). Further, in situations where the transferee servicer must treat an appeal as a pending complete loss mitigation application, a 30-day timeframe from the transfer date is consistent with the timeframe set forth in final § 1024.41(k)(3) for the evaluation of complete loss mitigation applications.

In light of the expansion in timelines beyond the proposed rule, the Bureau believes that all transferee servicers should be able to comply with § 1024.41(k)(4)(i) without reliance on the proposed exception for situations where compliance would be impracticable. Accordingly, final § 1024.41(k)(4)(i) does not include the proposed exception where compliance within 30 days of when the borrower made the appeal would have been impracticable.

The Bureau recognizes that, when transferee servicers acquire the servicing of a mortgage loan for which a borrower's appeal is pending as of the transfer date, the transition

period associated with transfers of several days following transfer in which the transferee servicer may not have access to the loan-level information may effectively shorten the actual time that transferee servicers will have following transfer to determine the appeal and provide the notice required by § 1024.41(h)(4). Although this transition period may result in a transferee servicer having fewer days to comply with § 1024.41(h)(4) than would a servicer in the absence of a transfer, final § 1024.41(k)(4)(i) balances transferee servicer interests in having sufficient time to comply with borrower interests in a quick determination on an appeal. As explained above, even with this transition period, § 1024.41(k)(4)(i) should generally provide transferee servicers more time to determine a borrower's appeal than the proposal would have provided by permitting compliance within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later. Moreover, one industry commenter recommended the adoption of a 30-day timeframe for compliance, measured from the transfer date. Accordingly, even accounting for the transition period inherent to transfers, the Bureau believes that final § 1024.41(k)(4)(i) provides transferee servicers appropriate time to complete a determination and provide the notice required by § 1024.41(h)(4) with respect to a borrower's appeal.

Final § 1024.41(k)(4)(i) also permits transferee servicers to comply within 30 days of the date the borrower made the appeal, as proposed. As noted above, the Bureau believes that providing transferee servicers 30 days from the transfer date to comply will generally establish a longer timeframe for compliance than would have been provided under the proposal. However, the Bureau is cognizant that, in the context of appeals, unique circumstances may arise where it would be beneficial for transferee servicers and borrowers to base the timeframe for transferee servicer compliance on the date the borrower made the appeal. Specifically, some borrowers might make an appeal to the transferor servicer after the transfer date but before the borrower's

time to appeal pursuant to § 1024.41(h)(2) has expired. In such situations, a transferee servicer would have more time to make a proper determination on the appeal if the timeframe for compliance were based on the date the borrower made the appeal, rather than on the transfer date, without compromising reasonable borrower expectations. Accordingly, the Bureau is finalizing § 1024.41(k)(4)(i) to provide greater flexibility and ensure transferee servicers have sufficient time to determine appeals even where a borrower timely makes an appeal to the transferor servicer after the transfer date. Moreover, the Bureau believes that the bright-line standard in § 1024.41(k)(4)(i) will facilitate compliance.

The Bureau is finalizing § 1024.41(k)(4)(ii) to provide that a transferee servicer that is required to treat a borrower's appeal as a pending complete loss mitigation application under § 1024.41(k)(4) must comply with the requirements of § 1024.41 for such application, including evaluating the borrower for all loss mitigation options available to the borrower from the transferee servicer. Section 1024.41(k)(4)(ii) further explains that, for purposes of § 1024.41(c) or (k)(3), 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. Finally, § 1024.41(k)(4)(ii) provides that, for purposes of § 1024.41(e) through (h), the transferee servicer must treat such a pending complete loss mitigation application as 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.

Final § 1024.41(k)(4)(ii) includes several changes from the proposal. Section 1024.41(k)(4)(ii) explains that a transferee servicer that is required to treat a borrower's appeal as a pending complete loss mitigation application under § 1024.41(k)(4) must comply with the requirements of § 1024.41 for such application, including evaluating the borrower for all loss

mitigation options available to the borrower from the transferee servicer. Final § 1024.41(k)(4)(ii) reflects the changes finalized in § 1024.41(k)(4) and links the appeals covered by § 1024.41(k)(4)(ii) to the category of appeals treated as complete loss mitigation applications in § 1024.41(k)(4).

Additionally, final § 1024.41(k)(4)(ii) explains that, for purposes of § 1024.41(c) or (k)(3), 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. The proposal would have explained that the application shall be considered complete as of the date the appeal was received, but without specific reference to the date it was first received either by the transferor or transferee servicer. As explained above, the Bureau recognizes that there may be situations where a borrower timely submits an appeal to a transferor servicer after the transfer date. Under these circumstances, the date the appeal was received by the transferor servicer would be different from the date the appeal was received by the transferee servicer. Accordingly, the Bureau is including additional clarifying language in in final § 1024.41(k)(4)(ii) to account for this situation.

Finally, the Bureau is finalizing § 1024.41(k)(4)(ii) to explain that, for purposes of § 1024.41(e) through (h), the transferee servicer must treat such a pending complete loss mitigation application as 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. The reference to § 1024.41(c)(2)(iv) in the final rule provides further clarity with regard to the treatment of facially complete loss mitigation applications. Additionally, the final rule clarifies the transferee servicer's obligations with respect to applications considered facially complete or complete, as applicable, with respect to the transferor servicer. The proposal would have

addressed a transferee servicer's obligations only with respect to applications considered facially complete by the transferor servicer.

The Bureau declines to revise the circumstances under which a transferee servicer must treat an appeal as a pending complete loss mitigation application, as suggested by some commenters. The timeframe for compliance set forth in final § 1024.41(k)(4)(i), explained above, addresses commenter concerns over transferee servicers' ability to comply with the rule. The Bureau continues to believe that, where the transferee servicer cannot evaluate the appeal, requiring the transferee servicer to treat the appeal as a pending complete loss mitigation application and reevaluate the borrower for all loss mitigation options that may be available to the borrower preserves the benefits of the appeal process for borrowers, including an opportunity to receive loss mitigation when the transferor servicer has erred in its evaluation.

The Bureau is renumbering proposed comment 41(k)(4)-1 as 41(k)(4)-2, as discussed more below. The Bureau is adopting a new comment 41(k)(4)-1 to clarify transferor and transferee servicer obligations when a borrower submits an appeal of a transferor servicer's determination to the transferor servicer after the transfer date. Comment 41(k)(4)-1 provides that 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. It further explains that 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. By explaining the obligations of transferor and transferee servicers in such situations, comment 41(k)(4)-1 should better enable transferee servicers to comply with the requirements set forth in § 1024.41(k)(4)(i). Comment 41(k)(4)-1 parallels new comment 41(k)(1)(i)-1.iii, which explains that borrowers may provide documents and information

necessary to complete an application to the transferor servicer after the transfer date and clarifies the obligations of transferor and transferee servicers when this occurs.

The Bureau declines to provide borrowers additional time beyond the timeframe in § 1024.41(h)(2) to make an appeal after the transfer date, as suggested by one commenter. The transfer itself will not shorten the timeframe for borrowers to submit an appeal. Pursuant to comment 41(k)(4)-1, borrowers may submit appeals to either the transferor or transferee servicer without jeopardizing their right to timely appeals. A borrower who timely submits an appeal to the transferor servicer following the transfer date will have the right to a determination under § 1024.41(h)(4), and no further extensions to borrower timeframes are necessary.

The Bureau is finalizing comment 41(k)(4)-1 substantially as proposed, but renumbered as comment 41(k)(4)-2 and with revisions for clarity. Comment 41(k)(4)-2 provides guidance on situations where a transferee servicer is unable to determine an appeal. Comment 41(k)(4)-2 explains that 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. Comment 41(k)(4)-2 provides that, in that circumstance, the transferee servicer is required to treat the appeal as a pending complete application.

Comment 41(k)(4)-2 further provides that the transferee servicer 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. Comment 41(k)(4)-2 sets forth an example where a transferor servicer denied a borrower for all loan modification options but offered the borrower a short sale option, and the borrower's appeal of the loan modification denial was pending as of the transfer date. Comment 41(k)(4)-2 explains that, 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). It further explains that, 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.

As proposed, the comment did not specifically explain a transferee servicer's obligations when the transferor servicer offers the borrower a loss mitigation option that the transferee servicer does not offer. The final comment clarifies that the transferee servicer's obligation to permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer applies irrespective of whether the transferee servicer offers the particular loss mitigation option. The Bureau understands that the investor generally determines the loss mitigation options that may be available to a borrower. It further understands that a transferee servicer may not offer the same loss mitigation options as the transferor servicer when, for example, a transfer involves a change in the investor of the loan along with the transfer of servicing rights. The Bureau believes, however, that the transferee servicer, under both State contract law and investor requirements, should be able to execute any loss mitigation option offered by the transferor servicer, even if the transferee servicer does not offer the particular

option. Comment 41(k)(4)-2 ensures that a transfer does not deprive a borrower of any loss mitigation options that were offered by the transferor servicer, and it is consistent with the treatment of pending loss mitigation offers in § 1024.41(k)(5).

Finally, the Bureau is not adopting proposed comment 41(k)(4)-2. Because of the changes incorporated in final § 1024.41(k)(4)(i), proposed comment 41(k)(4)-2 is not necessary.

41(k)(5) Pending Loss Mitigation Offers

Proposed § 1024.41(k)(5) would have provided that a transfer does not affect the borrower's ability to accept or reject a loss mitigation option offered under § 1024.41(c) or (h). Specifically, the proposal would have required that, if a transferor servicer offered the borrower a loss mitigation option prior to the transfer and the borrower's time to accept or reject the offer had not expired as of the transfer date, a transferee servicer must allow the borrower to accept or reject the offer. The Bureau is adopting § 1024.41(k)(5) substantially as proposed.

Proposed comment 41(k)(5)-1 would have clarified that some borrowers will provide their acceptances to the transferor servicer and that, pursuant to the policies and procedures maintained under § 1024.38(b)(4), a transferee servicer must obtain those acceptances from the transferor servicer. For example, a borrower may be able to accept a trial modification agreement by timely making an initial payment of the modified amount to the transferor servicer instead of to the transferee servicer. RESPA section 6(d) provides that, during the 60-day period beginning on the effective date of the transfer of servicing, a payment received by the transferor servicer (rather than the transferee servicer) before the due date applicable to such payment may not be treated as late for purposes of imposing a late fee on the borrower or for any other

purposes.[278] Similarly, the proposed comment explained that the transferee servicer must honor an acceptance that the borrower timely sent to the transferor servicer.

The Bureau received few comments on proposed § 1024.41(k)(5). One industry commenter stated that most servicers currently operate under the principles set forth in proposed § 1024.41(k)(5). Another industry commenter recommended that the borrower be provided an additional 14 days from the transfer date to accept any offers that had not expired. One consumer advocate commenter stated that transferee servicers should allow borrowers additional time to accept or reject a loss mitigation offer from the transferor servicer.

The Bureau is adopting § 1024.41(k)(5) and comment 41(k)(5)-1 substantially as proposed. Final § 1024.41(k)(5) provides that a transfer does not affect a borrower's ability to accept or reject a loss mitigation option offered under § 1024.41(c) or (h). It further states that, if a transferee servicer acquires the servicing of a mortgage loan for which the borrower's time period under § 1024.41(e) or (h) for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period. The Bureau declines to extend borrower timeframes for accepting or rejecting a loss mitigation option, as suggested by some commenters. The timeframe for borrowers to accept or reject a loss mitigation option under § 1024.41(e) or (h), as applicable, is determined as of the date the servicer provides the notice of the loss mitigation option. Although a transfer may extend the timeline for transferee servicers to provide notice of a loss mitigation option offered under § 1024.41(c) or (h), it does not affect the borrower's timeframe to accept or reject a loss

[278] 12 U.S.C. 2605(d)).

mitigation offer that is already pending as of the transfer date. Accordingly, a timeframe extension for borrowers to accept or reject a loss mitigation option is not necessary. Moreover, because the Bureau is providing that the borrower's acceptance is effective whether sent to the transferee or transferor servicer, the borrower does not need additional time to determine the correct address, learn of the transfer, or allow time for the forwarding of the acceptance from the transferor servicer to the transferee servicer.

The Bureau is finalizing comment 41(k)(5)-1 with certain changes for clarity and consistency with § 1024.41(k). Comment 41(k)(5)-1 explains that a borrower may provide an acceptance or rejection of a pending loss mitigation offer to the transferor servicer after the transfer date. It further explains that, 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.

Final comment 41(k)(5)-1 differs from the proposal, which would have addressed only a borrower's acceptance, but not a rejection, of a pending loss mitigation offer to the transferor servicer after the transfer date. Final comment 41(k)(5)-1 also omits superfluous language regarding the transferee servicer's expectation of where a borrower may provide such acceptance. Additionally, final comment 41(k)(5)-1 specifically explains that transferor servicers must timely transfer documents and information regarding such acceptances and rejections. The proposal did not impose specific requirements on transferor servicers in § 1024.41(k). As explained in the section-by-section analysis of § 1024.41(k)(1), however, the Bureau is clarifying the specific requirements of transferor servicers to improve the seamlessness

of transfers and to facilitate transferee servicer compliance with the final rule. Additionally, final comment 41(k)(5)-1 clarifies that 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. Final comment 41(k)(5)-1 thus makes clear that a borrower's acceptance may be timely, even if submitted to the transferor servicer.

Appendix MS to Part 1024—Mortgage Servicing

Currently, the model forms that a servicer may use to comply with the disclosure requirements of §§ 1024.33, 1024.37, and 1024.39 are provided in an appendix with the heading "Appendix MS—Mortgage Servicing." The Bureau did not propose to change this heading but is revising it in this final rule to "Appendix MS to Part 1024—Mortgage Servicing" to conform to the other appendix headings in Regulation X.

Comment appendix MS to part 1024-2 explains that servicers may make certain changes to the format or content of the forms and clauses without losing protection from liability so long as those changes do not affect the substance, clarity, or meaningful sequence of the forms and clauses. The comment also provides examples of changes that the Bureau considers acceptable changes. For the reasons stated in part V.A. and in this discussion, the Bureau is amending comment appendix MS to part 1024-2 to allow servicers to make adjustments to these model forms to reflect the circumstances of confirmed successors in interest without losing the benefit of the protection from liability that use of the model forms affords.

The model forms in appendix MS include language that, if sent to a confirmed successor in interest, could suggest that the successor in interest is liable on the mortgage loan obligation. For example, the Notice of Servicing Transfer model form provided in appendix MS–2 refers to "your mortgage loan" and states: "This means that after this date, a new servicer will be

collecting your mortgage loan payments from you" and "Send all payments due on or after [Date] to [Name of new servicer] at this address: [New servicer address]." Some of the model forms for force-placed insurance notices in appendix MS–3 state: "You must pay us for any period during which the insurance we buy is in effect but you do not have insurance." The model clauses for the written early intervention notice in appendix MS–4 include: "Refinance your loan with us or another lender"; "Modify your loan terms with us"; "Payment forbearance temporarily gives you more time to pay your monthly payment"; and "As an alternative to foreclosure, you may be able to sell your home and use the proceeds to pay off your current loan."

The final rule amends comment appendix MS to part 1024-2 to indicate that, except as otherwise specifically required, acceptable changes to the format or content of the forms and clauses include modifications to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. The revised comment notes, for example, that, 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 obligation, the modifications could include: use of "the mortgage loan" or "this mortgage loan" instead of "your mortgage loan" and "the monthly payments" instead of "your monthly payments"; 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 servicing transfer; and use of "We will charge the loan account" instead of "You must pay us" in notices relating to force-placed insurance. As explained in part V.A., the adjustments authorized by these changes represent one of several options that servicers may use to ensure that their notices and other communications do not confuse or deceive successors in interest who have not assumed the mortgage loan obligation and are not otherwise liable on it regarding whether they

are liable on the mortgage loan obligation.

Appendix MS–3 to Part 1024—Model Force-Placed Insurance Notice Forms

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

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

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

the form in bold text.

The Bureau received one comment that recommended revisions to Model Notice MS-3(A) through (C) so that the model forms included bold text consistent with the requirements under § 1024.37.

The Bureau is finalizing the technical corrections to the model forms for force-placed insurance notices located at appendix MS–3(A) through (D) as proposed. Additionally, the Bureau is making certain technical corrections to model forms MS–3(A) through (C) that were not proposed. The Bureau recognizes, as stated by one commenter, that the model forms MS–3(A) through (C) do not align with the requirements in § 1024.37 that servicers provide certain information on the force-placed insurance notices in bold text. Accordingly, the Bureau is revising MS-3(A) through (C) to align the model forms with the applicable requirements of § 1024.37 that require certain information on the notices to be set in bold text. The Bureau is also making a technical correction to the heading for appendix MS.

Legal Authority

The Bureau is exercising its authority under section 6(k)(1)(E) of RESPA to amend the model forms in appendix MS–3(A) through (D) to part 1024 of Regulation X. The amendments to the model forms for the force-placed insurance notices align the text of the model forms with the disclosures required by § 1024.37.

Appendix MS–4 to Part 1024—Model Clauses for the Written Early Intervention Notice

Proposed model clause MS–4(D) in appendix MS–4 would have illustrated model language that servicers could use to comply with the requirement under proposed § 1024.39(d)(2)(iii)(A) that the modified written early intervention notice include a statement that the servicer may or intends to invoke its specified remedy of foreclosure. The Bureau

proposed model clause MS–4(D) to assist servicers subject to the FDCPA with respect to a borrower who has invoked the FDCPA's cease communication protections in complying with the modified written early intervention notice under proposed § 1024.39(d)(2)(iii).

The Bureau sought comment on whether proposed model clause MS–4(D) was appropriate and whether alternate or additional model clauses would be helpful to borrowers and servicers in this context. Some industry commenters objected to the proposed model language on the basis that it may be considered threatening to a borrower and inconsistent with encouraging borrowers to reach out to the servicer. One servicer commented that the implied threat of foreclosure would be inaccurate in many cases because that servicer ultimately pursues foreclosure on just 15 percent of the borrowers who receive a written early intervention notice.

The Bureau is finalizing model clause MS–4(D) with modifications to the language to convey more accurately the circumstances under which a servicer may invoke its specific remedy of foreclosure. As discussed in the section-by-section analysis of new § 1024.39(d), model clause MS–4(D) may be used to comply with the requirement that the written early intervention notice include a statement that the servicer may or intends to invoke its specified remedy of foreclosure pursuant to section 805(c)(2) or (3) of the FDCPA. Use of this model clause or another statement in compliance with § 1024.39(d)(3)(i), located on a written notice as required by and in compliance with the other requirements of § 1024.39(d)(3), provides a safe harbor from FDCPA liability under section 805(c) for providing the required statement. As finalized, model clause MS–4(D) states, "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."

Legal Authority

The Bureau adopts new model clause MS–4(D) in appendix MS–4 to part 1024 of Regulation X pursuant to its authority under section 6(k)(1)(E) of RESPA and section 814(d) of the FDCPA. For the reasons discussed in the section-by-section analysis of new § 1024.39(d) and the interpretive rule accompanying this final rule, the Bureau believes that requiring a servicer to provide the modified written early intervention notice if any loss mitigation option is available and if no borrower on the mortgage loan is a debtor in bankruptcy is a reasonable interpretation of the exceptions under section 805(c)(2) and (3) of the FDCPA, which permit a debt collector to communicate with a consumer who has invoked the cease communication protections to notify the consumer that the debt collector or creditor may or intends to invoke specified remedies which it ordinarily invokes.

C. Regulation Z

Section 1026.2 Definitions and Rules of Construction

2(a)(11)

As noted in part V.A., the Bureau proposed to apply certain mortgage servicing rules to confirmed successors in interest. Similar to the definition in proposed § 1024.30(d) with respect to the Mortgage Servicing Rules in Regulation X,[279] proposed § 1026.2(a)(11) would have revised the definition of the term consumer to include a successor in interest once a servicer confirms the successor in interest's identity and ownership interest in the dwelling for the purposes of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41. For the reasons described in part V.A. and in this discussion, the Bureau is finalizing this proposed definition with a

[279] *See* section-by-section analysis of § 1024.30(d), *supra.*

substantive change to add the mortgage transfer disclosure requirements of § 1026.39 and technical changes to incorporate the new definition of confirmed successor in interest. The final rule thus amends the definition of consumer for purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41 to include a confirmed successor in interest. As in the proposal, confirmed successors in interest covered by § 1026.2(a)(11) will not necessarily have assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law or otherwise be liable on it.[280]

As described in part V.A., successors in interest face many of the challenges that the Mortgage Servicing Rules in Regulation Z were designed to prevent. Because a confirmed successor in interest is a homeowner whose dwelling is subject to foreclosure if the mortgage loan obligation is not satisfied, the same reasons supporting the Bureau's adoption of the 2013 TILA Servicing Final Rule support the changes that the Bureau is making to § 1026.2(a)(11).

The Bureau has considered each of the Mortgage Servicing Rules in Regulation Z and has concluded that each rule should apply to confirmed successors in interest. The Bureau generally believes that it would add unnecessary complexity to the rules to require servicers to apply some but not all of the Mortgage Servicing Rules in Regulation Z to confirmed successors in interest. After reviewing the comments, the Bureau has not identified any compelling reasons not to apply a particular rule and therefore concludes that it is preferable to apply all of the Mortgage Servicing Rules in Regulation Z to confirmed successors in interest.[281]

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[280] As indicated in part V.A., *supra*, the Bureau understands that whether a successor in interest has assumed a mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law is a fact-specific question.
[281] As explained in part V.A., *supra*, and in the section-by-section analyses of §§ 1026.20(f) , 1026.39(f), and 1026.41(g), *infra*, the final rule includes additional provisions governing how the Mortgage Servicing Rules in Regulation Z apply to confirmed successors in interest.

The new definition of consumer in § 1026.2(a)(11) entitles confirmed successors in interest to receive ARM disclosures under § 1026.20(c) and (d) and escrow account cancellation notices under § 1026.20(e).[282] The disclosures required by § 1026.20(c) through (e) will provide confirmed successors in interest with important information to allow the confirmed successor in interest to keep the mortgage loan current, which in turn will help the confirmed successor in interest avoid unnecessary foreclosure.

The Bureau anticipates that § 1026.36(c)'s protections will help confirmed successors in interest maintain ownership of their homes.[283] As noted in the section-by-section analysis of § 1026.36(c)(1)(iii), even in the absence of the final rule, existing § 1026.36(c) imposes certain obligations on servicers with respect to payments from successors in interest. However, consumer advocacy groups reported in their comments, as they had in earlier reports, that some servicers are refusing to accept payments from successors in interest, which in turn may lead to delinquency on the mortgage loan and, eventually, foreclosure. Applying § 1026.36(c)'s prompt crediting requirements explicitly to confirmed successors in interest may help alleviate this problem. The Bureau also believes that providing confirmed successors in interest with access to the loan's payoff balance will help keep them informed about the mortgage loan secured by the dwelling and prevent unnecessary foreclosure.[284] Access to this information could also facilitate refinancing by the confirmed successor in interest. Because successors in interest, as owners of a

[282] Section 1026.20(c) and (d) generally applies with respect to a closed-end consumer credit transaction secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation, and § 1026.20(e) generally applies with respect to a closed-end consumer credit transaction secured by a first lien on real property or a dwelling.

[283] Section 1026.36(c)(1) and (2) apply in connection with a closed-end consumer credit transaction secured by a consumer's principal dwelling, and § 1026.36(c)(3) applies in connection with a consumer credit transaction secured by a dwelling.

[284] For the reasons discussed in part V.A., *supra*, the Bureau believes that providing confirmed successors in interest with payoff balances does not present privacy concerns.

dwelling securing a mortgage loan, may be required to make payments on the loan to avoid foreclosure, applying the prohibition on pyramiding of late fees explicitly to confirmed successors in interest serves TILA's purpose of protecting consumers against inaccurate and unfair credit billing practices.[285]

The new definition of consumer in § 1026.2(a)(11) also ensures that confirmed successors in interest can receive ongoing periodic statements required under § 1026.41.[286] As the Bureau recognized in issuing the periodic statement requirement in the 2013 TILA Servicing Final Rule, the periodic statement serves a variety of important purposes, including informing consumers of their payment obligations, providing information about the mortgage loan, creating a record of transactions that increase or decrease the outstanding balance, providing information needed to identify and assert errors, and providing information when consumers are delinquent.[287] Receiving periodic statements serves these same purposes for confirmed successors in interest who, as homeowners of a dwelling securing a mortgage loan, may be required to make payments on the loan to avoid foreclosure.

As explained in part V.A., a trade association commenter suggested that a confirmed successor in interest should be treated as a consumer for purposes of the mortgage transfer disclosure requirement in § 1026.39. The mortgage transfer disclosure notifies consumers of valuable information regarding certain transfers of ownership of a mortgage loan, including the name and contact information for the new owner of the mortgage loan and an agent or party authorized to resolve issues concerning the consumer's payments on the loan (if the owner's

[285] 78 FR 10901, 10914 (Feb. 14, 2013) (quoting 15 U.S.C. 1601(a)).
[286] Section 1026.41 generally applies with respect to a closed-end consumer credit transaction secured by a dwelling.
[287] 78 FR 10901, 10959 (Feb. 14, 2013).

information cannot be used for that purpose). Information of this nature can assist confirmed successors in interest who seek to engage in loss mitigation, to ensure that payments on the account are properly applied, or to identify who has a security interest in their property. For the reasons set forth in part V.A. and below, the final rule defines consumer in § 1026.2(a)(11) to also include confirmed successors in interest for purposes of § 1026.39.

As explained in part V.A., some industry commenters expressed concern that the proposal would require servicers to communicate about the loan with parties that are not obligated on the loan in ways. An industry commenter suggested that such communications might be considered abusive or harassing and might be found to violate FDCPA section 806, 15 U.S.C. 1692d, if done by a servicer subject to the FDCPA. The Bureau does not believe that providing this important information about the property at issue in a notice that is required by Regulation X will be abusive or harassing absent other conduct making the overall effect of the communication abusive or harassing, as explained in part V.A. Additionally, the final rule gives servicers the option not to send Mortgage Servicing Rule notices to a confirmed successor in interest who is not liable on the loan obligation until the confirmed successor in interest requests them through a written acknowledgment, as long as the servicer sends an initial written notice and acknowledgment form to the confirmed successor in interest upon confirmation in compliance with the requirements of § 1024.32(c)(1) through (3).

A number of industry commenters also expressed concern that subjecting servicers to the Mortgage Servicing Rules in Regulation Z might prove costly for servicers. However, as explained in part V.A., many of the specific cost concerns that industry commenters raised relate to requirements that are not part of the final rule. For example, many industry commenters expressed concern about the potential burden of having to provide duplicative copies of notices

to confirmed successors in interest if the servicer had already provided the same notice to another consumer on the account. To address this concern, the final rule clarifies that servicers generally do not have to send Regulation Z disclosures to a confirmed successor in interest if the disclosure is provided to another consumer on the account. Because servicers already must comply with §§ 1026.20(c) through (e), 1026.36, 1026.39, and 1026.41 with respect to the transferor consumer, the Bureau believes that the additional cost to servicers to apply these requirements to confirmed successors in interest will be relatively minimal. The Bureau believes that the additional cost imposed by extending the Mortgage Servicing Rules in Regulation Z to confirmed successors in interest will largely be limited to updating servicer systems initially, adding individual successors in interest to the system on an ongoing basis, and printing and mailing costs, if any.

As discussed in more detail in part V.A., the Bureau received a variety of comments on whether mortgage servicing protections should apply with respect to successors in interest even if the servicer has not confirmed the successor in interest's identity and ownership interest in the dwelling. Industry commenters generally opposed extending such protections, asserting that doing so could violate the privacy of the transferor consumer and any other consumers on the account and could result in unauthorized persons obtaining access to loan information or taking action with respect to a loan. Some consumer advocacy groups encouraged the Bureau to apply certain servicing protections prior to confirmation. For example, consumer advocacy groups indicated that, even before a successor in interest is confirmed, a servicer should be required to credit payments promptly and refrain from improper pyramiding of late fees pursuant to § 1026.36(c).

For the reasons stated in part V.A. and in this discussion, the Bureau has decided not to

add successors in interest who have not been confirmed to the Regulation Z definition of consumer in § 1026.2(a)(11).[288] Because some people representing themselves as successors in interest may not actually have an ownership interest in the dwelling, requiring servicers to apply Regulation Z's mortgage servicing communication and disclosure requirements to successors in interest before servicers have confirmed the successor in interest's identity and ownership interest in the dwelling may present privacy and other concerns, as various commenters noted. For the same reason, the Bureau also believes it is inappropriate to require servicers to incur substantial costs before confirming the successor in interest's identity and ownership interest in the dwelling. However, as discussed in the section-by-section analysis of § 1026.36(c), § 1026.36(c)(1) and (2) imposes certain obligations relating to payment crediting and processing that apply even if a payment is received from a successor in interest prior to confirmation.[289] Moreover, as discussed in the section-by-section analysis of Regulation X §§ 1024.36(i) and 1024.38(b)(1)(vi), the Bureau is creating a new request for information procedure and imposing certain policies and procedures requirements on servicers under Regulation X with respect to potential successors in interest.

The final rule includes commentary to § 1026.2(a)(11) in comment 2(a)(11)-4.i, .ii, and .iv, which was not part of the proposal. It also includes a substantially revised version of proposed comment 2(a)(11)-4 as comment 2(a)(11)-4.iii. New comment 2(a)(11)-4.i clarifies

[288] However, a successor in interest may be a consumer under the Regulation Z definition of consumer (both currently and as amended by the final rule), even if the successor in interest has not been confirmed, if the successor in interest has assumed the mortgage loan obligation under State law or is otherwise obligated on the mortgage loan obligation.

[289] For example, the Bureau is clarifying in comment 36(c)(1)(iii)-2 that, when a servicer specifies requirements for payments, those requirements should not make it difficult for most confirmed and potential successors in interest to make conforming payments.

that confirmation of a successor in interest is different from assumption of the mortgage loan under State law. It explains that 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. It also explains that, 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 Regulation Z are not limited to §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41. The Bureau believes that this comment will help prevent confusion about the consequences of confirmation and of assumption of the loan obligation under State law.

New comment 2(a)(11)-4.ii explains that communications in compliance with Regulation Z to a confirmed successor in interest as defined in § 1026.2(a)(27)(ii) do not violate FDCPA section 805(b) because the term consumer for purposes of FDCPA section 805 includes any person who meets the definition in Regulation Z of confirmed successor in interest. As explained in parts IV.C. and V.A., this is consistent with an interpretive rule that the Bureau is issuing concurrently with this final rule.

Comment 2(a)(11)-4.iii addresses the treatment of transferor consumers, a subject that was addressed in proposed comment 2(a)(11)-4. Proposed comment 2(a)(11)-4 would have provided that, even after a servicer confirms a successor in interest's status, the servicer would still generally be required to comply with the requirements of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 with respect to the prior consumer. The proposed comment indicated, however, that a servicer would not be required to comply with the requirements of §§ 1026.20(c) through (e) and 1026.41 if the prior consumer also either had died or had been released from the obligation on the mortgage loan and a servicer would not be required to comply with the

requirements of § 1026.36(c) if the prior consumer also had been released from the obligation on the mortgage loan. The proposed comment also would have provided that the prior consumer would retain any rights under §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 that accrued prior to the confirmation of the successor in interest to the extent those rights would otherwise survive the prior consumer's death or release from the obligation. For the reasons stated in part V.A. and in this discussion, the Bureau has substantially revised this comment to make it clear that confirmation of a successor in interest does not strip the consumer who transferred the ownership interest to the successor in interest of any protections under Regulation Z. The revised comment appears as comment 2(a)(11)-4.iii in the final rule.

In the proposal, the Bureau solicited comment on whether a servicer should not be required to comply with §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 with respect to prior consumers after a successor in interest is confirmed. The Bureau also solicited comment on whether other circumstances exist, beyond death and release of the obligation on the mortgage loan, in which some or all of the requirements of §§ 1026.20(c) through (e), 1026.36(c), and 1026.41 should not apply with respect to the prior consumer after a successor in interest is confirmed. The Bureau also solicited comment on whether § 1026.41 should provide that, in the case of consumer death, the servicer should continue providing periodic statements to the consumer's estate until a successor in interest's status has been confirmed.

As explained in part V.A., the Bureau received many comments objecting to the use of the term prior consumer. A number of commenters also expressed concern that the Bureau's proposal would not provide adequate protection to the estates of transferor consumers. Some consumer advocacy groups suggested that estates and their representatives should always be able to obtain information regarding the mortgage loan and have payments applied correctly. A trade

association agreed with two caveats: It indicated that (1) the servicer needs to verify that a person purporting to act as administrator or executor is properly acting in that capacity, and (2) if the estate is released from the loan obligation, Regulation P may limit the estate's ability to access future loan information. Another trade association indicated that the executor of an estate may ultimately be legally obligated to dispose of property and needs information in order to fulfill the executor's responsibilities.

The final rule uses the term transferor consumer rather than prior consumer because a transferor consumer typically remains a consumer for purposes of Regulation Z after the transfer. As many commenters indicated, transferor consumers may remain liable on the mortgage loan obligation and can have significant legal interests at stake even after a successor in interest is confirmed. The Bureau also recognizes that, when a consumer dies, the consumer's estate and its representative have an important role to play and that Regulation Z can provide valuable information and protections to transferor consumers and their estates even after confirmation of a successor in interest. The Bureau does not intend for the final rule to diminish any protections that TILA and Regulation Z currently provide for living transferor consumers or for estates and their representatives, and the Bureau has significantly revised proposed comment 2(a)(11)-4 accordingly. As finalized, comment 2(a)(11)-4.iii provides that, 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.

The Bureau acknowledges that, under the final rule, servicers will sometimes be required to comply with the Mortgage Servicing Rules in Regulation Z with respect to more than one person—such as the transferor consumer or a representative of the transferor consumer's estate

and the confirmed successor in interest, as well as, in some cases, multiple confirmed successors in interest who each acquire an ownership interest in a dwelling. Although some commenters expressed concern about this, the Bureau notes that, under the Mortgage Servicing Rules, the rules already may apply with respect to more than one consumer for a particular mortgage loan. It is quite common for more than one consumer (for example, spouses) to be obligated on the mortgage note, and the Mortgage Servicing Rules apply with respect to each consumer in such cases. Accordingly, the Bureau does not believe that applying the Mortgage Servicing Rules in Regulation Z to confirmed successors in interest will present novel challenges for servicers in this regard.

The final rule also includes new comment 2(a)(11)-4.iv, which makes clear that servicers generally do not need to send Regulation Z notices to confirmed successors in interest if the notices would be duplicative of notices sent to another consumer on the account. A number of commenters asked the Bureau to clarify whether servicers must send multiple copies of required servicing notices after a successor in interest is confirmed. One industry commenter explained that most servicing platforms only allow for automated delivery of correspondence to one address. It indicated that a requirement to send items to multiple addresses or through differing communication channels would create significant operational and systems challenges with concomitant costs.

For the reasons set forth in part V.A. and in this discussion, the Bureau agrees that it would be unnecessarily burdensome to require servicers to send additional copies of notices required by § 1026.20(c), (d), or (e), § 1026.39, or § 1026.41 to confirmed successors in interest if another consumer is already receiving them. Proposed comment 41(a)-5.ii addressed this issue with respect to periodic statements, but, in light of the comments received, the Bureau believes it

is clearest and most efficient to address questions regarding duplication of notices for confirmed successors in interest in a uniform, centralized way in comment 2(a)(11)-4.iv for all of the Mortgage Servicing Rules in Regulation Z. Comment 2(a)(11)-4.iv clarifies that, except as required by Regulation X 12 CFR 1024.36, in response to an information request, 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. Comment 2(a)(11)-4.iv also explains that, 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.

Requiring only one periodic statement is consistent with current comment 41(a)-1, which provides that, 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. New comment 2(a)(11)-4.iv is also consistent with § 1026.17(d), comment 17(d)-2, and § 1026.31(e), which generally provide that, if there is more than one consumer, the disclosures required by Regulation Z subparts C and E may be made to any consumer who is primarily liable on the obligation.

2(a)(27)

The Bureau proposed to define successor in interest in § 1026.2(a)(27) to cover all categories of persons who acquired an ownership interest in a dwelling securing a mortgage loan

in a transfer protected by the Garn-St Germain Act.[290] The proposed definition stated that a successor in interest is a person to whom an ownership interest in a dwelling securing a closed-end consumer transaction is transferred from a prior consumer, provided that the transfer falls under an exemption specified in section 341(d) of the Garn-St Germain Act.[291] As explained in part V.A., the Bureau is finalizing the definition of successor in interest in § 1026.2(a)(27)(i) with several adjustments to address concerns raised by commenters. For clarity and ease of reference, the final rule also includes a definition of confirmed successor in interest in § 1026.2(a)(27)(ii).

2(a)(27)(i)

As explained in part V.A., some industry commenters objected to the use of categories from the Garn-St Germain Act, and many industry commenters urged the Bureau not to finalize the proposed successor provisions or to narrow the scope of the definition of successor in interest substantially—for example, to limit the scope to situations involving death or death or divorce. Others urged the Bureau to exclude anyone who has not assumed the mortgage loan obligation from the definition of successor in interest. Some suggested excluding certain types of transactions, such as reverse mortgages.

Some industry commenters raised questions about whether the Bureau intended to incorporate the occupancy requirements of the Garn-St Germain Act implementing regulations administered by the OCC.[292] An industry commenter suggested that the Bureau should omit reference to the Garn-St Germain Act and instead enumerate the categories of transfer of

[290] 12 U.S.C. 1701j-3(d).
[291] *Id.* As discussed in the section-by-section analysis of § 1024.31, *supra*, the Bureau proposed to add a similar definition to Regulation X.
[292] 12 CFR 191.5(b).

ownership that would qualify for regulatory protection, in order to avoid unintended consequences.

Consumer advocacy group commenters generally supported use of the Garn-St Germain Act framework and urged the Bureau to broaden the definition to include various categories that are not covered by the Garn-St Germain Act but that are similar to the Garn-St Germain Act categories. They suggested, for example, that the definition should include unmarried partners, relatives other than a spouse or child of the borrower who obtain an interest in the home through a quitclaim deed, and unrelated transferees, as well as co-homeowners who did not sign the original loan. A large number of commenters of various types expressed concern about the use of the term prior consumer because the consumer who transfers an interest may still be liable on the loan obligation and a consumer for purposes of Regulation Z.

For the reasons explained in part V.A. and in this discussion, the Bureau is finalizing the definition of successor in interest for Regulation Z in § 1026.2(a)(27)(i) using the Garn-St Germain Act framework but with two changes. First, because the consumer who transfers an ownership interest to the successor in interest may remain a consumer after the transfer, the final rule substitutes "consumer" for "prior consumer" in the definition of successor in interest.

Second, the final rule does not include a cross-reference to the Garn-St Germain Act but instead lists the specific categories of transfers that could render a transferee a successor in interest. These categories are modeled on the categories of transfers of ownership interest that section 341(d) of the Garn-St Germain Act protects. To ensure that the scope of the final rule does not change without further rulemaking by the Bureau, the Bureau has omitted the Garn-St

Germain Act category that includes any other transfer or disposition described in the statute's implementing regulations.[293] Additionally, in restating the categories in the final rule, the Bureau has not incorporated certain scope limitations imposed by the Garn-St Germain Act or its implementing regulations, such as the exclusion for reverse mortgages and certain occupancy requirements in 12 CFR 191.5(b). As explained in part V.A., these adjustments to the proposal promote clarity and consistency with other aspects of Regulation Z and with the final definition of successor in interest in subpart C of Regulation X.

The final rule adds new comment 2(a)(27)(i)-1 to clarify how the definition of successor in interest applies when property is held in a joint tenancy or a tenancy by the entirety. A trade association questioned whether the proposal would protect a non-borrower owner who holds property in a tenancy by the entirety when the borrower owner dies if there is not a transfer under State law. This commenter stated that, if property is held in a tenancy by the entirety, it is not clear that there is a property transfer when one owner dies because State law may provide that the survivor continues to own an undivided interest in the entire property and that the late spouse's property interest simply terminates.

The Bureau believes it is important to extend protections to a tenant by the entirety upon the death of a borrower spouse and to a joint tenant upon the death of a borrower joint tenant. The Bureau is adding comment 2(a)(27)(i)-1 in the final rule, to clarify that, if a borrower 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

[293] 12 U.S.C. 1701j-3(d)(9). The Bureau has also omitted several categories in the Garn-St Germain Act that do not result in a transfer of ownership interest and that are therefore irrelevant for successor in interest status. *See* 12 U.S.C. 1701j-3(d)(1), (2), (4); *see also* 79 FR 74176, 74181 n.28 (Dec. 15, 2014) (noting that the proposal would not apply to the situations described in these categories).

with a right of survivorship in the property is a successor in interest as defined in § 1026.2(a)(27)(i).

The final rule also adds new comment 2(a)(27)(i)-2 to clarify the application of the definition of successor in interest to *inter vivos* trusts. The comment explains that, 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). This clarification ensures that a trust is not a successor in interest under these circumstances. It is also consistent with comment 3(a)-10 to Regulation Z, which explains that credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization.

2(a)(27)(ii)

Section 1026.2(a)(27)(ii) defines confirmed successor in interest for purposes of Regulation Z as a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the dwelling. This new definition was not part of the proposal but is consistent with how the Bureau used the term confirmed successor in interest in the proposal and includes language drawn from the proposed definition of consumer. Including this definition in the final rule will help to streamline the successor in interest provisions throughout Regulation Z.

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

Section 1026.20(e) implements the requirement in TILA section 129D(j)(1)(B) that the creditor or servicer must provide an escrow account cancellation notice for certain mortgage transactions. Pursuant to § 1026.2(a)(11), as amended by the final rule, confirmed successors in interest are consumers for purposes of § 1026.20(e). Section 1026.20(e)(4) requires that the disclosures provided pursuant to § 1026.20(e) must have headings, content, order, and format substantially similar to model form H–29 in appendix H to part 1026. For the reasons stated in part V.A. and in this discussion, the Bureau is adding comment 20(e)(4)-3 to make it clear that creditors and servicers may modify the language in model form H–29 to accommodate particular consumer circumstances or transactions not addressed by the form and to tailor the model form H–29 statement of consequences for failing to pay property costs to the circumstances of the particular consumer.

Model form H–29 includes some language that may not be well suited to confirmed successors in interest who have not assumed the mortgage loan obligation under State law and are not otherwise liable on it. The model form states, for example, "you will no longer have an escrow account," which could potentially be confusing for a confirmed successor in interest who is not liable on the mortgage loan obligation and therefore may not ever have been the holder of an escrow account. The model form notice refers to "your loan" and also states: "[i]f you fail to pay any of your property costs, we may . . . require you to pay for property insurance that we buy on your behalf, which likely would cost more and provide fewer benefits than what you could

buy on your own." This potential consequence may not apply to a confirmed successor in interest if the confirmed successor in interest is not a party to the loan agreement.

The final rule adds comment 20(e)(4)-3 to indicate that 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 part 1026 do not preclude creditors and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the form. The requirements also do not preclude creditors and servicers from tailoring to the circumstances of the particular consumer the statement of consequences if the consumer fails to pay property costs. This new comment clarifies that servicers can adjust the language used in model form H–29 to the specific circumstances of confirmed successors in interest and others. The new comment is similar to existing Regulation Z comments 20(c)(3)(i)-1 and 20(d)(3)(i)-1, which authorize adjustments to accommodate particular consumer circumstances or transactions not addressed by the forms with respect to the ARM notices required by § 1026.20(c) and (d). As explained in part V.A., the adjustments authorized by comments 20(c)(3)(i)-1, 20(d)(3)(i)-1, and 20(e)(4)-3 represent one of several options that servicers may use to ensure that their notices and other communications do not confuse or deceive confirmed successors in interest who have not assumed the mortgage loan obligation under State law and are not otherwise liable on it as to whether they are liable on the mortgage loan obligation.

20(f) Successors in Interest

As explained in part V.A. and the section-by-section analysis of Regulation X § 1024.32, the final rule allows servicers to provide an initial explanatory written notice and acknowledgment form to confirmed successors in interest who are not liable on the mortgage

loan obligation. The notice explains that the confirmed successor in interest is not liable unless and until the confirmed successor in interest assumes the mortgage loan obligation under State law. The notice also indicates that the confirmed successor in interest must return the acknowledgment to receive certain servicing notices under the Mortgage Servicing Rules. For the reasons stated in part V.A. and in this discussion, the final rule includes new § 1026.20(f), which provides that, if, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with such a written notice and acknowledgment form, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by § 1026.20(c), (d), or (e) 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.

The final rule does not mandate that servicers send the initial written notice and acknowledgment form; instead, Regulation X § 1024.32(c)(1) gives servicers the option to do so and, if they choose to do so, § 1026.20(f) relieves them of the obligation to provide written disclosures required by § 1026.20(c), (d), or (e) until the confirmed successor in interest affirmatively indicates a desire to receive them by returning the acknowledgment or assumes the mortgage loan obligation under State law. Similar provisions in §§ 1024.32(c)(2), 1026.39(f), and 1026.41(g) address the disclosures required by, respectively, the Mortgage Servicing Rules in Regulation X and §§ 1026.39 and 1026.41. As noted in part V.A., the Bureau has decided to excuse servicers that have not received an acknowledgment back from a confirmed successor in interest from the requirement to send Mortgage Servicing Rule notices because doing so relieves servicers of the costs associated with sending notices to confirmed successors in interest who are

not liable on the mortgage loan obligation and do not want notices. However, if a confirmed successor in interest assumes a mortgage loan obligation under State law, the information in the initial notice and acknowledgment form is no longer applicable, and § 1026.20(f) accordingly does not suspend the servicer's obligation to provide notices required by § 1026.20(c), (d), or (e).

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

36(c) Servicing Practices

36(c)(1) Payment Processing

The Bureau proposed a technical change to § 1026.36(c)(1) for clarity. Section 1026.36(b) provides that § 1026.36(c)(1) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. However, current § 1026.36(c)(1) refers to consumer credit transactions secured by a consumer's principal dwelling, without referring to closed-end transactions. Proposed § 1026.36(c)(1) added language relating to closed-end consumer credit transactions.

The Bureau also proposed commentary to § 1026.36(c)(1) to clarify how servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications. Proposed comment 36(c)(1)(i)-4 would have provided that, if the loan contract has not been permanently modified but the consumer has agreed to a temporary loss mitigation program, a periodic payment under § 1026.36(c)(1)(i) remains an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, irrespective of the payment due under the temporary loss mitigation program. Accordingly, if a consumer submits a payment under a temporary loss mitigation program that is less than an amount sufficient to cover principal, interest, and escrow

(if applicable) for a given billing cycle under the loan contract, the servicer should generally treat the payment as a partial payment under § 1026.36(c)(1)(i), even though the consumer may have made the payment due under the temporary loss mitigation program.

The Bureau proposed this comment in response to several inquiries regarding payment processing for payments under temporary loss mitigation programs. In the proposal, the Bureau acknowledged that its statement in the 2013 TILA Final Servicing Rule, "if a consumer makes a payment sufficient to cover the principal, interest, and escrow due under a trial modification plan, these funds should be applied,"[294] may have suggested that, when a temporary loss mitigation program is in effect, the periodic payment is the payment due under the temporary loss mitigation program, rather than the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract. In the proposal, the Bureau reiterated that the periodic payment, even under a temporary loss mitigation program, remains the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract. A consumer may continue to accumulate a delinquency according to the loan contract during the duration of a temporary loss mitigation program. If a consumer fails to comply with the terms of a temporary loss mitigation program, the servicer will typically revert back to the terms of the loan contract, with the result that the consumer may be facing acceleration or an immediate demand for payment in full of the accumulated delinquency. Accordingly, the Bureau believed that it would be appropriate to require servicers to credit payments in a way that reflects the continuing contractual obligations between the parties and any accumulating delinquency. Moreover, the Bureau believed it could be burdensome for

[294] 78 FR 10901, 10954 (Feb. 14, 2013).

servicers to treat the payment due under a temporary loss mitigation program as the periodic payment, only to revert to the contractual payment if the consumer fails to comply with the terms of the temporary loss mitigation program.

For loans that have been permanently modified, proposed comment 36(c)(1)(i)-5 would have provided that the periodic payment under § 1026.36(c)(1)(i) is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract. The periodic payment should reflect the contractual obligation; once the loan contract has been permanently modified, the terms of the modified loan contract govern the periodic payment determination and not the terms of the contract pre-modification.

Several consumer advocacy groups commented on proposed comment 36(c)(1)(i)-4. Consumer advocacy group commenters expressed concern that the proposed comment would cause servicers to believe that payments made under a temporary loss mitigation program are treated differently than other partial payments. One consumer advocacy group stated that a temporary loss mitigation program is a contract that the consumer has the legal right to enforce. It suggested that treating payments made under a temporary plan as partial payments under proposed comment 36(c)(1)(i)-4 conflicts with this principle.

The Bureau is finalizing the technical change to § 1026.36(c)(1) and the revisions to comments 36(c)(1)(i)-4 and -5 as proposed. Accordingly, final § 1026.36(c)(1) refers directly to a closed-end consumer credit transaction secured by a consumer's principal dwelling. Comment 36(c)(1)(i)-4 explains that, 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. Comment 36(c)(1)(i)-5 provides that, 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.[295]

As explained in the proposal, the servicer should generally treat a payment due under a temporary loss mitigation program as a partial payment under § 1026.36(c)(1)(i). Although a temporary loss mitigation program is a contract, as noted by one commenter, and may be enforceable as such, the temporary loss mitigation program does not remove the obligations of the existing mortgage loan contract. Servicers must credit payments in a way that reflects the continuing contractual obligations between the parties. The Bureau notes that its commentary here is confined to clarifying how servicers must credit payments received and ensuring that those payments are credited according to the terms of the loan contract; the Bureau is not addressing other legal requirements the servicer may have to the borrower relating to the temporary loss mitigation program.

36(c)(1)(iii) Non-conforming Payments

Section 1026.36(c) includes requirements relating to prompt crediting of payments, pyramiding of late fees, and payoff statements. In the proposal, the Bureau solicited comment on whether certain parts of § 1026.36(c) should apply with respect to successors in interest even if the servicer has not confirmed the successor in interest's identity and ownership interest in the dwelling. The Bureau received a variety of comments on this issue, including some that asked

[295] As described in the section-by-section analysis of § 1026.41(d), the Bureau is also finalizing commentary to § 1026.41(d) clarifying certain periodic statement disclosures relating to temporary loss mitigation programs and permanent loan modifications.

the Bureau to clarify how servicers should handle payments by potential successors in interest.[296] For the reasons explained in part V.A. and in this discussion, the final rule clarifies the operation of § 1026.36(c) with respect to potential successors in interest by amending comment 36(c)(1)(iii)-2.

Several consumer advocacy groups stated that a servicer should always be required to credit payments promptly and to refrain from improper pyramiding of late fees. These groups noted that it could take potential successors in interest several months or longer to obtain and provide documentation of their status as a successor in interest. Consumer advocacy group commenters also indicated that successors in interest continue to have difficulties getting their payments credited. A local government commenter noted the importance of assisting successors in making payments on a loan if the loan is current at the time the servicer is notified of the borrower's death.

A number of industry commenters urged the Bureau not to apply protections or regulations including § 1026.36(c) to unconfirmed successors in interest. A trade association stated that successors in interest can and should make payments while successorship claims and loss mitigation applications are being prepared or pending. It indicated that servicers accept payments made prior to confirmation if the servicers have enough confirming information. This commenter suggested that it would be helpful for the Bureau to clarify the treatment of a payment that a successor in interest sends before confirmation and raised a number of questions relating to how the error resolution procedures of § 1024.35 apply to payments received from

[296] Some commenters also addressed whether § 1026.36(c) and other mortgage servicing requirements should apply to confirmed successors in interest. Those comments are addressed in part V.A. and the section-by-section analysis of § 1026.2(a)(11).

potential and confirmed successor in interest. This commenter indicated that servicers should have the ability to accept or reject payments from potential successors in interest and that servicers need to be able to reject payments in certain circumstances, citing the Patriot Act.

For the reasons stated in part V.A. and the section-by-section analysis of § 1026.2(a)(11), the Bureau has decided not to define unconfirmed successors in interest as consumers for purposes of the Mortgage Servicing Rules, including § 1026.36(c). However, the Bureau agrees with commenters that potential successors in interest should be able to make payments during the confirmation process, in order to ensure that mortgage loans do not become delinquent or, if already delinquent, do not become more delinquent while potential successors in interest await confirmation. Both industry commenters and consumer advocacy groups emphasized the importance of payments by potential successors in interest. The Bureau encourages servicers to continue to work with potential successors in interest to facilitate payments during the confirmation process in order to help prevent delinquency. The Bureau also notes that there may be circumstances where State law provides additional protections for potential successors in interest as to payment acceptance and crediting.

Additionally, the Bureau notes that the mere fact that a payment comes from someone who is not a consumer does not obviate the servicer's obligations to handle it properly under § 1026.36(c)(1) and (2).[297] In connection with consumer credit transactions secured by a consumer's principal dwelling, section 129F(a) of TILA generally requires servicers to credit a payment to the consumer's loan account as of the date of receipt, with certain limited

[297] For example, comment 36(c)(1)(i)-3 addresses how servicers should calculate the date of receipt for payments made by third-party payors such as a financial institution through a preauthorized payment or telephone bill-payment arrangement.

exceptions.[298] In establishing this requirement, Congress did not specify by whom the payment must be made. Consistent with section 129F(a), § 1026.36(c)(1)(i) provides, with specified exceptions, that, in connection with such transactions, no servicer shall fail to credit a periodic payment to the consumer's loan account as of the date of receipt, without limiting the requirement to payments received from a consumer. There may be many circumstances in which a third party makes mortgage payments on behalf of the consumer or as a successor in interest to the transferor consumer. In those cases, as well as when the consumer makes the payment directly, the Bureau expects servicers to follow the payment processing requirements in § 1026.36(c)(1) and to adhere to the prohibition on pyramiding of late fees in § 1026.36(c)(2), to the extent those provisions are otherwise applicable.

Current comment 36(c)(1)(iii)-1 explains that a servicer may specify reasonable requirements for making payments in writing, such as requiring that payments be accompanied by the account number or payment coupon. Current comment 36(c)(1)(iii)-2 also explains that it should not be difficult for most consumers to make conforming payments. Pursuant to the final rule, consumers, as used in comment 36(c)(1)(iii)-2, includes confirmed successors in interest. In light of the importance of keeping loans current, it would not be reasonable for a servicer to impose payment requirements that prevent a potential successor in interest from making payments on the account during the confirmation process. The final rule accordingly amends comment 36(c)(1)(iii)-2 to clarify that it should not be difficult for most consumers or potential successors in interest to make payments that conform to a servicer's payment requirements. The Bureau believes that this clarification serves TILA's purpose of protecting consumers against

[298] 15 U.S.C. 1639f(a).

inaccurate and unfair credit billing practices by ensuring that servicers properly process payments received on an account.[299]

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

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

The Bureau did not receive comments addressing the proposed technical change to § 1024.36(c)(2) and is finalizing as proposed. Accordingly, final § 1024.36(c)(2) refers directly to a closed-end consumer credit transaction secured by a consumer's principal dwelling.

Section 1026.39 Mortgage Transfer Disclosures

39(f) Successors in Interest

As explained in part V.A. and the section-by-section analysis of Regulation X § 1024.32, the final rule allows servicers to provide an initial explanatory written notice and acknowledgment form to confirmed successors in interest who are not liable on the mortgage loan obligation. The notice explains that the confirmed successor in interest is not liable unless and until the confirmed successor in interest assumes the mortgage loan obligation under State law. The notice also indicates that the confirmed successor in interest must return the acknowledgment to receive certain servicing notices under the Mortgage Servicing Rules. For

[299] 15 U.S.C. 1601(a).

the reasons stated in part V.A. and in this discussion, the final rule includes new § 1026.39(f), which provides that, if, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with such a written notice and acknowledgment form, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by § 1026.39(b) 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.

The final rule does not mandate that servicers send the initial written notice and acknowledgment form; instead, Regulation X § 1024.32(c)(1) gives servicers the option to do so and, if they choose to do so, § 1026.39(f) relieves them of the obligation to provide written disclosures required by § 1026.39(b) until the confirmed successor in interest affirmatively indicates a desire to receive them by returning the acknowledgment or assumes the mortgage loan obligation under State law. Similar provisions in §§ 1024.32(c)(2), 1026.20(f), and 1026.41(g) address the disclosures required by, respectively, the Mortgage Servicing Rules in Regulation X and §§ 1026.20(c), (d), and (e) and 1026.41. As noted in part V.A., the Bureau has decided to excuse servicers that have not received an acknowledgment back from a confirmed successor in interest from the requirement to send Mortgage Servicing Rule notices because doing so relieves servicers of the costs associated with sending notices to confirmed successors in interest who are not liable on the mortgage loan obligation and do not want notices. However, if a confirmed successor in interest assumes a mortgage loan obligation under State law, the information in the initial notice and acknowledgment form is no longer applicable, and

§ 1026.39(f) accordingly does not suspend the servicer's obligation to provide notices required by § 1026.39(b).

Section 1026.41 Periodic Statements for Residential Mortgage Loans

41(a) In General

Although the Bureau did not propose to amend comment 41(a)-1, the Bureau is revising the example provided in comment 41(a)-1 to substitute "spouses" for "husband and wife," in order to align the language with other examples in Regulation Z.[300] Thus, as revised, comment 41(a)-1 explains that, if spouses jointly own a home, a servicer need not send statements to both spouses; a single statement may be sent.[301]

Proposed comment 41(a)-5.i reiterated for clarity that a servicer must provide a confirmed successor in interest with a periodic statement meeting the requirements of § 1026.41. The Bureau proposed this comment to ensure that the effect of proposed § 1026.2(a)(11) with respect to providing periodic statements to confirmed successors in interest would be clear. However, the Bureau believes that the effect of the final version of § 1026.2(a)(11) with respect to periodic statements is clear from § 1026.2(a)(11) and its commentary and § 1026.41(g), and the Bureau therefore has not included a comment similar to proposed comment 41(a)-5.i in the final rule. Pursuant to § 1026.2(a)(11), comment 2(a)(11)-4.iv, and § 1026.41(g), a servicer must provide a confirmed successor in interest with periodic statements, unless: (1) The servicer is providing the specific periodic statements to another consumer on the account, or (2) the

[300] Pursuant to the Bureau's Same-Sex Married Couple Policy, *see supra* note 39, the Bureau interprets "spouse" to include married same-sex spouses.

[301] Section 1026.41 defines servicers to mean creditors, assignees, or servicers for the purposes of § 1026.41. The Bureau, therefore, also uses the term servicer to mean a creditor, assignee, or servicer in the section-by-section analysis of § 1026.41, except as otherwise noted.

confirmed successor in interest is not liable on the mortgage loan obligation, the servicer has provided a written notice and acknowledgment form in accordance with Regulation X § 1024.32(c)(1)(iv), and the confirmed successor in interest has not provided the servicer an executed acknowledgment that has not been revoked.

Proposed comment 41(a)-5.ii would have provided that, if a servicer sends a periodic statement meeting the requirements of § 1026.41 to another consumer, the servicer need not also send a periodic statement to a successor in interest; a single statement may be sent. The proposed comment also would have provided that, if a servicer confirms more than one successor in interest's identity and ownership interest in the dwelling, the servicer need not send periodic statements to more than one of the successors in interest. For the reasons stated in part V.A. and the section-by-section analysis of § 1026.2(a)(11) and in this discussion, the Bureau has decided not to finalize proposed comment 41(a)-5.ii and is instead addressing in comment 2(a)(11)-4.iv whether duplicative periodic statements and other Regulation X disclosures must be sent to confirmed successors in interest.

The Bureau solicited comment on whether only one successor in interest should receive a periodic statement or whether instead each successor in interest should receive a periodic statement. A number of industry commenters stated that the rule of joint obligors should apply, such that only one periodic statement is required, and urged the Bureau not to require multiple periodic statements. Some noted that a requirement to provide periodic statements to multiple successors in interest would be extremely burdensome and require significant systems changes. As explained above, various commenters also suggested that the Bureau clarify what is expected with regard to other Mortgage Servicing Rule notices when there are multiple borrowers and suggested that only one notice should be required. In contrast, a consumer advocacy group

suggested that anyone with an ownership interest should receive a copy of the periodic statement, provided they have given their contact information to the servicer.

The Bureau believes that servicers should not be required to send more than one periodic statement with respect to a mortgage loan. This is consistent with how periodic statements for multiple obligors are treated in current comment 41(a)-1, which provides that, when two consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling, the periodic statement may be sent to either one of them. Due to the constraints of current systems platforms and other factors, the Bureau recognizes that requiring servicers to send multiple copies of the same periodic statement would impose additional costs. In light of commenters' requests for clarification regarding other notices required by the Mortgage Servicing Rules, the Bureau has decided to address this issue through a more general comment to § 1026.2(a)(11), as explained in the section-by-section analysis of that section. The Bureau is therefore not finalizing proposed comment 41(a)-5.ii.

41(c) Form of the Periodic Statement

Current section 1026.41(c) requires servicers to make periodic statement disclosures clearly and conspicuously and in a form the consumer may keep. It provides that proper use of sample forms provided in appendix H–30 complies with these requirements. For the reasons stated in part V.A. and in this discussion, the Bureau is adding new comment 41(c)-5, which explains that 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.

The sample periodic statement forms in appendix H–30 include language that could suggest liability under the mortgage loan, such as: "You are late on your mortgage payments.

Failure to bring your loan current may result in fees and foreclosure—the loss of your home . . . . You must pay this amount to bring your loan current." Including these statements in notices sent to a confirmed successor in interest who is not liable on the loan obligation under State law could potentially result in confusion if the servicer has not otherwise clarified that the confirmed successor in interest is not in fact liable on the loan obligation.

Comment 41(c)-5 notes that, for example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation and is not otherwise liable on it, a servicer may modify the forms to use "this mortgage" or "the mortgage" instead of "your mortgage"; "The payments on this mortgage are late" instead of "You are late on your mortgage payments"; and "This is the amount needed to bring the loan current" instead of "You must pay this amount to bring your loan current." As explained in part V.A., the adjustments authorized by comment 41(c)-5 represent one of several options that servicers may use to ensure that their notices and other communications do not confuse or deceive successors in interest who have not assumed the mortgage loan obligation under State law and are not otherwise liable on it regarding whether they are liable on the mortgage loan obligation.

41(d) Content and Layout of the Periodic Statement

Section 1026.41(d) specifies the disclosures that must be provided on the periodic statement and requires that several of those disclosures be provided in close proximity to one another. The Bureau proposed to amend current comment 41(d)-1 and add new comments 41(d)-4 and -5 relating to the requirements in § 1024.41(d). The Bureau is finalizing comments 41(d)-1 and -4 substantially as proposed. The Bureau is finalizing comment 41(d)-5 as proposed.

The Bureau proposed to amend current comment 41(d)-1, which states that items in close proximity may not have any intervening text between them. The close proximity standard is

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

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

The Bureau proposed additional § 1026.41(d) commentary clarifying certain periodic statement disclosure requirements relating to temporary loss mitigation programs. Proposed

comment 41(d)-4 would have provided that, if the consumer has agreed to a temporary loss mitigation program, the disclosures required by § 1026.41(d)(2), (3), and (5) regarding how payments will be and were applied should nonetheless identify how payments are applied according to the loan contract, irrespective of the payment due under the temporary loss mitigation program. The Bureau proposed this commentary in response to several inquiries regarding how temporary loss mitigation programs affect certain disclosures on the periodic statement. Currently, the Bureau's rules and commentary do not address this issue.

As described in the section-by-section analysis of § 1024.36(c)(1), proposed comment 36(c)(1)(i)-4 would have provided that, if the consumer has agreed to a temporary loss mitigation program, a periodic payment under § 1026.36(c)(1)(i) remains an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, irrespective of the payment due under the temporary loss mitigation program. Accordingly, the Bureau believed that it was appropriate for the disclosures on the periodic statement required by § 1026.41(d)(2), (3), and (5) to identify how payments will be and are applied according to the loan contract, irrespective of the payment due under the temporary loss mitigation program, because this is how servicers would actually be applying the payments under proposed comment 36(c)(1)(i)-4. The Bureau believed that this treatment would have been appropriate so that the consumer is kept apprised of how payments are being applied, including being notified of any delinquency that may be accumulating during a temporary loss mitigation program.

The Bureau also proposed comment 41(d)-5 to address the disclosures that servicers must make on the first periodic statement provided to a consumer after an exemption under § 1026.41(e) terminates. Section 1026.41(d) requires that a periodic statement include three disclosures concerning account activity that occurred "since the last statement." First,

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

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

Sections 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) could be interpreted as requiring the periodic statement to include information about account activity for the duration of the exemption period—literally "since the last statement." The Bureau recognized that there may be benefits to providing a consumer with information regarding all fees and charges imposed, all

payments received and applied, and all transaction activity that occurred during the exemption period. A consumer could review this information to determine if a servicer imposed any erroneous fees, failed to properly credit payments, or made other mistakes with respect to the consumer's mortgage loan while the exemption applied. The § 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) disclosures, however, generally cover a time period equivalent to a billing cycle, and the first post-exemption periodic statement should arguably cover a similar time period. The proposal would therefore have clarified that the first post-exemption periodic statement may be limited to disclosing the fees and charges imposed, payments received and applied, and transaction activity since the last payment due date that occurred while the exemption was in effect.

The Bureau believed that consumers and servicers may be better served if the first post-exemption periodic statement includes account activity only since the final payment due date that occurred while the exemption was in effect. The Bureau understood that servicers' systems are generally not equipped to provide months' or years' worth of account activity on a single periodic statement. Requiring the disclosure of all fees and charges imposed, payments received, and transaction activity during an exemption period, which could have spanned several months or years, would impose costs on servicers. Similarly, consumers could be confused or overwhelmed by the receipt of a periodic statement listing all account activity during a lengthy exemption period. For example, consumers might believe that listed fees and charges were presently due, even if the consumer had already paid them.

Moreover, including account activity for the duration of the exemption period would have undermined, in part, the rationale for the exemptions. For example, § 1026.41(e)(3) recognizes the value of a coupon book as striking a balance between ensuring consumers receive

important information and providing a low-burden method for servicers to comply with the periodic statement requirements.[302] Requiring the first post-exemption periodic statement to include the disclosures required under § 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) for the duration of the exemption arguably would have upset the balance struck by the coupon book exemption. Servicers might be forced to maintain the functional ability to produce periodic statements to account for the possibility of a change from coupon books to periodic statements or a loss of the exemption, thus obviating any burden-reduction features of the exemption.

Consumers either receive, or have alternative methods of obtaining, much of the account information that, under the proposal, would not have been included in the first post-exemption periodic statement. For example, consumers who receive coupon books have a right to request the information set forth in § 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4). Similarly, for servicers subject to Regulation X's servicing requirements, a consumer may obtain this information by submitting a written information request. In addition, even if the first post-exemption periodic statement does not include the past payment breakdown since the last pre-exemption periodic statement, § 1026.41(d) requires the statement to identify the total of all payments received since the beginning of the current calendar year. This year-to-date information, while not necessarily covering the entire exemption period, provides consumers with a broad overview of the costs of their mortgage loan and how their payments are being allocated to interest or fees as opposed to principal.[303]

Accordingly, the Bureau proposed comment 41(d)-5, which would have provided that,

[302] 78 FR 10901, 10973 (Feb. 14, 2013).
[303] *Id.* at 10966.

for purposes of the first periodic statement following termination of an exemption under § 1026.41(e), the disclosures required by § 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) may be limited to the period since the final payment due date that occurred while the exemption was in effect. Proposed comment 41(d)-5 also provided an illustrative example. The Bureau sought comment on proposed comment 41(d)-5, including whether to disclose account activity since a date other than the final payment due date that occurred while the exemption was in effect.

One industry commenter expressed support for the proposed clarifications to the periodic statement requirements generally, while another expressed concern over the costs associated with updating the periodic statements. A few consumer advocacy groups expressed support for proposed comment 41(d)-4 and stated that the proposal accurately reflects the fact that a temporary loss mitigation program does not change the terms of the loan contract.

For the reasons discussed below, the Bureau is finalizing comments 41(d)-1 through -5 substantially as proposed. Comment 41(d)-1 explains that § 1026.41(d) requires several disclosures to be provided in close proximity to one another. It provides that, to meet this requirement, the items to be provided in close proximity must be grouped together, and set off from other groupings of items. It further provides that 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. It clarifies that items in close proximity may not have any unrelated text between them and explains that text is unrelated if it does not explain or expand upon the required disclosures.

Comment 41(d)-4 explains that, if the consumer has agreed to a temporary loss mitigation program, the disclosures required by § 1026.41(d)(2), (3), and (5) regarding how payments were and will be applied must identify how payments are applied according to the loan contract,

regardless of the temporary loss mitigation program. Final comment 41(d)-4 clarifies the proposed language by explaining that a servicer must, rather than should, identify how payments are applied according to the loan contract, regardless of the temporary loss mitigation program. The Bureau is finalizing this change because it is mandatory that the disclosures required by § 1026.41(d)(2), (3), and (5) identify how payments are applied according to the loan contract. Additionally, the Bureau is finalizing comment 41(d)-4 so that it discusses only temporary loss mitigation programs, rather than referring to both temporary loss mitigation programs and loss mitigation programs.

Comment 41(d)-5 explains that § 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) require 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. It explains that, 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. It provides an illustrative example.

41(d)(1)

Section 1026.41(d)(1)(iii) provides that the periodic statement required by § 1026.41(d) must include the amount due, shown more prominently than other disclosures on the page. The Bureau proposed § 1026.41(d)(1) commentary to clarify how acceleration, temporary loss mitigation programs, and permanent loan modification affect disclosure of the amount due on the periodic statement. Currently, the Bureau's rules and commentary do not address this issue. The Bureau is finalizing proposed comment 41(d)(1)-1 regarding acceleration with revisions. The

Bureau is finalizing comment 41(d)(1)-2 regarding temporary loss mitigation programs as proposed and comment 41(d)(1)-3 regarding permanent loan modifications substantially as proposed.

Proposed comment 41(d)(1)-1 would have provided that, if the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due disclosed on the periodic statement under § 1026.41(d)(1) should identify only the lesser amount that will be accepted to reinstate the loan, not the entire accelerated balance.

The Bureau is aware that, after accelerating a mortgage loan, a servicer may accept a lesser amount to reinstate the loan and may sometimes be required to do so by State law. The Bureau believed that receiving a periodic statement indicating that the amount due is the reinstatement amount rather than the full accelerated balance would make the consumer more likely to pay the reinstatement amount, thereby possibly preventing foreclosure. The Bureau believed it may confuse consumers to receive a periodic statement indicating that the amount due is the full accelerated balanced when, in fact, the consumer is informed elsewhere that the consumer may pay only the reinstatement amount. The consumer may be deterred from reading other disclosures or documents if the consumer sees the full accelerated balance as the amount due and believes payment of that amount is impossible. In that case, the consumer may not become aware that reinstatement is available, possibly leading to unnecessary foreclosure.

Proposed comment 41(d)(1)-2 would have provided that, if the consumer has agreed to a temporary loss mitigation program, the amount due under § 1026.41(d)(1) may identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract. The Bureau believed that it may be confusing for consumers who have agreed to a loss mitigation program to receive a periodic statement identifying the amount due under the

loan contract when that amount is different from the payment due under the temporary loss mitigation program. Accordingly, the Bureau proposed that servicers may, but are not required to, identify the payment due under the temporary loss mitigation program, instead of the amount due according to the loan contract.

The Bureau did not propose to require that the payment due under the temporary loss mitigation program must be identified as the amount due for two primary reasons. First, because a temporary loss mitigation program does not change the underlying legal obligation, the Bureau believed it may be inappropriate to require a servicer to modify periodic statements whenever a consumer agrees to a temporary loss mitigation program. Second, the Bureau was concerned that imposing additional requirements on servicers when a consumer agrees to a temporary loss mitigation program could deter servicers from offering temporary loss mitigation programs.

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

Proposed comment 41(d)(1)-3 would have provided that, if the loan contract has been permanently modified, the amount due under § 1026.41(d)(1) should identify only the amount due under the modified loan contract. The Bureau believed that the periodic payment should reflect the contractual obligation; once the loan contract has been permanently modified, the terms of the modified loan contract govern the periodic payment determination, not the terms of the contract pre-modification.

The Bureau received a number of comments in response to the proposed § 1026.41(d)(1) commentary. The majority of industry commenters expressed concern over the explanation in

proposed comment 41(d)(1)-1 that, if the balance of the 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. Several of these commenters stated that disclosing the reinstatement amount on the periodic statement as proposed would not be feasible, as this value changes frequently, even daily. They stated that servicers could not be expected to disclose a reinstatement amount that would remain accurate until the periodic payment due date disclosed on the periodic statement. One industry commenter stated that reinstatement amounts are often manually calculated and that the proposal would necessitate implementation of expensive, automated systems. This commenter also said that the proposal was unclear as to whether a servicer would be required to accept the disclosed reinstatement amount after it is no longer accurate. Another industry commenter expressed that the reinstatement amount depends on the expenses incurred by third parties on behalf of servicers and stated that servicers would have no cause to stop such third-party activities unless they had received an indication from the consumer that the consumer sought to reinstate the loan.

A few industry commenters recommended that the Bureau address concerns over frequent changes to the reinstatement amount by permitting servicers to disclose a reinstatement amount that is "good through" a specified date. These commenters stated that disclosing the good through date would clarify that the disclosed reinstatement amount may only be available for a specified period of time, and that this specified period of time may not coincide with the consumer's payment due date.

Some industry commenters urged the Bureau to require only that servicers provide a general disclosure when a loan is accelerated. One commenter expressed support for the Bureau's goal of making the periodic statement seem less daunting for delinquent consumers. It

stated, however, that this goal would be more effectively carried out if servicers provided a generic clarification on the periodic statement that, although the fully accelerated balance is the total amount owed on the loan, the consumer may have the right to request a quote for a lower reinstatement amount. This commenter recommended that the periodic statement include contact information for the mortgage servicer's payoff and reinstatement departments.

Several consumer advocacy groups expressed support for proposed comment 41(d)(1)-1. These commenters stated that otherwise disclosing the amount due on the periodic statement as the fully accelerated amount may cause consumer confusion.

A few industry commenters expressed concern with proposed comment 41(d)(1)-2. These commenters stated that identifying an amount due other than what is legally required under the loan contract could lead to consumer confusion. They further expressed that disclosing this amount would provide little benefit to consumers, as consumers would already be aware of the terms of the loss mitigation program.

In contrast, several consumer advocacy groups stated that, when a consumer and servicer have entered into a contract for temporary loss mitigation, the consumer may be confused if the periodic statement discloses the contractual amount due. These commenters stated that consumers may believe the contractual amount is the amount they are required to pay and may also believe that the servicer has terminated or will not comply with the terms of the temporary loss mitigation program. Some consumer advocacy groups expressed that the costs to servicers associated with changing the amount due on the periodic statement to reflect the terms of the temporary loss mitigation program would be minimal. These commenters further stated that any such costs would not deter servicers from offering temporary loss mitigation programs to consumers, as many servicers must extend such offers pursuant to investor requirements. One

consumer advocacy group suggested that servicers identify the amount due under the loan contract if the loss mitigation program is expected to be 90 days or less and otherwise identify the amount due under the temporary loss mitigation plan. It stated that the proposal may lead to consumer confusion as to the validity of the loss mitigation program.

For the reasons discussed below, the Bureau is finalizing comment 41(d)(1)-1 with changes from the proposal. It is finalizing comment 41(d)(1)-2 as proposed and is finalizing comment 41(d)(1)-3 substantially as proposed.

The Bureau understands that proposed comment 41(d)(1)-1 could have posed compliance difficulties. As noted by commenters, the reinstatement amount may frequently change, which could make it difficult to disclose a reinstatement amount on the periodic statement that will remain accurate until the consumer's payment due date. Accordingly, the Bureau is finalizing comment 41(d)(1)-1 with changes from the proposal.

Final comment 41(d)(1)-1 provides that, if the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due under § 1026.41(d)(1) must identify only the lesser amount that will be accepted to reinstate the loan. It further explains that 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. It provides that, 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.

Comment 41(d)(1)-1 provides a flexible standard for disclosing the reinstatement amount. Servicers may disclose that the reinstatement amount is accurate for only a specified time, thus reducing concerns about consumer confusion when a reinstatement amount changes

between the date the amount is disclosed on the periodic statement and the date the consumer's payment is due. For example, if the servicer discloses that the reinstatement amount is "good through" a specific date, the reinstatement amount must be accepted through that date to reinstate the loan, even if that date is different from the date on which the consumer's payment is due. Additionally, consumers should benefit by having information on the statement indicating that the reinstatement amount is accurate, or will remain accurate, for only a specified time. A general disclosure, as suggested by some commenters, would be less effective in helping consumers understand the specific amount that the consumer can pay to reinstate the loan and possibly avoid unnecessary foreclosure. The Bureau understands that calculating the reinstatement amount for purposes of this disclosure may increase costs to servicers, as suggested by one commenter. However, the Bureau believes that final comment 41(d)(1)-1 may alleviate some of the costs that the proposal could have imposed, and that there are benefits to consumers associated with disclosure of the reinstatement amount. The Bureau also understands that servicers may already be required to disclose this information to consumers under State law.

Permitting servicers to disclose an "as of [date]" enables servicers to disclose a reinstatement amount that accurately captures the amount of fees that have actually been incurred as of the date the periodic statement is provided. It avoids servicers having to make an estimate of future fees. If servicers instead disclose a "good through [date]," the reinstatement amount may include an estimate of future fees that have not yet been incurred at the time the periodic statement is provided. If any information necessary for an accurate disclosure under subpart E of Regulation Z is unknown to the servicer, the servicer must make the disclosure

based on the best information reasonably available at the time the disclosure is provided.[304] The disclosure shall state clearly that the disclosure is an estimate and describe the circumstances under which the disclosure may change.[305]

The Bureau recognizes that, where servicers are estimating future fees, servicers may overestimate or underestimate the actual amount of these unincurred fees. The Bureau understands that, under applicable State and Federal law, consumers would have a right to recover any fees that are paid based on the disclosed reinstatement amount but that the servicer does not actually incur during the time between when the periodic statement is provided and the "good through" date. Alternatively, any bona fide charges from third parties incurred during the time between when the periodic statement is provided and the "good through" date could still be accepted from the consumer after reinstatement, where permitted by applicable State law.

Additionally, final comment 41(d)(1)-1 explains that, if the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due under § 1026.41(d)(1) must, rather than should, identify only the lesser amount that will be accepted to reinstate the loan. As the Bureau has explained, in these situations consumers will benefit from a periodic statement indicating that the amount due is the reinstatement amount. Additionally, the changes adopted in the final rule should facilitate servicers' compliance with comment 41(d)(1)-1.

The Bureau is adopting comment 41(d)(1)-2 as proposed. Comment 41(d)(1)-2 provides that, if the consumer has agreed to a temporary loss mitigation program, the amount due under

[304] *See* 12 CFR 1026.17(c)(1) and 1026.31(d)(2).
[305] *Id*.

§ 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. Industry commenters generally stated that the disclosed amount due should reflect the amount due under the loan contract, while most consumer advocacy groups stated that the disclosed amount due should reflect the amount required to be paid pursuant to the temporary loss mitigation program. The Bureau continues to believe, as explained in the proposal, that it may be confusing for consumers who have agreed to a loss mitigation program to receive a periodic statement identifying the amount due under the loan contract when that amount is different from the payment due under the temporary loss mitigation program. At the same time, requiring servicers to modify periodic statements whenever a consumer agrees to a temporary loss mitigation program may be costly for servicers. Accordingly, where a consumer has agreed to a temporary loss mitigation program, the Bureau believes that permitting, but not requiring, servicers to disclose the amount due under the temporary loss mitigation program appropriately balances consumer and servicer interests.

The Bureau did not receive any comments on proposed comment 41(d)(1)-3 and is finalizing the comment substantially as proposed. Comment 41(d)(1)-3 provides that, 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. Comment 41(d)(1)-3 clarifies the proposed language by explaining that the amount due under § 1026.41(d)(1) must, rather than should, identify only the amount due under the modified loan contract. As the Bureau has explained, once a loan has been permanently modified, the obligation under the unmodified loan contract is not relevant to the periodic statement.

41(d)(2)

Section 1026.41(d)(2)(i) provides that the explanation of amount due on periodic statements required by § 1026.41 must include the monthly payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow (if applicable) and, if a mortgage loan has multiple payment options, a breakdown of each of the payment options along with information on whether the principal balance will increase, decrease, or stay the same for each option listed. The Bureau proposed § 1026.41(d)(2) commentary to clarify how acceleration and temporary loss mitigation programs affect disclosure of the explanation of amount due on the periodic statement. The Bureau's rules and commentary do not currently address this issue. The Bureau proposed this § 1026.41(d)(2) commentary in conjunction with proposed § 1026.41(d)(1) commentary, as discussed in the section-by-section analysis of § 1026.41(d)(1). The Bureau is finalizing the proposed § 1026.41(d)(2) commentary with revisions.

Proposed comment 41(d)(2)-1 would have provided that, if the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due under § 1026.41(d)(2) should omit the monthly payment amount that would generally be required under § 1026.41(d)(2)(i) and should include both the reinstatement amount and the accelerated amount. The proposed comment would have provided that the statement must also include an explanation that the reinstatement amount will be accepted to reinstate the loan. The proposed comment would have required that this explanation be on the front page of the statement or, alternatively, be included on a separate page enclosed with the periodic statement or in a separate letter.

The Bureau proposed comment 41(d)(2)-1 because, given that the amount due will reflect

the reinstatement amount, the Bureau believed that the periodic statement should elsewhere identify the accelerated balance, which is the amount that the consumer technically owes under the loan contract. The Bureau believed that the explanation of amount due is where this disclosure is most appropriate. The Bureau proposed that the monthly payment amount be omitted from the explanation of amount due after acceleration because the Bureau believed that, once a loan has been accelerated, the monthly payment obligation is not relevant to the consumer, as the servicer will no longer accept this amount.

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

Several industry commenters expressed concern with proposed comment 41(d)(2)-1. These commenters stated that including both the reinstatement amount and the accelerated loan balance in the explanation of amount due could lead to consumer confusion. Many of these industry commenters asserted that, where a servicer will accept a lesser amount to reinstate the loan, there is no need to disclose the accelerated loan balance on the periodic statement. One industry commenter stated that there is often a significant difference between the reinstatement

amount and the accelerated amount, and that disclosing the accelerated amount could be overwhelming to consumers.

Several industry commenters requested that servicers not be required to disclose this amount or be permitted to disclose that this amount was an estimate. One industry commenter stated that it was unclear how the accelerated amount should be accurately disclosed on the periodic statement, and that programing systems to include the accelerated amount on the periodic statement could be complicated. Another industry commenter expressed concern that the proposal might have required servicers to provide a payoff amount in the periodic statement, and stated that payoff statements are difficult to produce because the amount required to pay off a loan can change daily. Some industry commenters requested that the final rule permit servicers to include language explaining that the payoff amount is distinct from the accelerated amount and reinstatement amount.

Several consumer advocacy groups stated that, after acceleration, many servicers have specific requirements as to how the reinstatement amount must be paid that are distinct from the requirements pertaining to periodic payments. These commenters expressed that, for example, servicers may require that the reinstatement amount be submitted in the form of a certified check to the attorney handling the foreclosure on behalf of the servicer. These commenters recommended that the rule require that the periodic statement include an explanation of any requirements the consumer must follow in paying the reinstatement amount. Another consumer advocacy group stated that information regarding the accelerated balance should be clearly located to avoid confusing the consumer, whether on the periodic statement or in the same enclosure as the periodic statement.

Proposed comment 41(d)(2)-2 would have provided that, if the consumer has agreed to a

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

The Bureau believed that, when the amount due is disclosed on the periodic statement as the payment due under the temporary loss mitigation program, the periodic statement should elsewhere identify the amount due according to the loan contract, as this amount is significant information that the consumer should have. For example, under proposed comment 36(c)(1)(i)-4, the amount due according to the loan contract would be the amount promptly credited by the servicer. The Bureau believed that the explanation of amount due under § 1026.41(d)(2) is where this disclosure is most appropriate.

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

periodic statement or in a separate letter, the Bureau believed it was appropriate that this explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

Comments regarding the disclosure of the amount due on the periodic statement when a consumer is participating in a temporary loss mitigation program are discussed in the section-by-section analysis of § 1026.41(d)(1).

The Bureau is finalizing comments 41(d)(2)-1 and -2 with changes from the proposal. The Bureau understands that proposed comment 41(d)(2)-1 could have caused consumer uncertainty as to the meaning of the accelerated amount or the reinstatement amount. The Bureau continues to believe that consumers will benefit if the periodic statement includes both the reinstatement amount and the accelerated amount in the explanation of amount due. However, consumers may further benefit if servicers are permitted to include additional, relevant information in the explanation of amount due. Accordingly, the Bureau is finalizing comment 41(d)(2)-1 with changes.

Final comment 41(d)(2)-1 explains that, if the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due under § 1026.41(d)(2) 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). Comment 41(d)(2)-1 further provides that 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. It provides that 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. Finally, comment 41(d)(2)-1 provides that the explanation may include related information, such as a statement that the amount disclosed is "not a payoff amount."

As the Bureau has previously explained, the accelerated amount is the amount that the consumer technically owes under the loan contract and is significant information that the consumer should have. Additionally, the Bureau believes the burden on servicers associated with providing the accelerated amount should be limited. The Bureau notes that some industry commenters requested that the final rule permit servicers to disclose an estimate of the accelerated amount because of the difficulty associated with disclosing an accurate accelerated amount. However, as discussed in the section-by-section analysis of § 1026.41(d)(1), if any information necessary for an accurate disclosure is unknown to the servicer, the servicer must make the disclosure based on the best information reasonably available at the time the disclosure is provided and shall state clearly that the disclosure is an estimate, consistent with Regulation Z's provisions for the disclosure of estimates.[306] The Bureau believes this provision accounts for situations where a servicer may not have sufficient information to calculate the accelerated amount accurately. Final comment 41(d)(2)-1 also clarifies that the reinstatement amount listed in the explanation of amount due under § 1026.41(d)(2) must be the reinstatement amount that is disclosed as the amount due.

Additionally, as discussed in the section-by-section-analysis of § 1026.41(d)(1), the Bureau understands that reinstatement amounts may change with some frequency. Consistent with final comment 41(d)(1)-1, the Bureau is finalizing comment 41(d)(2)-1 to explain that the

[306] *See* §§ 1026.17(c)(1) and 1026.31(d)(2).

periodic statement must include language stating that the reinstatement amount will be accepted to reinstate the loan through the "as of [date]" or "good through [date]," as applicable.

The Bureau also understands from comments received that servicers may place certain conditions on the acceptance of the reinstatement amount, for example, requiring payment by certified check or to a specific address. Final comment 41(d)(2)-1 addresses this possibility by requiring that any special instructions for submitting the payment be included in the periodic statement. This explanation should prevent consumers from missing an opportunity to reinstate the loan simply because they are unaware of the specific form or manner in which the reinstatement amount must be remitted. Additionally, consumers may benefit if the explanation of the reinstatement amount is included on the periodic statement or enclosed with the periodic statement. Accordingly, final comment 41(d)(2)-1 does not permit this explanation to be provided in a separate letter.

Final comment 41(d)(2)-1 also provides that the explanation on the periodic statement regarding the reinstatement amount may also include related information, such as a statement that the amount disclosed is "not a payoff amount." This provision enables servicers to provide further clarification and relevant, additional information to consumers in the explanation of amount due required by § 1026.41(d)(2). For example, servicers could include information on the periodic statement regarding the distinction between the payoff amount and the reinstatement and accelerated amounts. Permitting this additional information addresses concerns about consumer uncertainty as to the meaning of the reinstatement or accelerated amounts as compared to the payoff amount. Additionally, servicers disclosing an estimated accelerated amount may include in the explanation of amount due relevant information regarding, for example, circumstances under which the estimate may change.

The Bureau is finalizing comment 41(d)(2)-2 substantially as proposed. Comment 41(d)(2)-2 explains that, 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. It further explains that 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. Finally, it states that 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.

Final comment 41(d)(2)-2 clarifies that the explanation of amount due under § 1026.41(d)(2) must, rather than should, include both the amount due according to the loan contract and the payment due under the temporary loss mitigation program. The final rule also explains that the statement must, rather than should, include an explanation that the amount due is being disclosed as a different amount because of the temporary loss mitigation program. Under these circumstances, requiring servicers to include this information in the explanation of amount due will benefit consumers. Additionally, as servicers will already know the amount due under the loan contract and be aware that the consumer is participating in a temporary loss mitigation program, requiring this additional information provides an important consumer protection without imposing a significant additional burden on servicers.

41(d)(8)

Section 1026.41(d)(8) requires a servicer to include a so-called “delinquency box”

containing certain prescribed information in periodic statements sent to consumers who are more than 45 days delinquent.[307] The Bureau proposed certain revisions to § 1026.41(d)(8) to align the requirements of that section with the proposed definition of delinquency under Regulation X § 1024.31. The Bureau proposed to revise § 1026.41(d)(8) and add commentary to mirror the language in proposed § 1024.31 (Delinquency) and its related comments.

Current § 1026.41(d)(8) requires a servicer to include in each periodic statement certain information about a consumer's delinquency when the consumer is more than 45 days delinquent, including the date on which the consumer became delinquent. However, Regulation Z currently does not include an explanation of how a servicer must determine the length of a consumer's delinquency. The Bureau explained that it may confuse consumers if a servicer calculates the length of delinquency pursuant to § 1026.41(d)(8)(i) differently from the length of delinquency for purposes of the servicing requirements in subpart C of Regulation X. As such, the Bureau proposed Regulation Z comment 41(d)(8)-1, which mirrored the proposed Regulation X definition of delinquency in § 1024.31 and accompanying comment 31 (Delinquency)-1. Proposed Regulation Z comment 41(d)(8)-1 would have clarified that delinquency begins on the date a consumer misses a payment of principal, interest, and escrow (if applicable), notwithstanding any grace period the servicer affords the consumer.

In addition, the Bureau proposed to add comment 41(d)(8)-2 to address how a creditor must disclose the length of a consumer's delinquency as required by § 1026.41(d)(8) if a servicer applies a consumer's payment to the oldest outstanding delinquency first. As discussed in the section-by-section analysis of § 1024.31, the Bureau proposed a comment to the definition of

[307] 12 CFR 1026.41(d)(8).

delinquency to clarify that, if a servicer applies a borrower's payment to the oldest outstanding delinquency, the servicer must advance the date of the borrower's delinquency for purposes of calculating the length of a borrower's delinquency under the various applicable provisions of Regulation X's mortgage servicing rules. To ensure that a servicer's method of calculating the length of the consumer's delinquency for purposes of Regulation Z § 1026.41(d)(8)(i) was consistent with the method for doing the same under the proposed definition of delinquency in Regulation X, the Bureau proposed to include the same commentary in proposed Regulation Z comment 41(d)(8)-2.

Finally, the Bureau proposed to revise § 1026.41(d)(8)(i) to harmonize its language with the notion that the date a consumer's delinquency begins advances if the servicer applies payments to the oldest outstanding delinquency. Current § 1026.41(d)(8)(i) requires servicers to include the date on which the consumer became delinquent on a delinquent consumer's periodic statement. The Bureau believed that including that date could lead to consumer uncertainty if related proposed comment 41(d)(8)-2 was adopted. Accordingly, the Bureau proposed to revise § 1026.41(d)(8)(i) to require servicers to instead disclose the length of a consumer's delinquency as of the date of the periodic statement.

A consumer advocacy group expressed support for the proposed revisions to § 1026.41(d)(8) and stated that consumers will benefit from the disclosure of the length of the delinquency.

The Bureau is finalizing § 1026.41(d)(8)(i) and comments 41(d)(8)-1 and -2 substantially as proposed. Final § 1026.41(d)(8)(i) explains that servicers must disclose on the periodic statement the length of the consumer's delinquency. It omits proposed language regarding "as of

the date of the periodic statement," as the Bureau is incorporating this statement into final comment 41(d)(8)-1.

Final comment 41(d)(8)-1 explains that, 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. It further explains that a consumer is delinquent if one or more periodic payments of principal, interest, and escrow, if applicable, are due and unpaid. Final comment 41(d)(8)-1 includes a change from the proposal to address a situation where a servicer provides the consumer a coupon book under § 1026.41(e)(3) and is exempt from the periodic statement requirements under § 1026.41(a)(2). Section 1026.41(e)(3)(iv) requires the servicer to provide the consumer the information listed in § 1026.41(d)(8) in writing for any billing cycle during which the consumer is more than 45 days delinquent. Proposed § 1026.41(d)(8)(i), which would have referred to the length of the consumer's delinquency only as of the date of the periodic statement, did not account for situations where the servicer provides a coupon book under § 1026.41(e)(3). Accordingly, the Bureau is finalizing comment 41(d)(8)-1 to also clarify how the length of a consumer's delinquency is determined when a servicer provides a written notice under § 1026.41(e)(3)(iv).

Final comment 41(d)(8)-2 provides that, 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. It provides an illustrative example.

Legal Authority

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

41(e) Exemptions

41(e)(4) Small Servicers

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

The Bureau proposed to amend certain criteria for determining whether a servicer qualifies for the small servicer exemption under § 1026.41(e)(4). For purposes of determining whether a servicer qualifies as a small servicer, current § 1026.41(e)(4)(iii) excludes from consideration certain types of mortgage loans, including mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees. The proposal would have removed the requirement from § 1026.41(e)(4)(iii)(A) that the non-affiliate be a creditor or assignee and would have added a new provision § 1026.41(e)(4)(iii)(D) to exclude from the small servicer determination transactions serviced by a servicer for a seller financer that meet all of the criteria identified in § 1026.36(a)(5).[308] For the reasons discussed below, the Bureau is adopting, as proposed, § 1026.41(e)(4)(iii)(A) and (D).

The Bureau's mortgage servicing rules exempt small servicers from certain mortgage servicing requirements. Regulation Z exempts small servicers, defined in § 1026.41(e)(4)(ii),

[308] Section 1026.36(a)(5) provides that, to be considered a seller financer, a person must (1) provide financing for the sale of only one property in any 12-month period, (2) not have constructed a residence on the property in the ordinary course of business, and (3) provide financing that meets certain interest rate criteria and does not result in negative amortization. See the section-by-section analysis of § 1026.41(e)(4)(iii)(D) for additional details.

from the requirement to provide periodic statements for residential mortgage loans.[309] Regulation X incorporates this same definition by reference to § 1026.41(e)(4)[310] and thereby exempts small servicers from: (1) Certain requirements relating to obtaining force-placed insurance;[311] (2) the general servicing policies, procedures, and requirements;[312] and (3) certain requirements and restrictions relating to communicating with borrowers about, and evaluation of applications for, loss mitigation options.[313]

Under § 1026.41(e)(4)(ii), a small servicer is a servicer that: (1) Services, together with any affiliates,[314] 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; (2) is a Housing Finance Agency, as defined in 24 CFR 266.5; or (3) is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. Generally, under § 1026.41(e)(4)(ii)(A), a servicer cannot be a small servicer if it services any loan for which the servicer or its affiliate is not the creditor or

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[309] *See* § 1026.41(a), (e)(4). For loans serviced by a small servicer, a creditor or assignee is also exempt from the Regulation Z periodic statement requirements. *See* § 1026.41(e)(4)(i).
[310] *See* 12 CFR 1024.17(k)(5); 1024.30(b)(1); 1024.41(j).
[311] 12 CFR 1024.17(k)(5) (prohibiting purchase of force-placed insurance in certain circumstances).
[312] 12 CFR 1024.30(b)(1) (exempting small servicers from §§ 1024.38 through 1024.41, except as otherwise provided under § 1024.41(j), as discussed in note 313, *infra*). Sections 1024.38 through 1024.40 respectively impose general servicing policies, procedures, and requirements; early intervention requirements for delinquent borrowers; and policies and procedures to maintain continuity of contact with delinquent borrowers.
[313] *See* 12 CFR 1024.41 (loss mitigation procedures). Though exempt from most of the rule, small servicers are subject to the prohibition of foreclosure referral before the loan obligation is more than 120 days delinquent and may not make the first notice or filing for foreclosure if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option. 12 CFR 1024.41(j).
[314] Affiliate is defined in § 1026.32(b)(5) as any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.* (BHCA). Under the BHCA, a company has control over another company if it (i) "directly or indirectly . . . owns, controls, or has power to vote 25 per centum or more of any class of voting securities" of the other company; (ii) "controls . . . the election of a majority of the directors or trustees" of the other company; or (iii) "directly or indirectly exercises a controlling influence over the management or policies" of the other company (based on a determination by the Board). 12 U.S.C. 1841(a)(2).

assignee. As noted above, current § 1026.41(e)(4)(iii) excludes from the small servicer determination certain mortgage loans voluntarily serviced by the servicer.

In the 2012 RESPA Servicing Proposal, the Bureau proposed the exclusion from the small servicer determination for voluntarily serviced mortgage loans[315] and received one comment from a national trade association requesting guidance regarding certain depository services some of its bank members provide for depositors who "owner-finance" the sale of residential real estate. At that time, the Bureau did not have sufficient information about the described service.[316] Since that time, the Bureau learned that certain depository institutions, which may otherwise qualify for the small servicer exemption, service for their depository customers seller-financed sales of residential real estate.[317]

The Bureau understands that certain banks, particularly in small or remote communities, provide their customers this service when there may not be an alternative service provider in the state. The Bureau understands that, under these arrangements, depository institutions typically receive scheduled periodic payments from the purchaser of the property pursuant to the terms of the sale and deposit into the account of the seller (the depository institution's customer) the payments of principal and interest and such other payments with respect to the amounts received from the purchaser as may be required pursuant to the terms of the sale.[318] The Bureau understands that these arrangements typically involve small seller financers who are not affiliates

[315] 78 FR 25638, 25644 (May 2, 2013).
[316] 78 FR 44685, 44697-98 (July 24, 2013).
[317] For ease of review, the section-by-section analyses of § 1026.41(e)(4)(iii), (e)(4)(iii)(A), and (e)(4)(iii)(D) discuss the concept of seller financing and the practice of seller-financed sales of residential real estate in general terms, except when specifying that the analyses refer directly to the term seller financer as defined under § 1026.36(a)(4) or (5).
[318] *See* 12 U.S.C. 2605(i)(3) (definition of servicing applicable to TILA, as amended by section 1401 of the Dodd-Frank Act).

of the servicer, do not regularly extend consumer credit, and would not qualify as a creditor[319] or an assignee in their own right. The Bureau understands that depository institutions typically charge a fee for servicing these seller-financed transactions. The Bureau further understands that in some cases, however, depository institutions may elect to service voluntarily these seller-financed sales of residential real estate on behalf of their depository customers without receiving any compensation or fees. In either scenario, under the current rule, a depository institution that services even a single seller-financed sale of residential real estate would likely no longer qualify for the small servicer exemption and would be subject to all of the applicable mortgage servicing rules for all of the mortgage loans that it services, including those that would otherwise be exempt as being owned or originated by the servicer.

To address these scenarios, in issuing the proposal, the Bureau sought comment on whether it would be appropriate to exclude from the small servicer determination mortgage loans voluntarily serviced by the servicer for a non-affiliate that is not a creditor or assignee, or transactions serviced by a servicer for a seller financer that meet all of the criteria identified in the definition of seller financer under § 1026.36(a)(5). The Bureau also sought comment on whether to exclude from the small servicer determination existing mortgage loans that meet the criteria of proposed § 1026.41(e)(4)(iii)(A) and (D).

The Bureau received several comments supporting the proposed amendments to § 1026.41(e)(4)(iii)(A) and (D). The commenters included credit union associations, trade

[319] To be considered a creditor under TILA, a person generally must extend consumer credit for transactions secured by a dwelling more than five times in the preceding calendar year. § 1026.2(a)(17)(v). However, the Bureau notes that the threshold is lower for high-cost mortgages subject to § 1026.32; a person regularly extends credit if, in any 12-month period, the person originates more than one credit extension that is subject to § 1026.32, or one or more such credit extensions through a mortgage broker. *Id*.

associations, a nationwide association of State regulators, and a community bank. No commenters opposed these proposed amendments.

Some commenters recommended that the Bureau adopt additional revisions, beyond those contemplated in the proposal, to expand the reach of the small servicer exemption. Several commenters recommended including additional types of transactions that could be exempt from the small servicer determination. One trade association suggested that the small servicer exemption apply for all institutions that are community banks, a term that the rule would define. Several commenters also recommended that the Bureau raise the small servicer threshold under § 1026.41(e)(4)(ii) from 5,000 loans to 10,000 loans. One trade association recommended that the Bureau introduce a de minimis standard for servicing loans not owned or originated by the servicer. The Bureau declines to adopt these recommended approaches and considers these comments to be outside of the scope of the proposal, which did not contemplate altering the 5,000 loan threshold or exempting additional types of transactions.

One commenter suggested that the servicing rules do not apply to long-term escrow companies or contract collection companies because such companies are not considered servicers and their activities should not be considered mortgage loan servicing. In part, the commenter predicated this assertion upon the nature of these companies, arguing that they are not in control of the loan, do not represent the lender in foreclosure matters, and cannot force-place insurance. The Bureau notes that the presence or absence of these factors is not determinative as to whether an entity qualifies as a servicer. TILA section 103(cc)(7) defines servicer to have the same meaning as in RESPA section 6(i)(2), which defines a servicer as, subject to certain exceptions,

the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan).[320] Further, RESPA section 6(i)(3) defines servicing as receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan.[321] Thus, the mortgage servicing rules apply to any person who receives scheduled periodic payments from a borrower pursuant to the terms of any loan, even a person not typically considered to be a servicer.

Two commenters recommended that the Bureau exclude from the small servicer determination existing mortgage loans that meet the criteria of proposed § 1026.41(e)(4)(iii)(A) and (D), irrespective of when the servicing relationship began. A national trade association stated that excluding existing contract collection activities would afford banks the opportunity to make an informed business decision as to how they prefer to handle this activity going forward. And a community bank stated that, without excluding existing seller-financed loans, the new exemption would lose its value, as it would be impossible to impose new parameters on existing contracts with seller-financers.

As discussed in the section-by-section analyses of § 1026.41(e)(4)(iii)(A) and (D), the final rule excludes from the small servicer determination both mortgage loans voluntarily serviced for a non-affiliate that is not a creditor or assignee and also transactions serviced for a seller financer that meet all of the criteria identified in the definition of seller financer under § 1026.36(a)(5). The Bureau believes that, to the extent servicing cost savings are passed on to consumers, consumers may benefit from having a depository institution that otherwise qualifies

[320] 15 U.S.C. 1602(cc)(7); *see* 12 U.S.C. 2605(i)(2).
[321] 12 U.S.C. 2605(i)(3).

for the small servicer exemption service voluntarily mortgage loans for a non-affiliate that is not a creditor or assignee without losing its small servicer status. Similarly, consumers benefit from having a depository institution service transactions for a seller financer that meet all of the criteria identified in the definition of seller financer under § 1026.36(a)(5) without losing its small servicer status. Financial institutions may be better equipped than individual seller financers to service loans. The Bureau believes that consumers may benefit from a depository institution receiving their scheduled periodic payments and providing an independent accounting as a third party to the transaction, even if the servicer is exempt from some servicing regulations as a small servicer.

Under the final rule, a small servicer will now be able to service mortgage loans on behalf of certain seller financers, even if they do not meet TILA's definition of creditor, without jeopardizing the servicer's exemption. The Bureau will continue to monitor this market to determine if the small servicer exemption is being manipulated to evade TILA's requirements or otherwise cause consumer harm.

The Bureau also determines that it is appropriate to exclude from the small servicer determination all loans that meet the criteria identified in § 1026.41(e)(4)(iii)(A) and (D), regardless of whether the small servicer began servicing the loan before the effective date of this final rule. The Bureau believes that requiring servicers to review their entire portfolios to determine whether they already service such loans and, if so, how many would unnecessarily increase burden on servicers. Therefore, a servicer may continue to service existing loans that meet these criteria and exclude them from consideration in determining whether a servicer qualifies for the small servicer exemption.

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

The Bureau is adopting the proposed revisions to § 1026.41(e)(4)(iii)(A). In determining whether a servicer qualifies for the small servicer exemption, § 1026.41(e)(4)(iii)(A) excludes from consideration 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. As revised, § 1026.41(e)(4)(iii)(A) no longer requires that the non-affiliate be a creditor or assignee.

The Bureau believes that removing the requirement that the non-affiliate be a creditor or assignee would not unduly expand the existing exception. The Bureau further believes that the rationale for the exception applies equally well to those non-affiliates who seller-finance sales of residential real estate, do not meet the definition of creditor under § 1026.2(a)(17) because they extend five or fewer mortgage loans in a year, and may or may not meet the criteria identified in the definition of seller financer under § 1026.36(a)(5). The Bureau also believes that continuing to limit the voluntarily serviced exception to mortgage loans voluntarily serviced by a servicer and for which the servicer does not receive any compensation or fees reduces the risk that the amendment to § 1026.41(e)(4)(iii)(A) will be used to circumvent the servicing rules. Because the small servicer cannot receive any fees or compensation for servicing these loans, the Bureau believes that the overall volume of such servicing, and consequent risk of harm to consumers, is likely to remain small, but the Bureau will continue to monitor this market to determine if the small servicer exemption is being manipulated to evade TILA's requirements or otherwise cause consumer harm.

Legal Authority

The Bureau is amending the voluntarily serviced exception under current § 1026.41(e)(4)(iii)(A) and exempting mortgage loans voluntarily serviced by a servicer for a

non-affiliate of the servicer and for which the servicer does not receive any compensation or fees from the periodic statement requirement under section 128(f) of TILA pursuant to its authority under section 105(a) and (f) of TILA and section 1405(b) of the Dodd-Frank Act.

For the reasons discussed above, the Bureau believes that the amendment is appropriate under section 105(a) of TILA to facilitate servicer compliance. The Bureau believes that the amendments to the voluntarily serviced exception to no longer require that the non-affiliate be a creditor or assignee facilitate compliance with TILA by allowing depository institutions to voluntarily service seller-financed sales of residential real estate, without losing status as a small servicer, in order to service loans cost-effectively and in compliance with applicable regulatory requirements. In addition, consistent with section 1405(b) of the Dodd-Frank Act, the Bureau believes that exempting from the requirements of section 128(f) of TILA those transactions voluntarily serviced by a servicer for a non-affiliate, without requiring the non-affiliate to be a creditor or assignee, is in the interest of consumers and in the public interest.

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

The Bureau is adopting new § 1026.41(e)(4)(iii)(D) as proposed. Section 1026.41(e)(4)(iii)(D) excludes from the small servicer determination the new category of transactions serviced by a servicer for a seller financer that meet all of the criteria identified in the definition of seller financer under § 1026.36(a)(5). Section 1026.36(a)(5) identifies a seller financer as a natural person, estate, or trust that provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural

person, estate, or trust and serves as security for the financing.[322] The natural person, estate, or trust cannot have constructed, or acted as a contractor for the construction of, a residence on the property in its ordinary course of business.[323] The financing must have a repayment schedule that does not result in negative amortization and must have a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or the London Interbank Offered Rate (LIBOR).[324]

In addition to the general comments discussed in the section-by-section analysis of § 1026.41(e)(iii), the Bureau received a comment generally supportive of proposed § 1026.41(e)(4)(iii)(D) from a trade association that also said that the proposed exemption was overly restrictive in limiting seller financers to one loan per 12-month period. The commenter stated that depository institutions would need to establish internal controls to track and monitor whether a seller financer provides financing for more than one property in any 12-month period, which the commenter said may create an incentive for small banks to terminate collection contract relationships.

The Bureau has narrowly tailored this new category of transactions that are excluded when determining whether a servicer qualifies as a small servicer. Section 1026.41(e)(4)(iii)(D) relates only to transactions serviced by the servicer for a seller financer that meet all of the

[322] Section 1026.36(a)(5)(i).
[323] Section 1026.36(a)(5)(ii).
[324] Section 1026.36(a)(5)(iii).

criteria identified in the definition of seller financer under § 1026.36(a)(5). In contrast to the criteria identified in a second definition of seller financer under § 1026.36(a)(4), which permits seller financing for the sale of up to three properties in any 12-month period, the criteria identified in the definition of seller financer under § 1026.36(a)(5) permits seller financing for the sale of only one property in any 12-month period. Limiting the seller financer criteria to the sale of only one property in any 12-month period reduces the risk that this new category of transactions excluded from the small servicer determination will be used to circumvent the servicing rules.

As the cost of servicing such transactions is likely to be relatively high, and may include costs to verify that a seller-financed transaction meets all of the criteria identified in the definition of seller financer under § 1026.36(a)(5), the Bureau believes that it is appropriate to permit servicers to charge a fee for servicing the loans described in § 1026.41(e)(4)(iii)(D). The Bureau will continue to monitor this market to determine if the small servicer exemption is being manipulated to evade TILA's requirements or otherwise cause consumer harm.

Legal Authority

The Bureau is exempting transactions serviced by a servicer for a seller financer that meet all of the criteria identified in the definition of seller financer under § 1026.36(a)(5) from the periodic statement requirement under section 128(f) of TILA pursuant to its authority under section 105(a) and (f) of TILA and section 1405(b) of the Dodd-Frank Act.

For the reasons discussed above, the Bureau believes that the exemption in § 1026.41(e)(4)(iii)(D) is appropriate under section 105(a) of TILA to facilitate servicer compliance. The Bureau believes that excluding from the small servicer determination transactions serviced by a servicer for a seller financer that meet all of the criteria identified in

the definition of seller financer under § 1026.36(a)(5) facilitates compliance with TILA by allowing depository institutions to service seller-financed transactions, without losing status as a small servicer, in order to provide high-contact servicing and to service loans cost-effectively and in compliance with applicable regulatory requirements. In addition, consistent with section 1405(b) of the Dodd-Frank Act, the Bureau believes that exempting from the requirements of section 128(f) of TILA those transactions serviced by a servicer for a seller financer that meet all of the criteria identified in the definition of seller financer under § 1026.36(a)(5) is in the interest of consumers and in the public interest.

41(e)(5) Certain Consumers in Bankruptcy

Current § 1026.41(e)(5) provides that a servicer is exempt from the requirement to provide a periodic statement for a mortgage loan while the consumer is a debtor in bankruptcy. Current comment 41(e)(5)-3 states that, if there are joint obligors on the mortgage loan, the exemption applies if any of the consumers is in bankruptcy, and current comment 41(e)(5)-2.ii explains that a servicer has no obligation to resume providing a periodic statement with respect to any portion of the mortgage debt that is discharged in bankruptcy. Proposed revisions to § 1026.41(e)(5) generally would have limited the exemption to a consumer in bankruptcy whose bankruptcy plan or statement of intention provides for surrendering the property or avoiding the lien securing the mortgage loan, as well as to a consumer who has requested that a servicer cease providing a periodic statement. In cases where a mortgage loan has multiple obligors and not all of them are in bankruptcy, the exemption would have applied to a non-bankrupt obligor only when (1) one of the obligors is in chapter 12 or chapter 13 bankruptcy and (2) the non-bankrupt obligor requests that a servicer cease providing a periodic statement. The proposal also would

have specified the circumstances when the exemption terminates and a servicer must resume providing a periodic statement.

The Bureau is adopting § 1026.41(e)(5) with several revisions from the proposal. As revised, § 1026.41(e)(5) and associated commentary limit the circumstances in which a servicer is exempt from the periodic statement requirements with respect to a consumer who is a debtor in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy. (Except where noted specifically, this section-by-section analysis of § 1026.41(e)(5) uses the term periodic statement to refer to both a periodic statement and a coupon book that meets the requirements of § 1026.41(e)(3).) In addition to the limited exemption from the requirement to provide a periodic statement with respect to a consumer who is a debtor in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy, § 1026.41(e)(5) provides a transitional single-billing-cycle exemption under certain circumstances to enable a servicer to transition to a periodic statement modified for bankruptcy and to an unmodified periodic statement upon the conclusion of the bankruptcy case or the reaffirmation of the debt.[325] Once effective, final § 1026.41(e)(5) will apply to a mortgage loan irrespective of whether the consumer became a debtor in bankruptcy before or after the final rule's effective date.

In contrast to the proposal, the final rule applies the exemption at the loan level, such that a servicer is exempt with respect to all consumers on a mortgage loan if the exemption criteria are met with respect to any one consumer on the loan.[326] As in the proposal, the final rule

[325] Section 1026.41(f) sets forth certain modifications to a periodic statement or coupon book when a 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.

[326] The proposal used the term primary obligor. The final rule instead uses the term consumer for clarity, given that it is already a defined term under Regulation Z.

generally allows a consumer in bankruptcy to opt in or out of receiving a periodic statement by making a written request to the servicer, but the final rule contains a new provision allowing a servicer to establish an exclusive address for such requests, subject to certain requirements. In addition, the final rule includes a new provision that ensures that a servicer has a period of time to transition to providing a periodic statement with the modifications set forth in § 1026.41(f) or to resume providing a periodic statement without such modifications following a consumer's bankruptcy case. The final rule also contains various technical changes from the proposal, such as use of the term bankruptcy plan instead of plan of reorganization, to improve clarity. These and other changes from the proposal are described in more detail below.

Background

Currently, § 1026.41(e)(5) provides a blanket exemption from the requirement to send a periodic statement if a consumer is in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy. The Bureau deliberated on this issue in two rulemakings prior to the proposal, each of which was based in part on the requirement in section 128(f) of TILA, as amended by section 1420 of the Dodd-Frank Act, that a creditor, assignee, or servicer must provide a periodic statement for a residential mortgage loan.

On January 17, 2013, the Bureau issued the 2013 TILA Servicing Final Rule implementing the periodic statement requirements and related exemptions in § 1026.41. In the 2013 TILA Servicing Final Rule, the Bureau acknowledged industry's concern that the Bankruptcy Code's automatic stay prevents attempts to collect a debt from a consumer in bankruptcy, but the Bureau explained that it did not believe the Bankruptcy Code would prevent

a servicer from sending a consumer a statement on the status of the mortgage loan.[327] The Bureau further explained that the 2013 TILA Servicing Final Rule allowed servicers to make changes to the periodic statement when a consumer is in bankruptcy, such as including a message about the bankruptcy and presenting the amount due to reflect payment obligations determined by the individual bankruptcy proceeding.[328]

After publication of the 2013 TILA Servicing Final Rule, servicers and their representatives expressed more detailed concerns about the requirement to provide periodic statements to consumers under bankruptcy protection. The Bureau received numerous requests for clarification regarding how to reconcile the periodic statement requirements with various bankruptcy law requirements. Industry stakeholders expressed concern that bankruptcy courts, under certain circumstances, may find that a periodic statement violates the automatic stay or discharge injunction, even if a disclaimer were included. They requested guidance regarding whether and how servicers could permit consumers to opt out of receiving statements. Bankruptcy trustees explained that sending a periodic statement that fails to recognize the unique character of chapter 13's treatment of a mortgage in default arguably violates the Bankruptcy Code's automatic stay. Servicers and trustees further questioned how a periodic statement could be adapted to the specific circumstances that may arise depending on the type of bankruptcy proceeding (*i.e.*, liquidation under chapter 7, or reorganization under chapter 11, chapter 12, or chapter 13).

[327] 78 FR 10901, 10966 (Feb. 14, 2013).
[328] *Id*. at 10966 n.125.

Consequently, the Bureau determined in 2013 that the interaction of bankruptcy law and the periodic statement requirements warranted further study and that there was insufficient time before the rule's January 10, 2014, effective date to reconcile completely the various competing requirements. Accordingly, the Bureau issued the October 2013 IFR, which added current § 1026.41(e)(5) to exempt a servicer from the periodic statement requirements with respect to a consumer in bankruptcy.[329] The Bureau explained in commentary that the exemption in § 1026.41(e)(5) applies to any consumer sharing primary liability on a mortgage loan with a debtor in bankruptcy[330] and that a servicer has no obligation to resume compliance with § 1026.41 with respect to any portion of a mortgage loan that is discharged under applicable provisions of the Bankruptcy Code.[331]

In issuing the October 2013 IFR, the Bureau did not take a position as to whether providing a periodic statement to a consumer in bankruptcy violates the automatic stay or discharge injunction. The Bureau also did not discourage servicers that send tailored periodic statements to consumers in bankruptcy from continuing to do so. Further, the Bureau expressed its belief that some consumers facing the complexities of bankruptcy may benefit from receiving a periodic statement, tailored to their circumstances.[332]

In the October 2013 IFR, the Bureau stated that it would continue to examine this issue and might reinstate the requirement to provide a consumer in bankruptcy with a periodic statement. However, the Bureau explained that it would not reinstate any such requirement without notice and comment rulemaking and an appropriate implementation period. The Bureau

[329] 78 FR 62993, 63000-02 (Oct. 23, 2013).
[330] Comment 41(e)(5)-3.
[331] Comment 41(e)(5)-2.ii.
[332] 78 FR 62993, 63001 (Oct. 23, 2013).

solicited comment on the scope of the exemption, when a servicer qualifies for the exemption and when it must resume providing a periodic statement, and how the content of a periodic statement might be tailored to meet the particular needs of a consumer in bankruptcy.[333]

After issuing the October 2013 IFR, the Bureau continued to engage various stakeholders on the scope of this exemption, including hosting a roundtable discussion on June 16, 2014, with representatives of consumer advocacy groups, bankruptcy attorneys, servicers, trade groups, bankruptcy trustees, and the U.S. Trustee Program. The Bureau also sought comment from bankruptcy judges and experts and conducted its own further analysis of the intersection of the periodic statement requirements and bankruptcy law.[334]

Based upon its review of the comments received on the October 2013 IFR and its study of the intersection of the periodic statement requirements and bankruptcy law, the Bureau proposed to reinstate the periodic statement requirements with respect to a consumer in bankruptcy under certain circumstances. The Bureau proposed these modifications through notice and comment rulemaking, rather than simply finalizing the IFR with modifications, to provide the public with the opportunity to consider and comment more fully on the Bureau's specific proposal.

The Bureau proposed to limit the scope of the exemption in § 1026.41(e)(5) to a consumer in bankruptcy who has made a determination to surrender the property or avoid the lien securing the mortgage loan or who has requested that a servicer cease providing periodic

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[333] *Id.* at 63002.

[334] Written or oral presentations to the Bureau imparting information or argument directed to the merits or outcome of the IFR were subject to the Bureau's policy on ex parte presentations. *See* Bureau of Consumer Fin. Prot., CFPB Bulletin 11-3, *CFPB Policy on Ex Parte Presentations in Rulemaking Proceedings* (Aug. 16, 2011), *available at* http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExPartePresentationsRulemakingProceedings.pdf.

statements. The Bureau believed that drawing a distinction between a consumer who intends to retain the property and one who intends to surrender the property could strike an appropriate balance between a consumer's need for information about the mortgage loan and the burden on a servicer to provide information to such a consumer while avoiding violations of bankruptcy law.

The Bureau believed that this approach, favored by many commenters, was consistent with bankruptcy case law. Courts have observed that whether periodic statements are appropriate in bankruptcy typically depends on whether "the debtor needed the information contained in the statements when the statements were sent" and that debtors need information about their mortgage loan when they intend to retain property, not when they intend to surrender it.[335] Some courts have found that a periodic statement was permissible when the debtor planned to retain the property but that the same form of periodic statement violated the automatic stay when the same debtor later decided to surrender the home.[336]

Courts have held that periodic statements are appropriate for a chapter 7 debtor if the statement of intention identifies an intent to retain the property[337] or if the debtor otherwise

[335] *Connor v. Countrywide Bank NA (In re Connor)*, 366 B.R. 133, 136, 138 (Bankr. D. Haw. 2007)); *see also Henry v. Assocs. Home Equity Servs., Inc. (In re Henry)*, 266 B.R. 457, 471 (Bankr. C.D. Cal. 2001) (collecting cases).
[336] *Connor*, 366 B.R. at 138 (debtor failed to state a claim for stay violation related to periodic statements received prior to chapter 13 plan confirmation, but debtor did state a claim related to statements received after conversation to chapter 7 because debtor had indicated his intent to surrender the property); *In re Joens*, No. 03-02077, 2003 WL 22839822, at *2-3 (Bankr. N.D. Iowa Nov. 21, 2003) (creditor violated automatic stay by sending collection letters and periodic statements to chapter 7 debtor who intended to surrender, but noting that it would have been proper to send statements if the debtor had intended to retain).
[337] *In re Henry*, 266 B.R. at 471 (holding that creditor did not violate the automatic stay by sending periodic statements and notice of default to debtors who retain their property by continuing to make payments without reaffirming the mortgage loan); *Kibler v. WFS Fin., Inc. (In re Kibler)*, Case No. 97-25258-B-7, Adv. No. 00-2604, 2001 WL 388764 (Bankr. E.D. Cal. Mar. 19, 2001) (noting that borrowers who retain their property by continuing to make payments without reaffirming the mortgage loan "need to receive normal billings to avoid a contract default and potential foreclosure").

continues to make voluntary payments after the bankruptcy case.[338] Similarly, courts have found that chapter 13 debtors who have not yet proposed a plan of reorganization may benefit from periodic statements because they need information about the amount of their mortgage loan debt in order to formulate a plan of reorganization[339] and that chapter 13 debtors also benefit from periodic statements if their proposed or confirmed plan provides that they will retain the property and continue making payments.[340]

Conversely, bankruptcy courts have determined that periodic statements can constitute impermissible collection attempts in violation of the automatic stay when a consumer has identified an intent to surrender the property, either through the statement of intention in a chapter 7 case or a plan of reorganization in a chapter 13 case.[341] Similarly, courts have held that a chapter 13 consumer with a plan of reorganization that provides for avoiding a junior lien—that is, rendering the lien unenforceable and treating the mortgage debt as an unsecured claim—

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[338] *See* 4 Collier on Bankruptcy ¶ 524.04 ("Section 524(j) clarifies that when a debtor does not reaffirm a mortgage debt secured by real estate that is the debtor's principal residence, the creditor may continue to send statements to the debtor in the ordinary course of business and collect payments made voluntarily by the debtor.") (citing *Jones v. Bac Home Loans Servicing, LP (In re Jones)*, Case No. 08-05439-AJM-7, Adv. No. 09-50281, 2009 WL 5842122, at *3 (Bankr. S.D. Ind. Nov. 2009)); *cf. Ramirez v. Gen. Motors Acceptance Corp. (In re Ramirez)*, 280 B.R. 252, 257-58 (C.D. Cal. 2002) (holding that creditor did not violate discharge injunction by sending periodic statements and a "summary of voluntary payments" to a debtor who his vehicle without reaffirming the loan).

[339] *Connor*, 366 B.R. at 138 (holding that debtor failed to state a claim for stay violation related to periodic statements received prior to chapter 13 plan confirmation); *Pultz v. NovaStar Mortg., Inc. (In re Pultz)*, 400 B.R. 185, 190-92 (Bankr. D. Md. 2008) (noting that sending of single loan statement was useful to the debtor for forecasting the amount of the unsecured debt she could pay through her chapter 13 plan); *Schatz v. Chase Home Fin. (In re Schatz)*, 452 B.R. 544 (Bankr. M.D. Pa. 2011) ("I also recognize that such information could assist a Chapter 13 debtor in drafting his Chapter 13 plan.").

[340] *In re Henry*, 266 B.R. at 471 ("A secured creditor should be encouraged to send out payment coupons, envelopes and periodic statements if a debtor has filed a statement that the debtor plans to keep property subject to secured debt and to make payments."); *Cousins v. CitiFinancial Mortg. Co. (In re Cousins)*, 404 B.R. 281, 286-87 (Bankr. S.D. Ohio 2009) (stating in dicta that periodic statements can be helpful to chapter 13 debtors making direct payments to understand amounts due).

[341] *Joens*, 2003 WL 22839822, at *2-3 (holding that creditor violated automatic stay by sending several collection letters and periodic statements to chapter 7 debtor who had indicated an intent to surrender); *Connor*, 366 B.R. at 138 (holding that debtor stated a claim related to periodic statements and demand letter received after conversion to chapter 7 because he had indicated his intent to surrender the property).

has no need for statements regarding the amounts due under the mortgage loan.[342] Finally, courts have found that consumers do not need statements when they have actually surrendered or vacated the property,[343] or requested that the servicer not send periodic statements.[344] In these cases, courts finding an automatic stay or discharge injunction violation have often looked to the totality of the creditor's collection efforts, beyond the creditor's providing a periodic statement.

Therefore, the Bureau proposed to revise the scope of the exemption in § 1026.41(e)(5). Consistent with most comments the Bureau received on the IFR and the case law discussed above, proposed § 1026.41(e)(5) would have limited the scope of the exemption generally to when a consumer is no longer retaining the property, will no longer make regular payments on the mortgage loan, or has affirmatively requested not to receive a statement. Proposed § 1026.41(e)(5)(i) would have provided an exemption from the periodic statement requirements in § 1026.41 when two conditions are satisfied. First, the proposal would have required the consumer to be a debtor in a bankruptcy case, to have discharged personal liability for the mortgage loan through bankruptcy, or to be a primary obligor on a mortgage loan for which another primary obligor is a debtor in a chapter 12 or chapter 13 case. The purpose of this requirement would have been to limit the exemption to consumers who may be protected by the Bankruptcy Code's automatic stay or discharge injunction.

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[342] *Curtis v. LaSalle Nat'l Bank (In re Curtis)*, 322 B.R. 470, 484-85 (Bankr. D. Mass. 2005) (holding that wholly unsecured junior lienholder violated automatic stay by, among other things, sending a RESPA transfer letter demanding payment to a chapter 13 debtor whose plan provided for avoiding the lien).

[343] *In re Roush*, 88 B.R. 163, 164-65 (Bankr. S.D. Ohio 1988) (holding that creditor violated the discharge injunction when it sent a collection letter to debtor three years after debtor surrendered property); *In re Bruce*, No. 00–50556 C–7, 2000 WL 33673773, at *4 (Bankr. M.D.N.C. Nov. 7, 2000) (holding that creditor violated the discharge injunction by sending periodic statements and calling the debtor at his place of employment after receiving notice that the debtor had vacated the property).

[344] *In re Draper*, 237 B.R. 502, 505-06 (Bankr. M.D. Fla. 1999) (holding that creditor violated the stay by, among other things, sending periodic statements to chapter 13 debtor who had asked not to receive them).

Second, one of the following circumstances also would have had to apply: (1) The consumer requests in writing that the servicer cease providing a periodic statement;[345] (2) the consumer's confirmed plan of reorganization provides that the consumer will surrender the property securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearages or the maintenance of payments due under the mortgage loan; (3) a court enters an order in the consumer's bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with respect to the property securing the mortgage loan, or requiring the servicer to cease providing a periodic statement; or (4) the consumer files with the overseeing bankruptcy court a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the property securing the mortgage loan. As commenters on the IFR noted, in each of these situations, a consumer is no longer retaining the property, is no longer making regular periodic payments on the mortgage loan, or has affirmatively requested not to receive a statement. As a result, the Bureau believed that the periodic statement's value is diminished and there is an increased risk of a court finding that a servicer violated the automatic stay by sending a periodic statement in this circumstance.

With respect to joint obligors who are not in bankruptcy, proposed § 1026.41(e)(5)(i) would have effectively limited the exemption to those co-obligors who (i) share primary liability with a consumer who is a debtor in a chapter 12 or chapter 13 case and (ii) have requested that a servicer cease providing a periodic statement. As the Bureau noted in the proposal, a non-debtor

[345] The Bureau understands from its outreach that at least one large national servicer provides periodic statements to all of its consumers in bankruptcy who have a first-lien mortgage, except those who opt out, and that it believes its practice is consistent with the automatic stay.

joint obligor is protected by the Bankruptcy Code's automatic stay provisions only in chapter 12 or chapter 13 cases.[346] The Bureau understood that these joint obligors generally have a need to continue receiving periodic statements. Moreover, these joint obligors are not bound by a debtor's decision to surrender the property securing the mortgage loan. Accordingly, the Bureau believed that it was appropriate for the non-debtor joint obligors to continue receiving periodic statements unless non-debtor joint obligors have requested that the servicer cease providing them.

Proposed comment 41(e)(5)(i)-1 would have clarified the exemption's applicability with respect to joint obligors. The proposed comment stated that when two or more consumers are primarily liable on a mortgage loan, an exemption under § 1026.41(e)(5)(i) with respect to one of the primary obligors does not affect the servicer's obligations to comply with § 1026.41 with respect to the other primary obligors. The Bureau explained that the proposed comment was meant to eliminate ambiguity concerning whether a servicer must continue to provide a statement to joint obligors when an exemption under § 1026.41(e)(5)(i) applies to one of the obligors. The proposed comment also referenced proposed § 1026.41(f), explaining that, if one of the joint obligors is in bankruptcy and no exemption under § 1026.41(e)(5)(i) applies, the servicer would have been required to provide a periodic statement with certain bankruptcy-specific modifications set forth in § 1026.41(f). In that instance, the servicer could have provided a periodic statement with the bankruptcy-specific modifications to any of the primary obligors on the mortgage loan, even if not all of them are in bankruptcy.

[346] *See* 11 U.S.C. 1201, 1301.

Proposed comment 41(e)(5)(i)-2 also would have clarified that, for purposes of § 1026.41(e)(5), the term plan of reorganization referred to a consumer's plan of reorganization filed under applicable provisions of the Bankruptcy Code and confirmed by a court with jurisdiction over a consumer's bankruptcy case. The proposed comment was intended to avoid confusion about the meaning of the term plan of reorganization and whether the term refers to a proposed plan or one that has been confirmed by a court.

Finally, proposed comment 41(e)(5)(i)(B)(*4*)-1 would have further clarified that, for purposes of determining whether a servicer is exempt under § 1026.41(e)(5)(i) based on a consumer's statement of intention filed in the consumer's bankruptcy case, a servicer must rely on a consumer's most recently filed statement of intention. Thus, under the proposed rule, if a consumer originally filed a statement of intention identifying an intent to retain the property, but the consumer then filed an amended statement of intention identifying an intent to surrender the property, a servicer would have had to rely on the amended filing to determine that the exemption applies. The Bureau explained that the proposed comment was meant to avoid uncertainty about whether the exemption applied when a consumer filed multiple or amended statements of intention.

Proposed § 1026.41(e)(5)(ii) would have specified when a servicer must resume providing a periodic statement in compliance with § 1026.41. First, proposed § 1026.41(e)(5)(ii)(A) would have provided that a servicer is not exempt from the requirements of § 1026.41 with respect to a consumer who submits a written request to continue receiving a periodic statement, unless a court enters an order prohibiting the servicer from providing a periodic statement. The Bureau explained that consumers should have the right to choose to receive information regarding their mortgage loan, particularly when their intent with regard to

retaining the property changes. In advance of the proposal, the Bureau understood that, for example, some chapter 7 debtors will file a statement of intention that initially identifies an intent to surrender the property but will subsequently decide to keep the property. In that case, the Bureau believed a consumer should be able to receive a periodic statement. Proposed comment 41(e)(5)(ii)-1 would have clarified that a servicer must comply with a consumer's most recent written request to cease or to continue, as applicable, providing a periodic statement.

Second, proposed § 1026.41(e)(5)(ii)(B) would have provided that a servicer must resume compliance with § 1026.41 within a reasonably prompt time after the next payment due date that follows the earliest of the following outcomes in either the consumer's or the joint obligor's bankruptcy case, as applicable: (1) The case is dismissed; (2) the case is closed; (3) the consumer reaffirms the mortgage loan pursuant to 11 U.S.C. 524; or (4) the consumer receives a discharge pursuant to 11 U.S.C. 727, 1141, 1228, or 1328. Proposed § 1026.41(e)(5)(ii)(B) would have largely tracked current comment 41(e)(5)-2.i, and the Bureau explained its belief that an exemption would no longer be necessary once the consumer has exited bankruptcy or reaffirmed personal liability for the mortgage loan. The Bureau also thought that the proposed "reasonably prompt" standard would be flexible enough to account for instances in which a servicer had no reason to know that the consumer's bankruptcy case had terminated.

In combination, proposed § 1026.41(e)(5)(ii)(A) and (B) would have required a servicer to resume providing a periodic statement within a reasonably prompt time after the next payment due date following receipt of a consumer's written request, the case closing or dismissal, the consumer's reaffirmation of the mortgage loan, or the consumer receiving a discharge. Proposed comment 41(e)(5)(ii)-2 would have clarified that delivering, emailing, or placing the periodic statement in the mail within four days after the next payment due date, or within four days of the

close of any applicable courtesy period, generally would be considered reasonably prompt. (With respect to coupon books, resuming compliance would have required providing a new coupon book only to the extent the servicer had not previously provided the consumer with a coupon book that covered the upcoming billing cycle.) This interpretation of reasonably prompt would have been consistent with the Bureau's interpretation currently set forth in comment 41(b)-1, which clarifies the timing requirements for a periodic statement generally.

Finally, proposed comment 41(e)(5)-1 would have clarified that, if an agent of a consumer submitted a request to cease or to continue providing a periodic statement, the request would have been deemed submitted by the consumer. The Bureau explained its understanding that attorneys or housing counselors often communicate with a servicer on a consumer's behalf and believed that it was important to clarify that a servicer must comply with a request to cease or commence providing a periodic statement by an agent of a consumer.

The Bureau sought comment on all aspects of the proposal, including the scope of the proposed exemption, the requirements for qualifying for the exemption, and when servicers must resume providing a periodic statement.

Comments on the Proposed Scope of the Exemption

The Bureau received numerous comments in response to proposed revisions to § 1026.41(e)(5). As described below, the Bureau also conducted additional outreach. The summary below generally does not address comments received in response to the IFR because the Bureau addressed those comments in the proposal.[347]

[347] *See* 79 FR 74247.

Commenters generally addressed five broad issues: (1) For mortgage loans with multiple obligors, whether the exemption should be determined at the individual consumer level or at the loan level; (2) whether and when a periodic statement should be required for a consumer who is in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy; (3) assuming a periodic statement is required with respect to a consumer in bankruptcy in some circumstances, whether a consumer's request to receive or cease receiving a periodic statement must be submitted in writing and not orally; (4) the conditions under which the exemption should terminate; and (5) whether the trustee of a consumer's bankruptcy case should receive a copy of the periodic statement.

Consumer-specific vs. loan-level exemption. Consumer advocacy groups and industry commenters differed on whether the periodic statement exemption should apply to a specific consumer (as proposed) or at the loan level (as in the existing rule). Several consumer advocacy groups supported without qualification the proposal's treatment of co-obligors because it would allow a co-obligor who is not in bankruptcy to continue to receive a periodic statement even when the criteria for an exemption are satisfied with respect to the obligor in bankruptcy.

Several industry commenters urged a loan-level exemption, for many of the same reasons advanced in comments on the early intervention bankruptcy exemption.[348] For example, these commenters stated that servicers' systems are set up to manage communications at the account or loan level, such that they code an entire account (rather than designate a specific consumer) as subject to bankruptcy-related communication restrictions; that many servicers cannot suppress, or cease sending, statements as to one obligor while providing them to a co-obligor; that

[348] *See* section-by-section analysis of § 1024.39.

servicers have difficulty removing names from the account without affecting other aspects of loan administration, such as notices required by State law; and that, when co-obligors live together, a servicer cannot prevent the wrong consumer from opening the periodic statement. One servicer recommended requiring co-obligors to submit a joint written request to the servicer in order to receive a periodic statement. Other industry commenters suggested that servicers be expressly allowed to include one or all obligors' names on the statement, at the servicer's discretion. One servicer said that it would require two years to update systems to provide consumer-specific periodic statements when a consumer is in bankruptcy.

The Bureau conducted additional outreach with several servicers to determine their current practices and systems capabilities. These servicers stated that they suppress or cease communications at the account or loan level; for example, when a consumer files bankruptcy, invokes the FDCPA cease communication right, or is a party to litigation against the servicer, these servicers flag the entire mortgage loan account as one for which they should not send certain communications. Some servicers stated that their systems can identify the reason for suppressing communications (*e.g.*, bankruptcy, a consumer's invocation of the FDCPA cease communication right, or ongoing litigation), and a few could identify the specific co-obligor who, for example, filed for bankruptcy. A few servicers said that they could provide duplicate notices to co-obligors at different addresses, but most servicers said that they cannot provide certain communications to one obligor while providing other communications to a co-obligor at a different address. One servicer said that it can provide unique notices to different co-obligors at different addresses upon special request but that the process is manual and would not be practical if required routinely.

A trade association recommended that the final rule clarify that a servicer must provide only one periodic statement per loan per month. The commenter also advised that servicing systems cannot remove a name from an account because servicers need to send some information to each obligor regardless of bankruptcy. The commenter further stated that sending a periodic statement to a non-bankrupt co-obligor indicating that any part of the debt has been discharged (even as to another co-obligor) may estop the servicer from collecting the debt.

Whether and when to require statements for consumers in bankruptcy. The Bureau received comments supporting and opposing the proposed requirement to provide a periodic statement under any circumstances to a consumer who is in bankruptcy or has discharged personal liability for the mortgage loan through bankruptcy. Consumer advocacy groups strongly supported providing a periodic statement to a consumer in bankruptcy, while industry commenters offered differing views. Some industry commenters were generally supportive of providing a periodic statement to a consumer in bankruptcy, subject to certain conditions, while others strongly opposed any requirement to provide a periodic statement to a consumer in bankruptcy.

Consumer advocacy groups strongly supported the proposal to limit the scope of the exemption, stating, among other things, that it would preserve the ability of consumers in bankruptcy to receive essential account information. These commenters further recommended that the exemption should not apply if a consumer has a pending loss mitigation application because such a consumer may decide to retain the property after being approved for loss mitigation. Consumer advocacy groups stated that receiving a periodic statement would help consumers understand their payment obligations, maintain mortgage payments, and make payments to the trustee on the arrearage. Both consumer advocacy groups and the U.S. Trustee

Program noted that servicers sometimes misapply payments and supported the proposal in part because periodic statements might show whether servicers apply payments correctly or impose improper fees.

Consumer advocacy groups also recommended requiring a servicer to provide a notice to the consumer upon determining that the bankruptcy exemption applies to a particular loan. The recommended notice would advise that standard periodic statements will no longer be provided, the basis for the exemption, and the consumer's right to continue receiving statements modified for consumers in bankruptcy.

Some industry commenters expressed general support for requiring servicers to provide periodic statements to consumers in bankruptcy. For example, a servicer and a trade association both noted the need to provide accurate and clear information to a consumer in bankruptcy. One bank agreed that a servicer should provide a periodic statement following bankruptcy to a consumer who has discharged personal liability for a mortgage loan but retained possession of the property. The bank requested that the final rule state expressly that a periodic statement is required in this circumstance.

Some industry commenters voiced strong opposition to providing a periodic statement to a consumer in bankruptcy, either in general or under the specific circumstances set forth in the proposal. Industry commenters stressed the lack of any safe harbor from liability under the Bankruptcy Code and noted that servicers are subject to individual judges' interpretations of the Bankruptcy Code. Industry commenters expressed concern that providing a periodic statement could give rise to the risk of litigation from a consumer who alleges an automatic stay violation.

Several commenters asserted that the Bureau would be inappropriately intruding on bankruptcy law by requiring a servicer to send a periodic statement to a consumer in bankruptcy.

A trade association expressed general concern that requiring a periodic statement for a consumer in bankruptcy could conflict with bankruptcy law. A credit union expressed concerns that the proposal purports to override bankruptcy law regarding communicating with a consumer in bankruptcy. Another trade association stated that some case law suggests that TILA cannot be interpreted as mandating communications that violate the automatic stay, and a different trade association commented that TILA does not apply to a mortgage loan that has been discharged through bankruptcy. Another trade association pointed to the complexity of bankruptcy law, stating that the Bureau should respect the delicate balance between creditors and debtors and should not attempt to strengthen protections for consumers in bankruptcy through amendments to Regulation Z.

Numerous industry commenters objected to the burden that servicers would face in providing a periodic statement to a consumer in bankruptcy. They explained that most of the burden would result from the need to alter a periodic statement to comply with the proposal (as discussed in more detail in the section-by-section analysis of § 1026.41(f)). In particular, numerous industry commenters strongly opposed any requirement to provide a periodic statement that is modified for a consumer in chapter 13, stating, among other things, that the proposed changes would be difficult to operationalize and manage and would likewise be difficult and resource-intensive to implement or apply consistently and correctly. Some industry commenters noted that many servicers would have to change their systems in order to comply with the proposal. Credit unions and community banks expressed concern about these systems limitations more uniformly than did large servicers and national banks. Further, some commenters stated that switching to a modified periodic statement when a consumer is in bankruptcy would increase burden because consumers may move in-and-out of bankruptcy

multiple times. Industry commenters also questioned whether the burden would be justified, as any one servicer may have only a limited number of loans in bankruptcy. One trade association commented that the complex interface with bankruptcy law would require servicers to consult with legal counsel, increasing cost.

Some industry commenters stated that receiving a periodic statement could confuse or anger a consumer in bankruptcy, while others suggested that a periodic statement is less valuable or unnecessary for at least some of these consumers. Some servicers commented that statements are unnecessary for the roughly 50% of chapter 13 consumers who make mortgage payments through the trustee because the trustee is the one sending the payments to the servicer. These commenters stated the Federal Rules of Bankruptcy Procedure applicable to chapter 13 cases already require a servicer to provide the trustee and the consumer with sufficient ongoing information about the mortgage loan, in addition to providing a procedure at the end of the case to reconcile whether the consumer is current on the mortgage loan. One credit union suggested that consumers can obtain the relevant information in other ways, such as by making a request to a servicer or a trustee.

A trade association discussed some servicers' current practices with respect to consumers who are in bankruptcy or who have discharged personal liability. For example, one servicer allows a consumer to opt out but otherwise sends a modified periodic statement that shows account activity accompanied by bankruptcy disclaimers. Another sends a modified periodic statement disclosing payments received. And another sends monthly periodic statements containing disclaimers and other limited information, which allows the statement to be used for consumers in different chapters of bankruptcy. Servicers reported to the Bureau that they engage in a range of practices with respect to borrowers in bankruptcy: Some do not send periodic

statements to any consumers in bankruptcy; others provide statements to consumers in only certain chapters of bankruptcy or provide statements only upon a consumer's request. Some industry commenters suggested generally that the Bureau adopt a rule that is consistent with one or more of these current practices.

Some commenters addressed specifically the criteria for the proposed exemption. One servicer generally supported the proposed two-pronged, multi-factor exemption test. Other commenters, while generally supportive, took issue with specific aspects of the proposal, as discussed more fully below. Several industry commenters suggested that the proposed exemption criteria would be difficult to implement and that determining if the exemption applied would require complex analysis.

Some industry commenters made recommendations about which consumers in bankruptcy should receive a periodic statement. Consistent with the proposal, a trade association recommended not requiring a periodic statement for a consumer in chapter 13 who files a plan identifying an intent not to make loan payments, as well as for a consumer in chapter 7 who files a statement of intention identifying an intent to surrender the property. Another trade association stated that a chapter 13 debtor does not need any statements because the plan of reorganization sets forth the consumer's payment obligation, the servicer's proof of claim discloses the arrearage, and the servicer's change-in-payment notices (required by the Bankruptcy Rules) alert the consumer to any change in the payment amount. A servicer and several trade associations requested that the exemption apply when a consumer in chapter 11, chapter 12, or chapter 13 bankruptcy has a cram-down plan—that is, a plan that reduces the mortgage debt to the value of the collateral. Alternatively, some commenters stated that a servicer should have more flexibility to modify the required disclosures for cram-down plans because they are atypical and can have

unique payment requirements. Trade associations also recommended that the proposed exemption should apply not only when a consumer's confirmed plan of reorganization provides for the surrender of the property, but also when a consumer's proposed plan of reorganization provides for the surrender of the property, likening a proposed plan of reorganization to a statement of intention filed by a consumer in a chapter 7 case.

Opt-ins and opt-outs. The Bureau received various comments on whether a potential requirement to provide a periodic statement to a consumer in bankruptcy should apply only to a consumer who opts in, or affirmatively requests, to receive a periodic statement, as well as comments on whether an opt-in or opt-out should be in writing. Consumer advocacy groups and the U.S. Trustee Program strongly opposed any opt-in requirement for reasons similar to those the Bureau articulated in the proposal: Consumers may not be aware that they can opt in; some consumers will fail to opt in (particularly if a written opt-in is required), even though they want to receive a periodic statement; and an opt-in requirement would slow and perhaps impede the consumer's access to information after filing for bankruptcy. These commenters added that the proposal, as a practical matter, already incorporated an opt-in requirement because a consumer must declare in court filings whether the consumer intends to retain or surrender the property and a consumer would avoid triggering the exemption only by choosing to retain the property.

Several industry commenters advocated for an express opt-in requirement. They stated that this approach would provide greater protection from automatic stay violations and be much less burdensome than requiring servicers to review bankruptcy court filings to determine whether the exemption applies. A trade association suggested that an opt-in would simplify compliance. Another trade association suggested that an opt-in requirement would prevent consumers in chapter 13 bankruptcy from being confused as to why one creditor in the bankruptcy case

continues to send periodic statements notwithstanding the bankruptcy. One trade association, however, stated that opt-ins and opt-outs cause additional burden and expense for servicers because they are another data field to track.

Some industry commenters addressed the specifics of how opt-in requests should be made. Several trade associations stated that opt-ins should be effective if sent to either a specific address designated by the servicer or the servicer's address listed on the proof of claim. One industry commenter recommended that servicers should give a notice including the following disclosures to the consumer's counsel upon receipt of bankruptcy filing: (1) That the consumer can opt in to receiving a statement, (2) that all other aspects of the automatic stay will remain in place, and (3) a request for an appropriate address in the event that the consumer wants the counsel to manage receipt of periodic statements. Several industry commenters that already provide a periodic statement to a consumer in bankruptcy, subject to the consumer's ability to opt out, requested that the final rule grandfather a consumer's previous decision to opt out of receiving periodic statements, so that such a consumer does not need to opt out again. Some commenters also suggested that all co-obligors on a mortgage loan be required to jointly submit a request.

The Bureau also received comments on whether a consumer's request to receive or cease receiving periodic statements must be submitted in writing and not orally. Industry commenters generally favored a writing requirement, stating that it will make compliance easier and offer more protection from the automatic stay because a writing creates a record to which the parties and a court can refer. Some industry commenters suggested that opt-outs via email or other electronic forms of communications should satisfy the requirement. Two servicers stated that oral opt-outs should be permitted so that consumers could more easily opt out of receiving

statements. Consumer advocacy groups suggested that a consumer should be able to exercise any opt-in right orally and that, if the Bureau adopts a writing requirement, a servicer should have to inform a consumer who makes an oral request of the need to submit a written request. Further, these commenters stated that the Bureau should not permit a servicer to designate an exclusive address for written requests because this creates an additional hurdle for a consumer. They stated that servicers have misused the exclusive address requirement for qualified written requests.

Transitioning to modified and unmodified periodic statements. Industry commenters generally suggested that the proposal would not afford a servicer sufficient time to begin providing a modified periodic statement to a consumer in bankruptcy or to resume providing an unmodified periodic statement after the consumer exits bankruptcy. One servicer explained that providing a periodic statement tailored to bankruptcy requires disclosing additional or different information than a normal periodic statement and can require the servicer to account for payments differently. This commenter also stated that providing a periodic statement immediately following bankruptcy can be difficult because, for example, servicers subject to the National Mortgage Settlement are currently required to perform account reconciliation after a chapter 13 case is dismissed or discharged so that they can account for any payments received during the case. Another servicer stated that servicers cannot resume providing periodic statements within four days after the next payment due date because their systems may not contain the information necessary to produce the next statement. This servicer stated that, if the Bureau finalizes such a requirement, it may need to adjust the contents of the periodic statement, for example, to remove distinctions between pre- and post-petition payments. Some trade associations expressed concerns similar to those above.

Several industry commenters recommended allowing servicers a reasonable amount of time after the second payment due date to transition to a modified statement or to resume providing an unmodified statement following bankruptcy. Some commenters specifically recommended allowing up to two billing cycles or up to 60 days. Another trade association recommended that the Bureau should not require servicers to provide a modified periodic statement under § 1026.41(f) to a consumer in bankruptcy until 30 days after the servicer files a proof of claim. The trade association explained that a servicer might not know the correct amount to disclose as the amount due under § 1026.41(f)(3)(ii) until the servicer completes a post-filing escrow analysis; it added that a servicer currently has 120 days following the bankruptcy filing to conduct the analysis and proof of claim.

The U.S. Trustee Program suggested that the Bureau revise the proposal to clarify how the requirement to resume providing a periodic statement after the bankruptcy concludes would apply to a servicer who was providing a periodic statement during the bankruptcy.
Only one commenter responded to the proposal's request for comment as to whether servicers receive timely notifications that a consumer has filed or exited bankruptcy. This servicer stated that, on occasion, it does not receive timely notices from the bankruptcy court.

The Bureau conducted additional outreach to several servicers regarding how they monitor for case openings, ongoing case activity, and case closings. Most servicers stated that they monitor these occurrences electronically and that they subscribe to some form of a third-party electronic notification system. As a result, these servicers learn of new filings, important case activity, and case closings quickly, usually within approximately a day. Servicers may also learn of filings through notices from the consumer or bankruptcy court. Some servicers rely on a manual review of the bankruptcy documents, including the consumer's bankruptcy petition or

plan of reorganization, as the servicer receives them. Other servicers simply cease all activity with respect to the account until they receive a notice that the consumer has emerged from bankruptcy.

Providing statements to a chapter 13 trustee. Most commenters were opposed to any requirement that servicers provide periodic statements to a trustee overseeing a consumer's chapter 13 case. Several commenters stated the requirement would increase cost or burden on servicers without sufficient corresponding benefit to consumers. The burden would include systems updates and providing additional copies of periodic statements each month. One trade association and a bank commented that providing a trustee with access to a consumer's periodic statement would raise privacy concerns because the trustee is not the consumer's representative and might be adverse to the consumer in certain circumstances. The bank advised that it would incur additional redaction costs to remove the account number from each periodic statement before sending it to a trustee. Several commenters stated that trustees can obtain necessary information by requesting it from the servicer or consumer or via, among other things, the proof of claim, change-in-payment notices, or notices of post-petition fees. Several servicers suggested that overseeing payment application is not one of a trustee's duties under the Bankruptcy Code. Although one servicer acknowledged that trustees may have an interest in proper payment application, it stated that some trustees would want to receive periodic statements in every case while others would not, which could make the rule difficult to implement.

The U.S. Trustee Program stated that trustees should receive periodic statements for consumers in chapter 13 bankruptcy because, in cases where the trustee is making mortgage payments on behalf of the consumer, the trustee needs to know what payments are due and how

they are applied. The U.S. Trustee Program also stated that receiving periodic statements will enable a trustee to determine whether a servicer's actual payment application matches representations the servicer makes to the bankruptcy court. In addition, the U.S. Trustee Program stated that it would be incongruous for a periodic statement to instruct a consumer to contact the trustee with questions (as proposed) while denying the trustee information necessary to answer those questions. Moreover, the U.S. Trustee Program observed that a trustee is not necessarily able to obtain the necessary information directly from a servicer and that obtaining it directly from a consumer results in costs to both the trustee and the consumer, as well as delays in the trustee's receipt of information. Finally, the U.S. Trustee Program stated that a trustee's receipt of a chapter 13 consumer's periodic statement would not necessarily raise privacy concerns, suggesting that servicers may not need to combine the mortgage statement with statements relating to other information.

Requiring Periodic Statements for Consumers in Bankruptcy

The Bureau is adopting § 1026.41(e)(5) with several revisions from the proposal. Among other things, revised § 1026.41(e)(5) limits the circumstances in which a servicer is exempt from the periodic statement requirements when a consumer is a debtor in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy. The Bureau continues to believe that a consumer in bankruptcy will generally benefit from receiving a periodic statement under certain circumstances.

The Bureau understands that a consumer in bankruptcy often does not receive information about a mortgage loan that would be disclosed on a periodic statement. As the Bureau explained in the proposal, consumers in bankruptcy have submitted complaints to the Bureau alleging that their servicers have denied requests to receive a periodic statement or other

written information regarding upcoming payments. Consumers have complained that, as a result, they may fall behind on payments or lack basic information about the status of their loans. Bankruptcy case law also provides evidence that some servicers do not provide periodic statements to consumers in bankruptcy, even when requested to do so by the consumer.[349] The Bureau understands that, to address this issue, approximately 30 bankruptcy courts have adopted local rules permitting or requiring a servicer to provide a periodic statement to a consumer in bankruptcy under certain circumstances.[350]

The Bureau believes that a consumer's status in bankruptcy should not act as a bar to receiving fundamental information about the mortgage loan account. Like all consumers, those in bankruptcy may benefit from information regarding the application of their payments to principal, interest, escrow, and fees. As the Bureau noted in the 2013 TILA Servicing Final

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[349] *See, e.g.*, *Henry v. Assocs. Home Equity Servs., Inc. (In re Henry)*, 266 B.R. 457, 471 (Bankr. C.D. Cal. 2001) ("A secured creditor should be encouraged to send out payment coupons, envelopes and periodic statements if a debtor has filed a statement that the debtor plans to keep property subject to secured debt and to make payments. Debtors frequently complain to the court that they want to make their payments, but their creditors do not cooperate by providing payment coupons."); *In re Freeman*, 352 B.R. 628 (Bankr. N.D. W. Va. 2006) (overruling creditor's objection to the debtor's request for periodic statements that were normally required by State law); *cf. Payne v. Mortg. Elec. Registration Sys., Inc. (In re Payne)*, 387 B.R. 614, 626 (Bankr. D. Kan. 2008) ("[The servicer]'s representative testified [that the servicer] does not send payments books to mortgagors in bankruptcy because [the servicer] cannot present a true and accurate accounting of the loan payments [the servicer] is receiving from the Trustee as opposed to debtors' payments history.").

[350] *See, e.g.*, LBR 4001-2, Bankr. M.D. Ala.; LBR 4072-1, Bankr. N.D. Ala.; Model Chapter 13 Plan, Bankr. S.D. Ala.; Bankr. D. Colo. LBR 4001-4; Bankr. S.D. Ill. Model Chapter 13 Plan; Bankr. E.D. La. General Order 2012-1 (adopting model Chapter 13 plan); Bankr. D. Md. L.R. 4001-5; Bankr. D. Mass. L.R. 4001-3; Bankr. E.D. Mich. Model Chapter 13 Plan; Bankr. E.D. Mo. L.R. 3021; Bankr. W.D. Mo. L.R. 4001-4; Bankr. D. Mont. LBR 4001-3; Bankr. D. Kan. Bk. S.O. 08-4; District of New Jersey Local Bankruptcy Rules, D.N.J LBR 4001-3; Bankr. N.D.N.Y. Model Chapter 13 Plan; Bankr. E.D.N.C. LBR 4001-2; Bankr. M.D.N.C Standing Order, *In re Terms and Provisions Available for Incorporation into Chapter 13 Confirmation Orders;* Bankr. W.D.N.C. LBR 4001-1; Bankr. D.N.H. L. Form 3015-1A, Model Chapter 13 Plan; Bankr. N.D. Ohio Admin. Order 13-02, *In re Form Chapter 13 Plan*; Bankr. D. Or. L.R. 3015-1; Bankr. D. R.I. LBR 4001-1; Bankr. D. S.C.SC LBR 3015-1 (adopting model Chapter 13 plan); Bankr. N.D. TX General Order 2010-1, *In re Amended Standing Order Concerning All Chapter 13 Cases*; Bankr. S.D. TX Uniform Plan and Motion for Valuation of Collateral; Bankr. W.D. TX (Austin Div.), *Consolidated Standing Order for Chapter 13 Case Administration for Austin Division* (adopting model Chapter 13 plan); Bankr. W.D. TX (San Antonio Div.), Model Chapter 13 Plan; Bankr. D. Vt. LBR 3071-1; Bankr. W.D. Wash. L. Form 13-4; Bankr. E.D. Wis. Model Chapter 13 Plan.

Rule, the explanation of amount due, transaction activity, and past payment breakdown give consumers the information they need to identify possible errors on the account and enable consumers to understand the costs of their mortgage loan.[351]

In the absence of a requirement that servicers provide periodic statements, consumers in bankruptcy often lack crucial information about their mortgage loan account. The Bureau understands that, for example, consumers in chapter 7 bankruptcy or those who have discharged personal liability for a mortgage loan often do not receive written information regarding their mortgage payments. The lack of information is particularly troubling for consumers in chapter 7 bankruptcy who use the ride-through option—that is, consumers who discharge personal liability for the mortgage loan but continue making mortgage payments to forestall foreclosure, which enables them to remain in their home. In that instance, the lien is unaffected by bankruptcy, such that a consumer's post-bankruptcy failure to stay current on the mortgage would enable a servicer to foreclose on the property, even though the servicer could not pursue a deficiency judgment against the consumer personally.[352] The Bureau understands that, although in many cases using this option may be a strategic decision by a consumer to avoid a future deficiency judgment, in some instances, courts will not permit a consumer to reaffirm a mortgage loan, and consumers are forced to use the ride-through option. Current § 1026.41(e)(5) exempts a servicer

[351] 78 FR 10901, 10964-67 (Feb. 14, 2013).

[352] *See In re Henry*, 266 B.R. at 476 (discussing the ride-through option and disagreement among courts as to whether the Bankruptcy Code permits it); *In re Covel*, 474 B.R. 702, 708 (Bankr. W.D. Ark. 2012) (holding that Congress eliminated the ride-through option for personal property in 2005, but "[b]y not making corresponding changes concerning real property, Congress appears to tacitly recognize a ride through option for real property."); *Kibler v. WFS Fin., Inc. (In re Kibler)*, Case No. 97-25258-B-7, Adv. No. 00-2604, 2001 WL 388764, at *5 (Bankr. E.D. Cal. Mar. 19, 2001) ("In jurisdictions that recognize the 'ride-though' option, debtors may want to preserve their property, yet not incur the potential personal liability imposed by a reaffirmation agreement. These debtors . . . need to receive normal monthly billings to avoid a contract default and potential foreclosure.").

from providing a periodic statement for the life of the mortgage loan in these circumstances, even if the maturity date is years away and the consumer continues making regular payments.

Congress mandated in the Dodd-Frank Act that consumers receive periodic statements and did not provide a bankruptcy exception. In addition, the 2005 amendments to the Bankruptcy Code provide expressly that a mortgage creditor does not violate the discharge injunction by seeking to obtain periodic payments on a discharged mortgage loan in the ordinary course of its relationship with a consumer in lieu of pursuing foreclosure.[353] A leading bankruptcy treatise interprets these amendments as permitting a servicer to send a periodic statement to a consumer who has used the ride-through option.[354] Both the Dodd-Frank Act and the 2005 amendments to the Bankruptcy Code therefore indicate that Congress contemplated that consumers could receive periodic statements about their mortgage loans notwithstanding the bankruptcy process. The Bureau believes that maintaining a complete exemption from the periodic statement requirements with respect a consumer in bankruptcy would not further Congress's goals.

The Bureau also believes that a consumer in chapter 13 will benefit from receiving the information set forth in periodic statements provided under § 1026.41. With respect to mortgage loans, chapter 13 contains unique provisions that allow a consumer to repay pre-bankruptcy

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[353] 11 U.S.C. 524(j) ("Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—(1) such creditor retains a security interest in real property that is the principal residence of the debtor; (2) such act is in the ordinary course of business between the creditor and the debtor; and (3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.").

[354] *See* 4 *Collier on Bankruptcy* ¶ 524.09 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014) ("Section 524(j) clarifies that when a debtor does not reaffirm a mortgage debt secured by real estate that is the debtor's principal residence, the creditor may continue to send statements to the debtor in the ordinary course of business and collect payments made voluntarily by the debtor. The provision makes clear that debtors do not have to reaffirm such debts in order to keep paying them. In fact, it has long been the practice that mortgage debts are not reaffirmed.").

arrearages over a reasonable period of time while also making the regular periodic payments as they come due under the mortgage loan.[355] Under chapter 13, servicers may need to adopt special accounting practices for consumers with these "cure and maintain" plans and separately track payments made on the pre-bankruptcy arrearages and the regular periodic payments.[356] These accounting practices differ from a servicer's usual practice because, so long as a consumer is timely making all the payments due under the plan, a servicer should not treat a consumer as delinquent by, among other things, assessing certain fees and charges. As commenters noted, the bankruptcy plan and updates from a trustee may provide a consumer in chapter 13 with some information about the mortgage loan, but they do not inform a consumer about payments the servicer has received and applied, nor do they provide the same standardized point-in-time information about the consumer's mortgage loan as does a periodic statement.

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[355] 11 U.S.C. 1322(b)(5).

[356] *See, e.g.*, *Boday v. Franklin Credit Mgmt. Corp. (In re Boday)*, 397 B.R. 846, 850-51 (Bankr. N.D. Ohio 2008) ("Section 1322(b)(5), by splitting a claim, means that a creditor is no longer permitted to allocate payments according to the terms of its contract. Instead, its effect is to require that any prepetition arrearage claim must be paid separately, according to the terms of the debtor's confirmed plan, based upon the creditor's allowed claim. The remaining debt, consisting of those payments which become due after the petition is filed, is then paid according to the terms of the parties' contract and original loan amortization as if no default ever existed . . . . From an accounting standpoint, this requires that a creditor allocate a debtor's loan payments in the following manner: First, the creditor must apply the arrearage payments it receives during the plan's duration in accordance with the terms of the plan, so that upon completion of the plan the debtor is deemed current on the prepetition amortization schedule. *Accord* 8 Collier on Bankruptcy ¶ 1329.09[3] (15th ed. rev.2005). Second, payments received from the debtor to service those payments which contractually accrue postpetition[] must be allocated according to the terms of the parties' contract as if no default had occurred."); *In re Wines*, 239 B.R. 703, 708 (Bankr. D.N.J. 1999) ("Crediting payments outside the plan to the installments due contemporaneously according to the original schedule is the only way to put the debtors in the same position as if default had never occurred."); *In re Collins*, No. 07-30454, 2007 WL 2116416, at *13 (Bankr. E.D. Tenn. July 19, 2007) (holding that chapter 13 cure and maintain plan can include provisions requiring servicer to apply payments separately and stating that such a provision "is not only reasonable but required"); *see also* Fannie Mae, *Fannie Mae Single Family 2016 Servicing Guide*, at E.2.2.04 (July 13, 2016), *available at* https://www.fanniemae.com/content/guide/servicing/index.html ("Details to be noted with the receipt of all payments pre-confirmation[:] Type of payment (pre-petition or post-petition)[;] Amount received; Date received[;] Source of the payment[; and] Allocation of the payment (principal, interest, late charges, etc.) . . . Unless the court requires the payments to be applied under the terms of the repayment plan, the servicer should generally hold any pre-petition payments it receives as "unapplied" funds until an amount equal to the contractual monthly or biweekly payment due is available for application . . . .").

The Bureau understands that the amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2011, which require a servicer to disclose certain mortgage loan information to a consumer in chapter 13,[357] were motivated in part by pervasive and documented servicer failures to make accurate filings or disclose fees during chapter 13 cases.[358] Consumers would often successfully make all payments required under their chapter 13 plan, only to find that the servicer claimed substantial additional amounts were still owed.[359] Courts have detailed some servicers' failure to properly credit payments made pursuant to chapter 13 plans, noting that servicers' systems and accounting practices often fail to adjust to the needs of chapter 13, and courts have sanctioned servicers or disallowed fees.[360] These difficulties were

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[357] Fed. R. Bankr. P. 3002.1 (requiring, among other things, servicers to provide 21-day advance notice of a change in payment amount and notice within 180 days after a servicer incurs a fees or expense for which the consumer is liable, and also providing for a reconciliation process at the end of the case to determine if a servicer disputes whether the consumer is current on the mortgage loan).

[358] Fed. R. Bankr. P. 3002.1 Advisory Committee's Notes (2011) ("[Rule 3002.1] is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor's plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments. In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, *see* Rule 3001(c)(2), and the amount of the postpetition payment obligations."); *In re Sheppard*, No. 10-33959-KRH, 2012 WL 1344112, at *2 (Bankr. E.D. Va. Apr. 18, 2012) ("Bankruptcy Rule 3002.1 was adopted to resolve significant and often hidden problems encountered by Chapter 13 debtors who utilized § 1322(b)(5) of the Bankruptcy Code to cure mortgage defaults in their confirmed plans. While debtors could cure an arrearage on their principal residence under § 1322(b)(5), they often incurred significant fees and other costs as a result of postpetition defaults or from interest or escrow fluctuations under the terms of the original loan documents. Fearful that any attempt to address these fees and charges could be construed as a violation of the automatic stay, many creditors would not inform debtors that these charges had been incurred until after the Chapter 13 case was closed. As the fees and charges were postpetition obligations not included in the plan and thus not discharged at the conclusion of the case, these debtors would emerge from bankruptcy only to face a substantial and previously undisclosed arrearage. This outcome was inconsistent with the goal of providing debtors with a fresh start."); *In re Thongta*, 480 B.R. 317, 319 (Bankr. E.D. Wis. 2012) (similar).

[359] *See, e.g.*, *Sheppard*, 2012 WL 1344112, at *2; *Thongta*, 480 B.R. at 319.

[360] *See, e.g.*, *In re Jones*, 366 B.R. 584, 594-98 (Bankr. E.D. La. 2007) (sanctioning servicer that applied all amounts received to pre- and post-petition charges, interest, and non-interest bearing debt, resulting "in such a tangled mess" that neither the CPA debtor nor the servicer could explain the accounting, and stating that "[i]n this Court's experience, few, if any, lenders make the adjustments necessary to properly account for a reorganized debt repayment plan."); *In re Hudak*, No. 08-10478-SBB, 2008 WL 4850196, at *5 (Bankr. D. Colo. Oct. 24, 2008) ("Many courts have noted that mortgage lenders simply do not accommodate for the accounting intricacies created by Chapter 13."); *Payne v. Mortg. Elec. Registration Sys., Inc. (In re Payne)*, 387 B.R. 614, 627 (Bankr. D. Kan.

also documented in and formed the basis of part of the National Mortgage Settlement, which required, among other things, that the subject servicers properly account for payments received in bankruptcy.[361]

In light of these documented concerns about servicers not properly applying payments in chapter 13 cases, the Bureau believes that a periodic statement would benefit a consumer in chapter 13 by, for example, enabling the consumer or the consumer's attorney to monitor for payment application errors. Moreover, in cases where a consumer was current as of the date of the bankruptcy petition or is making periodic payments directly to a servicer, a monthly reminder of amounts due may help a consumer make timely payments. The Bureau notes that the U.S. Trustee Program and other commenters strongly supported requiring servicers to provide a periodic statement to a consumer in chapter 13 for these and other reasons.

2008) ("[The servicer] admitted their computer system does not allow debtors who make all their payments in a timely manner to exit bankruptcy current on their mortgage obligation."); *In re Myles*, 395 B.R. 599, 606 (Bankr. M.D. La. 2008) (holding that debtors stated claim for stay violation where creditor allegedly treated a chapter 13 debtor as in default due to improper payment application and applied payments to improper fees as a result); *Boday*, 397 B.R. at 850-51 (Bankr. N.D. Ohio 2008) (holding that creditor violated plan and section 1322(b)(5) by applying plan payments to interest rather than principal under daily simply interest loan); *In re Rathe*, 114 B.R. 253, 256-57 (Bankr. D. Idaho 1990) ("[The servicer]'s accounting procedure applied payments to the earliest payments due and not to the payments due and owing during the pendency of the plan. The purpose of a Chapter 13 plan is to allow a debtor to pay arrearages during the pendency of the plan while continuing to make payments at the contract rate. Payments made during the pendency of the Chapter 13 plan should have been applied by [the servicer] to the current payments due and owing with the arrearage amounts to be applied to the back payments. [The servicer] cannot utilize its accounting procedures to contravene the terms of a confirmed Chapter 13 plan and the Bankruptcy Code."); *In re Stewart*, 391 B.R. 327 (Bankr. E.D. La. 2008) (sanctioning servicer for misapplying payments and noting that "[t]he reconciliation of Debtor's account took [the servicer] four months to research and three hearings before this Court to explain," that "[a]n account history was not produced until two months after the filing of the Objection," and that "[a]n additional two months were spent obtaining the necessary information to explain or establish the substantial charges, costs, and fees reflected on the account"), *vacated in part*, 647 F.3d 553 (5th Cir. 2011).

[361] *See, e.g.*, Exhibit A at 9, *United States v. Bank of Am.*, (2014) (No. 12-361 (RMC), 2014 WL 1016286 (National Mortgage Settlement)), *available at* https://d9klfgibkcquc.cloudfront.net/Ocwen-Consent-Judgment-Ex-A.pdf (providing that, among other things, "[i]n active chapter 13 cases, Servicer shall ensure that: a. prompt and proper application of payments is made on account of (a) pre-petition arrearage amounts and (b) postpetition payment amounts and posting thereof as of the successful consummation of the effective confirmed plan; b. the debtor is treated as being current so long as the debtor is making payments in accordance with the terms of the then effective confirmed plan and any later effective payment change notices").

The Bureau understands and appreciates the concerns expressed by many servicers that their systems are not currently set up to easily track how payments are applied in chapter 13 cases and that, in order to be able to disclose this information on a periodic statement, they may need to incur significant costs to upgrade their systems. Servicers and trade groups also stated that consumers may not understand the complexities of accounting for payments made under a chapter 13 plan. However, as the Bureau noted in the 2013 TILA Servicing Final Rule, this complexity argues for providing a consumer with a periodic statement. Commenters, including consumer advocacy groups, the U.S. Trustee Program, and other bankruptcy experts, have stated that consumers and their attorneys need the information on a periodic statement to understand the status of their mortgage loan and payments while in bankruptcy. Similarly, participants in the Bureau's consumer testing generally reacted favorably to the prospect of receiving a periodic statement while in chapter 13, often noting that they did not receive this same information during their own bankruptcy cases and wished that they had. In addition, the Bureau notes that, while the Bankruptcy Rules provide for a reconciliation procedure once the consumer completes all payments under a chapter 13 plan, a large proportion of chapter 13 cases are dismissed prior to completion.[362] As a result, many consumers in chapter 13 bankruptcy will not have a trustee or court oversee and ultimately determine whether a servicer correctly applied payments. For these consumers, having a record of payments made and applied may help resolve disputes once the bankruptcy case is over.[363] Accordingly, the Bureau believes that all consumers in chapter 13

[362] *See* Ed Flynn, *Chapter 13 Revisited: Can it help Solve the Judiciary's Fiscal Problems?*, 32 Am. Bankr. Inst. J. 20, 20 (Dec. 2013).
[363] The Bureau further notes that in instances where bankruptcy courts have local rules expressly permitting periodic statements or coupon books, the rules predominantly apply when the consumer is a debtor under chapter 13. *See supra*, note 350.

cases who intend to retain the property, including those making payments through a trustee, would benefit from receiving periodic statements.

The Bureau recognizes that industry will incur costs associated with providing periodic statements to consumers in bankruptcy. The Bureau believes that most of those costs will be associated with one-time systems changes necessary to implement § 1026.41(f), as well as some additional ongoing costs to ensure that servicers accurately track and disclose payments they receive from consumers in chapter 13 who are repaying their pre-bankruptcy arrearage. The Bureau thus believes that, as discussed in the section-by-section analysis of § 1026.41(f) and in parts VII and IX below, once servicers update their systems, providing periodic statements to consumers in bankruptcy will not add significant ongoing cost. In addition, some servicers informed the Bureau that they already supply periodic statements to some or all consumers in bankruptcy. For these servicers, the additional burden of complying with § 1026.41(e)(5) should be reduced.

Interaction with Bankruptcy Law

As noted above, several commenters suggested that requiring a periodic statement for a consumer in bankruptcy would inappropriately interfere with bankruptcy law. Some of these commenters stated that a bankruptcy court may hold a servicer in violation of the Bankruptcy Code's automatic stay for providing a periodic statement to a consumer in bankruptcy, even if the servicer did so in order to comply with TILA and Regulation Z.[364] Some commenters suggested that, by a requiring a periodic statement for a consumer in bankruptcy, the Bureau

[364] Some commenters stated that the risk of automatic stay violations could be reduced by requiring a consumer in bankruptcy to make an affirmative request before a servicer would be required to provide a periodic statement. The Bureau addresses those comments below.

would be effectively overruling bankruptcy law's general prohibition on creditors communicating with a debtor. Two commenters raised a question about the constitutionality of the Bureau's rulemaking in this area based on concerns about separation of powers, suggesting that the rulemaking would affect a judicial branch function. These two commenters urged the Bureau to defer to the expertise of the bankruptcy courts in developing a periodic statement.

As discussed more in the section-by-section analysis of § 1026.41(f), the Bureau has considered the rulings of bankruptcy courts in developing the periodic statement. The Bureau believes that the final rule is consistent with, rather than in conflict with, bankruptcy law. The Bureau has tailored § 1026.41(e)(5) to avoid requiring a servicer to send a periodic statement in circumstances when case law suggests that doing so would violate the automatic stay. As discussed above and in the proposal, courts have observed that whether periodic statements are appropriate in bankruptcy typically depends on whether "the debtor needed the information contained in the statements when the statements were sent" and that debtors need information about the mortgage loan when they intend to retain property, not when they intend to surrender it.[365] For example, under the final rule, a servicer generally will not be required to provide a periodic statement to a consumer in bankruptcy who has articulated an intent to surrender the property through a bankruptcy plan, a statement of intention filed with the bankruptcy court, or has made a written request to cease receiving a periodic statement.

The Bureau is not aware of any case law holding a servicer in violation for providing a periodic statement in the circumstances required by the final rule. Industry commenters cited

[365] *Connor v. Countrywide Bank NA (In re Connor)*, 366 B.R. 133, 136, 138 (Bankr. D. Haw. 2007)); *see also Henry v. Assocs. Home Equity Servs., Inc. (In re Henry)*, 266 B.R. 457, 471 (Bankr. C.D. Cal. 2001) (collecting cases).

several decisions finding automatic stay violations, but they all involved actions by a servicer that the final rule would not require, such as aggressive collections after the consumer agreed to surrender the property or sending notices misstating the consumer's obligations.[366] Reports from servicers appear to confirm that liability for alleged stay violations is unlikely: For example, a large national servicer advised the Bureau that it provides periodic statements to all consumers in bankruptcy with mortgage loans secured by a first lien, subject to a consumer's right to opt out, and that it believes this practice complies with the automatic stay. Given the case law on this issue, the tailored requirements of § 1026.41(e)(5) as described in more detail below, and the experiences of servicers that already provide periodic statements to consumers in bankruptcy, the Bureau does not believe that requiring servicers to send periodic statements to some consumers in bankruptcy exposes servicers to a risk of significant litigation or liability in the courts.

The Bureau's conclusion is informed particularly by the comments from the U.S. Trustee Program, which did not express concerns that the proposal would result in automatic stay violations and specifically stated that the proposal took the proper approach. Moreover, Congress amended TILA to require periodic statements for mortgage loans without any exception for consumers in bankruptcy, and the final rule simply limits the circumstances in

[366] *See, e.g.*, *In re Draper*, 237 B.R. 502, 505–06 (Bankr. M.D. Fla. 1999) (holding that creditor violated the stay by sending periodic statements to chapter 13 debtor who had asked not to receive them); *Connor v. Countrywide Bank NA (In re Connor)*, 366 B.R. 133, 136, 138 (Bankr. D. Haw. 2007) (debtor failed to state a claim for stay violation related to periodic statements received prior to chapter 13 plan confirmation, but debtor did state a claim related to statements received after conversation to chapter 7 because debtor had indicated his intent to surrender the property); *In re Schinabeck*, No. 08–41942, 2014 WL 5325781 (Bankr. E.D. Tex. Oct. 20, 2014) (holding that servicer violated the discharged injunction where it sent at least 60 written communications, including some after the consumer had filed the lawsuit alleging a discharge injunction violation, to a consumer who had vacated the property before bankruptcy and had requested to cease receiving communications about the property).

which a servicer is exempt from this Congressionally-imposed requirement.[367] For the reasons discussed, the Bureau believes that § 1026.41(e)(5) does not inappropriately intrude upon bankruptcy law.

Final Rule

The Bureau is finalizing § 1026.41(e)(5) and associated commentary with several revisions from the proposal. As revised, § 1026.41(e)(5) limits the circumstances in which a servicer is exempt from the periodic statement requirements when a consumer is a debtor in bankruptcy or has discharged the mortgage loan through bankruptcy. The exemption criteria in the final rule depart from the proposal in three primary ways. First, the exemption applies at the mortgage-loan level rather than as to specific consumers. When the criteria for an exemption are satisfied with respect to one consumer on a mortgage loan, a servicer is also exempt from the periodic statement requirements with respect to any other consumer on the mortgage loan. Second, the exemption can be triggered by a consumer's proposed bankruptcy plan, instead of only by the consumer's confirmed plan.[368] Third, the final rule generally provides that a servicer is exempt upon the consumer filing a statement of intention identifying an intent to surrender the dwelling securing the mortgage loan only if the consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case.

[367] One commenter stated that Regulation Z does not apply to a mortgage loan for which a consumer has discharged personal liability through bankruptcy. A bankruptcy discharge does not, however, by itself affect Regulation Z coverage. A bankruptcy discharge does not per se eliminate the existence of a debt or nullify an extension of credit; rather, the discharge operates as an injunction against collecting the debt as a personal liability of the consumer. *See* 11 U.S.C. 524(a) ("A discharge in a case under this title . . . operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived."); *see also* 11 U.S.C. 524(f) (clarifying that the discharge injunction does not prevent a debtor from "voluntarily repaying any debt").
[368] The final rule uses the term bankruptcy plan instead of plan of reorganization to improve clarity.

The final rule also allows a servicer to establish an exclusive address that a consumer in bankruptcy must use to submit a written request to opt into or out of receiving periodic statements, provided that the servicer notifies the consumer of the address in a manner that is reasonably designed to inform the consumer of the address and uses the same address both for opt-ins and opt-outs. The final rule further sets forth a transitional single-billing-cycle exemption under certain circumstances to enable a servicer to transition to a periodic statement modified for bankruptcy and to an unmodified periodic statement upon the conclusion of the bankruptcy case or reaffirmation of the debt.

The Bureau is finalizing proposed comment 41(e)(5)-1 substantially as proposed, with minor revisions to improve clarity. Comment 41(e)(5)-1 clarifies that a written request that a servicer cease or continue providing a periodic statement is deemed to be submitted by the consumer if an agent of the consumer, such as the consumer's bankruptcy counsel, submits the request. The Bureau is finalizing proposed comment 41(e)(5)(ii)-1 substantially as proposed, renumbered as comment 41(e)(5)-2, with minor revisions to improve clarity. Comment 41(e)(5)-2 states that a consumer's most recent written request under § 1026.41(e)(5)(i)(B)(*1*) or (e)(5)(ii) determines whether the exemption in § 1026.41(e)(5)(i) applies. The Bureau is also finalizing new comment 41(e)(5)-3, which clarifies that a consumer's written request under § 1026.41(e)(5)(i)(B)(*1*) or (e)(5)(ii) is effective as of the date of receipt by the servicer. The Bureau is finalizing proposed comment 41(e)(5)(ii)-3, renumbered as comment 41(e)(5)(i)-4, without revision. The comment clarifies that, if a consumer's bankruptcy case is revived or if the court reinstates a previously dismissed case or reopens a case, § 1026.41(e)(5) may apply again.

41(e)(5)(i) Exemption

Scope of Exemption

Final § 1026.41(e)(5)(i) provides that a servicer is exempt from the requirements of § 1026.41 with regard to a mortgage loan if a two-prong test is satisfied. First, any consumer on the loan must be a debtor in bankruptcy under title 11 of the United States Code or must have discharged personal liability for the mortgage loan through bankruptcy pursuant to 11 U.S.C. 727, 1141, 1228, or 1328.

Second, one of the following additional conditions in § 1026.41(e)(5)(i)(B)(*1*) through (*4*) must apply with regard to any consumer on the mortgage loan: (1) The consumer requests in writing that the servicer cease providing a periodic statement; (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 (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.

Changes to the Proposed Exemption Criteria

Apart from the exceptions discussed below, the Bureau is adopting proposed § 1026.41(e)(5)(i) and associated commentary substantially as proposed, with various revisions

to improve clarity. The exemption in the final rule departs from the proposal in three primary ways: (1) The exemption applies at the mortgage-loan level; (2) it can be triggered by a consumer's proposed bankruptcy plan; and (3) it includes an exemption upon the consumer filing a statement of intention identifying an intent to surrender the dwelling securing the mortgage loan only if a consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case.

Loan-level exemption. The exemption in final § 1026.41(e)(5)(i) applies at the loan level. This differs from the proposal, which would have exempted a servicer from the periodic statement requirements as to a specific consumer in bankruptcy but not, for example, as to any of the consumer's co-obligors who were not in bankruptcy. The Bureau is removing the reference to primary obligors that was in the proposal. As the Bureau is finalizing the exemption at the loan level rather than at the consumer level, and, as consumer is a defined term in Regulation Z, the Bureau believes it is more appropriate to refer solely to consumers and not to primary obligors in the regulation. The Bureau does not believe the omission of primary obligors from the regulation text is a substantive change. Comment 41(e)(5)(i)-1 discusses the applicability of the exemption when there is more than one primary obligor. Comment 41(e)(5)(i)-1 clarifies that, when two or more consumers are joint obligors with primary liability on a mortgage loan subject to § 1026.41, the exemption applies if any one of the consumers meets the criteria set forth in § 1026.41(e)(5)(i). The comment also offers an example in which two spouses jointly own a home and are primary obligors on the mortgage loan. One spouse files chapter 13 bankruptcy and has a bankruptcy plan that provides for surrendering the home. 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 pursuant to § 1026.41(e)(5)(ii).

In general, the Bureau believes that a non-debtor co-obligor would benefit from receiving a periodic statement, just like any other consumer with a mortgage loan. Nonetheless, commenters raised legitimate concerns about the proposal, which in some circumstances would have exempted a servicer as to one co-obligor but not another. Commenters indicated that most servicers' systems currently would not accommodate such a requirement. For example, servicers' systems typically suppress communications at the loan level, and some servicers cannot easily remove names from an account. Nor can servicers' systems automate sending a periodic statement to one address while providing other mortgage-related notices to another address, which may have been necessary under the proposal when co-obligors live separately. For these reasons, servicers reported that they might have to reorder fundamentally their systems to comply with the proposal. Furthermore, the Bureau understands that a requirement to provide different disclosures to different addresses could cause conflict with mortgage security instruments, which often state that there can be only a single notice address for each mortgage loan. Implementing and complying with the proposed consumer-specific exemption therefore could have been resource-intensive.

Definition of bankruptcy plan. Final § 1026.41(e)(5)(i)(B)(*2*) provides that a servicer is exempt from the periodic statement requirements depending on the terms of a consumer's bankruptcy plan. The proposal used the term confirmed plan of reorganization, and proposed comment 41(e)(5)(i)-2 would have clarified the meaning of that term. The Bureau is finalizing the proposed comment, renumbered in the final rule as comment 41(e)(5)(i)(B)(*2*)-1, with revisions. The comment clarifies that the term bankruptcy plan, for purposes of § 1026.41(e)(5)(i)(B)(*2*), refers to a consumer's most recently filed bankruptcy plan filed 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. Unlike the proposal, the final rule looks to the consumer's most recently filed bankruptcy plan, and it does not require the bankruptcy plan to be confirmed. The condition under § 1026.41(e)(5)(i)(B)(*2*) is thus satisfied if the consumer's most recently filed 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, whether or not that plan is confirmed or a prior plan provided for the payment of the mortgage loan.

The Bureau is adopting these changes so that the exemption criteria in § 1026.41(e)(5)(i)(B)(*2*) are based on a consumer's most recent expressed intent to retain or surrender the property as identified in a proposed or confirmed bankruptcy plan. As the Bureau explained in the proposal, the value of receiving a periodic statement is diminished for a consumer who intends to surrender the property. Additionally, providing a periodic statement to a consumer who has indicated, through a bankruptcy plan, an intention to surrender the property, could increase the risk of a court finding that a servicer violated the automatic stay. The Bureau understands that a consumer will often perform according to a proposed plan for several months before a plan is confirmed, and a consumer who is surrendering the property or avoiding the lien may not benefit from a statement during that interval. The Bureau therefore does not believe that a servicer should have to provide a periodic statement to a consumer whose proposed bankruptcy plan indicates that the consumer intends to cease making payments on the mortgage loan.

Payment after bankruptcy filing and statement of intention. Final § 1026.41(e)(5)(i)(B)(*4*) requires both that a consumer has filed with the bankruptcy court a

statement of intention identifying an intent to surrender the dwelling securing the mortgage loan and that a consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case. Unlike the proposal, the final rule requires a servicer to provide a periodic statement to a consumer whose statement of intention identifies an intent to surrender the property if a consumer either has made any partial or periodic payment on the mortgage loan after the commencement of the bankruptcy case or has requested in writing that the servicer provide a periodic statement.[369] The Bureau believes that making a payment on the mortgage loan may be a better indication of the consumer's intention to keep the property than a formal statement of intention filed with the bankruptcy court.[370] The statement of intention may reflect only the consumer's intention at a point in time and not the consumer's present intention. Moreover, the Bureau is also aware that a consumer in bankruptcy will often file a statement of intent identifying a purported intent to surrender the home even when the consumer fully intends to retain the property and continue making mortgage payments. The Bureau believes that such a consumer benefits from receiving periodic information about the loan and that, as discussed above, providing a periodic statement to a consumer who is continuing to make voluntary mortgage payments is consistent with bankruptcy law.[371]

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[369] As noted above, one commenter requested that the final rule state more explicitly when a servicer is required to provide a periodic statement to a consumer who has discharged personal liability for the mortgage loan. The Bureau believes that the final rule does make these circumstances clear generally and that the inclusion of the partial or periodic payment language further eliminates any potential ambiguity.

[370] Even if a servicer were to return a consumer's partial payment or hold it in suspense, the servicer would still be required to resume compliance with § 1026.41 after the bankruptcy case concludes because the consumer would have made the payment. The final rule looks to the consumer's actions in determining the scope of the exemption.

[371] *See, e.g.*, *Henry v. Assocs. Home Equity Servs., Inc. (In re Henry)*, 266 B.R. at 471 (Bankr. C.D. Cal. 2001) (holding that creditor did not violate the automatic stay by sending periodic statements and notice of default to debtors who retain their property by continuing to make payments without reaffirming the mortgage loan); *Kibler v. WFS Fin., Inc. (In re Kibler)*, Case No. 97-25258-B-7, Adv. No. 00-2604, 2001 WL 388764 (Bankr. E.D. Cal. Mar. 19, 2001) (noting that borrowers who retain their property by continuing to make payments without reaffirming the

In addition, as with the expression of the consumer's intent in a bankruptcy plan, the Bureau believes that the consumer's most recent statement of intention is the relevant filing for purposes of § 1026.41(e)(5)(i)(B)(*4*). The Bureau has finalized comment 41(e)(5)(i)(B)(*4*)-1 accordingly. The comment also provides an illustrative example.

41(e)(5)(ii) Reaffirmation or Consumer Request to Receive Statement or Coupon Book

The Bureau is finalizing proposed § 1026.41(e)(5)(ii) with revisions. Final § 1026.41(e)(5)(ii) provides that a servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i) with respect to a mortgage loan if the consumer reaffirms personal liability for the loan or any consumer on the mortgage 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. Proposed § 1026.41(e)(5)(ii)(A) would have similarly required a servicer to resume compliance with the periodic statement requirements upon receipt of a consumer's written request, unless a court ordered the servicer to cease providing a periodic statement or coupon book. Proposed § 1026.41(e)(ii)(B) would have likewise required a servicer to resume compliance after the consumer reaffirmed personal liability for the mortgage loan, among other things. The Bureau believes that final § 1026.41(e)(5)(ii) more clearly states that a servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i) with respect to a mortgage loan after either receipt of a consumer's written request or the consumer reaffirms personal liability for the mortgage loan.

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mortgage loan "need to receive normal billings to avoid a contract default and potential foreclosure"); 4 Collier on Bankruptcy ¶ 524.04 ("Section 524(j) clarifies that when a debtor does not reaffirm a mortgage debt secured by real estate that is the debtor's principal residence, the creditor may continue to send statements to the debtor in the ordinary course of business and collect payments made voluntarily by the debtor.") (citing *Jones v. Bac Home Loans Servicing, LP (In re Jones)*, Case No. 08-05439-AJM-7, Adv. No. 09-50281, 2009 WL 5842122, at *3 (Bankr. S.D. Ind. Nov. 25, 2009)).

The Bureau is also adopting new comment 41(e)(5)(ii)-1 to clarify what form of periodic statement a servicer would provide after a consumer reaffirms personal liability for a mortgage loan or opts into receiving a periodic statement. The comment explains that a servicer would provide a modified statement only if § 1026.41(f) applies to the mortgage loan at that time. The comment explains that, 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 that complies with § 1026.41 but without the modifications set forth in § 1026.41(f). The comment further explains that § 1026.41(f) does apply, however, with respect to a mortgage loan following a consumer's written request to receive a periodic statement, 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 that includes the modifications set forth in § 1026.41(f).

Written Opt-out and Opt-in Requests under 41(e)(5)(i) and 41(e)(5)(ii)

As explained above, § 1026.41(e)(5)(i)(B)(*1*) provides that a servicer may honor a consumer in bankruptcy's written request that the servicer cease providing a periodic statement. Section 1026.41(e)(5)(ii) provides, in part, that a servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i) with respect to a mortgage loan if any consumer on the mortgage loan requests in writing that the servicer provide a periodic statement, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement. Thus, § 1026.41(e)(5)(i)(B)(*1*) provides an opt-out mechanism and § 1026.41(e)(5)(ii) provides an opt-in mechanism.

Section 1026.41(e)(5)(i)(B)(*1*) generally provides the requirements for opt-out. Section 1026.41(e)(5)(i)(B)(*1*) does not prohibit servicers from continuing to honor opt-out requests received, whether orally or in writing, from consumers in bankruptcy before the effective date, so long as the servicer can document that the consumer affirmatively made the request. Servicers may choose to require consumers to submit a new written request, but the Bureau is not requiring it. The Bureau believes that imposing such a requirement in the final rule would unnecessarily increase burden on consumers and servicers.

As noted above, the Bureau is adopting comment 41(e)(5)-1, which clarifies that, if an agent of the consumer, such as the consumer's bankruptcy counsel, submits a request under § 1026.41(e)(5)(i)(B)(*1*) or (e)(5)(ii), the request is deemed to be submitted by the consumer. The Bureau is also adopting new comment 41(e)(5)-3, which clarifies that a consumer's written request under § 1026.41(e)(5)(i)(B)(*1*) or (e)(5)(ii) is effective as of the date of receipt by the servicer.

Requiring written opt-out and opt-in. Requiring opt-out and opt-in requests to be in writing reduces the potential for litigation in the bankruptcy court and eliminates ambiguities about whether a consumer made an effective request. Although a written requirement imposes greater burden on consumers, a significant majority of consumers in bankruptcy are represented by counsel, who should be able to assist them with preparing a request.[372] The section-by-section analysis of § 1026.41(e)(5)(iii) discusses the final rule provision that a servicer may

[372] *See In re LaGrone*, 525 B.R. 419, 427 (Bankr. N.D. Ill. 2015) (citing *By the Numbers—Pro Se Filers in the Bankruptcy Courts*, The Third Branch News (U.S. Cts.) Oct. 2011, *available at* http://www.uscourts.gov/News/TheThirdBranch/11–10–01/By_the_Numbers—Pro_Se_Filers_in_the_Bankruptcy_Courts.aspx, for the proposition that in 2011 debtors were represented by counsel in 92% of chapter 7 cases and 90% of chapter 13 cases).

establish an address that a consumer must use to submit a written request that the servicer cease or continue providing a periodic statement.

No universal opt-in requirement. The Bureau declines to require that a consumer in bankruptcy always submit an affirmative request to a servicer in order to receive a periodic statement. The Bureau shares the concern of some commenters that a consumer who wants to receive a periodic statement may nonetheless fail to make an affirmative request to opt in. Moreover, absent an express requirement that a servicer provide notice to a consumer of the right to opt in, a consumer may not be aware of this right, and the Bureau is concerned about the burden such a new notice requirement would impose on servicers. The Bureau is also concerned that a notice-and-opt-in procedure could create long delays between the bankruptcy filing and when a consumer receives a periodic statement, potentially causing a consumer to be unaware of additional fees and charges. The final rule already provides that a servicer has period of time constituting a limited exemption from the requirements of § 1026.41 before it must provide a periodic statement subject to § 1026.41(f) to a consumer in bankruptcy, and the Bureau is concerned that lengthening this period with a notice-and-opt-in procedure could deprive the consumer of important information about the mortgage loan during a time when the consumer is attempting to reorder the consumer's financial affairs.

The Bureau does not believe an affirmative opt-in requirement is necessary to protect servicers from violating the automatic stay or discharge injunction. As discussed above, bankruptcy courts hold consistently that a servicer does not violate the automatic stay when it provides an accurate periodic statement to a consumer who intends to retain a property through

bankruptcy, including specifically in the circumstances in which the final rule would require a periodic statement.[373] The Bureau notes that the U.S. Trustee Program opposed an opt-in requirement and did not express concerns that the proposal would result in automatic stay violations. Additionally, from outreach and comments received, the Bureau is aware that at least one large servicer provides a periodic statement to all of its consumers in bankruptcy who have a first-lien mortgage, subject to the consumer's right to opt out, and that this servicer believes its practice complies with the automatic stay. The final rule allows a consumer in bankruptcy to opt out of receiving a periodic statement, so a servicer does not risk an automatic stay violation by sending a periodic statement to a consumer who has requested not to receive them.

The Bureau further notes that the final rule incorporates a de facto opt-in requirement. As consumer advocacy groups commented about the proposal, a consumer must identify in either the bankruptcy plan or the statement of intention whether the consumer intends to retain or surrender the property. The exemption under §1026.41(e)(5)(i) does not apply if the consumer identifies an intent to retain the property, but it does apply if the consumer identifies an intent to surrender (unless the consumer subsequently makes a partial or periodic payment on the mortgage loan or requests in writing that the servicer provide a periodic statement). Accordingly, in practice, a servicer will generally not be required to provide a periodic statement to a consumer in bankruptcy unless the consumer has taken an affirmative step identifying an intent to retain the property.

[373] *See supra*, note 335-340.

The Bureau believes that a consumer who makes such an affirmative step likely benefits from receiving a periodic statement.[374] Indeed, consumer testing participants stated overwhelmingly that they would prefer to receive a periodic statement if they intended to retain their property through bankruptcy,[375] The Bureau has also received complaints from consumers who are retaining their property but do not receive periodic statements from their servicers due to the bankruptcy.

The Bureau also does not believe that the final rule imposes substantially more burden than would a universal opt-in regime. The Bureau understands that a servicer likely will expend more resources to determine whether an exemption applies under the final rule, such as by reviewing bankruptcy court filings, than it would if it were required to send a periodic statement only upon receiving a request from the consumer. As noted above, however, a servicer may have incurred other costs if the Bureau had required the servicer to provide a notice to the consumer about an opt-in right. Moreover, as already discussed, the Bureau believes there are substantial benefits to consumers of not adopting an express opt-in requirement.

Other opt-in and opt-out issues raised by commenters. The Bureau is not adopting commenters' other recommendations relating to the written request requirement. For example, the Bureau is not adopting one commenter's recommendation that the rule require all co-obligors

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[374] The Bureau acknowledges that, in some circumstances, the final rule may require a servicer to provide a periodic statement to a consumer who has not yet filed a statement of intention or bankruptcy plan and thus to a consumer who has not yet made clear an intent to retain or surrender the property. In this circumstance, however, courts have held that a periodic statement would be helpful to the consumer because it provides information that may be relevant to deciding whether to retain or surrender. *See, e.g., Connor v. Countrywide Bank NA (In re Connor)*, 366 B.R. 133, 136, 138 (Bankr. D. Haw. 2007) (holding that debtor failed to state a claim for stay violation related to periodic statements received prior to chapter 13 plan confirmation).

[375] Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing*, at 58 (Feb. 2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/testing-bankruptcy-periodic-statement-forms-mortgage-servicing/ (report on consumer testing submitted to the Bureau of Consumer Fin. Prot.).

to sign any opt-in or opt-out requests. The Bureau believes that this approach would present practical challenges because some consumers may not be able to obtain a signature from all co-obligors and some consumers would be unaware of the need to obtain additional signatures. In such circumstances, requiring all co-obligors to sign a request could make it inappropriately difficult for a consumer to receive a periodic statement.

The Bureau also is not adopting commenters' recommendation to require that a servicer inform a consumer attempting to opt in or opt out orally about the need to submit a written request. Many consumers in bankruptcy are represented by counsel who can advise them of the writing requirement. The Bureau believes that requiring this notice could add an unnecessary compliance obligation. Although not required, the Bureau nevertheless encourages servicers to inform consumers of the writing requirement and notes that doing so does not violate § 1026.41(e)(5).

41(e)(5)(iii) Exclusive Address

Under new § 1026.41(e)(5)(iii), a servicer may establish an address that a consumer must use to submit a written request that the servicer cease or continue providing a periodic statement. The Bureau believes that allowing servicers to designate an address for these purposes may reduce compliance burden for servicers and facilitate consumers' exercise of their opt-in and opt-out preferences.

The Bureau shares some commenters' concerns, however, that some consumers may not know the specific address and therefore be unable to exercise these rights. Therefore, § 1026.41(e)(5)(iii) requires a servicer establishing a specific address for this purpose to notify the consumer of the address in a manner that is reasonably designed to inform the consumer of the address. For example, a servicer may be able to satisfy this requirement by including the

address on the servicer's website or the periodic statement. Section 1026.41(e)(5)(iii) does not necessarily require that the servicer inform the consumer of the address in writing; for example, when a consumer has called the servicer requesting a periodic statement, the servicer may inform the consumer of the address in that phone call with the consumer. Section 1026.41(e)(5)(iii) also provides that, if a servicer designates a specific address for opt-in and opt-out requests, it must designate the same address for both. Requiring the same address for opt-ins and opt-outs should reduce the potential for uncertainty or mistakes about which address consumers or their counsel should use for making requests.

41(e)(5)(iv) Timing of Compliance Following Transition

The Bureau is finalizing new § 1026.41(e)(5)(iv) to ensure that a servicer has a sufficient period of time to transition to providing a modified or an unmodified periodic statement in connection with a consumer's bankruptcy case. Section 1026.41(e)(5)(iv)(A) specifies the three bankruptcy-related events that would cause a servicer to transition to providing a different form of periodic statement: (1) A mortgage loan becomes subject to the requirement to provide a modified periodic statement pursuant to § 1026.41(f); (2) a mortgage loan ceases to be subject to the requirement to provide a modified periodic statement pursuant to § 1026.41(f); or (3) a servicer ceases to qualify for an exemption pursuant to a § 1026.41(f) with respect to a mortgage loan.

Comment 41(e)(5)(iv)(A)-1 clarifies when a mortgage loan becomes, or ceases to be, subject to the requirements of § 1026.41(f). The comment states that a mortgage loan becomes subject to the requirements of § 1026.41(f) when, for example, any consumer who is 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.

Comment 41(e)(5)(iv)(A)-2 clarifies when a servicer ceases to qualify for an exemption pursuant § 1026.41(e)(5)(i) with respect to a mortgage loan. The comment states that a servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i) with respect to a mortgage loan when, for example, (1) the consumer's bankruptcy case is dismissed or closed; (2) 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; (3) the consumer makes a partial or periodic payment on the mortgage loan despite having filed a statement of intention identifying an intent to surrender the dwelling securing the mortgage loan, thus making § 1026.1(e)(5)(i)(B)(*4*) inapplicable; (4) the consumer in bankruptcy reaffirms personal liability for the mortgage loan; or (5) the consumer submits a written request pursuant to § 1026.41(e)(5)(ii) that the servicer continue providing a periodic statement.

Section 1026.41(e)(5)(iv)(B) provides that a servicer is exempt from the periodic statement requirements with respect to a single billing cycle if the payment due date for that billing cycle is no more than 14 days after the date on which an event listed in § 1026.41(e)(5)(iv)(A) occurs. Comment 41(e)(5)(iv)(B)-1 clarifies that this single-billing-cycle exemption applies only for the first billing cycle that occurs after an event listed in § 1026.41(e)(5)(iv)(A) occurs. The comment explains that, if a servicer is required to provide a periodic statement, the servicer must do so beginning with the next billing cycle, in accordance with the timing provisions of § 1026.41(e)(5)(iv)(C).

Section 1026.41(e)(5)(iv)(C) sets forth the timeframe within which a servicer must provide the next periodic statement after an event listed in § 1026.41(e)(5)(iv)(A) occurs. When one of the events listed in § 1026.41(e)(5)(iv)(A) occurs, a servicer must provide the next modified or unmodified periodic statement 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 § 1026.41(e)(5)(iv)(A) occurs. Comment 41(e)(5)(iv)(C)-1 clarifies that delivering, emailing, or placing the periodic statement in the mail within four days after the payment due date or the end of the courtesy period generally would be considered reasonably prompt. Comment 41(e)(5)(iv)(C)-2 clarifies that § 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 in accordance with the timing requirements of § 1026.41(a)(2) and (b) (or § 1026.41(e)(3), in the case of a coupon book). Comment 41(e)(5)(iv)(C)-3 clarifies that § 1026.41(e)(5)(iv)(C) 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. Section 1026.41(e)(iv)(C) and comments 41(e)(5)(iv)(C)-1 and 2 thus impose timing requirements that are similar to those in § 1026.41(b) and comment 41(b)-1 in the non-bankruptcy context.

Industry commenters expressed concern about a servicer's ability to transition to providing modified periodic statements that are both accurate and timely following a consumer's bankruptcy filing, stating that the transition could be particularly difficult if a servicer learns of the consumer's bankruptcy within just a few days before it was scheduled to provide the next

periodic statement. Similarly, servicers expressed concern about their ability to timely provide an unmodified periodic statement after the close of a consumer's bankruptcy case. An industry commenter suggested that additional time is necessary because the National Mortgage Settlement requires certain servicers to perform an account reconciliation after the close of a consumer's chapter 13 case.

The Bureau believes § 1026.41(e)(5)(iv) provides an appropriate transition period for a servicer while also not unnecessarily disadvantaging a consumer. The Bureau therefore declines to adopt commenters' recommendations that the rule should uniformly allow a transition period until the second payment due date, of two billing cycles, or of 60 days. Under the final rule, a servicer will have more than 14 days before the first billing cycle due date for which it must provide the next periodic statement when a mortgage loan becomes subject to the requirement to provide a modified periodic statement, a mortgage loan ceases to be subject to the requirement to provide a modified periodic statement, or the servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i). The Bureau notes that, in practice, the final rule will afford most servicers a longer transition period than 14 days because § 1026.41(b) states that providing a periodic statement is timely if it occurs within a reasonably prompt time after the close of any courtesy period.[376]

Other Issues Raised by Commenters

[376] For example, a servicer with a courtesy period of 15 days would have at least 29 days (the 14-day period before the first payment due date plus the 15-day courtesy period) before it would be required to provide a periodic statement with the modification set forth in §1026.41(f). At that point, the servicer would have to deliver the periodic statement within a reasonably prompt time. *See* 12 CFR 1026.41(b); comment 41(b)-1 (explaining that "[d]elivering, emailing or placing the periodic statement in the mail within four days of the close of the courtesy period of the previous billing cycle generally would be considered reasonably prompt").

The Bureau declines to adopt commenters' suggestion to exempt a servicer from the periodic statement when a consumer is in chapter 12 bankruptcy or has a bankruptcy plan that reduces the outstanding amount of the mortgage loan to the value of the collateral—that is, a cram-down plan. The Bureau believes that such a consumer would benefit from the information contained in a periodic statement, including in particular the disclosure of payments received and applied, as would any other consumer. As commenters noted, however, in this situation the consumer's payment obligations during bankruptcy may be tailored to that specific consumer, such as requiring payments seasonally to coincide with the consumer's harvest or reducing payments to the remaining secured portion of the loan. A servicer therefore could bear additional costs attempting to disclose those specific circumstances on a periodic statement. The Bureau believes that the additional costs may not be warranted given that those types of bankruptcy cases are relatively infrequent.[377] Accordingly, as suggested by some commenters and in order to reduce burden further, the final rule provides servicers with flexibility as to how to present the information on periodic statements sent to consumers with cram-down plans, as explained in more detail in the section-by-section analysis of § 1026.41(f).

The Bureau also declines to require a servicer to send a periodic statement to a trustee overseeing a consumer's bankruptcy case. Industry commenters objected to the burden of preparing and mailing statements to a trustee, as well as to potential costs related to ensuring that the periodic statement does not disclose any personal information to the trustee. Some commenters also noted that trustees are not uniformly interested in receiving periodic statements.

[377] For example, that there was an average of approximately 545 chapter 12 cases filed nationwide annually between 2011 and 2014. *See* Administrative Office of the U.S. Courts, U.S. Bankruptcy Courts— Caseload Statistics Data Tables, *available at* http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables.

The Bureau recognizes that some trustees would use periodic statements to monitor how servicers apply payments and acknowledges that the information contained on the periodic statement may otherwise be difficult for the trustee to obtain. Nonetheless, the Bureau declines to mandate that servicers provide periodic statements to bankruptcy trustees at this time, based on concern about the burden this could impose on servicers.

The Bureau also declines to adopt other recommendations some commenters made relating to the exemption, for example, that the Bureau should require additional notices to the consumer or consumer's counsel regarding the exemption.

Legal Authority

The Bureau is exercising its authority under sections 105(a) and (f) of TILA and section 1405(b) of the Dodd-Frank Act to exempt servicers from the requirement in section 128(f) of TILA to provide periodic statements for a mortgage loan in certain bankruptcy-related circumstances. For the reasons discussed above, the Bureau believes this exemption is necessary and proper under section 105(a) of TILA to facilitate compliance. In addition, consistent with section 105(f) of TILA and in light of the factors in that provision, the Bureau believes that imposing the periodic statement requirements for certain consumers in bankruptcy may not currently provide a meaningful benefit to those consumers in the form of useful information. Consistent with section 1405(b) of the Dodd-Frank Act, the Bureau also believes that the modification of the requirements in section 128(f) of TILA to provide this exemption is in the interest of consumers and in the public interest.

41(e)(6) Charged-off Loans

Proposed § 1026.41(e)(6) would have exempted a servicer from the requirements of § 1026.41 for a mortgage loan charged off in accordance with loan-loss provisions, but only if

the servicer would not charge any additional fees or interest on the account, and only after the servicer provided the consumer a periodic statement with various additional disclosures relating to the effects of charge off. For the reasons set forth below, the Bureau is adopting § 1026.41(e)(6)(i) as proposed but is revising the disclosures that must appear on the periodic statement that servicers must provide before exercising the exemption. As finalized, § 1026.41(e)(6)(ii) also contains provisions relating to when a servicer must resume compliance with the periodic statement requirement.

The periodic statement rule set forth in § 1026.41 requires the creditor, assignee, or servicer of a closed-end consumer credit transaction secured by a dwelling (a mortgage loan) to provide the consumer, for each billing cycle, a periodic statement meeting certain time, form, and content requirements.[378] The Bureau understands that a servicer, pursuant to certain accounting standards and at a creditor's direction, may be required to charge off a delinquent mortgage loan in accordance with applicable loan-loss provisions. Charge off is an accounting practice that indicates that the creditor or servicer no longer considers the mortgage loan to be an asset. However, charge off does not release the consumer from liability for the mortgage loan. In some cases, although the mortgage loan has been charged off, the underlying lien secured by the dwelling remains in place. Therefore, even after charge off, the credit transaction is still secured by a dwelling. As explained in the proposal, under § 1026.41, unless the lien is released, the periodic statement is required for all charged-off mortgage loans, regardless of whether the mortgage loan was charged off prior to the effective date of the rule, January 10, 2014.

[378] For purposes of § 1026.41, the term servicer includes the creditor, assignee, or servicer, as applicable. 12 CFR 1026.41(a)(2).

In advance of the proposal, the Bureau understood that the servicing of charged-off mortgage loans may differ from the servicing of non-charged-off mortgage loans. A servicer's software, systems, and platforms may treat charged-off mortgage loans distinctly, such that providing a periodic statement for a charged-off mortgage loan may be more burdensome, and therefore more costly, than providing a periodic statement for a non-charged-off mortgage loan. The Bureau also understood, however, that, even after charge-off, a servicer may pass along various fees to the consumer, such as attorney's fees, court costs, filing fees, garnishment fees, property maintenance fees, taxes, insurance, and fees for maintaining the lien. In the proposal, the Bureau explained that, where a servicer continues to charge a consumer fees and interest, the periodic statement may provide significant value to the consumer. An important role of the periodic statement is to document fees and charges to the consumer; as long as such charges may be assessed, the consumer is entitled to receive a periodic statement.[379] In advance of the proposal, the Bureau considered concerns expressed about circumstances in which periodic statements should not be required and acknowledged that some circumstances could make providing a periodic statement more complicated. However, such circumstances are often precisely when a consumer most needs the periodic statement.

Balancing these considerations, the Bureau proposed § 1026.41(e)(6), which would have exempted servicers from the requirements of § 1026.41 for a mortgage loan that a servicer has charged off in accordance with loan-loss provisions, but only if the servicer would not charge any additional fees or interest on the account and would provide the consumer a periodic statement with specified disclosures within 30 days of charge off or the most recent periodic

[379] *See* 2013 TILA Servicing Final Rule, 78 FR 10901, 10960 (Feb. 14, 2013).

statement. Proposed comment 41(e)(6)-1 would have clarified the relationship between proposed §§ 1026.41(e)(6) and 1026.39, which requires certain disclosures upon the purchase, assignment, or transfer of a mortgage loan. Proposed comment 41(e)(6)-2 would have clarified when the obligation to provide periodic statements resumes under certain circumstances. The Bureau is adopting § 1026.41(e)(6) and comments 41(e)(6)-1 and -2 with several revisions from the proposal, as described below. Some of the revisions are substantive, while others are technical to improve clarity.

In the proposal, the Bureau sought comment on whether limiting the exemption for charged-off mortgage loans as proposed would be appropriate. Additionally, the Bureau sought comment on whether, with respect to mortgage loans that were charged off prior to the rule's effective date, the Bureau should provide servicers additional time to comply with either the proposed exemption for charged-off mortgage loans or the otherwise applicable periodic statement rule. Finally, the Bureau sought comment on whether there are alternatives to periodic statements for charged-off mortgage loans, such as an annual reminder to the consumer of a loan's status, including what might be the associated benefits to consumers and costs to servicers of such alternatives.

The Bureau received numerous comments on proposed § 1026.41(e)(6). Some industry commenters and consumer advocacy groups generally expressed support for the proposal. One trade association expressed particular support for the proposed requirement to have clear labeling on the proposed final periodic statement, arguing that it would help consumers understand what has happened to their debt and various implications thereof. A servicer expressed appreciation for the approach taken in the proposal, agreeing that providing periodic statements to consumers with charged-off loans would provide little benefit to consumers while posing significant costs to

servicers.

Other commenters recommended various revisions to the proposal. A trade association and a servicer requested that servicers be allowed to amend the periodic statements provided under § 1026.41(e)(6) as to continuing liability when the debt has been discharged in bankruptcy. A commenter also requested that servicers should not be required to provide a periodic statement under § 1026.41(e)(6) if the consumer has sent the servicer a cease communication letter pursuant to section 805(c) of the FDCPA. A state trade association commented that, although the exemption under proposed § 1026.41(e)(6) is worthwhile, the exemption should not depend on whether the servicer will continue to charge any fees, as providing statements after charge off imposes a heavy burden, servicers may have no choice but to assess additional fees, and the servicer should not be required to forego collecting such fees to take advantage of the exemption. One servicer generally agreed with the proposed exemption from providing periodic statements for charged-off mortgage loans. However, the servicer indicated that the proposed requirements would require servicers to create and maintain a new periodic statement that differs from the existing periodic statements, which takes between 60 and 90 days to create. This servicer thus expressed a preference for providing a simple notice setting forth the relevant information instead of a periodic statement that must comply with the requirements of proposed § 1026.41(e)(6). Another servicer requested that the Bureau clarify whether the proposed commentary for when there is a change in ownership likewise applies when there is an assignment for collection but no change in ownership.

Consumer advocacy groups suggested that the Bureau should clarify certain required language on the periodic statement provided under § 1026.41(e)(6), stating that consumers will not clearly understand the meaning and implications of charge off. One consumer advocacy

group stated that the periodic statement should clearly state that the charge off does not eliminate the consumer's liability and that a lien secured by the dwelling remains in place. This commenter also suggested that servicers should be required to provide an annual reminder of the loan's status with important information, until the loan is transferred, assigned, or foreclosed upon, or the borrower has successfully obtained loss mitigation.

Other consumer advocacy groups stated that the periodic statement provided under § 1026.41(e)(6) should not contain the label "Final Statement," as proposed, because the periodic statement might not in fact be final if the servicer is later required to provide a periodic statement, for example, because it adds fees or interest to the account. These commenters recommended that the Bureau consider the following specific adjustments to the periodic statement following charge off: delete any reference to finality; indicate that the creditor or future creditor can go back to charging interest and fees and collecting on the debt; include an explanation that the creditor must notify the borrower and resume statements before the creditor may recommence charging interest or fees; include an explanation of the prohibition on various charges accruing if collection activity resumes; and detail the right of resumption. Additionally, these consumer advocacy groups stated that the periodic statement should emphasize that later creditors who have not received the periodic statement may later resume retroactive collection efforts, suggesting that this practice could be problematic for some borrowers who, having not retained the final statement, would have no proof that the creditor cannot do so. Finally, these consumer advocacy groups recommended requiring servicers to provide additional statements about the charged-off mortgage loan as a reminder, perhaps every six months, but also suggested finalizing a rule that would permit the servicer to stop providing periodic statements if they mark the mortgage as satisfied and remove the lien on the property post-charge-off.

One credit union commenter opposed requiring servicers to provide a periodic statement with the modifications proposed under § 1026.41(e)(6), indicating that providing a periodic statement with the term "Final Statement" could be misleading to consumers because servicers may make attempts to recover the debt after charge off, for example, through foreclosure. This commenter recommended that a periodic statement should not contain this language and instead contain language stating that, if the balance due is not paid, the loan may be referred to foreclosure.

A trade association stated that loans that were charged off before the effective date of the proposed amendments should not be subject to any periodic statement requirements. The association commented that guidance the Bureau issued in 2013, clarifying that the Bureau expects servicers to provide periodic statements for mortgage loans after charge off, came too late during industry's implementation of the 2013 Mortgage Servicing Final Rules for vendors to integrate the systems changes to comply in advance of the 2014 effective date.

The Bureau is adopting § 1026.41(e)(6) with several revisions, as described below. As finalized, § 1026.41(e)(6)(i) provides that a servicer is exempt from the requirements of § 1026.41 for a mortgage loan if two conditions are met. First, under § 1026.41(e)(6)(i)(A), the servicer must have charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account. Second, under § 1026.41(e)(6)(i)(B), the servicer must provide, 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." Section 1026.41(e)(6)(i)(B) also requires that this periodic statement provide a clear and conspicuous explanation 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. Providing this periodic statement as required under § 1026.41(e)(6)(i)(B) will provide important consumer protections while relieving the burden on servicers associated with providing ongoing periodic statements under § 1026.41. The Bureau stresses that a servicer does not need to include any of the enumerated statements unless they apply to a particular consumer. For example, if a consumer has discharged personal liability for the mortgage loan through bankruptcy, the servicer would not need to include on the periodic statement an explanation that the consumer remains liable for the mortgage loan obligation.

The Bureau is finalizing proposed comment 41(e)(6)-2, but incorporating it in § 1026.41(e)(6)(ii) instead of finalizing it as a comment. Section 1026.41(e)(6)(ii) clarifies when a servicer must resume compliance with § 1026.41 after exercising the exemption under § 1026.41(e)(6)(i) and how a servicer must treat fees or interest that accrued while the exemption applied. Section 1026.41(e)(6)(ii)(A) states that, if a servicer fails at any time to treat the mortgage loan that is exempt under § 1026.41(e)(6)(i) as charged off or charges any additional fees or interest on the account, the obligation to provide a periodic statement pursuant to § 1026.41 resumes. Section 1026.41(e)(6)(ii)(B) states that a servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption in § 1026.41(e)(6)(i) applied. As the Bureau explained in the proposal, if the servicer or covered

person at any time no longer treats the mortgage loan as charged off, begins charging fees or interest on the account, or retroactively assesses fees or interest on the account, such conduct would contravene the purpose of the exemption from the otherwise applicable periodic statement requirement. As noted above, an important role of the periodic statement is to document fees and charges to the consumer. As long as such charges may be assessed, the consumer is entitled to receive a periodic statement.

The Bureau is adopting three comments to clarify the requirements of § 1026.41(e)(6). The Bureau is adopting comment 41(e)(6)-1 substantially as proposed but separating it into two separate comments to clarify a servicer's obligations when there is a change in ownership and separately when there is a change in servicing. Comment 41(e)(6)-1, as finalized, clarifies the relationship between §§ 1026.41(e)(6) and 1026.39, which requires certain disclosures upon the purchase, assignment, or transfer of a mortgage loan. The comment provides that, 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 a mortgage transfer disclosure.[380]

Comment 41(e)(6)-2, as finalized, clarifies a servicer's rights and obligations under § 1026.41(e)(6) when there is a change in servicing. The comment provides that 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 the periodic statement required under § 1026.41(e)(6)(i)(B), unless the servicer provided the consumer a periodic statement pursuant to § 1026.41(a). As noted above, the substance of this comment appeared in

[380] Section 1026.39(a)(1) defines a covered person as any person, as defined in 12 CFR 1026.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer, and who acquires more than one mortgage loan in any twelve-month period.

the proposal as a portion of comment 41(e)(6)-1. The Bureau also notes that comment 41(e)(6)-2 refers to the rights and obligations of a servicer, whereas the proposal would have referred to a covered person who would otherwise be subject to the requirements of § 1026.41.

The Bureau is also adopting new comment 41(e)(6)(i)(B)-1 to clarify the "clearly and conspicuously" standard for purposes of § 1026.41(e)(6)(i)(B). The comment reiterates that the periodic statement required under § 1026.41(e)(6)(i)(B) must be clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records" and that it must provide certain clear and conspicuous explanations to the consumer, as applicable, but no minimum type size or other technical requirements are imposed. Comment 41(e)(6)(i)(B)-1 further states that the clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer. Finally, the comment refers to comment 41(c)-1, which discusses the same standard for the periodic statements more generally.

Section 1026.41(e)(6) differs from the proposal in four primary ways. First, the Bureau is revising the label that must appear clearly and conspicuously on the periodic statement provided under § 1026.41(e)(6). Section 1026.41(e)(6)(i) requires that the periodic statement that a servicer provides as a prerequisite to taking advantage of the exemption in § 1026.41(e)(6) be clearly and conspicuously labeled in bold print "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records." The proposal would have required the label to read, "Final Statement—Retain This Copy for Your Records." As the Bureau explained in the proposal, consumers should be advised to retain this periodic statement provided under § 1026.41(e)(6) for record-keeping purposes, as they may need the information therein for tax or accounting purposes or to demonstrate the status of the loan to various parties. However, as

some commenters noted, the proposed label may have misled consumers because a servicer might still refer the loan to foreclosure following charge-off and provide an additional statement at that time, or the periodic statement that the servicer provides under § 1026.41(e)(6)(ii) may not in fact have been the final periodic statement. For example, as § 1026.41(e)(6)(ii)(A) clarifies, a servicer must resume providing periodic statements to a consumer if a servicer later either fails to treat the mortgage loan as charged off or charges any additional fees or interest on the account. Therefore, § 1026.41(e)(6)(ii) and comment 41(e)(6)-1 no longer require a reference to the "Final Statement" as in the proposal.

Second, a periodic statement provided under § 1026.41(e)(6) must provide two new disclosures that the proposal would not have required. First, the statement must explain that the servicer will no longer provide the consumer a periodic statement for each billing cycle. This disclosure should alert consumers that they will no longer receive these types of communications. Second, the statement must explain that the lien on the property remains in place and that the consumer remains liable for the mortgage loan obligation and any obligations arising from or related to the property, which may include property taxes. These additional disclosures may help consumers better understand the meaning and consequences of charge off, including the consumers' ongoing obligations with respect to the mortgage loan and the property. The Bureau is adopting the remaining disclosures as proposed. Together, the requisite disclosures offer consumers information to help them understand the meaning and consequences of charge off. The Bureau is including these disclosures to address commenters' concerns that consumers could misconstrue the charge off to mean that the mortgage loan obligation or lien has been released, or the debt forgiven, when in fact this is generally not the case.

Third, as explained above, the Bureau is revising proposed comment 41(e)(6)-2 and is

incorporating it into § 1026.41(e)(6)(ii). Fourth, the Bureau is adopting new comment 41(e)(6)(i)(B)-1, to clarify the "clearly and conspicuously" standard for purposes of the label required under § 1026.41(e)(6)(i)(B). The Bureau believes that this comment will help servicers understand what the rule requires.

The Bureau is adopting § 1026.41(e)(6) to reduce the burden on servicers of otherwise having to provide a regular periodic statement on an ongoing basis and to also ensure that consumers still receive important information about the mortgage loan. Although the general periodic statement requirements in § 1024.41(a) through (d) provide important consumer protections, if a servicer will not charge any additional fees or interest on the account, the benefit to a consumer of receiving a regular periodic statement may be minimal, and there will be potential for increased costs passed on to consumers.

The Bureau has narrowly tailored the exemption from the requirements of § 1026.41. As noted above, the exemption applies only to mortgage loans that have been charged off in accordance with loan-loss provisions and only if the servicer will not charge any additional fees or interest on the account. Additionally, the exemption requires that the servicer provide the consumer the periodic statement required under § 1026.41(e)(6)(i) with specific disclosures. The Bureau believes that limiting the exemption in this fashion reduces the risk that this exemption will be used to circumvent the servicing rules.

The Bureau declines to adopt other amendments to the disclosures required by § 1026.41(e)(6)(i)(B) that commenters recommended, including, among others, adding an explanation of possible future fees or interest, or the consumer's right of redemption. Generally, the periodic statement required under § 1026.41(e)(6)(i) is not the appropriate vehicle for these or other recommended disclosures. The Bureau is concerned that including these additional

disclosures could overload the consumer with information. Moreover, additional disclosures are likely to increase compliance costs.

The Bureau also declines to adopt one commenter's recommendation to remove the predicate that servicers may take advantage of the exemption under § 1026.41(e)(6) only if they do not charge any additional fees or interest on the account. The commenter stated that providing periodic statements after charge off imposes a heavy burden on servicers, servicers may have no choice but to assess fees, and servicers should not be required to forego collecting such fees to take advantage of the exemption. As the Bureau explained in the 2013 TILA Servicing Final Rule, in determining the disclosures that a general periodic statement must contain, the Bureau aimed to allow periodic statements to serve a variety of important purposes, including informing consumers of their payment obligations, providing information about the mortgage loan, and creating a record of transactions that increase or decrease the outstanding balance.[381] The Bureau continues to believe that periodic statements should serve these purposes and allowing servicers to charge additional fees or interest without providing a periodic statement to disclose such fees or interest would not accomplish this end. Consumers cannot adequately protect their interests if they are not aware that their mortgage loan is accruing interest or fees.[382]

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[381] 78 FR 10901, 10959, (Feb. 14, 2013).

[382] As explained in the proposal, the exemption under § 1026.41(e)(6) is similar to existing § 1026.5(b)(2)(i), which provides an exemption for certain charged-off accounts from the periodic statement requirement in § 1026.7 for open-end credit transactions. Section 1026.5(b)(2)(i) states, in relevant part, that "[a] periodic statement need not be sent for an account . . . if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account . . . ." 12 CFR 1026.5(b)(2)(i). In finalizing this exemption under § 1026.5(b)(2)(i), the Board weighed the costs and benefits and determined that "the value of a periodic statement does not justify the cost of providing the disclosure because the amount of a consumer's obligation will not be increasing," while reiterating that "this provision does not apply if a creditor has charged off the account but continues to accrue new interest or charge new fees." 74 FR 5244, 5276 (Jan. 29, 2009). The Bureau continues to

The Bureau also declines to allow servicers to provide a simple written notification setting forth relevant information in place of a periodic statement, as one industry commenter recommended. The commenter stated that § 1026.41(e)(6) will require servicers to create and maintain a new and different periodic statement, and that the new periodic statement could take several months to create. The Bureau acknowledges that servicers using the exemption under § 1026.41(e)(6) will incur some additional costs to create and maintain a periodic statement with the additional disclosures required under § 1026.41(e)(6). However, the Bureau is not mandating that servicers discontinue providing periodic statements for charged-off mortgage loans as § 1026.41(e)(6) allows. Rather, servicers will have the option to take advantage of the exemption. The Bureau also notes that the periodic statement required under § 1026.41(e)(6)(i) would not significantly differ from the periodic statement otherwise provided under § 1026.41 except that it would include additional disclosures related to the charge off. Further, although a simple written notification may contain some relevant information appropriate for consumers, the Bureau believes that including the required additional disclosures on the periodic statement under § 1026.41(e)(6) will be clearer for consumers and create a single record for the consumer to retain.

The Bureau also declines to require servicers to provide borrowers with semi-annual or annual periodic statements following the periodic statement provided under § 1026.41(e)(6)(ii). The Bureau believes that, on balance, the additional cost to servicers of tracking the appropriate

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agree with the Board's reasoning and believes that a similar analysis applies with respect to the proposed exemption from the periodic statement requirement in § 1026.41 for a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account. However, because closed-end consumer credit transactions secured by a dwelling are distinct from unsecured, open-end credit transactions by virtue of the underlying lien, the Bureau also believes that it is appropriate to impose additional requirements in this context.

timeframes and providing these additional periodic statements outweighs the potential benefit to consumers of receiving these statements.

The Bureau also declines to adopt one commenter's recommendation that servicers should not be required to provide a periodic statement if the consumer has sent a cease communication letter pursuant to 805(c) of the FDCPA. As noted in the Bureau's October 2013 Servicing Bulletin, periodic statements are specifically mandated by the Dodd-Frank Act, which makes no mention of their potential cessation under the FDCPA and presents a more recent and specific statement of legislative intent regarding these disclosures than does the FDCPA. Moreover, the Bureau believes that the periodic statements provide useful information to consumers regardless of their collections status. Finally, the Bureau notes that nothing in § 1026.41(e)(6) affects a debt collector's obligations under the FDCPA, including, for example, the requirement to provide the consumer a written validation notice under section 809 of the FDCPA.

Further, the Bureau declines to offer an exemption from the requirement to provide periodic statements for mortgage loans that were charged off before this final rule's effective date. As the Bureau indicated in the proposal, under the current rule, the periodic statement is required for charged-off mortgage loans unless the lien is released. For charged-off mortgage loans, if a servicer wishes to take advantage of the new exemption in § 1026.41(e)(6), the servicer must comply with the requirements of that section and provide, within 30 days of the most recent periodic statement, a periodic statement that meets the requirements of § 1026.41(e)(6)(i).

Legal Authority

The Bureau is exempting from the periodic statement requirement under section 128(f) of

TILA a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account, provided that the servicer must provide the consumer a periodic statement under § 1026.41(e)(6) within 30 days of charge off or the most recent periodic statement. The Bureau is adopting this exemption pursuant to its authority under section 105(a) and (f) of TILA and section 1405(b) of the Dodd-Frank Act.

For the reasons discussed above, the Bureau believes that the exemption is necessary and proper under section 105(a) of TILA to facilitate TILA compliance. As discussed above, the Bureau believes that the proposal to exempt certain mortgage loans that a servicer has charged off facilitates compliance with TILA by allowing servicers to service loans cost effectively in compliance with applicable regulatory requirements.

In addition, consistent with section 105(f) of TILA and in light of the factors in that provision, for servicers that are required to charge off mortgage loans in accordance with loan-loss provisions, the Bureau believes that requiring them to comply with the periodic statement requirement in section 128(f) of TILA would not provide a meaningful benefit to consumers in the form of useful information or protection. The Bureau believes, as noted above, that requiring provision of periodic statements would impose significant costs and burden. Specifically, the Bureau believes that the requirement will not complicate, hinder, or make more expensive the credit process. In addition, consistent with section 1405(b) of the Dodd-Frank Act, for the reasons discussed above, the Bureau believes that exempting a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account, provided that the servicer must provide the consumer a periodic statement under § 1026.41(e)(6) within 30 days of charge off or the most recent periodic

statement, from the requirements of section 128(f) of TILA would be in the interest of consumers and in the public interest.

In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purposes and objectives of Title X of the Dodd-Frank Act. Specifically, the Bureau believes that this final rule is necessary and appropriate to carry out the purpose under section 1021(a) of the Dodd-Frank Act of ensuring that all consumers have access to markets for consumer financial products and services that are fair, transparent, and competitive, and the objective under section 1021(b) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

41(f) Modified Periodic Statements and Coupon Books for Certain Consumers in Bankruptcy

Currently, § 1026.41(e)(5) exempts servicers from the requirement to provide a periodic statement for a mortgage loan while a consumer is a debtor in bankruptcy. (Except where noted specifically, the section-by-section analyses of § 1026.41(f), including this overview and the analyses of § 1026.41(f)(1) through (4), use the term periodic statement to refer to both a periodic statement and a coupon book that meets the requirements of § 1026.41(e)(3).) As discussed in the section-by-section analysis of § 1026.41(e)(5), the proposal would have limited that exemption to a specified set of consumers who are in bankruptcy or have discharged personal liability for a mortgage loan through bankruptcy. Further, proposed § 1026.41(f) would have specified that, when no exemption under § 1026.41(e)(5) applied, servicers may make various clarifications and modifications to the periodic statement requirements with respect to

those consumers. For the reasons set forth below, the Bureau is adopting § 1026.41(f) largely as proposed, but with some substantive revisions.

As discussed in greater detail in the section-by-section analysis of § 1026.41(e)(5), the Bureau sought comment in the October 2013 IFR as to how the content of a periodic statement might be tailored to meet the particular needs of consumers in bankruptcy. The Bureau received written comments in response to that solicitation during the official comment period. Prior to issuing the proposal, the Bureau continued to receive comments and consulted with servicers, trade groups, consumer advocacy groups, bankruptcy attorneys, bankruptcy trustees, and bankruptcy judges regarding how a periodic statement may be tailored for purposes of bankruptcy, including hosting a roundtable discussion on June 16, 2014. The Bureau already addressed these comments and outreach efforts in the proposal;[383] the discussion below generally addresses only the comments the Bureau received after issuing the proposal.

The Bureau received comments relating to various elements of proposed § 1026.41(f). Comments specific to particular subsections are summarized in the relevant section-by-section analyses below.

Some consumer advocacy groups and industry commenters addressed more generally proposed § 1026.41(f). They expressed general support for the proposed modifications to the periodic statement requirement. One consumer advocacy group stated that consumers and their attorneys would benefit from being able to ensure that the servicer is correctly applying payments. Other consumer advocacy groups expressed strong support for the proposal, stating that receiving disclosures regarding pre-petition and post-petition payments would resolve

[383] 78 FR 74175, 74246-74251 (Dec. 15, 2014).

concerns about misapplication of payments and consumer understanding of their bankruptcy obligations. A trade association stated that the proposed amendments would protect credit unions from liability related to automatic stay violations.

The Bureau also received numerous comments from members of industry stating directly or indirectly that complying with proposed § 1026.41(f) would be costly and burdensome. Some credit unions stated that credit unions in particular would not be able to manage the level of detail that the proposal would have required. Other industry commenters stated that servicers in general would have difficulty accurately making the proposed disclosures. Several commenters stated that complying with the proposed modifications would require systems updates. Some of these commenters stated that the modified periodic statements would provide little corresponding benefit to consumers, for example, because the consumer can obtain the information from other sources, such as a bankruptcy trustee.

Having considered the comments it received following the proposal, the Bureau is adopting § 1026.41(f) with the revisions discussed below. In general, the Bureau believes that it is appropriate to modify or omit certain of the disclosures required by § 1026.41(d) with respect to a periodic statement provided to a consumer in bankruptcy or who has discharged the mortgage loan through bankruptcy. As explained in more detail in the section-by-section analyses of § 1026.41(f)(1) through (3), the Bureau believes that the final rule's modifications and omissions are necessary to ensure that a periodic statement takes into account the unique circumstances of bankruptcy and accurately reflects the payments made by a consumer in bankruptcy. The Bureau further believes that it is appropriate to require certain modifications to the periodic statement specifically for consumers who have filed under chapter 12 or chapter 13, in part because of the special treatment of mortgage loans secured by a consumer's principal

residence under chapter 12 and chapter 13, which permit a consumer to repay pre-bankruptcy arrearages over a reasonable time while continuing to make monthly periodic payments due under the loan.[384]

Thus, as explained in more detail in respective section-by-section analyses below, § 1026.41(f)(1) through (5) set forth various requirements for these modified periodic statements. Briefly stated, § 1026.41(f)(1) permits the periodic statement to omit certain delinquency information that would otherwise be required under § 1026.41(d) when the consumer is in bankruptcy. Section 1026.41(f)(2) requires all periodic statements modified under § 1026.41(f) to include certain informational disclosures about the bankruptcy. Section 1026.41(f)(3) sets forth various specific modifications to the periodic statement when the consumer is in chapter 12 or chapter 13 bankruptcy. Section 1026.41(f)(4) describes how a servicer complies with § 1026.41(f) when there is more than one primary obligor. And § 1026.41(f)(5) sets forth certain requirements when the servicer provides a coupon book under § 1026.41(e)(3) instead of a periodic statement.

Under revised § 1026.41(f), these requirements apply 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. This modifies the proposal to clarify that, where applicable, § 1026.41(f) applies only while such consumer is a debtor in bankruptcy or has discharged personal liability for the

[384] *See* 11 U.S.C. 1222(b)(5), 1322(b)(5) (both stating that a plan "may provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due."). Under chapter 12, moreover, a court may modify the terms of a mortgage loan secured by a principal residence. 11 U.S.C. 1222(b)(2).

mortgage loan. Once the bankruptcy case ends, § 1026.41(f) no longer applies unless the consumer has discharged personal liability for the mortgage loan.[385]

The Bureau is also adopting proposed comments 41(f)-1 through -3 with revisions to improve clarity. The Bureau is renumbering proposed comment 41(f)-3 as comment 41(f)-4 because the Bureau is finalizing a new comment as comment 41(f)-3. The Bureau is also adopting new comments 41(f)-5 and -6.

The Bureau received no comments on proposed comment 41(f)-1 but is revising it to improve clarity. As revised, the comment provides that, 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. The comment further states that, 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.

The Bureau received few comments on proposed comment 41(f)-2, which generally would have allowed servicers some flexibility to use different terminology on a periodic statement than that found on the sample form in appendix H–30. A servicer supported the proposal to allow flexibility in modifying the terminology on a periodic statement. In the context of § 1026.41(f)(3), some trade associations stated more generally that they support express flexibility to revise the terminology relating to the payment amount. However, another servicer

[385] *See also* the section-by-section analysis of § 1026.41(e)(5). Under the final rule, § 1026.41(e)(5)(iv)(B) and comment 41(e)(5)(iv)(B)-1 and -2 set forth guidelines for resuming the obligation to provide a periodic statement or coupon book under § 1026.41 without the modifications set forth in § 1026.41(f) when the bankruptcy case is dismissed, the case is closed, or the consumer reaffirms the mortgage loan pursuant to 11 U.S.C. 524.

suggested that the proposed comment used an example that would create challenges for some consumers in chapter 12 bankruptcy. The proposed comment would have stated that a servicer may, for example, refer to amounts past due as unpaid post-petition payments, and the commenter stated that some chapter 12 debtors may not have monthly post-petition payment obligations, so consumers would not benefit from receiving a modified periodic statement under § 1026.41(f).

Having considered these comments, the Bureau is adopting comment 41(f)-2 substantially as proposed, with several revisions to improve clarity by better aligning the comment with the terminology used on the sample periodic statement provided in appendix H–30, as well as with terminology that consumer testing participants more readily understood. As revised, comment 41(f)-2 provides that, 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. The comment refers to comment 41(d)-3, which includes similar language with respect to periodic statements generally. Comment 41(f)-2 also provides a non-exhaustive list of examples. The list includes examples that also appear on the new sample forms in appendices H–30(E) and H–30(F). Comment 41(f)-2, as finalized, does not include several examples that were in the proposal; the Bureau believes the examples provided in the final rule are more appropriate than the proposed examples with respect to the final sample forms. The Bureau does not intend for these changes to alter the meaning of the comment.

Comment 41(f)-2 explains that, for purposes of § 1026.41(f)(1) through (3), servicers may use terminology specific to the circumstances of bankruptcy. This approach is consistent with that of existing comment 41(d)-3, which provides similar flexibility on periodic statements

generally with respect to, for example, regional differences in terminology. Some industry commenters stated that courts sometimes disfavor terms such as "amount due," "payment due date," and "overdue" or "past due payments," as those terms call to mind an attempt to collect a debt; court decisions have occasionally focused on the precise language of the terms used on a periodic statement.[386] The Bureau also believes that the need to distinguish between pre-petition and post-petition payments in a chapter 13 case may require different terminology than that used on other periodic statements. Although many testing participants expressed a preference for the more-familiar terms "amount due" or "due date" that normally appear on periodic statements and other bills,[387] the consumer testing on sample forms demonstrated that consumers generally understood alternative terminology. Testing also suggested that some consumers prefer more technical, bankruptcy-specific language.[388] As to one commenter's concern that proposed comment 41(f)-2 would have offered an example that would create challenges for some consumers in chapter 12 bankruptcy, the Bureau notes that comment 41(f)-2 is designed to afford servicers greater flexibility, within certain limitations. If the specific language offered as an example is not appropriate in a certain context, a servicer does not need to use that language.

The Bureau is adopting a new comment, finalized as comment 41(f)-3, to clarify that 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, as described in more detail in

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[386] *See, e.g.*, *In re Draper*, 237 B.R. 502, 505-06 (Bankr. M.D. Fla. 1999) (statement listed the "total amount due"); *Butz v. People First Fed. Credit Union (In re Butz)*, 444 B.R. 301, 305 (Bankr. M.D. Pa. 2011) (statement requested immediate payment of an "amount due"); *Harris v. Mem'l Hosp. (In re Harris)*, 374 B.R. 611, 61461 (Bankr. N.D. Ohio 2007) (statement advised that the "account is past due").

[387] Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing*, at 53-54 (Feb. 2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/testing-bankruptcy-periodic-statement-forms-mortgage-servicing/ (report on consumer testing submitted to the Bureau of Consumer Fin. Prot.).

[388] *Id* at 58.

the section-by-section analysis of § 1026.41(d)(3), the disclosure of past payment breakdown information is already in § 1026.41(d)(3) and need not be restated in § 1026.41(f). The comment clarifies that 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.

The Bureau is adopting proposed comment 41(f)-3 but is renumbering the comment as 41(f)-4. The Bureau sought comment on whether the proposed comment may afford servicers too little or too much flexibility with respect to the required content of a periodic statement. A servicer supported additional flexibility in modifying the periodic statement requirements under § 1026.41(f). The Bureau is finalizing the comment as proposed. The comment provides that 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. The comment provides an 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*) that the servicer cease providing a periodic statement or coupon book.

As explained in the proposal, servicers may need flexibility to modify the periodic statement's content to comply with applicable rules and guidelines. The Bureau understands that many local bankruptcy rules already impose certain requirements regarding periodic statements, and the Bureau believes that servicers should be able to comply with both those rules and Regulation Z. The Bureau further believes that giving servicers the flexibility to include

disclosures related to a consumer's status in bankruptcy is important and necessary to permit servicers to comply with local practice or rules.

The Bureau is adopting new comment 41(f)-5 to clarify the timing of compliance with § 1026.41(f), when applicable. The comment states that a servicer must begin to provide a periodic statement or coupon book that complies with § 1026.41(f) within the timeframe set forth in § 1026.41(e)(5)(iv).[389]

41(f)(1) Requirements Not Applicable

For the reasons set forth below, the Bureau is adopting § 1026.41(f)(1) substantially as proposed, with minor revisions. Generally stated, the provision allows a periodic statement for consumers in bankruptcy to omit certain information about a consumer's failure to make timely payments. The provision also explains that such a periodic statement need not show the amount due more prominently than other disclosures on the page.

Section 1026.41(d) requires a periodic statement to disclose information related to a consumer's failure to make timely payments. Section 1026.41(d)(1)(ii) sets forth one such disclosure, requiring a periodic statement to include the amount of any late fee and the date on which the fee will be imposed if payment has not been received. Section 1026.41(d)(8) requires that a periodic statement include certain information for consumers who are 45 days or more delinquent on a mortgage loan. Specifically, current § 1024.41(d)(8)(i), (ii), and (v) require the disclosure of the date on which the consumer became delinquent; a notification of possible risks, such as foreclosure and expenses, that may be incurred if the delinquency is not cured; and a notice of whether the servicer has made the first notice or filing required by applicable law for

[389] *See* section-by-section analysis of § 1026.41(e)(5)(iv) for more detail.

any judicial or non-judicial foreclosure process, if applicable. Section 1026.41(d) also contains certain layout requirements, including the requirement in § 1026.41(d)(1)(iii) that the amount due be displayed more prominently than other disclosures on the page.

Proposed § 1026.41(f)(1) would have provided that certain of § 1026.41(d)'s disclosures and layout requirements do not apply to a periodic statement provided to consumers in bankruptcy under proposed § 1026.41(f). The proposal would have further provided that servicers may exclude the disclosures set forth in § 1026.41(d)(1)(ii) and (d)(8)(i), (ii), and (v), and that servicers do not need to comply with § 1026.41(d)(1)(iii)'s requirement to display the amount due more prominently than other disclosures on the page.

The Bureau solicited comment on whether these modifications would be appropriate and whether additional modifications are necessary. The Bureau also solicited comment on whether the proposed modifications or additional modifications would be necessary if the Bureau required a consumer in chapter 7 or chapter 11 (or a consumer who has discharged personal liability for the mortgage loan through bankruptcy) to opt in to receiving a periodic statement by submitting a written request to a servicer.

A servicer and a trade association expressed support for the proposal. A chapter 13 trustee recommended that the final rule retain § 1026.41(d)(7)(i)'s requirement to disclose the outstanding principal balance, while some trade associations stated that the final rule should clarify that servicers are permitted to disclose the outstanding principal balance according to contractual accounting methods. The final rule does not require a servicer to use any particular accounting method when calculating the outstanding principal balance, so long as the servicer accurately discloses this amount.

Consumer advocacy groups expressed limited support for aspects of proposed § 1026.41(f)(1). They stated that § 1026.41(f)(1) should not apply after the bankruptcy case closes and the consumer continues making payments on the mortgage loan—that is, it should not apply to consumers who use chapter 7 to discharge personal liability but continue making payments on the mortgage after bankruptcy so that they can keep the property (the ride-through option). These consumer advocacy groups asserted that the delinquency information, such as the late fee disclosure, is no different from any other contractual term and that they were unaware of any case law holding that delinquency information violates the discharge injunction. Thus, the consumer advocacy groups stated that consumers who use the ride-through option should receive a periodic statement with all the normal information, including delinquency information, following bankruptcy.

Several comments addressed whether servicers should be required to disclose late fee and past due amount information. Consumer advocacy groups initially stated that it may be appropriate to allow servicers to omit information about a late fee for chapter 13 consumers because some servicers do not charge late fees for payments disbursed by chapter 13 trustees. Upon reviewing the consumer testing report, some consumer advocacy groups stated definitively that the Bureau should require the disclosure that a late fee will be charged if payment is not received by the specified date.

Some trade associations stated that the Bureau should either require a late fee disclosure when applicable or make clear that the final rule does not prohibit a servicer from including one on a periodic statement provided to a consumer in bankruptcy. Two trade associations commented that § 1026.41(f)(1) should also allow a servicer to exclude past due amounts from the amount due on a periodic statement provided to a consumer in chapter 7 because including

them could be seen as a collection attempt that violates the automatic stay. This commenter suggested that servicers be given the flexibility to list past due amounts elsewhere on a periodic statement, such as in the explanation of amount due or a separate box.

The Bureau is finalizing § 1026.41(f)(1) substantially as proposed. For consumers in bankruptcy or who have discharged personal liability for a mortgage loan through bankruptcy, § 1026.41(f)(1) permits servicers to omit from the periodic statement the amount of any late payment fee that will be imposed and the date on which that fee will be imposed if payment has not been received. These disclosures would normally be required under § 1026.41(d)(1)(ii). Section 1026.41(f)(1) also permits servicers to omit for these consumers the delinquency-related disclosures set forth in § 1024.41(d)(8)(i), (ii), and (v)—that is, the length of the consumer's delinquency; a notification of possible risks, such as foreclosure and expenses, that may be incurred if the delinquency is not cured; and a notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable. Finally, § 1026.41(f)(1) states that, for these consumers, the requirement in § 1026.41(d)(1)(iii) to show the amount due more prominently than other disclosures on the page does not apply.

The Bureau continues to believe that receiving information regarding the consequences of late payments or continued delinquencies, such as disclosures regarding potential fees and possible foreclosure, provides tangible benefits to consumers. Indeed, consumer testing suggested that some consumers prefer to receive information about the delinquency, including

the consequences of non-payment.[390] Moreover, the Bureau continues to believe that a consumer in bankruptcy may already be aware of the consequences of non-payment and may have filed for bankruptcy precisely to avoid those consequences. Nonetheless, as the Bureau acknowledged in the proposal, bankruptcy courts have found that certain statements regarding potential late fees or foreclosure and other language that could be construed as threatening consequences for a failure to make payments could, in certain instances, violate the automatic stay. The Bureau is therefore permitting servicers to exclude from the periodic statement certain information regarding consequences of late payment or continued non-payment. The final rule, however, does not prohibit a servicer from including these disclosures.

Consistent with the flexibility the Bureau is affording servicers in modifying the periodic statement as necessary, discussed above, the Bureau also believes it is appropriate to give servicers the flexibility to include other disclosures, such as a disclaimer acknowledging the consumer's bankruptcy case and advising that the statement is for informational purposes only, as the most prominent disclosures on the page. The Bureau notes that the amount due disclosures required by § 1026.41(d)(1) must still be located at the top of the first page of the statement.

The Bureau declines to adopt a rule that would provide that § 1026.41(f)(1) does not apply for consumers using the ride-through option. Such a rule would allow servicers to omit certain disclosures while the consumer is in bankruptcy but require it again after the bankruptcy case closes. The Bureau believes that consumers using the ride-through option would benefit

[390] Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing*, at 56 (Feb. 2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/testing-bankruptcy-periodic-statement-forms-mortgage-servicing/ (report on consumer testing submitted to the Bureau of Consumer Fin. Prot.)

from receiving the disclosures and that section 524(j) of the Bankruptcy Code may allow servicers the freedom to include information about the consequences of non-payment on a periodic statement following a consumer's discharge. However, the Bureau understands that chapter 7 cases often last six months or less, and it may be operationally difficult and burdensome for servicers to switch to yet a third version of the periodic statement following bankruptcy. Finally, while § 1026.41(f)(1) allows servicers to omit certain disclosures from the periodic statement, the final rule does not, as noted above, prohibit a servicer from including them. The Bureau encourages those servicers that currently include such information on a periodic statement without violating the automatic stay or discharge injunction during or after bankruptcy to continue doing so.

The Bureau further continues to believe that the remainder of the delinquency disclosures required by § 1026.41(d)(8)—that is, § 1026.41(d)(8)(iii), (iv), (vi), and (vii)—may be appropriate for consumers in a chapter 7 or chapter 11 case and for consumers who have discharged personal liability for a mortgage loan. For example, references to any loss mitigation program to which the consumer has agreed[391] or to homeownership counselor information[392] do not relate to amounts owed, nor do they threaten consequences for non-payment. No commenter specifically identified this information as problematic and none cited case law indicating that providing it would cause a servicer to violate the automatic stay. The Bureau finds particularly instructive the comments submitted by the U.S. Trustee Program, which did not identify any automatic stay concerns related to this delinquency information.

[391] 12 CFR 1026.41(d)(8)(iv).
[392] 12 CFR 1026.41(d)(8)(vii).

Additionally, the Bureau continues to believe that consumers in chapter 7 or chapter 11 bankruptcy (or those who have discharged personal liability for a mortgage loan through bankruptcy) who are intending to retain their homes have a need for information regarding recent account activity[393] and the amount needed to bring the loan current.[394] As the Bureau stated in the 2013 TILA Servicing Final Rule, the accounting associated with mortgage loan payments is complicated and can be even more so in delinquency situations.[395] The account history helps a consumer better understand the exact amount owed on the loan and how that total was calculated, and it enables a consumer to better identify errors in payment application. Moreover, the Bureau understands that many housing counselors believe that this information is vital when trying to assist a consumer to pursue home retention options and cure prior defaults because it enables the counselor to understand the circumstances of a consumer's delinquency. The Bureau continues to believe that this information may have unique benefits for a consumer in bankruptcy because such a consumer may be facing an immediate decision whether to retain or surrender a home and in that situation the consumer needs accurate information about the amount the consumer owes.

The Bureau further notes that the disclosures in § 1026.41(d)(8) do not require a servicer to use any specific language. A servicer is therefore permitted to describe those disclosures in any number of ways to avoid concerns about, for example, the account history appearing to be a collection attempt rather than simply providing useful information.

[393] 12 CFR 1026.41(d)(8)(iii).
[394] 12 CFR 1026.41(d)(8)(vi).
[395] 78 FR 10901, 10971 (Feb. 14, 2013).

For similar reasons, the Bureau declines to adopt a recommendation to allow servicers to exclude past due amounts from the amount due. The Bureau believes that providing such information to a consumer who is retaining the property through bankruptcy would be helpful, would not violate the automatic stay, and is consistent with some servicers' current practices. The Bureau further notes that participants in the Bureau's consumer testing overwhelmingly preferred and found clearer periodic statements which included past due amounts in the amount due. Some testing participants had difficulty determining how much they needed to pay to retain their homes when past due amounts were listed separately.

41(f)(2) Bankruptcy Notices

Proposed § 1026.41(f)(2) would have required that a periodic statement modified under § 1026.41(f) include the following on the first page: (1) A statement identifying the consumer's status as a debtor in bankruptcy or the discharged nature of the mortgage loan, and (2) a statement that the periodic statement is for informational purposes only. Two industry commenters expressed support for § 1026.41(f)(2) as proposed. No commenters opposed proposed § 1026.41(f)(2). The Bureau is adopting the proposed disclosures, with revisions.

The Bureau sought comment on whether servicers should be permitted to include the disclosures under proposed § 1026.41(f)(2) on a separate page enclosed with the periodic statement, whether the disclosures under proposed § 1026.41(f)(2) should be permissive rather than mandatory, and whether there are other appropriate disclosures that should be permitted or required. A servicer stated that the disclosures in proposed § 1026.41(f)(2) should be mandatory and included on the first page of the periodic statement. A trade association expressed support for requiring the proposed disclaimers when the debtor requests in writing to continue to receive a periodic statement.

As revised, § 1026.41(f)(2) requires the periodic statement to include a statement identifying the consumer's status as a debtor in bankruptcy or the discharged nature of the mortgage loan, and a statement that the periodic statement is for informational purposes only. The Bureau understands that this requirement is consistent with the practice of servicers that currently provide a periodic statement to consumers in bankruptcy. Consumer testing participants generally understood the content of these disclosures.[396] Most testing participants also inferred from the language that appears on the sample forms in appendices H–30(E) and H–30(F) that the sample forms were informational in nature rather than primarily an attempt to collect a debt.[397]

Although a servicer recommended that the disclosures be included on the first page of the periodic statement, the Bureau is not adopting that proposed requirement. Servicers may locate the statements on the first page if they wish, but doing so may not be feasible or appropriate in some circumstances. Section 1026.41(f)(2) therefore grants servicers flexibility to determine how to include the relevant disclosures.

41(f)(3) Chapter 12 and Chapter 13 Consumers

For the reasons set forth below, the Bureau is finalizing § 1026.41(f)(3) with several revisions. As proposed, § 1026.41(f)(3) generally would have set forth additional modifications for a periodic statement provided to consumers in chapter 12 or chapter 13 cases. Proposed § 1026.41(f)(3)(i) would have permitted the omission of certain disclosures relating to delinquency. Proposed § 1026.41(f)(3)(ii) through (v) would have described how a periodic

[396] Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing*, at 13 (Feb. 2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/testing-bankruptcy-periodic-statement-forms-mortgage-servicing/ (report on consumer testing submitted to the Bureau of Consumer Fin. Prot.).
[397] *Id.* at 13-14.

statement for a consumer in chapter 12 or chapter 13 bankruptcy may disclose the amount due, explanation of amount due, past payment breakdown, and transaction activity. Proposed § 1026.41(f)(3)(vi) would have required the periodic statement to include specific information about the pre-petition arrearage. Proposed § 1026.41(f)(3)(vii) would have required several additional standard bankruptcy-specific disclosures on the periodic statement. The comments on each of these specific aspects of the proposal are discussed in the respective section-by-section analyses below.

The Bureau also received comments relating generally to § 1026.41(f)(3). Consumer advocacy groups, a chapter 13 trustee, and the U.S. Trustee Program generally supported the proposal regarding modified periodic statements for consumers in bankruptcy. These commenters noted servicers' history of misapplying payments in bankruptcy and argued that requiring pre-petition and post-petition disclosures would discourage improper fees and improve servicing practices.

Numerous credit unions and trade associations objected to the entirety of the proposal, arguing that it would introduce too much burden for credit unions. The commenters stated that credit unions' systems are not equipped to modify a periodic statement as proposed § 1026.41(f)(3) would have required, so they would bear significant implementation costs. Commenters stated that, for example, some credit unions may track the amount of the pre-petition arrearage and post-petition payments "off-system," that is, in a manner that is not readily automated or cannot be exported onto a periodic statement. These comments were consistent with comments the Bureau had received on the IFR, in which commenters stated that some servicers may be tracking pre-petition arrearage and post-petition payments in an Excel file or in another format that could not be exported easily to a periodic statement and some simply wait

until the end of the consumer's bankruptcy case and compare the chapter 13 trustee's ledger to payments they received. Comments on the proposal stated that, no matter the method by which credit unions track the pre-petition arrearage and post-petition payments, most credit unions currently cannot easily export the pre-petition and post-petition information into a monthly statement. Additionally, one commenter stated that credit unions' systems currently are not equipped to produce numerous different versions of periodic statements in order to comply with various local rules and orders in individual cases. Several commenters stated that their systems currently cannot differentiate between pre-petition and post-petition payments and the proposed modifications under § 1026.41(f)(3) would pose challenges.

Other industry commenters similarly objected to proposed § 1026.41(f)(3) in its entirety as unworkable in light of systems limitations and the complexity of chapter 13 bankruptcy cases. One commenter stated that servicing platforms have limited functionality with respect to pre-petition and post-petition payments, and that attempting to reconcile accurately payments from the consumer and the trustee would be exceedingly difficult.

The Bureau also received comments relating to accounting methods for consumers in bankruptcy and how proposed § 1026.41(f)(3) would affect servicers' accounting practices. Some industry commenters, including banks, trade associations, and an industry working group, stated that the proposal was inconsistent with their accounting practices. Some commenters stated that proposed § 1026.41(f)(3) would have inappropriately mandated that servicers adhere to a bankruptcy accounting method, under which the servicer applies post-petition periodic payments received to the current month and pre-petition arrearage payments are the only amounts allocated to the amount that is past due as of the bankruptcy filing. Commenters stated

that, in practice, servicers generally use the contractual accounting method, under which they apply all payments to the oldest outstanding debt as is normally done under the contract.

Servicers generally requested that the Bureau provide them flexibility to make disclosures under § 1026.41(f)(3) based on either method. A servicer provided a mock-up of a periodic statement that includes the contractual accounting method on page one and the bankruptcy accounting method on page two. Some commenters recommended requiring certain information relating to the bankruptcy on the second page only after a proof of claim is filed and only when the information is relevant to the consumer, such as when the consumer is curing a pre-petition arrearage and maintaining post-petition obligations. A commenter also stated that consumers who were current on the mortgage loan when they filed for bankruptcy are better served by a contractual statement than the modified statement under § 1026.41(f). One servicer stated that, because it currently employs contractual accounting, the proposal to break down how post-petition payments are applied to principal, interest, and escrow could confuse consumers. One commenter stated that consumers may not understand how transactions are applied due to differences in trustees' and servicers' accounting methods. A trade association argued that requiring disclosure of pre-petition and post-petition payments could be interpreted as requiring disclosure of how funds will be applied even before the servicer applies them. Some commenters objected to requiring disclosures under § 1026.41(f)(3), saying that servicers do not know how trustees will apply payments in advance, and servicers will be unable to match the trustee's accounting on a real-time basis.

Consumer advocacy groups and the U.S. Trustee Program favored the bankruptcy accounting method. Consumer advocacy groups stated that consumers might be confused by a periodic statement that did not take into account the consumer's status in bankruptcy because, for

example, it might list late fees that normally would be charged to a consumer who is behind on a mortgage payments but that would be inappropriate to impose on a consumer who is making timely chapter 13 plan payments. In addition, they stated that bankruptcy accounting is preferable because it shows the amounts the consumer is obligated to pay while in bankruptcy, as well as how those payments are applied. Consumer advocacy groups also stated that bankruptcy accounting is required under applicable bankruptcy law. They further stated that Fannie Mae and Freddie Mac already require servicers to track payments according to the terms of a chapter 13 plan.

Some commenters opposed requiring a periodic statement to be sent when the consumer has a cram-down bankruptcy plan—that is, the plan provides, for example, that the outstanding amount of the loan will be reduced to the value of the collateral—because it would be difficult to capture accurately all aspects of the cram-down and that servicers would need to prepare the periodic statement manually. These commenters also stated that most cram-downs are unsuccessful and that servicers would have to revert to the contractual application of payments following bankruptcy. These commenters offered three suggestions with respect to mortgage loans subject to a cram-down plan: exempt servicers from the periodic statement requirement with respect to such loans; permit servicers to send an unmodified periodic statement; or permit servicers to send a periodic statement that discloses the amounts due and past payments related to only the remaining secured portion of the loan.

Several commenters requested clarification of the definition of pre-petition and post-petition payments proposed in comment 41(f)(3)-2. A servicer stated that the proposed comment could be interpreted to mean that there can be no pre-petition or post-petition payments after a bankruptcy filing and before there is a confirmed plan. The servicer stated this interpretation

could create a circumstance in which no information about the payments would be required in bankruptcy statements. The servicer recommended that the Bureau require a periodic statement to include the best information reasonably available to servicers.

The Bureau notes that some trade associations requested clarification that servicers have the flexibility to adjust information disclosed on a periodic statement based on information they receive from trustees or through the National Data Center. These trade associations stated that servicers may need to determine how to apply payments made through trustees if the treatment is not readily apparent. The Bureau notes that the final rule does not prohibit a servicer from adjusting its records based on information it obtains from a trustee or other sources, including the National Data Center. The final rule does not, however, require a servicer to consult these sources before providing a periodic statement.

The Bureau is adopting § 1026.41(f)(3) with the revisions discussed below and in the section-by-section analyses of § 1026.41(f)(3)(i) through (vi). Section 1024.41(f)(3) generally sets forth additional modifications for a periodic statement provided to consumers in chapter 12 or chapter 13 cases.

The Bureau acknowledges that servicers will incur costs and burden to implement § 1026.41(f)(3) in particular. Nevertheless, the Bureau is adopting § 1026.41(f)(3) because of the benefits to consumers. As explained in the section-by-section analysis of § 1026.41(e)(5), consumers in chapter 12 and chapter 13 bankruptcy generally benefit from receiving the information in a periodic statement; consumer testing[398] and consumer complaint information indicate that consumers generally want to receive a periodic statement; and bankruptcy courts,

[398] *Id.* at 13, 33, 51.

the Advisory Committee on Bankruptcy Rules, and Congress have recognized that debtors need mortgage loan information. The modifications under § 1026.41(f)(3) balance burden reduction on servicers and consumers' access to crucial information by tailoring the disclosures to account for a chapter 12 or chapter 13 bankruptcy case.

The Bureau is revising certain aspects of § 1026.41(f)(3) to reduce some of the implementation burden. For example, as explained in the section-by-section analysis of § 1026.41(f)(3)(iv), the final rule does not modify the requirements of § 1026.41(d)(3) with respect to a periodic statement provided to consumers in chapter 12 or chapter 13 as proposed § 1026.41(f)(3)(iv) would have done. Servicers are not required to alter how they disclose their method of applying payments for purposes of providing a periodic statement to a consumer in bankruptcy. Moreover, not all information must appear on the first page and some information may be omitted.[399] A servicer may choose to include additional information on a periodic statement, including bankruptcy-specific information, such as descriptions of agreed orders or additional details about post-petition payments, even if such information is not required by § 1026.41.

The Bureau is adopting several comments to § 1026.41(f)(3). The Bureau is not finalizing proposed comment 41(f)(3)-1 but is adopting proposed comments 41(f)(3)-2 through -4 with revisions. As proposed, comment 41(f)(3)-1 would have clarified that the term plan of

[399] *See, e.g.*, comment 41(d)-2 (providing that a periodic statement may omit information that is not applicable to the mortgage loan); comment 41(f)(2)-4 (providing that 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); comment 41(f)(3)(v)-1 (explaining that a servicer may omit pre-petition arrearage information until the servicer has a reasonable opportunity to determine the amount of the pre-petition arrearage, but providing that the servicer may not omit the pre-petition arrearage after the deadline the bankruptcy court has fixed for filing a proof of claim).

reorganization, for purposes of § 1026.41(f)(3), refers to a consumer's plan of reorganization filed under the applicable provision of chapter 12 or chapter 13 of the Bankruptcy Code and confirmed by a court with jurisdiction over the consumer's bankruptcy case. The Bureau proposed this comment to help avoid any confusion about the meaning of the term plan of reorganization and whether the term refers to a proposed plan or one that has been confirmed by a court. The Bureau is not adopting proposed comment 41(f)(3)-1 because the final rule uses the term bankruptcy plan, and the Bureau does not believe that term needs to be clarified for purposes of § 1026.41(f).

The Bureau is revising proposed comment 41(f)(3)-2 and renumbering the comment as 41(f)(3)-1. The comment contains two parts. First, comment 41(f)(3)-1.i is similar to the proposal but contains revisions to improve clarity. It provides that, 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. The comment provides an illustrative example.

Second, the Bureau is adopting new 41(f)(3)-1.ii to gives servicers flexibility with respect to chapter 12 cases and cram-down plans. The comment provides that, 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) and (2) and (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. The comment further provides that, 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. The Bureau is adopting this comment to accommodate industry commenters' request for flexibility when a consumer has a cram-down plan, given that the plans are atypical. Although it is important for consumers with such plans to receive a periodic statement (as explained in the section-by-section analysis of § 1026.41(e)(5)), consumers with cram-down plans may better understand a periodic statement disclosing the terms of the portion of either the modified or unmodified mortgage loan, depending on the specific terms of the plan.

The Bureau is adopting proposed comment 41(f)(3)-3 without revision but renumbering it as comment 41(f)(3)-2. This comment clarifies the distinction between fees and charges imposed before the bankruptcy case was filed and those imposed after filing. It provides that, for purposes of § 1026.41(f)(3), post-petition fees and charges are those fees and charges imposed after the bankruptcy case is filed. The comment further states that, 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).

The Bureau is also adopting proposed comment 41(f)(3)-4 substantially as proposed, renumbered as comment 41(f)(3)-3, with revisions for clarity and to indicate the renumbering of certain regulatory provisions referenced in the comment. The comment addresses the disclosures that must be made on the first modified periodic statement provided to a consumer under proposed § 1024.41(f)(3) after an exemption under § 1026.41(e) expires. The comment states

that § 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. The comment includes a reference to comment 41(d)-5, which includes similar language addressing the disclosures that servicers must make on the first unmodified periodic statement provided to a consumer after an exemption under § 1026.41(e) terminates.

41(f)(3)(i) Requirements Not Applicable

For the reasons set forth in the proposal, the Bureau is adopting § 1026.41(f)(3)(i) as proposed. Section 1026.41(f)(3)(i) provides that, in addition to omitting the information set forth in § 1026.41(f)(1), the periodic statement may also omit the information set forth in § 1026.41(d)(8)(iii), (iv), (vi), and (vii), which relate generally to a consumer's account history, loss mitigation, the total payment amount needed to bring the account current, and homeownership counselor information.

Consumer advocacy groups opposed permitting servicers to exclude information about the consumer's account history if the confirmed plan of reorganization provides for maintenance of payments and the servicer contends that the consumer has failed to maintain the post-petition payments. The commenters stated that, for unknown reasons, servicers have recently permitted some debtors to remain delinquent on post-petition payments for months or years without providing notification to debtors, their attorneys, or chapter 13 trustees. To combat this problem, the commenters recommended that the periodic statement disclose the date on which the

consumer became delinquent on post-petition payments and an account history listing past due post-petition payments.

As the Bureau explained in the proposal, requiring a periodic statement to include the delinquency information in § 1026.41(d)(8)(iii), (iv), (vi), and (vii) could be confusing or of little value to consumers in a chapter 13 case. Information related to pre-bankruptcy defaults may not be helpful, and in fact may be confusing, to a consumer whose bankruptcy plan is designed to repay those defaults over time. Moreover, industry commenters stated that a consumer who fails to make several plan payments will likely face immediate consequences in bankruptcy, such as a trustee's motion to dismiss or a servicer's motion for relief from the automatic stay, and the delinquency information in these disclosures may serve less value in that scenario. The Bureau acknowledges that information related to post-petition defaults could be helpful to consumers, and the Bureau encourages servicers that currently provide such information to continue doing so, but the Bureau is concerned about the additional burden a requirement to provide these disclosures could impose on servicers. Accordingly, § 1026.41(f)(3)(i) provides that a servicer may omit the delinquency information required by current § 1026.41(d)(8).

41(f)(3)(ii) and (iii) Amount Due and Explanation of Amount Due

For the reasons set forth in the proposal and those explained below, the Bureau is adopting § 1024.41(f)(3)(ii) and (iii) substantially as proposed, with revisions to improve clarity. Thus, § 1026.41(f)(3)(ii) and (iii) respectively modify the amount due and explanation of amount due disclosures, required under § 1026.41(d)(1) and (2), for purposes of periodic statements provided to consumers in chapter 12 or chapter 13 bankruptcy.

Under § 1026.41(d)(1), a periodic statement must disclose, among other things, the payment due date and the amount due. Section 1026.41(d)(2) requires disclosure of an

explanation of amount due, including: (1) The monthly payment amount, with a breakdown showing how much, if any, will be applied to principal, interest, and escrow; (2) the total sum of any fees or charges imposed since the last statement; and (3) any payment amount past due. Section 1026.41(f)(3)(ii) and (iii) of the final rule generally provides that these amount due and explanation of amount due disclosure may be limited to the monthly post-petition payments due under the mortgage loan and any post-petition fees or charges imposed since the last periodic statement. Generally stated, comments 41(f)(3)(ii)-1 and (iii)-1 clarify, in part, that these disclosures would not be required to include the amounts of any payments on account of a consumer's pre-petition arrearage or that are due under a court order.

The Bureau solicited comment on whether the explanation of amount due should include a breakdown of the amount of the monthly payment that will be applied to principal, interest, and escrow or whether a more limited disclosure is appropriate, such as listing the monthly payment as a lump sum or listing the principal and interest as a combined figure with the escrow amount disclosed separately. Additionally, the Bureau requested comment on whether a servicer should be permitted or required to include post-petition fees and charges in the amount due disclosure.

Consumer advocacy groups submitted a comment expressing strong support for the proposal's requirement that the explanation of amount due break down the principal, interest, escrow, and fees and charges (as is currently required for non-bankruptcy periodic statements under § 1026.41). The commenters reasoned that the disclosures will enable debtors, their attorneys, and chapter 13 trustees to detect when servicers fail to properly apply payments in accordance with bankruptcy law and the underlying mortgage contract.

Numerous industry commenters supported aspects of § 1026.41(f)(3)(ii) and (iii) while also suggesting changes. One servicer supported disclosing post-petition information, as well as

the amount of the arrearage balance. A trade organization and two servicers supported limiting the amount due disclosure under § 1026.41(f)(3)(ii) to the post-petition payment and any fees and charges, instead of including any pre-petition amounts. Another servicer agreed that the amount due disclosure should include post-petition payments but stated that attempting to collect fees and charges without court approval could violate the automatic stay. In contrast, another servicer stated that the National Mortgage Settlement requires disclosure of fees and charges during bankruptcy, that it is industry practice to collect them as they are incurred, and that bankruptcy law does not prohibit this. One servicer requested that the Bureau clarify in comment 41(f)(3)(ii)-1 that compliance with Federal Rule of Bankruptcy Procedure 3002.1(c) is not a prerequisite for disclosing a post-petition fee or charge in the explanation of amount due disclosure under § 1026.41(f)(3)(iii). One servicer stated that it does not object to disclosing the amount of overdue payments in the explanation of amount due but requested flexibility.

Several other industry commenters stated that the amount due disclosure should not include any past due amounts that became due and unpaid during the bankruptcy case. Some of these commenters stated that, when consumers make the post-petition payments to a trustee, there is often a delay before the trustee forwards the payment to the servicer, and, as a result, periodic statements may inaccurately show the consumer as behind on payments. One commenter added that repayment of past due amounts is often resolved through a court-approved agreed order, which may be inconsistent with the periodic statement's amount due disclosure. Another commenter stated that periodic statements under § 1026.41(f) would be for informational purposes only, and that disclosing payment of an amount in default may be a collection effort inconsistent with the bankruptcy proceeding.

These industry commenters also stated that seeking payment of past due post-petition amounts could violate the automatic stay. They recommended limiting the amount due disclosure to the current monthly payment and permitting servicers to identify past due amounts elsewhere in the statement—either in the explanation of amount due disclosure under § 1026.41(f)(3)(iii) or in a separate box for outstanding post-petition payments. A servicer suggested placing the amount due disclosure with a disclaimer that the periodic statement is not an attempt to collect a debt.

Several commenters stated that servicers' systems cannot currently differentiate between pre-petition and post-petition payments. One servicer stated that its systems can track post-petition payments but currently cannot translate the information into a periodic statement. A credit union stated that its systems currently cannot limit the amount due disclosure to reflect only post-petition payments as proposed. A servicer similarly stated that it would have to alter its systems to allow the amount due disclosure to contain only post-petition payments.

Numerous industry commenters also argued that principal and interest should be permitted to be disclosed as a lump sum in the explanation of amount due disclosure under § 1026.41(f)(3)(iii). Some commenters stated that, because servicers apply payments to the oldest outstanding debt, consumers will be confused if the principal-interest breakdown of a payment due in one month differs from how that payment is actually applied in the following month. One servicer also stated that breaking down principal and interest could complicate reporting requirements to loan owners because servicers must apply or remit payments according to the underlying contract. Another servicer stated that, because it currently applies payments received to the oldest outstanding debt, the proposal to break down how post-petition payments are applied to principal, interest, and escrow could result in consumer confusion. A trade

association opposing a breakdown of principal, interest, and escrow stated that, if such a breakdown is required, the Bureau should require the most detailed breakdown possible, given concerns about violating the FDCPA's prohibition against making false, deceptive, or misleading representations.

One servicer stated that the breakdown of principal and interest may not match the trustee's records because servicers may not be able to discern how the trustee allocates payments. That servicer also stated that allowing the disclosure of principal and interest components in a lump sum would also ensure that the periodic statement discloses escrow and fees separately. Some trade associations argued that such a lump sum disclosure offers the consumer the necessary information, the amount of the required post-petition maintenance payment and the balance of the pre-petition arrearage. One commenter stated that consumers would still receive disclosure of the actual application of funds in the past payment breakdown section under proposed § 1026.41(f)(3)(iv). One servicer stated that a rule requiring servicers to disclose a breakdown of principal and interest is inconsistent with the Bankruptcy Code and Bankruptcy Rules.

The U.S. Trustee Program stated that removing a breakdown of principal, interest, taxes, and insurance would render the periodic statements less helpful. Consumer advocacy groups and a chapter 13 trustee indicated strong support for breaking down the payments into these constituent parts, saying that it would help consumers and attorneys monitor for payment application errors.

Several commenters recommended that, if the Bureau does require periodic statements to disclose a breakdown of principal and interest, the breakdown should disclose how a servicer is applying payments according to the terms of the mortgage loan agreement, rather than according

to bankruptcy accounting. These commenters stated that, while they track separately pre-petition and post-petition payments, they actually apply and remit funds to the investor in accordance with the mortgage loan agreement. They added that, if the debtor fails to complete all payments and the case is dismissed, the servicer is to apply the payments as if the bankruptcy case never occurred. Some trade associations stated that, if the Bureau requires the past payment breakdown to identify principal and interest, the breakdown should include all payments received, not just post-petition payments.

One servicer commented that the proposal did not address certain product types, such as payment option loans. The servicer requested clarification as to whether it could continue to provide periodic statements disclosing the various payment options consistent with the sample form in appendix H–30(C), or whether it would be appropriate to provide such a consumer with statements that disclose only the minimum payment option.

The Bureau is adopting § 1026.41(f)(3)(ii) and (iii) substantially as proposed, with revisions to improve clarity. Thus, § 1026.41(f)(3)(ii) provides that the amount due information set forth in § 1026.41(d)(1) 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.

Comment 41(f)(3)(ii)-1 clarifies the amounts that must be included in the amount due and the amounts that may be included in the amount due at a servicer's discretion. The comment provides that 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 the bankruptcy plan, including any past due post-petition payments, and post-petition fees and charges that a servicer has imposed. The comment further provides that the servicer is not required to include in the amount due any pre-petition payments due under the bankruptcy plan or other amounts

payable pursuant to a court order. The comment further provides that the servicer is not required to include in the amount due any post-petition fees and charges that the servicer has not imposed. The comment explains that a servicer that defers collecting a fee or a 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. The comment concludes by explaining that 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.

Section 1026.41(f)(3)(iii) similarly provides that the explanation of amount due information set forth in § 1026.41(d)(2) may be limited to the following: (1) The monthly post-petition payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow; (2) the total sum of any post-petition fees or charges imposed since the last statement; and (3) any post-petition payment amount past due. Comment 41(f)(3)(iii)-1 clarifies the amounts that must be included in the explanation of amount due and the amounts that may be included in the explanation amount due at a servicer's discretion. The comment provides that 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. The comment further clarifies that, 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 comment states that 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. Finally, the comment clarifies that, however, a servicer may identify other amounts due to the servicer provided those amounts are also disclosed in the amount due and transaction activity. The comment includes a reference to new comment 41(d)-4, which explains certain disclosure requirements if the consumer has agreed to a temporary loss mitigation program.

The Bureau continues to believe that it is appropriate to allow servicers to limit the amount due and explanation of amount due disclosures to include only post-petition payments and any fees and charges that the servicer is attempting to collect from the consumer during the bankruptcy case. In addition to the reasons provided by commenters, as the Bureau explained in the proposal, the Bureau understands that some local rules adopted by bankruptcy courts that address periodic statements provide that the statements should reflect the post-petition payments, and that these local rules would not require a servicer to include pre-petition payments or amounts due under a court order in the amount due field.[400] Accordingly, § 1026.41(f)(2)(ii) and (iii) requires a servicer to include post-petition payments in the amount due and explanation of amount due, including any past due post-petition payments, but does not require a servicer to include pre-petition payments that may be due under the bankruptcy plan.

The Bureau declines to adopt the recommendation of several industry commenters to allow servicers to omit past due post-petition amounts from the amount due and explanation of amount due and, for example, to permit servicers to include these amounts elsewhere on a periodic statement. As explained above in the section-by-section analysis of § 1026.41(f)(1), the

[400] The Bureau proposed under § 1026.41(f)(3)(vi) to require disclosures relating to a consumer's pre-petition arrearage. As described in the section-by-section analysis of § 1026.41(f)(3)(v), the Bureau renumbered that provision. Thus, the contents of § 1026.41(f)(3)(vi) relating to the date of post-petition delinquency are entirely new.

Bureau believes that it is important for consumers to understand the full amounts they need to pay to stay current on the periodic payments, which, in the chapter 12 and chapter 13 context, include post-petition payments. Consumer testing participants preferred and found clearer sample forms that included past due post-petition amounts in the amount due and explanation of amount due.

The Bureau also is requiring the explanation of amount due to contain a breakdown of how much, if any, of the post-petition payment will be applied to principal, interest, and escrow, as would normally be required under § 1026.41(d)(2)(i). Although, as some commenters suggested, there may be some discrepancy between the principal-interest allocation in the amount to be paid one month and how that payment was actually applied in the following month, the Bureau notes that this prospect is not unique to bankruptcy consumers—it may arise any time a consumer is delinquent and pays less than the full outstanding amount. Moreover, consumer testing suggested that many consumers in bankruptcy find a breakdown of principal and interest helpful.[401] Further, the Bureau believes that the potential for some confusion is outweighed by the benefits of disclosing the breakdown of the post-petition payments by principal, interest, and escrow. As the Bureau explained in the proposal, this breakdown is intended to give a consumer a snapshot of why the consumer is being asked to pay the amount due. Without an explanation of, for example, the amount attributable to escrow, a consumer and the consumer's attorney may be unable to discern how a servicer calculated the amount due.

[401] Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing*, at 39-40 (Feb. 2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/testing-bankruptcy-periodic-statement-forms-mortgage-servicing/ (report on consumer testing submitted to the Bureau of Consumer Fin. Prot.)

Some national trade associations asked that, if the rule required a principal-interest breakdown, the final rule should expressly endorse contractual accounting. The Bureau does not believe it is necessary or appropriate in this context to define how servicers should apply payments they receive from consumers in bankruptcy. Section 1026.41 imposes disclosure requirements; it does not establish accounting methods. Nonetheless, servicers must accurately disclose how they are applying payments, whether they use contractual or bankruptcy accounting.

As explained in the proposal, the Bureau believes that consumers, including those in bankruptcy, benefit from learning of fees and charges that have been imposed on their account. This information assists consumers' efforts to budget their finances and timely pay fees and charges. The Bureau further believes that servicers also benefit from fees or charges being disclosed on the periodic statement because it aids them in collecting the fees and charges quickly. The Bureau acknowledges the concern raised in comments that servicers should be permitted to disclose the fees and charges first to a bankruptcy court through the procedures set forth in Federal Rule of Bankruptcy Procedure 3002.1. Under the final rule, if a servicer defers collecting a fee or charge until after complying with the Federal Rule of Bankruptcy Procedure 3002.1 procedures, the servicer is not required to disclose the fee or charge until it has already complied with those procedures. To ensure that consumers receive timely notice of such fees or charges, § 1026.41(f)(2)(iii) requires a servicer to include in the explanation of amount due the total sum of any post-petition fees or charges imposed since the last periodic statement.

With respect to payment option loans, the Bureau notes that a servicer may display the amount due and the explanation of amount due in the form and manner set forth in the sample form in appendix H–30(C). The sample forms tailored to consumers in bankruptcy, found at

appendices H–30(E) and H–30(F) of the proposal and final rule, are intended to provide examples of how a servicer may comply with § 1026.41(f). The Bureau understands that certain product types may necessitate displaying the mortgage loan in a different manner.

41(f)(3)(iv)

The Bureau is not adopting § 1026.41(f)(3)(iv) as proposed. For the reasons described below, the Bureau is adopting the contents it proposed under § 1026.41(f)(3)(v), renumbered as § 1026.41(f)(3)(iv).

Past Payment Breakdown as Proposed

As proposed, § 1026.41(f)(3)(iv) would have provided that periodic statements under § 1026.41(f) must disclose the past payment breakdown, limited to the total of post-petition payments received and a breakdown of how those funds were applied. The Bureau has determined that it is not necessary to modify the requirements of § 1026.41(d)(3) for purposes of a periodic statement provided to a consumer in a chapter 12 or chapter 13 bankruptcy case. Section 1026.41(d)(3) therefore applies to such periodic statements without modification. As explained in the relevant section-by-section analyses, proposed § 1026.41(f)(3)(v) is adopted as revised at § 1026.41(f)(3)(iv).

The Bureau solicited comment on whether the past payment breakdown should include a breakdown of the amount of the post-petition payments that were applied to principal, interest and escrow, or whether a more limited disclosure is appropriate, such as listing the amounts applied as a lump sum or listing the principal and interest as a combined figure with the escrow amount broken out separately. Consumer advocacy groups and the U.S. Trustee Program supported the proposal, stating that it would allow consumers, their attorneys, and trustees to identify payment application errors. Consistent with their comments on the explanation of

amount due disclosure under § 1026.41(f)(3)(iii), several industry commenters stated that the past payments breakdown disclosure should reflect contractual accounting. As such, they stated it should reflect all payments applied to the loan, not just post-petition payments. However, one servicer stated that the past payment breakdown should not disclose pre-petition payments held in suspense because a consumer may be confused by the accumulation of small payments made by a trustee. Some servicers suggested that servicers include a statement in the Important Messages box indicating whether the past payments breakdown was a contractual or bankruptcy accounting.

Several industry commenters requested permission to disclose principal and interest as a lump sum in the past payments breakdown disclosure. In the alternative, they asked that the principal and interest allocation reflect contractual accounting, saying this will show how the payment actually was applied. One commenter who also asked that principal and interest be a lump sum in the explanation of amount due disclosure under § 1026.41(f)(3)(iii) suggested that principal and interest be disclosed separately in the past payments breakdown.

As the Bureau explained in the proposal, disclosing a breakdown of the post-petition payments by principal, interest, and escrow provides a consumer with a snapshot of how their payments have been applied. This allows a consumer to identify potential errors in payment application, including any misapplication of payments to escrow or fees. This breakdown also plays an important role in educating a consumer, and consumer testing showed that participants found a breakdown of past payments generally helpful, and that they preferred a principal-

interest breakdown.[402] However, the Bureau now believes that the past payments breakdown disclosure should include all payments applied to the loan, not just post-petition payments, so that consumers know the status of all payments received by a servicer. Further, a servicer that applies payments contractually should be permitted to disclose this application on the periodic statement. Proposed § 1026.41(f)(3)(iv) arguably would have limited the past payments breakdown to only post-petition payments applied, which may have left consumers unable to determine when a servicer applied other amounts to the loan. Similarly, the proposal could have made it challenging for consumers to determine how much was applied to the loan in the year-to-date disclosure under proposed § 1026.41(f)(3)(iv)(B). The proposal may have also made it difficult for servicers to disclose accurately all the amounts that they are applying to the mortgage loan.

Given the foregoing, the Bureau is not adopting the proposed requirement for periodic statements modified under § 1026.41(f) to disclose the past payment breakdowns by breaking out only post-petition payments. Instead, the past payment breakdown for consumers in bankruptcy must include all payments, just as it does for consumers not in bankruptcy under § 1026.41(d)(3). As the Bureau previously discussed in the context of § 1026.36(c)(1)'s prompt crediting requirements, servicers commonly maintain separate suspense accounts for pre-petition and post-petition payments,[403] and these servicers may, but are not required to, include more than one suspense account in the past payment breakdown in order to accurately disclose how they are applying payments. The Bureau is eliminating under § 1026.41(f)(3)(iv) any reference to the

[402] *Id.*at 39.
[403] 78 FR 10901, 10956 (Feb. 13, 2013).

past payment breakdown. As described below, the provisions that would have followed § 1026.41(f)(3)(iv) are renumbered accordingly.

Transaction Activity

Proposed § 1026.41(f)(3)(v) would have required a modified disclosure of transaction activity. The Bureau is renumbering the provision as § 1026.41(f)(3)(iv) and adopting the provision substantially as proposed, with revisions to improve clarity. Specifically, revised § 1026.41(f)(3)(iv) requires the disclosure of transaction activity under § 1026.41(d)(4)[404] to 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 provision also states that the brief description of the activity, required under § 1026.41(d)(4), need not identify the source of any payments.

As revised, § 1026.41(f)(3)(iv) incorporates the substance of proposed comment 41(f)(3)(v)-1 relating to transaction activity. The Bureau is therefore not adopting that proposed comment.

The Bureau solicited comment on whether the transaction activity should include post-petition payments, pre-petition payments, and post-petition fees and charges, or whether it should disclose different or additional types of activity. The Bureau received few comments specifically addressing this provision. Consumer advocacy groups supported the proposal, saying that it would help provide consumers in bankruptcy a complete and accurate record of

[404] Section 1026.41(d)(4) requires a periodic statement to include a list of all the transaction activity that occurred since the last statement. It defines transaction activity for purposes of the provision as any activity that causes a credit or debit to the amount currently due. It also provides that the list must include the date of the transaction, a brief description of the transaction, and the amount of the transaction for each activity in the list.

account activity just as the transaction activity disclosure currently does for consumers who are not in bankruptcy. The consumer advocacy groups also stated that the transaction activity disclosure should include pre-petition arrears and post-petition amounts due that the servicer receives, regardless of whether they are disbursed by the consumer or the trustee, and that it is relatively unimportant to disclose the source of the payments. After reviewing the report summarizing the Bureau's consumer testing, however, two of these groups reconsidered and stated that disclosing the source of the payments is important to help consumers understand whether the payments were from the consumer or were pre-petition arrearage payments from a trustee. Some trade associations supported the proposal because it did not require servicers to identify the source of the payments. One servicer agreed that the transaction activity disclosure should include post-petition payments and fees and charges but stated that it should not include payments on the pre-petition arrearage because those payments are already disclosed in the pre-petition arrearage box.

The Bureau believes that consumers in bankruptcy may benefit if the transaction activity disclosed includes pre-petition payments. Although those payments do not affect the amount due (which may be limited to post-petition payments and fees in a chapter 12 or chapter 13 bankruptcy), they nonetheless serve to reduce a consumer's delinquency. Moreover, the Bureau understands that there may be a significant delay between when a consumer sends a pre-petition payment to a trustee and when a servicer ultimately receives that payment. Consumers may benefit by having a record of when such payments are received by the servicer. The Bureau notes that consumer testing suggests that consumers may be able to use the transaction activity

disclosures to identify key information about timing of past payments[405] and fees and unpaid amounts included in the payment amount disclosure.[406]

However, the Bureau recognizes that it may be difficult for servicers to identify whether a payment came from a trustee, a consumer, or a third-party. Thus, § 1026.41(f)(3)(iv) does not require that § 1026.41(d)(4)'s brief description of the transaction activity identify the source of the payments received by the servicer. The transaction activity disclosure, however, must include activity since the last statement.

41(f)(3)(v) Pre-petition Arrearage

Proposed § 1026.41(f)(3)(vi) would have required a periodic statement to include certain information about the pre-petition arrearage, if applicable. The proposal would have required a periodic statement to contain the following disclosures, grouped in close proximity: the total of all pre-petition payments received since the last statement, the total of all pre-petition payments received since the beginning of the current calendar year, and the current balance of the consumer's pre-petition arrearage. The Bureau is renumbering the provision as § 1026.41(f)(3)(v) and adopting certain revisions to the content of the disclosures and their location on the periodic statement.

The Bureau solicited comment on whether periodic statements should include the pre-petition payments received and applied and the balance of the pre-petition arrearage, and whether there are alternative avenues for apprising consumers of this information. Several consumer advocacy groups, a chapter 13 trustee, and the U.S. Trustee Program supported such disclosure,

[405] Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing*, at 37 (Feb. 2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/testing-bankruptcy-periodic-statement-forms-mortgage-servicing/ (report on consumer testing submitted to the Bureau of Consumer Fin. Prot.).
[406] *Id.* at 55-56.

saying that it would help consumers to understand how their bankruptcy plans are progressing. Two of these consumer advocacy groups stated that it is unnecessary to require a breakdown of pre-petition payments by principal, interest, and escrow.

Numerous industry commenters opposed the disclosure of pre-petition payments because of systems limitations and the potential burden of tracking this information accurately. They stated that they would have to update their systems to disclose a pre-petition arrearage.

Several servicers and some trade associations suggested that the periodic statement should include the amount paid on the arrearage over the entire bankruptcy case rather than year-to-date. These commenters stated this will provide more helpful information to consumers about how their bankruptcy plans are progressing. Other industry commenters also suggested that the Bureau require disclosure of the arrearage's starting balance instead of the amount received last month. One servicer requested clarification on whether the disclosure of pre-petition payments received and how they were applied referred to how the payments were applied to reduce the outstanding pre-petition claim balance or how they were applied to the mortgage loan account.

The Bureau is adopting the pre-petition arrearage disclosure with several revisions. As revised, § 1026.41(f)(3)(v) requires a periodic statement modified in accordance with § 1026.41(f) to include, if applicable, the total of all pre-petition payments received since the last statement, the total of all pre-petition payments received since the beginning of the consumer's bankruptcy case, and the current balance of the consumer's pre-petition arrearage. The pre-petition arrearage disclosures must be 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.

The Bureau believes that consumers should have an accurate record of the payments received by a servicer, including pre-petition arrearage payments. Consumers need this information to track the delinquency, understand payment application, and monitor their accounts for possible servicer error. Consequently, the Bureau is mandating the inclusion of specified pre-petition information. Without this information, periodic statements would not provide any indication whether chapter 12 or chapter 13 consumers are contractually current or delinquent. Moreover, while some participants in the Bureau's consumer testing did not find the pre-petition arrearage disclosure helpful, most readily understood it and responded positively to its inclusion on the tested forms.[407]

The final rule requires disclosure of pre-petition payments received since the beginning of the bankruptcy case, whereas the proposal would have required disclosure of pre-petition payments received only since the beginning of the current calendar year. As some commenters noted, a disclosure of the payments received since the beginning of the plan is more helpful for consumers in bankruptcy because it provides a more complete picture of the overall progress in the consumer's the bankruptcy plan.

Further, the Bureau has learned that servicers generally keep records of this information and that servicers of Fannie Mae and Freddie Mac loans are required to do so. The Bureau therefore believes that, with an appropriate implementation period, servicers would be able to disclose the information on a periodic statement. During outreach with industry participants, several servicers informed the Bureau that they expected that their third-party systems vendors would develop sufficient programming upgrades to enable servicers to more easily track and

[407] *Id.* at 56-57.

disclose information about pre-petition arrearages. Accordingly, § 1026.41(f)(3)(v) requires a servicer to disclose, if applicable, the total of all pre-petition payments received since the last periodic statement, the total of all pre-petition payments received since the beginning of the consumer's bankruptcy case, and the current balance of the consumer's pre-petition arrearage.

The Bureau continues to believe that the pre-petition arrearage disclosure does not need to include a breakdown of principal, interest, and escrow. No commenters suggested that such a breakdown would be helpful or necessary, as the purpose of this disclosure is to inform the consumer of the consumer's overall progress in reducing a pre-bankruptcy delinquency. Moreover, the Bureau understands that servicers may not be equipped currently to disclose a breakdown of this information on the periodic statement as modified for bankruptcy.

Unlike the proposal, the final rule expressly permits servicers to include the disclosures on the first page of the periodic statement, on a separate enclosed page, or in a separate letter. The final rule ensures that these important disclosures are prominent while addressing industry's concerns about the cost of compliance given current systems limitations.

The Bureau is also adopting proposed comment 41(f)(3)(vi)-1, renumbered as comment 41(f)(3)(v)-1, with certain revisions. The final comment provides that, if the amount of 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. Thus, the comment addresses situations where the servicer has not filed a proof of claim specifying the amount of the pre-petition arrearage, where an objection has been filed to the servicer's proof of claim, or where the servicer has not had time to determine the amount of the pre-petition arrearage before having to provide a periodic statement. Final comment 41(f)(3)(v)-1 further clarifies that 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, and that the servicer may not omit that information 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)(3)(vi) Additional Disclosures

Proposed § 1026.41(f)(3)(vii) would have required periodic statements under § 1026.41(f) to include certain additional bankruptcy-specific disclosures. The Bureau solicited comment on whether servicers should be permitted to include the proposed additional disclosures on a separate page enclosed with the periodic statement, whether the proposed disclosures should be permissive or mandatory when applicable, and whether there are other disclosures that a servicer should be required to include in a periodic statement under proposed § 1026.41(f).

The Bureau received several comments on this aspect of the proposal. Two servicers recommended that the Bureau allow servicers flexibility as to the location of the disclosures, citing servicers' systems limitations as the reason. One of these servicers expressed support for the proposed disclosures. Some trade associations specifically supported the proposal under § 1026.41(f)(3)(vii)(D) to require a statement directing consumers to contact their attorneys or trustees with payment application questions, stating that servicers cannot answer those questions. The Bureau received no comments opposing the additional disclosures proposed.

The Bureau is renumbering this provision as § 1026.41(f)(3)(vi) and mandating a new disclosure relating to post-petition delinquency when applicable. The Bureau is otherwise adopting the provision substantially as proposed, with minor revisions to improve clarity. Section 1026.41(f)(3)(vi) requires a servicer to include five additional statements on the periodic statement, as applicable, when a consumer is in chapter 12 or chapter 13 bankruptcy. Under the

final rule, servicers have flexibility to determine where on the periodic statement the disclosures will appear.

Section 1026.41(f)(3)(vi)(A) requires a statement that the amount due includes only post-petition payments and does not include other payments that may be due under the terms of the consumer's bankruptcy plan. The purpose of this disclosure is to ensure that a consumer understands that there may be additional amounts due under the plan that relate to the mortgage debt. The Bureau continues to believe that consumers may benefit from this disclosure, and consumer testing shows that consumers may find this statement helpful.

Section 1026.41(f)(3)(vi)(B) provides that, if the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, the periodic statement must include a statement that the consumer should send the payment to the trustee and not to the servicer. This proposed disclosure is intended to ensure that consumers have information about whether to send a post- petition payment to the trustee or servicer. The Bureau continues to believe that such a disclosure is appropriate. Some consumer testing participants cited this statement when explaining that they would follow their bankruptcy plan's instructions as to where to send payments.

Section 1026.41(f)(3)(vi)(C) and (D) requires disclosures tailored to when the consumer makes payments to a trustee. Section 1026.41(f)(3)(vi)(C) requires 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. Section 1026.41(f)(3)(vi)(D) requires a statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments. The Bureau is requiring these disclosures because there can be a delay between when a trustee

receives a payment from a consumer and when the trustee remits that payment to a servicer. For pre-petition payments in particular, the Bureau understands that the delay can be weeks or even months, as a trustee may not distribute payments on pre-petition claims until the creditor files a proof of claim or until higher priority claims have been paid. Thus, the periodic statement the consumer receives may not include all payments the consumer has made. Additionally, the Bureau understands that a trustee may allocate payments differently than a servicer, and until the allocations are reconciled, the periodic statement may indicate different allocations than a trustee's records. Based on these timing and allocation issues, the Bureau believes that it is appropriate to advise consumers of the differences between a servicer's records and a trustee's records and to encourage consumers to contact the attorney or trustee with questions. Consumer testing participants generally stated that these statements were helpful to explain why a servicer's records may differ from a trustee's or not include all of the consumer's payments made to a trustee.

Finally, the Bureau is adding new § 1026.41(f)(3)(vi)(E). If the consumer is more than 45 days delinquent on post-petition payments, § 1026.41(f)(3)(vi)(E) requires the periodic statement to include a statement that the servicer has not received all the payments that became due since the consumer filed for bankruptcy. The Bureau considered whether to require periodic statements to include an account history listing only post-petition payments the consumer has failed to make or, alternatively, the date the consumer became delinquent on post-petition payments. Although the Bureau believes that this information would be beneficial to a consumer who is delinquent on mortgage payments due during the bankruptcy case, the Bureau is concerned that requiring this information may impose additional burdens on servicers. Nonetheless, the Bureau agrees with the consumer advocacy group commenters that consumers

need to know when the servicer believes that the consumer has not made all required post-petition payments. Among other consequences, the failure to make a post-petition payment could lead to dismissal of the bankruptcy case. Accordingly, the Bureau is requiring in § 1026.41(f)(3)(vi)(E) that, if the consumer is at least 45 days delinquent on post-petition payments, the periodic statement must include a statement that the servicer has not received all of the consumer's payments due during the bankruptcy case. The Bureau believes that this disclosure will help alert consumers to any delinquency and that, because the language is standard, the burden on industry should be low.

41(f)(4) Multiple Obligors

Proposed § 1026.41(f)(4) would have addressed the situation where more than one consumer is primarily obligated on a mortgage loan and a servicer is required to provide at least one of the primary obligors with a modified periodic statement pursuant to § 1026.41(f). Proposed § 1026.41(f)(4) provided that, in this circumstance, the servicer may provide the modified version of the periodic statement to any or all of the primary obligors instead of providing any statements that do not include the bankruptcy-specific modifications, even if not all primary obligors are debtors in bankruptcy.

The Bureau only received one comment on this aspect of the proposal. A trade association commenter agreed with the proposal to permit servicers to provide only one type of periodic statement per mortgage loan account.

The Bureau is adopting § 1026.41(f)(4) substantially as proposed, with minor revisions to improve clarity. As revised, § 1026.41(f)(4) provides that, if § 1026.41(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.

The Bureau is also adopting comment 41(f)(4)-1 substantially as proposed but with certain revisions. As revised, comment 41(f)(4)-1 provides that, 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. Comment 41(f)(4)-1 further clarifies that § 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 of the primary obligors, even if the primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy. The comment specifies that the servicer need not provide an unmodified statement to any of the primary obligors. The comment provides an illustrative example.

This result is consistent with comment 41(a)-1, which clarifies that, when more than one consumer is primarily obligated on a mortgage loan, a servicer may send the periodic statement to any one of the primary obligors; the servicer would not be required to provide periodic statements to all primary obligors. The Bureau also recognizes that, given current limitations on technology, servicers would incur costs if they were required to send one version of the periodic statement to a consumer in bankruptcy and a different version to the consumer's non-bankrupt co-obligors. As clarified by comment 41(f)(4)-1 of the final rule, § 1026.41(f)(4) should eliminate those costs.

The Bureau notes that comment 41(f)(4)-1, as revised, does not include a proposed example describing a servicer's obligations when there are multiple obligors on the mortgage loan and an exemption applies under § 1026.41(e)(5)(ii). As described in greater detail in the section-by-section analysis of § 1026.41(e)(5), revisions to comment 41(e)(5)(i)-1 clarify that,

subject to certain restrictions, servicers are exempt from providing any periodic statement with regard to a mortgage loan if one of the primary obligors, for example, files chapter 13 bankruptcy and has a bankruptcy plan that provides for surrendering the dwelling that secures the mortgage loan.

New comment 41(f)(4)-2 clarifies disclosure requirements when co-obligors are both debtors under different chapters of bankruptcy. The comment provides that, 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). The comment sets forth an illustrative example.

41(f)(5) Coupon Books

The Bureau proposed § 1026.41(f)(5) to require a coupon book to comply with certain requirements of § 1026.41(f) where applicable. The Bureau solicited comment on applying the modifications set forth in proposed § 1026.41(f)(1) and (f)(3)(i) through (v) and (vii) when a servicer provides a coupon book under § 1026.41(e)(3). In particular, the Bureau solicited comment on whether there may be alternative means to providing consumers with substantially the same information regarding the mortgage loan account while they are in bankruptcy. Additionally, the Bureau solicited comment on whether servicers should be required to issue a new coupon book or other disclosures immediately upon a consumer's bankruptcy filing. Finally, the Bureau solicited comment on servicers' current practices with respect to providing a coupon book to consumers in bankruptcy.

The Bureau received no comments on § 1026.41(f)(5) and is adopting it substantially as proposed, with minor modifications to improve clarity. Under § 1026.41(f)(5), a servicer that

provides a coupon book instead of a periodic statement under § 1026.41(e)(3) must include in the coupon book the disclosures set forth in § 1026.41(f)(2) and (f)(3)(vi), 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 pre-petition arrearage information listed in § 1026.41(f)(3)(v), as applicable. Section 1026.41(f)(5) also provides that the modifications set forth in § 1026.41(f)(1) and (f)(3)(i) through (iv) and (vi) apply to a coupon book and other information a servicer provides to the consumer under § 1026.41(e)(3).

The Bureau continues to believe that § 1026.41(f)(5) will not impose significant burden on servicers that use a coupon book. The statements set forth in § 1026.41(f)(1) and (f)(3)(vi) are the only new, bankruptcy-specific disclosures that a servicer must include in a coupon book. These are standardized statements; servicers will not need to craft language for individual consumers. Additionally, the Bureau is allowing servicers to include these statements anywhere in the coupon book or on a separate page enclosed with the coupon book.

As to the pre-petition arrearage information set forth in § 1026.41(f)(3)(v), the Bureau understands that servicers already maintain internal records regarding pre-petition payments and the balance of the pre-petition arrearage. Therefore, the Bureau does not believe that the cost of providing this information upon a consumer's request will impose significant new burdens.

The remainder of the modifications set forth in proposed § 1026.41(f)(1) and (f)(3)(i) through (iv) and (vi) do not require a servicer to modify any of the disclosures in the coupon book or provide new information to a consumer. Rather, these modifications provide that certain disclosures (such as a description of late payment fees) are not required when a consumer is in

bankruptcy and clarify the requirements for certain other disclosures (such as amount due) in a manner that is consistent with the information already provided in a coupon book. Thus, while a servicer has the option to modify its coupon books to omit certain disclosures that are not required when a consumer is in bankruptcy, § 1026.41(f)(5) does not require servicers to redesign their coupon books specifically for consumers in bankruptcy, and servicers can determine the most cost-efficient method of providing the required information.

Servicers also are not required to update the coupon book with the bankruptcy disclosures immediately upon learning of the bankruptcy filing. Section 1026.41(f)(5) permits a servicer to provide a modified coupon book according to its normal schedule. For example, if a servicer provided a 12-month coupon book to a consumer in January and the consumer filed for bankruptcy in March, the servicer would not need to issue a new, modified coupon book accompanied by § 1026.41(f)(1) and (f)(3)(vi) disclosures until the following January.

Sample Forms

Section 1026.41(c) specifies that sample forms for periodic statements are provided in appendix H–30 and that proper use of these forms complies with the form and layout requirements of § 1026.41(c) and (d). The Bureau believes that sample forms are appropriate to provide servicers with guidance for complying with the requirements of § 1026.41(c) and (d) as modified by § 1026.41(f). The Bureau therefore exercises its authority under, among other things, section 128(f) of TILA to finalize sample forms for § 1026.41(c) and (d) as modified by § 1026.41(f). The Bureau notes that these are not required forms and that any arrangements of the information that meet the requirements of § 1026.41 would be considered in compliance with the section. For the reasons discussed, the Bureau believes that finalizing the sample forms in appendices H–30(E) and H–30(F) is appropriate.

Appendix H–30(E) provides a sample form for complying with the requirements of § 1026.41(c) and (d) as modified by § 1026.41(f) with respect to a consumer in a chapter 7 or chapter 11 bankruptcy case or who has discharged personal liability for a mortgage loan. This form includes disclosures that may not be applicable in all circumstances. For example, the form includes certain delinquency-related information to demonstrate compliance with § 1026.41(d)(8) as modified by § 1026.41(f), but a periodic statement does not need to include this information if it is not applicable to a mortgage loan.

Appendix H–30(F) provides a sample form for complying with the requirements of § 1026.41(c) and (d) as modified by § 1026.41(f) with respect to a consumer in a chapter 12 or chapter 13 bankruptcy case. Not all information on this form will be applicable in all circumstances. For example, the form includes a pre-petition arrearage disclosure to demonstrate compliance with § 1026.41(f)(3)(v), but a periodic statement does not need to include this information if it is not applicable to a mortgage loan. In addition, comment 41(f)(3)-1.ii clarifies that a servicer has additional flexibility in making certain disclosures when the consumer is in chapter 12 or has a plan that modifies the terms of the mortgage loan, and a servicer has the flexibility to make corresponding changes to the sample form.

The sample forms in appendices H–30(E) and H–30(F) use some terminology that differs from terminology used on the sample forms located in appendices H–30(A) through H–30(C), such as “payment amount” instead of “amount due” and “past unpaid amount” instead of “overdue payment.” This alternative terminology is not required but serves simply an example of how servicers may comply with the requirements of § 1026.41(c) and (d) as modified by § 1026.41(f). As comment 41(f)-2 states, a periodic statement may use terminology other than that found on the sample forms in appendix H–30, so long as the new terminology is commonly

understood. For example, a servicer could use commonly understood terms such as "amount due," "explanation of amount due," and "past due payment," on a periodic statement provided to a consumer in bankruptcy without affecting the servicer's safe harbor afforded by § 1026.41(c).

Consistent with § 1026.41(f)(1) and (f)(3)(i), the sample forms in appendices H–30(E) and H–30(F) omit certain disclosures otherwise required by § 1026.41(d), including disclosures that appear on the sample forms located on appendixes H–30(A) through H–30(C), such as the amount of any late payment fee and the date on which it will be assessed. A servicer has the option to include such disclosures on a periodic statement provided to a consumer in bankruptcy, and doing so would not affect the servicer's safe harbor for using the forms located in appendices H–30(E) or H–30(F). Similarly, a servicer may use a different presentation of the explanation of amount due, such as that on the sample form in appendix H–30(C), for payment option and other special types of loans, without affecting the servicer's safe harbor under § 1026.41(c).

Proposed sample forms. The proposed rule included proposed sample forms in appendices H–30(E) and H–30(F). A credit union supported the Bureau's efforts to gauge consumer understanding and stated that some proposed iterations of the sample forms may facilitate consumer comprehension. Two trade associations recommended that the Bureau publish the anticipated final versions of the forms for notice and comment prior to issuing a final rule. Consumer advocacy groups generally did not oppose sample forms, and one consumer advocacy group suggested that the Bureau publish Spanish-language versions of the forms.

Other trade associations requested that the Bureau state expressly that safe harbors remain in place under both the Dodd-Frank Act and TILA if servicers use the sample forms, even if a servicer omits certain information that Regulation Z does not require or a servicer rearranges the format or layout of the form. The commenters stated that, absent such a

statement, servicers might feel compelled to include information that appears in the sample form exactly as displayed even if the regulation does not require such disclosures in the precise layout of the sample form.

Several commenters stated that providing a sample form similar to the one that servicers provide to a consumer not in bankruptcy would facilitate consumer comprehension, minimize burden on servicers, or avoid potential conflicts with debt collection and bankruptcy law. Other commenters suggested the Bureau provide a single sample form that could be used for a consumer in any chapter of bankruptcy, which could be achieved by permitting a servicer to omit certain information that is not relevant to a particular consumer's loan. Some trade associations requested flexibility as to how to display the information required by § 1026.41(d) as modified by § 1026.41(f), including suggesting that a servicer should have wide latitude when drafting the narrative messages required by § 1026.41(f)(2) and (f)(3)(vi) to incorporate language that has been received positively by consumers and bankruptcy courts.

Some commenters also commented on the format and presentation of the proposed sample forms. For example, the U.S. Trustee Program recommended that the Bureau use less technical language, referring in particular to the proposed form's use of the term "post-petition payments." Several consumer advocacy groups favored the technical language, however, noting that most consumers in bankruptcy would have an attorney to help them understand the disclosures. Other commenters had various alternative terminology and formatting suggestions.

As discussed above, the Bureau believes it is appropriate to provide sample forms to assist servicers in complying with § 1026.41(f). The Bureau reiterates that, as sample forms, their use is permissive and, as comment 41(c)-2 states, servicers may provide additional information on a periodic statement unless expressly prohibited by § 1024.41 or another

provision of subpart E of Regulation Z. In addition, comment § 1024.41(d)-2 states that servicers need not include on a periodic statement information that is inapplicable to a mortgage loan, while comment § 1026.41(f)-4 clarifies that a servicer may modify a periodic statement or coupon book as necessary to facilitate compliance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, court orders, and local rules, guidelines, and standing orders. A servicer thus does not lose a safe harbor under the Dodd-Frank Act or TILA by omitting inapplicable information or modifying a periodic statement in a manner consistent with the rule, including those comments. In addition, as discussed above, a servicer is permitted to use alternative terminology on a periodic statement so long as it is commonly understood. A servicer may use different language to convey the statements required by § 1026.41(f)(2) and (f)(3)(vi), so long as that language contains the information required by those provisions and is commonly understood.

The Bureau also notes that, as explained in more detail below, the final sample forms in appendices H–30(E) and H–30(F) incorporate information the Bureau received through public comments and consumer testing. The final sample forms use language that is less technical than on the proposed forms and which testing participants readily understood. They incorporate many elements from the existing periodic statement sample forms located in appendices H–30(A) through H–30(C), while providing servicers flexibility as to how to incorporate new disclosures required by § 1026.41(f). The Bureau intends for consumers to be able to comprehend the language in the new sample forms and for servicers not to have to fundamentally redesign their periodic statement templates for consumers in bankruptcy.

The Bureau further believes that there has been a sufficient opportunity to comment on the sample forms. The final sample forms in appendices H–30(E) and H–30(F) closely resemble

both the proposed sample forms and the tested prototypes. Stakeholders have commented on both the proposed sample forms and the prototypes used during consumer testing (the prototypes were included in the testing report that the Bureau published for public comment, as discussed below). The Bureau therefore believes that it is not necessary to seek additional comments on the final forms. The Bureau is not at this time providing sample forms in languages other than English, but the Bureau will continue to consider whether to do so in the future and whether additional consumer testing on such forms would be necessary or appropriate.

Consumer testing methodology. The Bureau conducted consumer testing on the proposed sample forms and revisions thereto following publication of the proposed rule. The Bureau published and sought comment on a report summarizing the methods and results of the consumer testing.[408] The Bureau received approximately 20 comments on the testing report from, among others, trade associations, servicers, credit unions, and consumer advocacy groups.

Commenters were divided on aspects of the Bureau's testing methodology. For example, several industry commenters and one consumer advocacy group stated that the testing should have used a larger and more diverse sample of consumers. The consumer advocacy group stated that the study lacked any mention of minority group outreach, especially to representatives from the Hispanic communities, and recommended publishing the forms in Spanish. A credit union commented that the testing results would have been more statistically sound had the consumers been asked a more controlled set of questions, and a trade association questioned why the report does not cite to medical literature in support of its conclusions, particularly with respect to the

[408] 81 FR 24519 (Apr. 26, 2016); Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing* (Feb. 2016), *available at* http://www.consumerfinance.gov/data-research/research-reports/testing-bankruptcy-periodic-statement-forms-mortgage-servicing/ (report on consumer testing submitted to the CFPB).

monitoring of eye tracking movements in one round of testing. Some trade associations expressed general concern that it was unclear how the Bureau would use the findings from the eye-tracking tool employed in that round of testing and more specific concern that the Bureau might rely on eye-tracking results obtained from, at most, five participants. Some trade associations stated that the Bureau should have solicited greater input on the testing methodology from other stakeholders who may use and review the forms, such as bankruptcy judges, bankruptcy attorneys, or trade associations. Some commenters suggested that the Bureau conduct additional testing, with one recommending additional testing focused on the pre-petition arrearage disclosure.

Some trade associations also commented that the testing did not account for the variety of procedures used in chapter 13 cases, such as cases in which the consumer sends all mortgage payments to a trustee, the trustee makes several streams of payments to a servicer, or the trustee provides information about the mortgage loan to the consumer. A trade association questioned how the testing would correlate to policy determinations related to the substantive requirements of periodic statements for consumers in bankruptcy.

Several commenters expressed concerns about the inclusion of a payment coupon on the tested forms. For example, a bank stated that a blank payment coupon with a payment date but no payment amount, which was used in the second and third rounds of testing, seemed confusing. A trade association expressed concern that the testing report indicates that consumers focused on the payment coupon instead of the outstanding principal balance; the trade association recommended that the form be redesigned to focus the consumer on information other than the payment coupon.

On the other hand, some consumer advocacy groups, industry commenters, and a bankruptcy trustee expressed support for the Bureau's consumer testing process. They commented favorably on, among other things, the use of multiple revised statements to determine which presentation might be most comprehensible to consumers and stated that the forms are clearer as a result of the testing process. They also noted that participants' understanding of the forms appeared to increase with each successive round of testing, and they suggested that the Bureau factor the report's findings into the rulemaking.

The Bureau believes that the testing it conducted is appropriate. The testing methodology, including the number of rounds, the number of participants who reviewed each form in each round, the participants' relevant background experience, and the iterative process of form design and consumer interviews, is consistent with the testing the Bureau conducted in connection with other rulemakings, including the 2013 TILA Servicing Final Rule. The Bureau notes that consumers' comprehension of the periodic statements improved from round to round and that the Bureau has integrated adjustments from the testing where appropriate. For example, the Bureau has revised the narrative statements required by § 1026.41(f)(2) and (f)(3)(vi) from the proposed sample forms so that the final sample forms use language that testing participants found easier to understand. Similarly, the Bureau has adjusted the presentation of the § 1026.41(f)(3)(v) pre-petition arrearage disclosure from the proposed sample form so that the final sample form presents the information more effectively. While consumer testing cannot replicate every possible unique factual circumstance that may arise in a bankruptcy case, the Bureau's testing and the disclosures on the forms did address various scenarios such as, for example, a consumer who should make monthly post-petition payments to a trustee instead of a

servicer. Most testing participants stated that, consistent with the direction on the sample form, they would continue to send such payments to the trustee if their bankruptcy plan so required.

The Bureau also emphasizes that it is not relying solely on the consumer testing to determine that the sample forms will be effective; it is also relying on its knowledge of, and expertise in, consumer understanding and behavior, as well as principles of effective disclosure design. The Bureau further notes that many aspects of the final sample forms are similar or identical to aspects of the existing sample forms in appendices H–30(A) through H–30(C), which the Bureau previously tested in connection with the 2013 TILA Servicing Final Rule and which are now familiar to many consumers. Finally, the Bureau acknowledges that the eye-tracking findings came from only a handful of testing participants and has placed only limited weight on the eye-tracking findings.

As to a commenter's question regarding how the consumer testing would inform the substantive requirements of periodic statements for consumers in bankruptcy, the Bureau notes that the purpose of the testing was to test consumer understanding and make the sample forms clearer for consumers. As to the concerns some commenters raised about payment coupons on the sample forms, the Bureau notes that § 1026.41 does not mandate the inclusion of a payment coupon on periodic statements. The Bureau included them on the tested forms because servicers commonly include payment coupons on periodic statements. Servicers have flexibility to adjust the sample forms and the content of any payment coupon they choose to include on a periodic statement.

Consumer testing results. Commenters made numerous comments about the specific disclosures and language that appeared on the tested versions of the forms. To the extent that these comments addressed the findings set forth in the testing report or the accuracy of the

language on the final sample forms, they are addressed below. The Bureau does not address, however, comments that suggested alternative disclosures or language without referencing the testing report or the findings therein. Some of the comments the Bureau received raise issues that relate to the substantive requirements of § 1026.41(e)(5) or (f) rather than to the format or design of the sample forms. Most of these comments are similar to comments the Bureau previously received in response to the proposal and that the Bureau addressed above in the section-by-section analyses of § 1026.41(e)(5) and (f). Some commenters submitted substantive comments on the proposal. These comments were similar to the comments received on the proposal and, where appropriate, are addressed in the relevant section-by-section analyses.

Some commenters recommended that the sample forms incorporate specific language that testing participants understood or preferred. For example, consumer advocacy groups recommended that the Bureau adopt the language tested in round three relating to the pre-petition arrearage because consumers demonstrated a high level of comprehension and because the information would benefit consumers in various ways. A chapter 13 trustee also recommended that the sample form in appendix H–30(F) refer expressly to "pre-petition arrearage," in part because the first round of testing showed that consumers understand the phrase. This trustee further recommended that, based on the testing participants' positive responses, the sample forms should separately break down principal and interest, include language stating that the periodic statement is being sent for informational and compliance purposes only, and include a message that the statement may not show recent payments sent to the trustee but not yet forwarded to the servicer. A servicer commented that the form in appendix H–30(E) should use the term "account information" because testing participants preferred it over "delinquency information." Another

servicer recommended that the final forms use concise versions of certain disclosures that were tested in certain rounds.

Other commenters indicated that the final forms should not incorporate disclosures that the consumer testing participants did not readily understand. Among concerns about other disclosures, one credit union commented that testing participants' trust in the accuracy of the tested forms was diminished by some of the narrative statements regarding the unique circumstances of chapter 13 cases, such as a disclaimer that the periodic statement may not be up to date. Similarly, one commenter expressed concern that consumers paying their mortgage through a chapter 13 trustee would be confused by a periodic statement, citing the uncertainty some testing participants expressed about the meaning of the narrative messages. Two servicers commented that testing participants appeared uncertain about how much they should pay when reviewing certain of the tested forms, such as when past due amounts were listed separately from the amount currently due. One of these servicers further stated that testing participants had some difficulty distinguishing between pre-petition and post-petition payments when both types of payments were listed in the transaction activity and past payment breakdown. One credit union stated that the participants' feedback on the forms' overall organization, clarity, and helpfulness suggested that the participants did not fully understand the disclosures. Some commenters recommended making clearer whether amounts due and payments received relate to pre-petition arrearage or to post-petition payments. One servicer cautioned that providing greater detail about the breakdown of principal, interest, and escrow could confuse consumers comparing the previous month's statement to the subsequent month's statement. A credit union also noted that some testing participants stated that they would rather the periodic statements be sent to their

attorneys to avoid miscommunications, and it added, more generally, that the Bureau should not ignore the report's negative findings.

Industry commenters took opposing views on the testing report's finding that testing participants preferred disclosure of the consequences of nonpayment and language that uses the term "due." Some commenters stated that the forms should reflect the participants' preference because it conveys information clearly and accurately, while others stated that disclosing this information and using "due" language could raise concerns about the automatic stay. One servicer expressed concerns that providing a periodic statement similar to the tested forms could violate the automatic stay because some testing participants stated that several iterations of the tested forms were collection attempts rather than purely informational notices. A trade association argued that the sample forms should not identify the number of days a mortgage loan is delinquent because testing participants' reactions varied as to whether the disclosure would be helpful.[409]

The Bureau acknowledges that, as commenters noted, some versions of the narrative messages shown to testing participants received mixed or negative reactions, primarily in the first round and, to a lesser degree, the second round of testing. The Bureau notes that participants in each successive round found the various narrative messages to be clearer than those in the prior round, and the Bureau believes, that the versions of the messages included on the final sample forms in appendices H–30(E) and H–30(F) are clear and generally understandable to consumers. For example, while some participants in round one stated the

[409] Final § 1026.41(f) permits, but does not require, a servicer to disclose the length of a delinquency on a periodic statement.

periodic statement tested was untrustworthy because of a message that it might not be up to date, participants in the later rounds found helpful a revised message that recent payments to a trustee may not be disclosed on the statement because the trustee had not yet forwarded them to the servicer.

The final versions of the sample forms in appendices H–30(E) and H–30(F) incorporate findings set forth in the testing report, including specifically the language regarding pre-petition arrearage that participants found helpful in the third round of testing. Similarly, the final sample forms include language identifying payments as "pre-petition" or "post-petition" payments, which some participants found helpful; the forms also include "plain language" terminology identifying those payments to assist consumers who are less familiar with bankruptcy-specific terminology. In addition, the sample form in appendix H–30(E) uses the term "account history" in lieu of "delinquency information," as testing participants found that term helpful.

The Bureau believes that the testing report indicates that consumers generally should understand the account information as displayed on the sample forms. For example, testing participants readily comprehended the principal-interest breakdown and preferred such a disclosure over a combined disclosure. Consistent with this finding and the Bureau's other knowledge and experience regarding disclosures, the final rule requires a periodic statement to include a principal-interest breakdown. Testing participants also generally understood the pre-petition arrearage disclosure, and their comprehension was highest in the final round of testing, which used a disclosure similar to the disclosure on the final sample form. The final sample forms also present the amount due and explanation of amount due in the manner that participants found most helpful. Moreover, the Bureau believes that, as consumer advocacy groups commented and as explained in the testing report, a consumer may understand the disclosures on

a periodic statement when they relate to the consumer's own mortgage loan and bankruptcy rather than a hypothetical testing scenario.

As to commenters' concerns about some participants' preference that a servicer provide the periodic statement to their bankruptcy attorney, the Bureau notes that, depending on the circumstances, a servicer may be able to satisfy the requirements of § 1026.41 by providing a periodic statement to a consumer's attorney. The Bureau further notes that, while some testing participants stated that the tested forms appeared to be more in the nature of collection attempts than purely informational, most participants viewed the forms as informational, and nearly all participants expressed a preference for receiving a similar form if they were attempting to retain their home through bankruptcy. More generally, as explained in the section-by-section of § 1026.41(e)(5), the Bureau does not believe that a servicer is likely to violate the automatic stay by providing a periodic statement that complies with the provision of § 1026.41(c) and (d) as modified by § 1026.41(f), nor does the Bureau believe that an automatic stay violation is likely when a servicer uses properly one of the sample forms in appendices H–30(E) or H–30(F).

Format and Design of the Sample Forms. Several commenters had suggestions on the general design and format of the sample forms. For example, a consumer advocacy group suggested that the sample forms display information in a bullet point format, while other consumer advocacy groups recommended that certain of the bankruptcy-related narrative messages be located in a separate box because testing participants preferred that approach. Some servicers recommended against listing multiple suspense accounts in the past payments breakdown, as was done in one version of the tested forms. Industry commenters stated that the bankruptcy sample forms should be similar to the non-bankruptcy sample forms, that the Bureau should have a single bankruptcy sample form that could be adapted to all chapters of bankruptcy,

and that servicers should have flexibility in how they present the required information. Two consumer advocacy groups stated that the sample forms should describe a trustee's pre-petition payments as payments rather than partial payments. The Bureau also received several comments asking how the sample forms in appendices H–30(E) or H–30(F) should address specific scenarios or hypotheticals.

As noted above, the sample forms are one way a servicer may choose to present the required information in a manner that complies with the formatting requirements of § 1026.41(c), (d), and (f). To the extent that a servicer may wish to use a different format or add additional informational, it may do so within the limits provided by the rule. For example, a servicer may, as one commenter suggested, disclose one or multiple suspense accounts on a periodic statement without jeopardizing its safe harbor use of the sample forms.

Consistent with these commenters' general recommendations, the sample forms in appendices H–30(E) and H–30(F) incorporate to a large degree the format and content of the sample forms in appendices H–30(A) through H–30(C). For example, the sample forms all contain the same general presentation of general account information, amount due, transaction activity, and past payment breakdown, among other things. The sample form in appendix H–30(E) contains the same disclosures in a similar format as the form in appendix H–30(B), except that appendix H–30(E) omits three specific pieces of information, adds a short bankruptcy message, and uses alternative terminology that a servicer may but is not required to use for a consumer in bankruptcy. The Bureau believes that these similarities will help reduce the potential burdens on a servicer that chooses to use the new sample forms and will help make the forms generally understandable to consumers.

Legal Authority

The Bureau is adopting § 1026.41(f), which contains content and layout requirements for periodic statements in bankruptcy, to implement section 128(f) of TILA as well as section 105(a) of TILA and section 1032(a) of the Dodd-Frank Act. Section 128(f)(1)(e) of TILA requires the periodic statement to include a description of any late payment fees. For the reasons discussed above, the Bureau is using its authority under section 105(a) and (f) of TILA to exempt servicers from having to include this information in periodic statements provided to consumers who are in bankruptcy or have discharged personal liability for a mortgage loan. This proposed exemption is additionally authorized under section 1405(b) of the Dodd-Frank Act.

41(g) Successors in Interest

As explained in part V.A. and the section-by-section analysis of Regulation X § 1024.32, the final rule allows servicers to provide an initial explanatory written notice and acknowledgment form to confirmed successors in interest who are not liable on the mortgage loan obligation. The notice explains that the confirmed successor in interest is not liable unless and until the confirmed successor in interest assumes the mortgage loan obligation under State law. The notice also indicates that the confirmed successor in interest must return the acknowledgment to receive certain servicing notices under the Mortgage Servicing Rules. For the reasons stated in part V.A. and in this discussion, the final rule includes new § 1026.41(g), which provides that, if, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with such a written notice and acknowledgment form, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by § 1026.41 unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided an executed

acknowledgment in accordance with Regulation X § 1024.32(c)(1)(iv) that the confirmed successor in interest has not revoked.

The final rule does not mandate that servicers send the initial written notice and acknowledgment form; instead Regulation X § 1024.32(c)(1) gives servicers the option to do so and, if they choose to do so, § 1026.41(g) relieves them of the obligation to provide periodic statements until the confirmed successor in interest affirmatively indicates a desire to receive them by returning the acknowledgment or assumes the mortgage loan obligation under State law. Similar provisions in §§ 1024.32(c)(2), 1026.20(g), and 1026.39(f) address the disclosures required by, respectively, the Mortgage Servicing Rules in Regulation X and §§ 1026.20(c), (d), and (e), and 1026.39. As noted in part V.A., the Bureau has decided to excuse servicers that have not received an acknowledgment back from a confirmed successor in interest from the requirement to send periodic statements and other Mortgage Servicing Rule notices because doing so relieves servicers of the costs associated with sending notices to confirmed successors in interest who are not liable on the mortgage loan obligation and do not want them. However, if a confirmed successor in interest assumes a mortgage loan obligation under State law, the information in the initial notice and acknowledgment form is no longer applicable, and § 1026.41(g) accordingly does not suspend the servicer's obligation to provide periodic statements.

Appendix H to Part 1026–Closed-End Model Forms and Clauses

Appendix H–4(C) to Part 1026

The 2013 TILA Servicing Final Rule revised the commentary to § 1026.19(b) to reflect the revised § 1026.20(c) and revised § 1026.20(d) ARM notices. The proposal would have modified the Variable-Rate Model Clauses in appendix H–4(C) to reflect the language in the

revised commentary. The Bureau is adopting these modifications as proposed. No change to the table of contents of appendix H is necessary.

Appendix H–14 to Part 1026

The 2013 TILA Servicing Final Rule changed the commentary to § 1026.19(b) to reflect the revised § 1026.20(c) and revised § 1026.20(d) ARM notices. This proposal would have modified the Variable-Rate Mortgage Sample form in appendix H–14 to reflect the language in the revised commentary. The Bureau is adopting these modifications as proposed. No change to the table of contents of appendix H is necessary.

Appendix H–30(C) to Part 1026

This proposal would have made a minor technical revision to the entry for H–30(C) in the table of contents at the beginning of this appendix and republishes sample form H–30(C). The technical change amends "Sample Form of Periodic Statement for a Payment-Options Loan (§ 1026.41)" to "Sample Form of Periodic Statement for a Payment-Option Loan (§ 1026.41)." The Bureau is adopting this technical change as proposed.

Appendices H–30(E) and H–30(F) to Part 1026

This final rule provides sample forms for periodic statements for certain consumers in bankruptcy in proposed appendices H–30(E) and H–30(F) and makes corresponding additions to the table of contents for appendix H. Section 1026.41(c) specifies that sample forms for periodic statements are provided in appendix H–30 and that proper use of these forms complies with the form and layout requirements of § 1026.41(c) and (d). The Bureau believes that sample forms are appropriate to provide servicers with guidance for complying with the requirements of § 1026.41(c) and (d) as modified by proposed § 1026.41(f). The Bureau therefore exercises its authority under, among other things, section 128(f) of TILA to provide sample forms for

§ 1026.41(c) and (d), as modified by § 1026.41(f). Appendix H–30(E) provides a sample form for complying with the requirements of § 1026.41(f) with respect to a consumer in a chapter 7 or chapter 11 bankruptcy case or a consumer who has discharged personal liability for a mortgage loan. Appendix H–30(F) provides a sample form for complying with the requirements of § 1026.41(f) with respect to a consumer in a chapter 12 or chapter 13 bankruptcy case. They would not be required forms, however, and any arrangements of the information that meet the requirements of § 1026.41 would be considered in compliance with the section.

VI. Effective Date

The Bureau proposed an effective date of 280 days (approximately nine months) after publication of a final rule for all of the final rule provisions except the changes to § 1026.41(e)(5) and (f) (bankruptcy periodic statement exemption and modified statements), for which the Bureau proposed an effective date of one year after publication. As discussed further below, the Bureau is adopting an effective date of one year after publication for most provisions, with an extended effective date of 18 months after publication for the provisions relating to bankruptcy periodic statements and to successors in interest.

The Bureau received over a dozen comments on the effective date, all of which were from industry commenters, including both servicers and industry trade associations. Nearly all of the commenters recommended extensions of the proposed effective dates, generally to one year, 18 months, or two years. Several commenters suggested one effective date for all provisions, while others suggested that having two different effective dates was appropriate and requested more time to implement those provisions regarding bankruptcy periodic statements, successors in interest, and early intervention notices. Industry trade association commenters

requested an explicit safe harbor for servicers that come into compliance before the effective date.

Approximately half of commenters discussing the effective date indicated that an implementation period of 12 months or less would be sufficient for the provisions other than those regarding bankruptcy and successors in interest, while approximately half requested more time to implement the provisions other than those regarding bankruptcy and successors in interest. Approximately half of commenters discussing the effective date indicated that an implementation period of 18 months would be sufficient for the provisions regarding bankruptcy and successors in interest, while approximately half requested more time to implement those provisions. One commenter indicated that consumer-focused enhancements to the rule, including the provisions addressing successors in interest, loss mitigation, transfers, and bankruptcy should be implemented promptly but cautioned that these areas involve significant operational complexity and will require significant time to implement properly. Similarly, in explaining their recommended extensions to the proposed effective dates, several commenters focused on the need for sufficient time to update operating systems and software; coordinate with third party service providers and, if applicable, bankruptcy trustees; train staff; and test customer support and technology to comply with the final rule.

Regarding bankruptcy periodic statement requirements specifically, several industry commenters requested that the Bureau allow servicers a sufficiently long period to implement the changes necessary to comply. Multiple trade associations recommended 18 months. A systems vendor commenter and a credit union commenter each recommended 24 months. Another credit union commenter estimated it would take approximately four to six months for vendors to

develop the statements, three months to test the statements, and two months to train employees and inform consumers about the statements, for a total of nine to 11 months.

Industry trade association commenters noted that this rulemaking is not subject to a statutory deadline. They stated that the prior rulemakings under title XIV of the Dodd-Frank Act did not provide sufficient implementation time and so urged the Bureau to extend the effective dates. Several commenters pointed out that the industry is still implementing other Bureau rules, including the 2013 Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act and the Truth in Lending Act and the 2015 Home Mortgage Disclosure Act rulemaking. Commenters also indicated that they might have to implement other upcoming anticipated rules.

For the reasons discussed in detail below, the Bureau is adopting an effective date of one year after publication for all provisions, except for an effective date of 18 months after publication for the bankruptcy periodic statement exemption and modified statements (§ 1026.41(e)(5) and (f)) and for the following regulation text and commentary provisions specifically addressing successors in interest: in Regulation X, § 1024.30(d) and related comments 30(d)-1 through -3; the definitions of successor in interest and confirmed successor in interest in § 1024.31 and related comments 31(Successor in interest)-1 and -2; § 1024.32(c) and related comments 32(c)(1)-1, 32(c)(2)-1 and -2, and 32(c)(4)-1; § 1024.35(e)(5); § 1024.36(d)(3) and (i) and related comments 36(i)-1 through -3; § 1024.38(b)(1)(vi) and related comments 38(b)(1)(vi)-1 through -5; comment 41(b)-1; comment appendix MS to part 1024-2; and in Regulation Z, § 1026.2(a)(11) and (27) and related comments 2(a)(11)-4 and 2(a)(27)(i)-1 and -2; comment 20(e)(4)-3; § 1026.20(f); comment 36(c)(1)(iii)-2; § 1026.39(f); comment 41(c)-5; and § 1026.41(g). The Bureau considered the comments, including the potential issues that could arise as a result of an inadequate implementation period and industry's focus on other

recent mortgage rulemakings, and believes that these effective dates achieve the right balance between affording industry sufficient time for implementation and promptly affording consumers the benefits of the final rule.

The Bureau recognizes that the final rule provisions regarding bankruptcy periodic statements and successors in interest may take more time to implement than the other final rule provisions. Specifically, servicers and third-party service providers need sufficient time to coordinate, develop, and test systems required to modify periodic statements for consumers in bankruptcy. They also need sufficient time to train employees regarding the bankruptcy periodic statement requirements. In addition, although the successor in interest provisions generally should not require the same levels of operating systems changes as the bankruptcy periodic statement requirements, the Bureau acknowledges that these proposed provisions generated more comments than any other aspect of the proposal. Many servicers may need to institute new systems to track potential and confirmed successors in interest who are not obligated on the loan, particularly as to those successors in interest who are not already covered under the policies and procedures requirement in existing § 1024.38(b)(1)(vi). Servicers also need sufficient time to develop policies and procedures relating to the types of documents that they will accept to confirm successor in interest status for common factual scenarios that could arise under the final rule's broader definition of successor in interest. The Bureau also recognizes that servicers may wish to work with third-party service providers to ensure compliance with the successor in interest provisions. Thus, the Bureau believes that an implementation period of 18 months is reasonable for the changes to the bankruptcy periodic statement exemption and modified statements and to the provisions specifically addressing successors in interest.

After further consideration, the Bureau also believes it is unlikely that servicers could implement within the proposed 280 days (approximately nine months) all of the remaining provisions of the final rule, including the early intervention notice requirements for which commenters specifically requested an extension of time for compliance. The Bureau recognizes that, in particular, the new notices required under the final rule will require some systems changes while servicers are, at the same time, implementing most of the other changes in the final rule. Thus, the Bureau believes that a one-year implementation period is reasonable for all of the provisions of the final rule other than the bankruptcy periodic statements and successor in interest provisions identified above.

The Bureau considered whether to offer servicers a safe harbor for early compliance, as requested by some commenters. Specifically, the Bureau considered whether to adopt an early effective date (*i.e.*, at or shortly after the time of publication in the *Federal Register*) and permit optional compliance with some or all of the final rule provisions for a specific period of time (*e.g.*, one year or 18 months, depending on the provision) after that effective date, at which time compliance would be mandatory. For the reasons discussed below, the Bureau is choosing not to set an early effective date with optional early compliance.

The Bureau does not believe that it is appropriate to permit servicers to choose optional early compliance for only some provisions of the final rule without requiring early compliance with other provisions. The provisions of the existing rule are closely intertwined with each other and with the final rule; early compliance with only some provisions of the final rule risks interfering with the connections among the different parts of the rule. Nor does the Bureau believe that servicers would choose or be able to comply with all aspects of the final rule prior to the mandatory compliance dates, in part because, as noted above, some provisions will require

systems changes. Thus, the Bureau believes that any optional early compliance would require the Bureau to specify those provisions of the final rule with which a servicer must also comply if it chooses to comply early with other provisions of the final rule. This task would be speculative, given that the Bureau did not receive any comments on which portions of the proposal would be feasible for an early optional compliance period. In addition, offering an early optional compliance period could result in confusion about when, during that period, servicers must comply with either the current rule provisions or the final rule provisions.

In addition, the Bureau is concerned about causing considerable uncertainty for servicers, consumers, and regulators by adopting an early effective date and permitting optional compliance with some or all of the final rule provisions for a specific period of time after that date. Even if some servicers were to choose to comply with all aspects of the final rule prior to the mandatory compliance dates, it would result in broader compliance challenges and potential unnecessary litigation. Consumers may have difficulty understanding whether their servicers are complying with specific provisions at any given time. Regulators and the judiciary would have to spend additional time and resources to determine which servicers are complying with the final rule provisions at which times, and the lack of certainty could potentially lead to inconsistent interpretations, treatment of different servicers, and application of borrower protections.

The Bureau recognizes, however, that there are several instances where the final rule adopts new commentary to the current regulation that clarifies, reinforces, or does not conflict with the existing rule and commentary. Servicers may already be operating in a manner that is consistent with both these new commentary provisions and the existing regulation text and commentary. In those instances, servicers that continue to rely on the existing regulation and

commentary prior to the effective dates do not violate the existing rules, even though the new commentary provisions are not yet effective during that period.

Similarly, the Bureau is aware, as noted in several parts of the section-by-section analysis above, that servicers may already be engaged in several consumer-friendly practices that are not specifically required under the current rule and thus do not violate the current rule. Some of these practices not only may be required under the final rule as of the effective dates but also will be subject to specific requirements as of those dates. For example, some servicers currently are providing periodic statements to consumers in bankruptcy or providing notices of complete applications to consumers. Those statements or notices may not meet all of the specific requirements under the final rule but are nonetheless beneficial to borrowers. As another example, some servicers currently reevaluate borrowers for loss mitigation options in certain circumstances (such as a new hardship) under the requirements of § 1024.41, even if they are not required to do so for a borrower's subsequent complete loss mitigation application under the current rule, as provided in § 1024.41(i). Those reevaluations are not a violation of the current rule and may benefit borrowers in those circumstances. The Bureau recognizes that some servicers may be engaging in several other such practices, in addition to the above examples, that are not mandated by the current rule. Where such practices that will be mandated by the final rule are in compliance with the current rule or are not in violation of the current rule, servicers may continue those practices in compliance with the existing rule without necessarily adopting all of the specific requirements of the final rule before their effective dates.

For the reasons discussed above, the Bureau believes that these effective dates, which provide extended implementation periods of one year and 18 months, are appropriate and will provide industry with sufficient time to revise and update policies and procedures; coordinate

with third-party service providers to implement and test systems changes; and train staff. In addition, to assist industry with efficient and effective implementation of the rule, the Bureau intends to provide implementation material in advance of the effective dates in the form of revisions to the Bureau's small entity compliance guide to the mortgage servicing rules and other aids.

VII. Dodd-Frank Act Section 1022(b)

A. Overview

In developing the final rule, the Bureau has considered the final rule's potential benefits, costs, and impacts.[410] The proposal set forth a preliminary analysis of these effects, and the Bureau requested comment on this topic. In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, HUD, the HUD Office of Inspector General, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of the Treasury, the Department of Agriculture, and the Department of Veterans Affairs, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The final rule covers nine major topics, summarized below, generally in the order they appear in the final rule. More details can be found in the section-by-section analysis above.

1. Successors in interest. The Bureau is finalizing three sets of rule changes relating to successors in interest. First, the Bureau is adopting definitions of successor in interest for

[410] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of the rule on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

purposes of Regulation X's subpart C and Regulation Z that are modeled on the categories of transfers protected under section 341(d) of the Garn-St Germain Act. Second, the Bureau is finalizing rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest.[411] Third, the Bureau is applying the Regulation X and Z mortgage servicing rules to successors in interest once a servicer confirms the successor in interest's status.

2. Definition of delinquency. The Bureau is finalizing a general definition of delinquency that applies to all of the servicing provisions of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. 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.

3. Requests for information. The Bureau is finalizing amendments that change how a servicer must respond to requests for information asking for ownership information for loans in trust for which the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) is the owner of the loan or the trustee of the securitization trust in which the loan is held.

4. Force-placed insurance. The Bureau is finalizing amendments to the force-placed insurance disclosures and model forms to account for when a servicer wishes to force-place insurance when the borrower has insufficient, rather than expiring or expired, hazard insurance

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

coverage on the property. Additionally, servicers now will have the option to include a borrower's mortgage loan account number on the notices required under § 1024.37. The Bureau also is finalizing several technical edits to correct discrepancies between the model forms and the text of § 1024.37.

5. Early intervention. The Bureau is clarifying the early intervention live contact obligations for servicers to establish or make good faith efforts to establish live contact so long as the borrower remains delinquent. The Bureau is also clarifying requirements regarding the frequency of the written early intervention notices, including when there is a servicing transfer. In addition, regarding certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the FDCPA, the Bureau is finalizing exemptions for servicers from complying with the live contact obligations but requiring servicers to provide written early intervention notices under certain circumstances.

6. Loss mitigation. The Bureau is finalizing several amendments relating to the loss mitigation requirements. The final rule: (1) Requires servicers to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current on payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application; (2) Modifies an existing exception to the 120-day prohibition on foreclosure filing to allow a servicer to join the foreclosure action of a superior or subordinate lienholder; (3) Clarifies how servicers select the reasonable date by which a borrower should return documents and information to complete an application; (4) Clarifies that, if the servicer has already made the first notice or filing, and a borrower timely submits a complete loss mitigation application: (i) The servicer must not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, even where the sale proceedings are conducted by a third party,

unless one of the specified circumstances is met (*i.e.*, the borrower's loss mitigation application is properly denied, withdrawn, or the borrower fails to perform on a loss mitigation agreement); (ii) That absent one of the specified circumstances, conduct of the sale violates the rule; (iii) That the servicer must instruct foreclosure counsel promptly not to make any further dispositive motion, to avoid a ruling or order on a pending dispositive motion, or to prevent conduct of a foreclosure sale, unless one of the specified circumstances is met; and (iv) That the servicer is not relieved from its obligations by counsel's actions or inactions; (5) Requires that servicers provide a written notice to a borrower within five days (excluding Saturdays, Sundays, or legal holidays) after they receive a complete loss mitigation application and requires that the notice: (i) Indicate that the servicer has received a complete application; (ii) provide the date of completion, a statement that the servicer expects to complete its evaluation within 30 days from the date it received the complete application, and an explanation that the borrower is entitled to certain specific foreclosure protections and may be entitled to additional protections under State or Federal law; (iii) Clarify that the servicer might need additional information later, in which case the evaluation could take longer and the foreclosure protections could end if the servicer does not receive the information as requested.; (6) Sets forth how servicers must attempt to obtain information not in the borrower's control and evaluate a loss mitigation application while waiting for third party information; requires servicers to exercise reasonable diligence to obtain the information and prohibits servicers from denying borrowers solely because a servicer lacks required information not in the borrower's control, except under certain circumstances; requires servicers in this circumstance to complete all possible steps in the evaluation process within the 30 days, notwithstanding the lack of the required third-party information; requires that servicers promptly provide a written notice to the borrower if the servicer lacks required third party

information 30 days after receiving the borrower's complete application and cannot evaluate the application in accordance with applicable requirements established by the owner or assignee of the mortgage loan; and requires servicers to notify borrowers of their determination on the application in writing promptly upon receipt of the third party information it lacked; (7) Permits servicers to offer a short-term repayment plan based upon an evaluation of an incomplete loss mitigation application; (8) Clarifies that servicers may stop collecting documents and information from a borrower for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee, the borrower is ineligible for that option; and clarifies that servicers 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 requirements established by the owner or assignee of the mortgage loan; and (9) Addresses and clarifies how loss mitigation procedures and timelines apply when a transferee servicer receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer.

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

8. Periodic statements. The Bureau is finalizing several requirements relating to periodic

statements. The final rule: (1) Clarifies certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in temporary loss mitigation programs, or have been permanently modified, to conform generally the disclosure of the amount due with the Bureau's understanding of the legal obligation in each of those circumstances, including that the amount due may only be accurate for a specified period of time when a mortgage loan has been accelerated; (2) Requires servicers to send modified periodic statements (or coupon books, where servicers are otherwise permitted to send coupon books instead of periodic statements) to consumers who have filed for bankruptcy, subject to certain exceptions, with content varying depending on whether the consumer is a debtor in a chapter 7 or 11 bankruptcy case, or a chapter 12 or 13 bankruptcy case; and includes proposed sample periodic statement forms that servicers may use for consumers in bankruptcy to ensure compliance with § 1026.41; and (3) Exempts servicers from the periodic statement requirement for charged-off mortgage loans if the servicer will not charge any additional fees or interest on the account and provides a periodic statement including additional disclosures related to the effects of charge-off.

9. Small servicer. The Bureau is finalizing certain changes to the small servicer determination. The small servicer exemption generally applies to servicers who service 5,000 or fewer mortgage loans for all of which the servicer is the creditor or assignee. The final rule excludes certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not a creditor or assignee, from being counted toward the 5,000 loan limit, allowing servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

In addition to the changes discussed above, the final rule also makes technical corrections and minor clarifications to wording throughout several provisions of Regulations X and Z that

generally are not substantive in nature.

B. Provisions to Be Analyzed

The analysis below considers the potential benefits, costs, and impacts to consumers and covered persons of the following key provisions of the final rule:

1. Requirements related to successors in interest.

2. A new definition of "delinquency" for purposes of Regulation X's mortgage servicing rules.

3. Early intervention written notice requirements for certain consumers.

4. Changes to loss mitigation procedures, including:

   - Requiring a notice of complete application for loss mitigation applications;
   - Requirements applicable when determination of what loss mitigation options to offer a borrower is delayed because information outside the borrower's control is missing;
   - Clarifications to the dual tracking protections in § 1024.41(g);
   - Requiring review of multiple loss mitigation applications from the same borrower in some circumstances;
   - Clarification of how loss mitigation timelines apply in the case of servicing transfers; and
   - Permitting evaluation for short-term repayment plans based on incomplete applications.

5. Periodic statement requirements applicable to consumers in bankruptcy.

6. An exemption from the servicing rule's periodic statement requirement for

mortgage loans that have been charged off.

7. Revisions to the small servicer determination.

In addition to the changes listed above, the final rule modifies or clarifies other provisions of the 2013 Mortgage Servicing Final Rules. These other changes include: commentary relaxing certain information provision requirements under § 1024.36(a) when a borrower requests information about the owner of a loan and Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held; an amendment to the force-placed insurance notice described in § 1024.37(c) through (e) to require the notice to state that coverage is insufficient (rather than expiring or expired), when applicable, and to allow inclusion of the account number on the notice; a policies and procedures requirement under § 1024.38(b)(2)(vi) regarding identifying and obtaining documents not in the borrower's control that a servicer requires to determine what loss mitigation options, if any, to offer a borrower; commentary regarding a servicer's flexibility in collecting documents and information to complete a loss mitigation application under § 1024.41(b)(1); commentary under § 1024.41(b)(2)(i) to clarify how a servicer must treat a loss mitigation application it receives when no foreclosure sale has been scheduled; commentary relevant to the reasonable date for return of documents under § 1024.41(b)(2)(ii); amendments to § 1024.41(c)(2)(iv) clarifying when a loss mitigation application is considered facially complete; an exception to § 1024.41(f)(1)'s 120-day pause for circumstances in which a servicer joins the foreclosure action of a superior or subordinate lienholder; commentary clarifying the effect of § 1026.36(c)'s and § 1026.41(d)'s prompt crediting and periodic statement requirements with regard to loan modifications and loans that have been accelerated; commentary to clarify the information that must be included in a periodic statement pursuant to § 1026.41(d) following a period when the

servicer was exempt from sending periodic statements; removal of the phrase "creditor or assignee" from the description of voluntarily serviced loans that may be excluded in determining the small servicer exemption under § 1026.41(e)(4), and certain other minor changes. The Bureau believes these modifications and clarifications will generally benefit consumers and covered persons and impose minimal new costs on consumers and covered persons.

C. Data Limitations and Quantification of Benefits, Costs and Impacts

Prior to publishing the proposal, the Bureau engaged in extensive outreach on many of the issues addressed by the final rule, including discussions with several servicers of different sizes, consultations with other stakeholders, and convening a roundtable on the application of the mortgage servicing rules in the case of bankrupt borrowers. The Bureau received several comments related to the potential impacts of the proposal on consumers and industry. However, as discussed further below, the data with which to quantify the potential costs, benefits, and impacts of the final rule are generally limited.

Quantifying the benefits of the final rule for consumers presents particular challenges. As discussed further below, certain provisions may directly save consumers time and money while others may benefit consumers by, for example, facilitating household budgeting, supporting the consumer's ability to obtain credit, and reducing default and avoidable foreclosure. Many of these benefits are qualitative in nature, while others are quantifiable but would require a wide range of data that is not currently available to the Bureau.

In addition, the Bureau believes, based on industry outreach, that many servicers already follow procedures that comply with at least some provisions of the final rule. However, the Bureau does not have representative data on the extent to which servicer operations currently comply with the final rule. Consequently, the Bureau is unable to quantify the benefits to

consumers or the costs to servicers of the final rule. Even with additional representative data, the Bureau would need information on the cost of changing current servicer practices in order to quantify the cost of closing any gaps between current practices and those mandated by the final rule.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the final rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

D. Small Servicer Exemption

Small servicers—generally, those that service 5,000 or fewer mortgage loans, all of which the servicer or affiliates own or originated—are exempt from many of the provisions of the 2013 Mortgage Servicing Final Rules, including most of the provisions affected by the final rule.[412] Therefore, most of the discussion of potential benefits and costs below generally does not apply to small servicers or to consumers whose mortgage loans are serviced by small servicers. The two exceptions are (1) the provisions related to successors in interest, which create new, limited information request procedures for potential successors in interest and extend the protections of the Mortgage Servicing Rules, including certain provisions from which small servicers are not exempt, to confirmed successors in interest, and (2) the definition of delinquency in § 1024.31, which may affect the scope of the 2013 RESPA Servicing Final

[412] Section 1026.41(e)(4)(ii) defines the term small servicer as a servicer that either: (1) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; (2) is a Housing Finance Agency, as defined in 24 CFR 266.5; or (3) is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor.

Rule's prohibition on initiating foreclosure proceedings unless a borrower's mortgage loan obligation is more than 120 days delinquent. For those provisions, the discussion of potential benefits and costs does apply to loans serviced by small servicers.

E. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau believes that, compared to the baseline established by the 2013 Mortgage Servicing Final Rules, many of the final rule provisions benefit both consumers and covered persons by increasing the clarity and precision of the servicing rules and thereby reducing compliance costs. Other benefits and costs are considered below.

1. Successors in Interest

The final rule includes new requirements for mortgage servicers with respect to successors in interest. For purposes of these provisions, successors in interest generally include individuals who receive an ownership interest in a property securing a mortgage loan in certain types of transfers that are protected by the Garn-St Germain Act, including, for example, certain transfers resulting from the death of the borrower, transfers to the borrower's spouse or children, or transfers resulting from divorce. As described in more detail below, these provisions relate to how mortgage servicers confirm a successor in interest's identity and ownership interest in the property and apply the Mortgage Servicing Rules to confirmed successors in interest.

Section 1024.36(i) generally requires a servicer to respond to a written request that indicates that the person making the request may be a successor in interest by providing that person with a description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property. Section 1024.38(b)(1)(vi) requires servicers to maintain certain policies and procedures with respect to successors in interest, which are generally intended to facilitate the process of confirming a person's status as a successor in

interest and communicating with the person about the status.

Section 1024.30(d) provides that a confirmed successor in interest shall be considered a borrower for the purposes of the Mortgage Servicing Rules in Regulation X. Similarly, § 1026.2(a)(11) provides that a confirmed successor in interest is a consumer with respect to the Mortgage Servicing Rules in Regulation Z. Under the final rule, the Mortgage Servicing Rules apply with respect to a confirmed successor in interest regardless of whether that person has assumed the mortgage loan obligation (*i.e.*, legal liability for the mortgage debt) under State law.

Potential benefits and costs to consumers. As described in more detail below, the final rule will benefit successors in interest by permitting them to protect and manage their interest in the property, and to make key decisions about that property interest, without unnecessary delays and associated costs.[413]

The Bureau understands, based on pre-proposal discussions with certain large servicers, that only a small number of properties for which they service mortgage loans are transferred to successors in interest in any given year.[414] The Bureau does not have representative data on current servicer policies toward such successors in interest. Because the Garn-St Germain Act prevents foreclosure solely on the basis that a home was transferred to a successor in interest, the

[413] The Dodd-Frank Act's broad definition of consumer includes successors in interest since it means an individual or an agent, trustee, or representative acting on behalf of an individual. 12 U.S.C. 5481(4).

[414] One large servicer indicated that in recent years the number of successors in interest applying to assume a mortgage loan each year represented less than 0.03 percent of the total loans it services. However, this number does not include successors in interest that did not apply to assume the loan but nonetheless might have benefitted from the final rule (for example, because they would have been able to obtain more information about the loan before deciding whether to apply to assume the loan). Data from the American Housing Survey indicate that, in 2011, 239,000 homeowners (approximately 0.5 percent of those with a mortgage) had assumed the mortgage loan on their home; however, these data do not indicate whether the homeowner was a successor in interest as defined in the final rule at the time the loan was assumed. Office of Policy Dev. and Research, U.S. Dep't of Hous. & Urban Dev. & U.S. Census Bureau, U.S. Dep't of Commerce, *American Housing Survey for the United States: 2011*, at 79 (Sept. 2013), *available at* http://www.census.gov/content/dam/Census/programs-surveys/ahs/data/2011/h150-11.pdf.

Bureau expects that servicers currently are servicing loans for successors in interest, regardless of whether such successors in interest assume the mortgage loan. The Bureau does not have representative information on the standards servicers use in servicing loans for successors in interest; however, as discussed below, the Bureau believes, based on information it has received through the comment process and from consumers and other stakeholders prior to issuing the proposal, that in many cases successors in interest would benefit from additional protections.

The final rule will help potential successors in interest confirm their status as successors in interest by requiring generally that servicers respond to written requests from potential successors in interest with a description of the documents the servicer requires to confirm the person's identity as a successor in interest, reducing the time and effort required to establish their status in the eyes of the servicer. In their comments, consumer advocacy groups and government commenters confirmed what the Bureau had heard through prior reports from consumers, consumer advocacy groups, and other stakeholders: that successors in interest often have difficulty demonstrating their identity and ownership interest in the property to servicers' satisfaction and that some servicers currently require successors in interest to submit documents that are unreasonable in light of the particular situation of that successor in interest or in light of the laws of the relevant jurisdiction. The Bureau has heard repeated reports that some servicers have taken a long time to confirm the successor in interest's status, even after receipt of appropriate documentation. The Bureau has also heard reports that servicers may fail to communicate to the successor in interest whether the servicer has confirmed the successor in interest's status. Unnecessary delays and other difficulties can harm successors in interest because successors in interest who have not been confirmed by the servicer may not be able to obtain information about the mortgage, and in some instances servicers may be unwilling to

accept payment from the unconfirmed successor in interest. These problems may lead successors in interest to incur unnecessary costs related to the mortgage or deprive them of rights to which they would otherwise be entitled and may even lead to unnecessary foreclosures.

The final rule will also benefit successors in interest after they have been confirmed by the servicer by extending the protections of the Mortgage Servicing Rules to confirmed successors in interest, regardless of whether they assume the obligations of the mortgage loan under State law. The benefits of the Mortgage Servicing Rules to consumers generally are discussed in the 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, in which the Bureau noted that the need for these rules arises in part from the fact that, because borrowers generally do not choose their servicers, it is difficult for consumers to protect themselves from shoddy service or harmful practices.[415] This reasoning is particularly applicable to successors in interest because they may not be parties to the mortgage loan. In addition, successors in interest may find that they have a particular need for access to information about the mortgage loan secured by the property that they now own. Access to this information may help them avoid unwarranted or unnecessary costs and fees on the mortgage loan and prevent unnecessary foreclosure.

Furthermore, confirmed successors in interest obtaining an ownership interest in a home that is their principal residence may benefit in particular from Regulation X's rules relating to loss mitigation procedures, particularly when deciding whether to assume the obligations of the mortgage loan. Successors in interest may often experience a disruption in household income due to death or divorce and therefore may be more likely than other homeowners to need loss

[415] *See* 78 FR 10695, 10842-61 (Feb. 14, 2013); 78 FR 10901, 10978-94 (Feb. 14, 2013).

mitigation to avoid foreclosure. If the servicer does not evaluate the successor in interest promptly for loss mitigation options, or if the servicer requires the successor in interest to assume the mortgage obligation before it will evaluate the successor in interest for loss mitigation options, the successor in interest will be required to decide whether to assume the mortgage obligation without knowing what loss mitigation options will be available. As noted by some government and consumer advocacy group commenters, the final rule helps confirmed successors in interest to assess whether they will be able to afford to keep the home, permitting them to make a more fully informed decision about whether to accept the mortgage obligation.

Potential benefits and costs to covered persons. The costs of complying with the final rule's provisions related to successors in interest depend on servicers' current policies and procedures. Because the Garn-St Germain Act generally protects successors in interest from enforcement of due-on-sale provisions after transfer of homeownership to them, servicers are effectively required to continue servicing loans following their transfer to successors in interest. Thus, the Bureau believes that servicers likely already have some policies and procedures in place for confirming a successor in interest's identity and ownership interest in the property (and thereby determining whether the Garn-St Germain Act is applicable) and for servicing a loan secured by property that has been transferred to a successor in interest. The final rule establishes certain standards for the performance of these activities. To the extent to which some servicers are meeting these standards already, the costs for these servicers will be reduced. However, many servicers may need to significantly alter certain of their policies and procedures to comply with the final rule's successor in interest provisions.

The revisions to § 1024.38(b)(1)(vi) and new § 1024.36(i) may require servicers to develop and implement new policies and procedures for confirming a successor in interest's

interest in a property and communicating with potential successors in interest about documents the servicer requires to confirm the person's status. Under current § 1024.38(b)(1)(vi), servicers must maintain policies and procedures designed to identify and facilitate communication promptly with the successor in interest of a deceased borrower. As discussed above, the Bureau believes that, because the Garn-St Germain Act generally protects successors in interest from enforcement of due-on-sale provisions, servicers likely already have some policies and procedures in place for confirming the identity and ownership interest in the property of a successor in interest following most transfers covered by the final rule. However, the Bureau does not have data on the extent to which servicers' current policies and procedures may comply with the final rule's successor in interest provisions or the extent of the changes that will be required to bring policies and procedures into compliance with these provisions. In addition, servicers may not currently have policies in place for establishing a successor in interest's status when the transferor of the property retains an ownership interest following the transfer. Such transfers may not change servicers' servicing approach at all under current practice, whereas under the final rule servicers will be required to treat confirmed successors in interest as borrowers for purposes of the servicing rules.

Some industry commenters pointed out that legal determinations of successorship are often complex and may involve competing claims or borrower confusion about their legal status. The Bureau acknowledges that such determinations may be difficult, particularly when there is a dispute regarding title to the property, and that laws relevant to successorship vary across jurisdictions. However, servicers must already make such determinations to assess whether the Garn-St Germain Act applies and, more generally, because, in order to protect the investor's security interest in the property, servicers may need to know who owns the property securing the

loan they are servicing. Thus, while servicers will bear costs of establishing and carrying out procedures to establish a successor in interest's status under the final rule, the Bureau expects that in most cases servicers will be revising or formalizing existing processes for establishing ownership of the property following a transfer.

In addition, some industry commenters said that the proposed rule's provisions could increase the risk of fraud losses. One commenter noted that the Bureau's discussion of benefits and costs in the preamble to the proposed rule did not discuss the possibility of increased servicer fraud losses. However, the Bureau does not expect that the final rule will lead to a significant increase in fraud losses to servicers. Servicers can comply with the final rule while taking steps designed to prevent fraudulent claims prior to confirming a successor in interest's status.[416] Furthermore, because fraudulently establishing oneself as a confirmed successor in the eyes of the servicer would not affect title to the property, it is not clear what direct benefit this would offer to a fraudster or what direct fraud losses it would cause for the servicer.

Sections 1024.30(d) and 1026.2(a)(11), which extend the protections of the Mortgage Servicing Rules to confirmed successors in interest, generally require servicers to continue to apply existing policies and procedures to a set of loans that were subject to the Mortgage Servicing Rules prior to an ownership interest in the property being transferred to the successor in interest. As discussed above, the Bureau expects that such loans make up a small fraction of the total loans serviced by any particular servicer. For these reasons, the Bureau expects that the cost to servicers of complying with most existing Mortgage Servicing Rules with respect to

[416] For example, comment 38(b)(1)(vi)-2 to Regulation X indicates that the documents that a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property may include documents the servicer reasonably believes are necessary to prevent fraud or other criminal activity (such as if a servicer has reason to believe that the documents presented are forged).

confirmed successors in interest generally will be small.

Servicers may need to develop new policies and procedures to address certain circumstances specific to successors in interest. For example, servicers will need to decide whether to send the notice and acknowledgment form permitted by § 1024.32(c)(1) through (3) before sending Mortgage Servicing Rule notices to a confirmed successor or may need to develop new policies and procedures for cases in which, following the transfer, the transferor retains an interest in the property or there are multiple borrowers. Servicers currently must address such situations in some manner, but given the final rule's requirement to comply with the Mortgage Servicing Rules with respect to successors in interest, servicers will likely need to reconsider policies and procedures to ensure they are in compliance.

The Bureau acknowledges that, due to the unique circumstances of a confirmed successor in interest who has recently obtained an interest in the property, there may be additional costs associated with complying with the Mortgage Servicing Rules with respect to confirmed successors in interest. For example, confirmed successors in interest may have experienced a disruption in household income due to death or divorce and therefore may be more likely to seek loss mitigation to avoid foreclosure, possibly delaying the foreclosure process. Confirmed successors in interest may also be more likely to seek information regarding the loan that is secured by the property in which they now hold an interest. Compensation structures in servicing, which tend to make mortgage servicing a high-volume, low-margin business, may mean that servicers are not compensated for the time required to address the circumstances of some successors in interest even when doing so might minimize the aggregate costs to servicers

and investors.[417] Nonetheless, because the Bureau believes that the number of successors in interest serviced at any given time is small and that many servicers are already performing servicing tasks with respect to successors in interest, the Bureau expects that servicers would not incur significant additional costs as a result of the final rule's successor in interest provisions.

One industry commenter noted that, in discussing the costs and benefits of the proposed successor in interest provisions in the preamble to the proposed rule, the Bureau did not discuss the costs to servicers of becoming equipped to originate mortgage loans. However, the final rule does not require servicers to originate mortgage loans.

2. Definition of "Delinquency"

The final rule adds a general definition of delinquency in § 1024.31 that applies to all sections of subpart C of Regulation X, replacing the existing definition of delinquency for purposes of §§ 1024.39 and 1024.40(a). Delinquency is defined as a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent, and 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. Comment 31 (Delinquency)-2 clarifies that, 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. The Bureau understands from its pre-proposal outreach and from commenters that the majority of servicers credit payments made to a delinquent account to the oldest outstanding periodic payment. Some servicers that use this method have expressed concern about how to calculate the length of a

[417] *See* 78 FR 10695, 10843-44 (Feb. 14, 2013).

borrower's delinquency without increased certainty from the Bureau.[418]

The Bureau believes that the final rule's definition will clarify the application of the servicing rules without imposing significant new burdens on servicers. The Bureau recognizes that, in principle, the definition could affect the circumstances under which a servicer may initiate foreclosure proceedings, because the definition of "delinquency" affects the application of § 1024.41(f)(1)'s prohibition on initiating foreclosure proceedings unless "a borrower's mortgage loan obligation is more than 120 days delinquent." In particular, Comment 31 (Delinquency)-2 implies that a servicer that otherwise applies payments to the oldest outstanding periodic payment may not initiate foreclosure proceedings unless the borrower has missed the equivalent of at least four monthly payments. Absent this clarification, § 1024.41(f)(1) could be interpreted to permit such a servicer to commence foreclosure even if the borrower has missed only one payment, so long as the payment was missed more than 120 days ago and the borrower has not become current since. However, information gathered in pre-proposal industry outreach indicates that servicers generally would not treat borrowers who are behind by three or fewer payments as seriously delinquent. More specifically, servicers contacted by the Bureau during pre-proposal outreach, when asked about policies for referring a loan for foreclosure, uniformly told the Bureau that they generally would not initiate foreclosure in cases where a borrower is making regular payments, even if such a borrower has a long-standing delinquency of up to three months' payments. In addition, Fannie Mae and Freddie Mac guidelines generally prevent servicers from initiating foreclosure if a loan is delinquent by fewer than four monthly payments.

[418] See Am. Bankers Ass'n. Letter to Bureau of Consumer Fin. Prot. (Oct. 24, 2014), *available at* http://www.aba.com/Advocacy/commentletters/Pages/default.aspx#2014.

Therefore, the Bureau expects that the final rule's definition will not impose meaningful new constraints on servicers.

3. Early Intervention Written Notices

The final rule revises the scope of the exemptions from the early intervention requirements in § 1024.39(c) and (d) for two groups of borrowers: those who are debtors in bankruptcy and those who have exercised their cease communication rights under the FDCPA regarding their mortgage loans when a servicer is subject to the FDCPA with respect to those loans. Servicers are currently exempt from each of § 1024.39's early intervention requirements with respect to these two groups of borrowers. Under the final rule, servicers remain exempt from the live contact requirement of § 1024.39(a) with respect to these borrowers. Servicers also remain exempt from the written notice requirement with respect to these borrowers if no loss mitigation option is available and if a borrower invokes the FDCPA's cease communication protections while any borrower on the mortgage loan is a debtor in bankruptcy. However, if these conditions are not met, the final rule requires that a servicer provide these two groups of borrowers with a modified version of the written early intervention notice that is generally required by § 1024.39(b). Notices sent to such borrowers may not include a request for payment, and notices sent to borrowers who have exercised their cease communication rights under the FDCPA must include certain other modifications and may not be provided more than once during any 180-day period.

Potential benefits and costs to consumers. As discussed in more detail below, § 1024.39(c) and (d) of the final rule may benefit borrowers who are in bankruptcy or who have exercised their cease communication rights under the FDCPA by providing them with information about loss mitigation options that could enable them to remain in their homes or

avoid other costs associated with default on their mortgages.

The Bureau recognizes that many borrowers affected by this provision will have already received early intervention communications prior to filing for bankruptcy or invoking the FDCPA's cease communication protections. Most homeowners who file for bankruptcy are delinquent on their mortgage payments prior to filing for bankruptcy, in which case their servicers frequently will have been required to send early intervention communications prior to the filing.[419] However, many borrowers filing for bankruptcy are not delinquent on their mortgages at the time of filing, and so, under the IFR, do not receive required communications about loss mitigation options if they become delinquent while in bankruptcy. Even borrowers who do receive an early intervention written notice prior to their bankruptcy filing may benefit from information about available loss mitigation options after filing for bankruptcy, given that the borrower's servicer may have changed or new loss mitigation options may have otherwise become available since the borrower initially became delinquent. Information regarding loss mitigation may have unique value for borrowers in bankruptcy as they make decisions about how best to eliminate or reorganize their debts.

Borrowers have FDCPA protections only with respect to debt collectors and a servicer generally is considered a debt collector for purposes of the FDCPA only if the servicer acquires servicing rights to a mortgage loan after the mortgage loan is in default. Therefore, at the time a borrower first becomes delinquent on a mortgage loan, the servicer is not covered by the FDCPA

[419] One study found that, among homeowners that file for bankruptcy, more than 60 percent of homeowners with prime mortgages and more than 75 percent of homeowners with subprime mortgages were delinquent on their mortgages prior to filing for bankruptcy. Wenli Li & Michelle J. White, *Mortgage Default, Foreclosure, and Bankruptcy* (Nat'l Bureau of Economic Research, Working Paper No. 15472, Nov. 2009), *available at* http://www.nber.org/papers/w15472.

with respect to that mortgage loan, and is thus generally obligated to provide written early intervention communications no later than the 45th day of the borrower's delinquency even if that borrower provides the servicer with a cease communication notification. When servicing of a borrower's loan is subsequently transferred while the loan is in default, the borrower has FDCPA protections with respect to the transferee servicer and may then properly invoke the FDCPA's cease communication protection. When the initial early intervention communications came from a different servicer that may have offered different loss mitigation options, such borrowers may benefit from written information about loss mitigation options available from the new servicer.

The final rule also may impose costs on some borrowers in both groups who would prefer not to receive any servicer communications regarding their mortgage loan. Both the Bankruptcy Code's automatic stay and the FDCPA's cease communication provision are intended to protect borrowers from being harassed by creditors while the borrowers are attempting to work through difficult financial circumstances. By requiring servicers to send early intervention written notices to such borrowers, the final rule may cause some borrowers to receive unwanted communications. However, the Bureau notes that final § 1024.39(c) and (d) limit the content and frequency of such communications so as to reduce any perceived harassment. Specifically, the modified written notice may not contain a request for payment. Furthermore, the written notice is not required to be provided more than once to borrowers in bankruptcy during a single bankruptcy case and may not be provided more than once during any 180-day period to borrowers who have invoked their FDCPA cease communication rights.

Potential benefits and costs to covered persons. The requirement to send notices to borrowers who are in bankruptcy or who have provided a cease communication notification

under the FDCPA will result in certain compliance costs for non-exempt servicers. These servicers will incur one-time costs from changing their systems to provide early intervention notices to these groups of borrowers and will incur ongoing costs from distributing these notices to an additional population. The Bureau believes that most, if not all, servicers are likely to service at least some mortgages for homeowners in bankruptcy. Fewer servicers are likely to service mortgage loans for borrowers who have FDCPA rights with respect to the mortgage loan, because these rights are triggered only if the servicer acquired the servicing rights at a time when the mortgage loan was already in default. Servicers that do not have a practice of acquiring servicing rights from others, or a practice of acquiring the servicing rights to loans that are in default, are therefore not subject to the FDCPA and are not affected by the final rule.

Servicers will bear one-time costs to develop early intervention notices that comply with the modified requirements for borrowers in bankruptcy or who have exercised FDCPA cease communication rights. The Bureau expects that these one-time costs will be relatively small given the limited nature of the modifications and the fact that the final rule includes a model clause for the specific disclosures required for borrowers who have exercised their FDCPA cease communication rights. In addition, servicers will need to ensure that their procedures for sending written early intervention notices are designed to identify borrowers who must receive modified notices under the final rule. However, servicers already must identify borrowers in bankruptcy and borrowers that have exercised FDCPA cease communication rights in order to comply with bankruptcy law and the FDCPA. Therefore, the Bureau expects that servicers will need to make only minor changes to their procedures to begin sending written early intervention notices to such borrowers.

Servicers will also incur ongoing costs from the requirement to distribute notices to these

additional groups of borrowers. However, the Bureau believes that the number of additional written early intervention notices that are required by the final rule is relatively small. With respect to borrowers in bankruptcy, FHFA data indicate that, for homeowners with GSE loans, between 0.3 percent and 0.4 percent of borrowers were in bankruptcy during 2015.[420] Based on information from industry and other Federal agencies, the Bureau believes that the percentage of homeowners with non-GSE loans in bankruptcy may be higher but that the overall percentage of homeowners with mortgage loans in bankruptcy is less than 1 percent. The Bureau expects that the share of borrowers who have exercised the FDCPA cease communication right is likewise relatively small, since the right is available only to borrowers for whom the servicer acquired servicing rights after the loan is in default.

4. Loss Mitigation Procedures

Notice of Complete Loss Mitigation Application

Section 1024.41(c)(3) requires a servicer to provide a borrower a written notice within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving a borrower's complete loss mitigation application, subject to certain limitations discussed below. The notice informs the borrower that the application is complete; the date the servicer received the complete application; and certain other information regarding the borrower's rights under the servicing rules. A notice is not required if the application was not complete or facially complete more than 37 days before a scheduled foreclosure sale; the servicer has already notified the borrower under § 1024.41(b)(2)(i)(B) that the application is complete and the servicer has not subsequently

[420] Fed. Housing Fin. Agency, *Foreclosure Prevention Report*, at 6 (January 2016), *available at* http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FPR_January2016.pdf.

requested additional documents or information from the borrower to complete the application; or the servicer has already provided a notice approving or denying the application.

Potential benefits and costs to consumers. Section 1024.41(c)(3) creates a new requirement to notify a borrower that a loss mitigation application is complete in those cases where the application was not complete when the servicer provided the notice acknowledging receipt of an application under § 1024.41(b)(2)(i)(B). Although this is a new requirement, the Bureau understands, based on pre-proposal outreach and comments it received, that many servicers nonetheless already notify borrowers in writing once their applications are complete. However, such notices may not include all the information borrowers need to determine when the application was considered complete for purposes of determining their protections under Regulation X's mortgage servicing rules.

The new required notice is intended to benefit borrowers who apply for loss mitigation by providing them with more information about their application status and foreclosure protections, thereby allowing them to better protect their interests. Borrowers who have not yet received a notice will be able to infer that their applications are not yet complete and, if necessary, to follow up with the servicer to determine what remains missing. Once borrowers have received the notice, they will know that the servicer is prohibited from completing the foreclosure process until the application has been evaluated and will be able to plan based on the expectation that a decision will be reached within 30 days (unless the servicer determines that more information is needed). The notice will also provide the borrower, the servicer's compliance function, regulators, and courts with a written record that can help them evaluate a servicer's compliance with § 1024.41(c)(1)'s 30-day evaluation requirement and other requirements that depend on the date the servicer received a complete application.

As noted above, several servicers informed the Bureau during pre-proposal outreach efforts or in comments that they already provide a notice informing the borrower that an application is complete. Some commenters also said that they are already in close contact with borrowers about the status of their loss mitigation applications. To the extent that servicers are already providing a notice that includes some of the information required by the notice or otherwise communicating such information to borrowers, the incremental benefit to borrowers of the provision may be reduced. Another industry commenter expressed concern that the costs of providing these notices could limit servicers' ability to make other changes that could benefit borrowers or could increase the cost of servicing non-performing loans, thereby reducing access to credit. The Bureau recognizes that additional costs to servicers can create negative consequences for consumers but agrees with other commenters that the notices will have significant benefits for many borrowers.

Potential benefits and costs to covered persons. Servicers will incur costs associated with changing their policies and procedures and updating their systems to ensure that they are sending notices in compliance with the final rule and, in addition, will incur distribution costs associated with sending notices to borrowers. However, the Bureau expects that these costs may be less than those associated with some other disclosure requirements, for two reasons. First, to comply with § 1024.41, servicers must already determine the time at which an application is complete and whether foreclosure protections apply under § 1024.41(f)(2) and (g); thus, servicers will not be required to make any new determinations in order to comply with the requirement. Second, based on pre-proposal industry outreach and comments on the proposal, the Bureau understands that many servicers are already sending a written notification informing applicants that their applications are complete, so the costs of the new requirement will be

limited for these servicers.

In addition, the Bureau notes that certain provisions of the notice requirement are intended to prevent servicers from incurring unnecessary costs in connection with the requirement. The notice is not required under certain circumstances in which a borrower would not benefit from the notice, including when the servicer is able to notify the borrower of the outcome of its evaluation before the notice is sent.

Information Outside of the Borrower's Control

The final rule amends § 1024.41(c)(1) and comment 41(b)(1)-4 and adds § 1024.41(c)(4) to address a servicer's obligations with respect to information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer the borrower. A servicer must exercise reasonable diligence in obtaining such information. The final rule also prohibits a servicer from denying a borrower's complete application due to a lack of information not in the borrower's control except under certain circumstances; requires that a servicer inform a borrower in writing if the servicer is unable to complete its evaluation within 30 days of receiving a complete application because it lacks information from a party other than the borrower or the servicer; requires that a servicer promptly provide the borrower written notice stating the servicer's determination upon receipt of missing information from a party other than the borrower or the servicer; and requires the servicer to provide the determination notice under § 1024.41(c)(1) promptly upon receipt of the required third-party information.

Potential benefits and costs to consumers. Under the existing rule, if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, the servicer must, within 30 days of receipt, determine what loss mitigation options, if any, it will offer a borrower, regardless of whether it has received required information not in the borrower's

control. The new provision will benefit borrowers applying for loss mitigation in situations in which the servicer faces delays in receiving necessary information from a party other than the servicer or the borrower, such as homeowner association payoff information or approval of the loan owner, investor, or mortgage insurance company. It may also indirectly reduce the likelihood that evaluations are delayed by encouraging investors and servicers to consider more carefully what third-party documents are required as part of a loss mitigation application. When evaluations are nonetheless delayed beyond 30 days, the final rule will reduce the impact on the borrower of such delays by requiring servicers to exercise reasonable diligence in obtaining the information, limiting their ability to deny the borrower's application solely on the basis of missing information outside the borrower's control, and ensuring that the borrower is aware of the application's status.

The Bureau understands from pre-proposal industry outreach that servicers currently follow different practices in the event they have not received required information that is outside the borrower's control 30 days after receipt of a complete loss mitigation application. Some servicers informed the Bureau that they exceed the 30-day evaluation timeframe in § 1024.41(c)(1) and wait to receive the information before making any decision on the application. One servicer informed the Bureau that it sends a denial notice to borrowers but also informs them that the servicer will reevaluate the application upon receipt of the third-party information. As a result, borrowers may be receiving conflicting messages from servicers about the status of their applications, and, in some cases, borrowers' applications for loss mitigation may be denied because the servicer has experienced a delay in receiving required information that is not in the borrower's control. The final rule requires servicers to give borrowers clearer information about their application status.

Potential benefits and costs to covered persons. The final rule will benefit servicers by clarifying servicer responsibilities when non-borrower information has not been received within 30 days of receiving a complete application from the borrower and preventing servicers from risking non-compliance with the evaluation requirement in order to provide a benefit to borrowers seeking loss mitigation options. On the other hand, the changes require servicers to review and perhaps change their policies applicable to gathering information from parties other than the borrower and informing borrowers of their loss mitigation decisions, which will impose one-time costs of revising policies and systems. In addition, servicers will bear the one-time costs of developing the new required notice and the ongoing cost of providing consumers with the new notice required by the final rule. One commenter estimated that, in addition to internal legal, business process, and technology costs, the vendor costs associated with programming the new notice would be $2,000.

The final rule provision also may impose costs on servicers because the requirement not to make a determination unless the servicer has obtained information outside of the borrower's control or has been unable to obtain such documents or information for a significant period of time while exercising reasonable diligence may delay the foreclosure process for a servicer that would otherwise deny an application without having received such information. The Bureau understands from pre-proposal industry outreach that, in cases where investor approval has not been delegated to the servicer, the missing non-borrower information is frequently investor approval of the application. Because investors bear costs when foreclosure proceedings are delayed, investors have incentives to weigh the cost of expediting their approval process against the potential delay in a foreclosure proceeding.

Clarification of the 2013 RESPA Servicing Final Rule's Dual Tracking Protections

The final rule includes revised commentary to § 1024.41(g) that clarifies servicers' obligations with respect to § 1024.41(g)'s prohibition against moving for foreclosure judgment or order of sale, or conducting a sale, during evaluation of a complete loss mitigation application received more than 37 days before a foreclosure sale. Revised comment 41(g)-3 explains that the prohibitions against moving for judgment or order of sale or conducting a sale may require a servicer to act through foreclosure counsel; that upon receipt of a complete application, the servicer must instruct counsel promptly to take certain steps to avoid a violation of § 1024.41(g); and that the servicer is not relieved of its obligations because the foreclosure counsel's actions or inactions caused a violation. Similarly, comment 38(b)(3)(iii)-1 clarifies that policies and procedures required under § 1024.38(b)(3)(iii) to facilitate sharing of information with service provider personnel responsible for handling foreclosure proceedings must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application. New comment 41(g)-5 explains that § 1024.41(g) prohibits a servicer from conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings.

Section 1024.41(g) is intended to protect borrowers by preventing a foreclosure sale from going forward while review of a complete loss mitigation application is pending. The revised commentary clarifies servicers' obligations to protect borrowers from foreclosure when a complete loss mitigation application is pending, even if it may be late in the foreclosure process. The commentary may reduce servicer compliance costs by adding clarity regarding the application of § 1024.41(g) when a foreclosure sale has been scheduled. At the same time, servicers will bear costs in confirming that their policies and procedures for foreclosures,

including communication with counsel, meet the requirements of § 1024.41(g) in light of the revised commentary. However, the Bureau does not believe that the revisions will impose significant burdens on servicers. Section 1024.41(g) and its existing commentary already require servicers to prevent a scheduled foreclosure sale from going forward when a timely loss mitigation application has been received. The commentary is intended to aid servicers in complying with § 1024.41(g) by elaborating upon and clarifying a servicer's obligations under the existing requirement, but does not impose new obligations on servicers.

The Bureau recognizes that there may be situations where servicers, despite their attempts to delay foreclosure sales, have to dismiss a foreclosure proceeding to avoid a violation of § 1024.41(g), and then may have to re-file where the borrower ultimately does not qualify for, or perform on, a loss mitigation option. The costs of dismissal may be significant in an individual case. However, the Bureau does not believe that the final commentary will impose significant overall costs on servicers because § 1024.41(g) already prohibits the conduct of a foreclosure sale when a timely loss mitigation application is pending. Moreover, the Bureau expects that servicers generally will be able to avoid the costs of dismissal so long as they comply with existing requirements.

Review of Multiple Loss Mitigation Applications

Currently, § 1024.41(i) requires a servicer to comply with the requirements of § 1024.41 for only a single complete loss mitigation application for a borrower's mortgage loan account. The final rule revises § 1024.41(i) to require servicers to comply with the requirements of § 1024.41 each time a borrower submits a loss mitigation application, unless the servicer has previously complied with § 1024.41 for a borrower's complete loss mitigation application and the borrower has been delinquent at all times since the borrower submitted the prior application.

Potential benefits and costs to consumers. Section 1024.41's loss mitigation procedures are intended to protect borrowers from harm in connection with the process of evaluating a borrower for loss mitigation options and proceeding to foreclosure. As discussed in the 2013 RESPA Servicing Final Rule, benefits to these borrowers include a period of 120 days in which to submit a loss mitigation application before foreclosure can commence, restrictions on dual tracking, an appeals process for denials of loss mitigation applications, and consideration for all available loss mitigation alternatives.[421] The final rule makes these benefits available to borrowers who complete a loss mitigation application, become (or remain) current after they submit that application, and subsequently encounter difficulties making payments and apply for loss mitigation again. The provision thereby benefits borrowers in two general circumstances: First, borrowers who have previously applied for and received a loan modification, and then subsequently have difficulty making payments on the modified loan (perhaps due to an unrelated hardship months or years after the modification), will be able to obtain the protections of § 1024.41's procedures for a subsequent loss mitigation application. Second, borrowers who previously applied for loss mitigation but were not approved for any option that they chose to accept will be able to apply for loss mitigation and benefit from § 1024.41's procedures if they become (or remain) current on their loan following the prior complete application.

A significant percentage of the borrowers who receive loan modifications subsequently become delinquent. The OCC Mortgage Metrics Report indicates that, for modifications completed since the second quarter of 2014, 13 to 16 percent of modified loans were 60 or more days delinquent six months after modification, and 20 percent were 60 or more days delinquent

[421] See 78 FR 10695, 10857-60 (Feb. 14, 2013).

after one year.[422] For the HAMP program, as of January 2016, 33 percent of the permanent modifications that became effective between April 2009 and January 2016 had defaulted by the end of this period.[423] These numbers suggest that a significant fraction of borrowers receiving loan modifications may benefit from the final rule's provision because they will have the protection of § 1024.41's loss mitigation procedures in the wake of these subsequent delinquencies. Many such borrowers may have received a loan modification that was affordable for them but then suffered a subsequent hardship. On the other hand, the large number of borrowers who become delinquent as soon as six months after completing a loan modification suggests that, in many cases, the subsequent delinquency may reflect, not a new adverse event, but the failure of the modification to achieve an affordable monthly payment for the borrower in light of the circumstances that preceded the modification. To the extent that a borrower's circumstances have not changed significantly, a subsequent loss mitigation application may not yield a new option for which the borrower is eligible and that the borrower finds more beneficial.

The Bureau does not have data indicating the number of borrowers in the second group—that is, those who apply for loss mitigation, are not approved for any option that they choose to accept, and subsequently become or remain current on their mortgage. The Bureau notes that the final rule may provide additional flexibility to borrowers who are current on their mortgage but might benefit from a loss mitigation option, because such borrowers could apply and determine

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[422] Office of the Comptroller of the Currency, *OCC Mortgage Metrics Report: Disclosure of Nat'l Bank and Fed. Savings Ass'n Mortgage Loan Data*, at 30 (Third Quarter 2015), *available at* http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics/mortgage-metrics-q3-2015.pdf.

[423] *See* Fed. Housing Fin. Agency, *Foreclosure Prevention Report*, at 3 (Jan. 2016), *available at* http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FPR_January2016.pdf (reporting that, of 650,511 permanent modifications that became effective between April 2009 and January 2016, 211,918 had defaulted by the end of the period).

whether they are eligible for loss mitigation without losing the right to § 1024.41's loss mitigation procedures in the future. For example, homeowners who are able to make their mortgage payments but would like to determine whether a short sale is possible will be able to apply for a short sale without losing the protection of § 1024.41's loss mitigation procedures in connection with a subsequent application for loss mitigation.

The benefits to borrowers of the final rule's revision to § 1024.41(i) depend on whether and under what circumstances investors make loss mitigation options available to borrowers who have completed an earlier loss mitigation application and perhaps received a loan modification. Section 1024.41 does not require a servicer to make any loss mitigation options available to a borrower, but only governs a servicer's evaluation of a borrower for any loss mitigation option that is available. Many borrowers may not realize benefits from the change to § 1024.41(i), even though it may entitle them to the protections in § 1024.41 with regard to a subsequent loss mitigation application, because they are not eligible to receive a second loan modification. For example, Fannie Mae and Freddie Mac's servicing guidelines generally do not permit a subsequent loan modification when a borrower has become 60 days delinquent within the 12 months after a borrower receives a prior loan modification.[424] The Bureau notes, however, that, for some borrowers affected by the final rule, any loss mitigation option provided as a result of the revision may be the first loss mitigation option offered to that borrower, even if it is not the first evaluation of a complete application.

Potential benefits and costs to covered persons. The final rule will impose costs on

[424] *See* Fannie Mae, *Fannie Mae Single Family 2012 Servicing Guide*, at § 602.05 Redefault (Mar. 14, 2012), *available at* https://www.fanniemae.com/content/guide/svc031412.pdf; Freddie Mac, *Single-Family Seller/Servicer Guide*, at § 9206.6: Ineligibility for Freddie Mac Standard Modification, *available a*t http://www.allregs.com/tpl/Viewform.aspx?formid=00051757&formtype=agency.

servicers by requiring them to evaluate certain borrowers' subsequent loss mitigation applications in accordance with § 1024.41's requirements. Costs of complying with § 1024.41's requirements include those arising from the requirements to send specific notices, comply with the rule's timelines for evaluation of loss mitigation applications, evaluate the borrower for all loss mitigation options available to the borrower, and, under certain circumstances, to delay initiation of foreclosure proceedings. The extent to which these requirements impose additional costs on servicers depends on their current policies with respect to subsequent loss mitigation applications. The Bureau learned through its pre-proposal outreach efforts that many servicers already reevaluate borrowers who reapply for loss mitigation using the procedures set forth in § 1024.41. To the extent that servicer practices already meet the requirements of the rule, the burden on servicers will be reduced.

Some industry commenters expressed concern that the requirement to review multiple loss mitigation applications would increase the burden to servicers of complying with § 1024.41, and in particular that borrowers might take advantage of the ability to submit multiple loss mitigation applications to "game the system" and delay a possible foreclosure. The Bureau notes that any costs imposed by the rule are mitigated by the fact that servicers can determine whether any loss mitigation options are available to borrowers and set the eligibility criteria for any subsequent loss mitigation application. In addition, the requirement that the borrower bring the loan current before § 1024.41's loss mitigation procedures apply to a subsequent application mitigates the costs of the final rule's provision for servicers by limiting the risk that a borrower will use multiple loss mitigation applications as a way to postpone foreclosure.

Loss Mitigation Timelines and Servicing Transfers

Section 1024.41(k) of the final rule addresses the requirements applicable to loss

mitigation applications pending at the time of a servicing transfer. Section 1024.41(k) clarifies that, subject to certain exceptions, a transferee servicer must comply with § 1024.41's requirements within the same timeframes that were applicable to the transferor servicer. The first exception applies to the written notification required by § 1024.41(b)(2)(i)(B), which servicers generally must provide within five days of a borrower's initial application. The final rule provides that, if a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the notice required by § 1024.41(b)(2)(i)(B) has not expired as of the transfer date 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. The second exception applies to the evaluation of loss mitigation applications, which servicers generally must complete within thirty days after receipt of a complete application. The final rule provides that, 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 complete the evaluation within 30 days of the transfer date. The final rule also provides that, if a borrower's appeal under § 1024.41(h) is pending as of the transfer date or is timely filed after the transfer date, a transferee servicer must determine the appeal within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later, if it is able to determine whether it should offer the borrower the loan modification options subject to the appeal; a transferee servicer that is unable to determine an appeal must treat the appeal as a complete loss mitigation application and evaluate the borrower for all loss mitigation options available to the borrower from the transferee servicer.

Potential benefits and costs to consumers. Section 1024.41(k) is intended to benefit borrowers who have loss mitigation applications in process at the time their mortgage loans are

transferred to another servicer by ensuring that the transfer does not unnecessarily delay the completion or evaluation of their applications or limit their ability to obtain the protections of § 1024.41. Delays in the processing of loss mitigation applications can prolong a borrower's delinquency, during which time fees and other costs may accrue, making it more difficult for the borrower to recover from financial distress. For some borrowers, delays in completing loss mitigation applications could prevent them from obtaining protections under § 1024.41, such as the prohibition on initiating foreclosure proceedings if a borrower has completed a loss mitigation application more than 37 days before a foreclosure sale.

The Bureau does not have representative data on how quickly servicers currently comply with the various loss mitigation requirements in the event of a servicing transfer but believes that timelines vary significantly across servicers. The Bureau understands that, while some servicers may already have practices that would comply with the final rule's timelines, others may not. To the extent that servicer practices already comply with § 1024.41(k), consumer benefits from the final rule will be lower.

Potential benefits and costs to covered persons. Section 1024.41(k) is intended to reduce the costs to servicers that engage in servicing transfers of complying with the loss mitigation rules by clarifying the application of loss mitigation timelines in the context of a servicing transfer. At the same time, while transferor and transferee servicers are currently required under § 1024.38 to have policies and procedures in place to ensure the timely transfer and receipt of accurate data, including through the devotion of appropriate personnel and resources, § 1024.41(k) will impose incremental costs on servicers to the extent that, under their current transfer procedures, their transfers do not comply with the final rule's timelines. Transferor and transferee servicers both may be required to devote more personnel and other resources in the

days or weeks before and after a transfer to ensure that the data is accurately transferred in a way that permits the transferee servicer to comply with the timelines with respect to all pending loss mitigation applications.

The final rule's exceptions, including extended timelines in connection with the acknowledgment notice confirming receipt of a loss mitigation application and the evaluation of loss mitigation applications and determination of appeals, are intended to mitigate the costs to servicers of complying with the final rule in circumstances in which the Bureau understands that complying with the timelines that are otherwise applicable would be especially difficult. The final rule generally provides transferee servicers with as much time to provide the acknowledgement notice, to evaluate loss mitigation applications, and to determine the outcome of appeals as servicers generally have when they receive a consumer's application, complete application, or appeal (as applicable) directly from the consumer.

Evaluation for Short-term Repayment Plans Based on Incomplete Applications

Section 1024.41(c)(2)(iii) of the final rule permits a servicer to offer short-term repayment plans based upon an evaluation of an incomplete loss mitigation application. This is an exception to the general rule under § 1024.41(c)(2)(i) that a servicer may not evaluate a borrower for loss mitigation options based on an incomplete application, and parallels an existing exception to this rule, which permits a servicer to offer a short-term payment forbearance program based upon an incomplete application. Borrowers who are offered a short-term repayment plan based on an incomplete application will not lose their protections under § 1024.41 with respect to a subsequent loss mitigation application.

As with the existing exception for short-term payment forbearance plans, § 1024.41(c)(2)(iii) of the final rule is intended to benefit borrowers and servicers by permitting

servicers to offer a short-term loss mitigation option to address a temporary hardship, while preserving borrowers' loss mitigation protections, in situations in which completing an application would be time-consuming or burdensome or would significantly delay a decision. The provision does not impose costs on borrowers because a borrower always has the option to reject a short-term repayment plan based on review of an incomplete loss mitigation application, provide a complete loss mitigation application, and be reviewed for all loss mitigation options available to the borrower (and receive other protections) under § 1024.41. Similarly, the provision does not impose costs on servicers because it does not impose any new obligations on servicers.

5. Periodic Statement Requirements Applicable to Consumers in Bankruptcy.

The final rule revises § 1026.41(e)(5) to limit the circumstances in which a servicer is exempt from the periodic statement requirements with respect to a consumer who is a debtor in bankruptcy and adds § 1026.41(f) to modify the content of periodic statements for certain consumers in bankruptcy. Currently, § 1026.41(e)(5) provides that a servicer is exempt from the requirement to provide periodic statements for a mortgage loan while the consumer is a debtor in bankruptcy. In general, § 1026.41(e)(5) of the final rule limits the exemption to consumers in bankruptcy who are surrendering the property or avoiding the lien securing the mortgage loan, to consumers in bankruptcy who have requested in writing that a servicer cease providing periodic statements or coupon books, and in certain other circumstances. Notwithstanding meeting the above conditions for an exemption, the final rule requires servicers to provide periodic statements or coupon books if the consumer reaffirms personal liability for the mortgage loan or requests statements in writing (unless a court has entered an order requiring otherwise) and to resume providing periodic statements when the consumer exits bankruptcy with respect to any

portion of the mortgage debt that is not discharged through bankruptcy.

Potential benefits and costs to consumers. The periodic statement requirements in § 1026.41 are intended to benefit consumers by providing accurate information about payments that consumers can use to monitor the servicer, assert errors if necessary, and track the accumulation of equity so that they can effectively determine how to allocate income and consider options for refinancing. As revised, § 1026.41(e)(5) is intended to make these benefits available to consumers in bankruptcy who own a home subject to a mortgage and intend to retain the home post-bankruptcy. The Bureau does not have representative data describing the number of consumers in the bankruptcy process that own a home and intend to retain it through the bankruptcy process. The FHFA reports that of the mortgage loans serviced for Fannie Mae and Freddie Mac, between 0.3 percent and 0.4 percent were in bankruptcy during 2015.[425] However, based on information the Bureau has received from servicers and other Federal agencies, the Bureau believes that the percentage of non-GSE loans in bankruptcy may be significantly higher.

There are at least two reasons to expect that consumers who are in bankruptcy and intend to retain the property are particularly likely to benefit from receiving periodic statements. First, consumers in bankruptcy have demonstrated difficulties in meeting their financial obligations and face unique challenges in rehabilitating their finances. Such consumers face complex decisions about how to restructure their financial lives and may derive particular benefit from information about the status of their mortgages that enables them to allocate income and make other decisions about their finances. Second, as discussed in the section-by-section analysis of

[425] Fed. Housing Fin. Agency, *Foreclosure Prevention Report*, at 6 (Jan. 2016), *available at* http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FPR_January2016.pdf.

§ 1026.41(e)(5), there is evidence that some servicers may be especially prone to error in applying payments of consumers in bankruptcy, particularly in the context of chapter 13 cases. This evidence indicates that it may be especially important for consumers in bankruptcy to be able to monitor how servicers apply their payments. Further, the Bureau understands based on consumer testing of proposed modifications to periodic statements and consumer complaint information that many consumers in bankruptcy want to receive periodic statements.

Potential benefits and costs to covered persons. Section 1026.41(e)(5) and (f) will impose costs on servicers by requiring them to modify systems to provide statements that show how payments are applied for consumers in bankruptcy, particularly those in chapter 13 bankruptcy. The Bureau understands from comments and from pre-proposal industry outreach that the principal systems some servicers currently use to process and apply mortgage payments are not designed to accommodate payments from consumers in chapter 13 bankruptcy and that many servicers account for payments from consumers in chapter 13 bankruptcy using a separate system or process. Servicer systems for producing periodic statements are generally not designed to produce statements for consumers in chapter 13 bankruptcy. While servicers generally must be capable of accounting for payments from consumers in chapter 13 bankruptcy, this accounting currently may not be done on a timeline that permits statements to be produced on a regular billing cycle. Several commenters noted that these system limitations mean complying with the rule will require costly system updates. While some larger servicers already have systems designed to provide similar disclosures in bankruptcy, the Bureau acknowledges that, for many servicers, this will involve significant one-time costs to develop new systems. In the final rule, the Bureau is not requiring a past payment breakdown that distinguishes between pre-petition and post-petition payments, which some commenters identified as particularly

burdensome. In addition, some servicers indicated that they expected vendors would modify software platforms used to generate periodic statements to accommodate requirements to send modified periodic statements to consumers in bankruptcy. While this will not eliminate all costs to servicers of establishing systems to provide periodic statements for consumers in bankruptcy, the Bureau expects that vendor adjustments to their systems will help mitigate the burden of the rule for many servicers.

Some commenters noted that, in order to send statements in compliance with the proposed rule, servicers would need to analyze multiple factors, such as which chapter of the Bankruptcy Code the consumer has filed under and whether the plan of reorganization provides that the consumer intends to retain the home. The Bureau understands, based on outreach to industry, that many servicers already track these aspects of each bankruptcy case. The Bureau does expect that there will be one-time costs to ensure that servicing systems capture this information in order to determine whether periodic statements are required and in what form.

Because the final rule requires sending periodic statements to an additional group of consumers, servicers will also incur additional vendor costs associated with distributing statements. With respect to servicers that provide consumers with coupon books, the final rule will require servicers to provide transaction activity and past payment application information to consumers upon a consumer's request, consistent with current § 1026.41(e)(3)(iii). The Bureau does not believe that providing this information will impose significant new costs on servicers that provide coupon books because the Bureau understands that the vast majority of servicers are already required to provide such information in response to a consumer's written information request pursuant to § 1024.36.

The final rule includes sample forms for periodic statements in bankruptcy. Sample

forms will lower costs to servicers by eliminating the need to develop compliant forms of periodic statements, and may also increase the overall usefulness to consumers of the periodic statements.

6. Periodic Statements Following Charge Off

The final rule adds a new exemption from the requirement to provide periodic statements under § 1026.41. The exemption applies to a mortgage loan that a servicer has charged off in accordance with loan-loss provisions if the servicer will not charge any additional fees or interest on the account, provided that the servicer must provide the consumer a periodic statement within 30 days of charge off or the most recent periodic statement. The periodic statement must clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records" and 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.

Potential benefits and costs to consumers. The periodic statement requirements in § 1026.41 are intended to benefit consumers by providing accurate information about payments that consumers can use to monitor the servicer, assert errors if necessary, and track the accumulation of equity. Where a consumer's loan has been charged off and the servicer will no longer charge any additional fees or interest on the account, these benefits are significantly

decreased. So long as the consumer is aware that no additional fees or interest will be charged, monthly statements will include no new information useful to the consumer. A periodic statement notifying the consumer of suspension of periodic statements and charge off, on the other hand, may provide consumers with important information about the ongoing status of the loan and the significance of its status. The required periodic statement will clarify that, although the mortgage loan has been charged off, the obligation remains in place. The periodic statement will also describe the implications of the remaining lien to the consumer.

Although periodic statements would not provide new information to consumers where accounts have been charged off and fees and interest no longer accrue, they may provide a benefit to some consumers as a reminder that the lien on the property remains in place. It is possible that, particularly years after charge off, a consumer (or successor in interest to the property securing the loan) may not realize that the obligation remains outstanding and the lien is still in place. A periodic statement that details the status could mitigate this issue but may not completely address it in all cases. This represents a potential cost of the exemption to some consumers.

Potential benefits and costs to covered persons. Because the provision does not impose any new requirements on servicers, it does not impose any new costs. The provision will benefit servicers by giving them the option to send a periodic statement explaining to the consumer the consequences of the charge off in lieu of continuing to send periodic statements for charged-off mortgage loans when they find it less costly to do so.

7. Small Servicer Exemption

The final rule amends certain criteria for determining whether a servicer qualifies for the small servicer exemption set forth under § 1026.41(e)(4). The final rule provides that

transactions serviced by the servicer for a seller financer that meet certain criteria are not considered in determining whether a servicer qualifies as a small servicer. Small servicers (generally, those that service, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee) are exempt from certain mortgage servicing requirements, including several of Regulation X's requirements, such as certain provisions related to force-placed insurance, general servicing policies and procedures, and communicating with borrowers about, and evaluation of applications for, loss mitigation options, and Regulation Z's requirement to provide periodic statements for residential mortgage loans. The final rule permits small servicers to maintain their small servicer status if they service transactions for a limited class of seller financers: those that provide seller financing for only one property in any 12-month period for the purchase of a property that they own, so long as they did not construct a residence on the property in the ordinary course of business and the financing meets certain restrictions.

The Bureau believes that the changes to § 1026.41(e)(4) will have little or no effect on consumers who are not parties to seller-financed transactions. The Bureau understands that the practice of servicing seller-financed transactions is not widespread and that depository institutions offering this service do not obtain significant revenue from the practice, but instead offer the service as an accommodation to depository customers that are seller financers. Thus, the Bureau expects that, in the absence of the final rule, small servicers would generally choose not to service seller-financed transactions in order to maintain their status as small servicers. Consequently, the Bureau does not expect that servicers' status as small servicers will ultimately be affected by the rule. Therefore, the final rule will not have any significant effect on the number of consumers whose servicer qualifies for the small servicer exemption.

Given the limited nature of servicing loans for seller financers, and given the Bureau's understanding that these services are offered by depository institutions to their customers when alternative service providers are generally not available, the Bureau believes that, if seller financers were unable to obtain servicing from the depository institution where they do their banking then, in many cases, they would be likely to instead service the loan themselves. Consumers who purchase homes from seller financers may benefit from the servicing of the loan by a small servicer rather than directly by the seller financer. Purchasers of seller-financed residential real estate may benefit from a financial institution receiving scheduled periodic payments and providing an independent accounting as a third party to the transaction. In addition, small servicers may be able to process payments and perform other servicing activities at a lower cost than seller financers, and this cost savings may be passed on to purchasers of seller-financed residential real estate.

The final rule will benefit certain servicers by allowing them to service some seller-financed transactions while still qualifying as small servicers. One commenter pointed out that, to ensure that servicing such transactions does not jeopardize their small servicer status, servicers would need to establish internal controls to track and monitor whether a seller financer provides financing for more than one property. The Bureau acknowledges that servicers could incur costs to verify that the seller-financed transactions they service meet the criteria of the final rule and that any such costs would mitigate the benefits from the final rule's changes to § 1026.41(e)(4).

F. Potential Specific Impacts of the Final Rule

Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, As Described in Section 1026

The Bureau believes that a large fraction of depository institutions and credit unions with

$10 billion or less in total assets that are engaged in servicing mortgage loans qualify as "small servicers" for purposes of the mortgage servicing rules because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. The Bureau estimates that 96 percent of insured depositories and credit unions with $10 billion or less in total assets service 5,000 mortgage loans or fewer.[426] The Bureau believes that servicers that service loans that they neither own nor originated tend to service more than 5,000 loans, given the returns to scale in servicing technology. The impact of the final rule on small servicers, which are exempt from many of the provisions of the servicing rules that are affected by the final rule, is discussed below in connection with the Regulatory Flexibility Act.

With respect to servicers that are not small servicers as defined in § 1026.41(e)(4), the Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the final rule on depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans.

Impact of the Final Rule's Provisions on Consumer Access to Credit and on Consumers in Rural Areas

The Bureau believes that the additional costs to servicers from the final rule are not likely to be extensive enough to have a significant impact on consumer access to credit. The exemption of small servicers from many provisions of the final rule will help maintain consumer access to credit through these providers.

Consumers in rural areas may experience benefits from the final rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural

[426] Based on an analysis of December 2015 Call Report data as compiled by SNL Financial.

areas may be more likely to obtain mortgages from small local banks and credit unions that either service the loans in portfolio or sell the loans and retain the servicing rights. The business model of these servicers may mean that they already provide most of the benefits to consumers that the final rule is designed to provide. It is also possible, however, that a lack of alternative lenders in certain rural areas may reduce competition and therefore the level of customer service, making it possible for the final rule to provide rural consumers with greater benefits than consumers elsewhere. More specifically, seller financing may be more common in rural areas, and the final rule's provisions related to servicing of seller-financed loans may help small servicers continue to service such loans in rural areas.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[427] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[428]

The undersigned certified that the proposed rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The final rule adopts the proposed rule with some modifications that do not lead to a different

[427] 5 U.S.C. 601 through 612.
[428] 5 U.S.C. 609.

conclusion. Therefore, a FRFA is not required.[429]

A. Application of the Final Rule to Small Entities

The analysis below evaluates the potential economic impact of the final rule on small entities as defined by the RFA.[430] The analysis uses as a baseline the 2013 Mortgage Servicing Final Rules as currently in effect. The Bureau has identified five categories of small entities that may be subject to the final rule for purposes of the RFA: Commercial banks/savings institutions (NAICS 522110 and 522120), credit unions (NAICS 522130), firms providing real estate credit (NAICS 522292), firms engaged in other activities related to credit intermediation (NAICS 522390), and small non-profit organizations. Commercial banks, savings institutions, and credit unions are small businesses if they have $550 million or less in assets. Firms providing real estate credit are small businesses if average annual receipts do not exceed $38.5 million, and firms engaged in other activities related to credit intermediation are small businesses if their average annual receipts do not exceed $20.5 million. A small non-profit organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The Bureau estimates that there are approximately 9,868 insured depositories (banks, thrifts and credit unions) and 862 non-depositories that engage in mortgage servicing and are

[429] 5 U.S.C. 605(b).

[430] For purposes of assessing the impacts of the final rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System ("NAICS") classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

therefore subject to the 2013 Mortgage Servicing Final Rules.[431] Of these, the Bureau estimates that approximately 8,308 depositories and 742 non-depositories are "small entities" as defined in the RFA.[432]

The large majority of these small entities qualify as "small servicers" for purposes of the 2013 Mortgage Servicing Final Rules: generally, servicers that service 5,000 or fewer mortgage loans, all of which the servicer or affiliates own or originated. The Bureau estimates that, among 9,050 small entities subject to the 2013 Mortgage Servicing Final Rules, all but approximately 11 depositories and all but approximately 78 non-depositories (collectively, approximately 1.0 percent of all small entities subject to the 2013 Mortgage Servicing Final Rules) service 5,000 loans or fewer.[433] The Bureau does not have data to indicate whether these institutions service loans that they do not own and did not originate. However, as discussed in the 2013 RESPA Servicing Final Rule, the Bureau believes that a servicer that services 5,000 loans or fewer is unlikely to service loans that it did not originate, because a servicer that services loans for others is likely to see servicing as a stand-alone line of business and would likely need to service substantially more than 5,000 loans to justify its investment in servicing activities.[434]

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[431] The estimated number of insured depositories engaged in mortgage servicing is based on the December 2015 Call Report data as compiled by SNL Financial, and the estimated number of non-depositories is based on December 2015 data from the Nationwide Mortgage Licensing System and Registry.

[432] The estimated number of insured depositories engaged in mortgage servicing that are small entities is based on the December 2015 Call Report data as compiled by SNL Financial, and the estimated number of non-depositories that are "small entities" as defined in the RFA is based on December 2015 data from the Nationwide Mortgage Licensing System and Registry. Non-profits and small non-profits engaged in mortgage loan servicing would be included in this estimate if their primary activity is originating or servicing loans. The Bureau has not been able to separately estimate the number of non-profits and small non-profits engaged in loan servicing.

[433] For insured depositories, the estimate is based on an analysis of the December 2015 Call Report data as compiled by SNL Financial, and the estimated number of non-depositories that are "small entities" as defined in the RFA is based on December 2015 data from the Nationwide Mortgage Licensing System and Registry.

[434] 78 FR 10695, 10866 (Feb. 14, 2013). For example, one industry participant estimated that most servicers would need a portfolio of 175,000 to 200,000 loans to be profitable. Bonnie Sinnock, *Servicers Search for 'Goldilocks' Size for Max Profits*, American Banker (Sept. 10, 2015), *available at*

Small servicers are exempt from many of the servicing provisions of Regulation X and Regulation Z. Pursuant to § 1024.30, small servicers are exempt from Regulation X's general servicing policies and procedures requirements (§ 1024.38), early intervention and continuity of contact requirements (§§ 1024.39 and 1024.40), and all loss mitigation procedures requirements of § 1024.41 other than § 1024.41(j), which makes applicable to small servicers § 1024.41(f)(1)'s prohibition on initiating foreclosure proceedings unless a borrower is more than 120 days delinquent and prohibits servicers from initiating foreclosure proceedings while a borrower is performing pursuant to the terms of an agreement on a loss mitigation option. Similarly, pursuant to § 1026.41(e)(4), small servicers are exempt from Regulation Z's requirement to provide periodic statements for residential mortgage loans pursuant to § 1026.41.

Given the Bureau's estimate that all but approximately 1.0 percent of small entities subject to the rule are small servicers, the final rule provisions that amend sections of Regulation X and Regulation Z from which small servicers are exempt will have no effect on almost all small entities, and therefore will not have a significant economic impact on a substantial number of small entities. Most provisions of the final rule would amend §§ 1024.38 through 1024.41 and 1026.41 and would therefore not affect small servicers.

In addition, certain provisions of the final rule apply to small servicers but reduce servicer compliance costs by relaxing the existing rules. This includes changes to the commentary to § 1024.36(a) to reduce disclosure requirements when a borrower requests information about ownership of a loan for which Fannie Mae or Freddie Mac is the owner of the

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http://www.americanbanker.com/news/consumer-finance/servicers-search-for-goldilocks-size-for-max-profits-1076620-1.html.

loan or the trustee of the securitization trust in which the loan is held; an additional exception to § 1024.41(f)(1)'s 120-day pause on initiating foreclosure proceedings for a servicer joining the foreclosure action of a senior lienholder; and revisions to the definition of small servicer in § 1026.41(e)(4)(iii) that permit small servicers to service loans for seller financers under certain circumstances.

There are three provisions of the final rule that do apply to small servicers and could potentially impose new costs on a substantial number of small entities: (1) the provisions related to successors in interest, which create a new, limited information request procedure for potential successors in interest and extend the protections of all the Mortgage Servicing Rules, including certain provisions from which small servicers are not exempt, to confirmed successors in interest; (2) the definition of delinquency in § 1024.31, which may affect the scope of the 2013 RESPA Servicing Final Rule's prohibition on initiating foreclosure proceedings unless a borrower's mortgage loan obligation is more than 120 days delinquent; and (3) a minor revision to the content of force-placed insurance notices required by § 1024.37(c). The following sections of this part discuss in greater detail the potential impact of these three provisions of the final rule on small servicers.

B. Successors in Interest

The final rule imposes new requirements on mortgage servicers with respect to successors in interest. For purposes of these provisions, successors in interest generally include individuals who acquire an ownership interest in the property securing a mortgage loan through transfers that are protected by the Garn-St Germain Act, including, for example, certain transfers resulting from the death of the borrower, transfers to the borrower's spouse or children, or transfers incident to divorce. The provisions relate to how mortgage servicers confirm a

successor in interest's identity and ownership interest in the property and apply the Mortgage Servicing Rules to confirmed successors in interest.

Small servicers must comply with some, but not all, of the Mortgage Servicing Rules, and the final rule requires small servicers to comply with that same set of rules with respect to confirmed successors in interest. Small servicers must comply, at least in part, with Regulation X's requirements regarding escrow accounts (§§ 1024.17 and 1024.34), general disclosure requirements (§ 1024.32), mortgage servicing transfers (§ 1024.33), error resolution procedures (§ 1024.35), requests for information (§ 1024.36), force-placed insurance (§ 1024.37), and certain prohibitions on initiating foreclosure proceedings and moving for foreclosure judgment or order of sale (§ 1024.41(f)(1) and (j)), and with Regulation Z's requirements regarding ARM disclosures (§ 1026.20(c) and (d)), regarding escrow account cancellation notices (§ 1026.20(e)), regarding payment processing, the prohibition on pyramiding of late fees, and the requirement to provide payoff statements (§ 1026.36(c)), and regarding mortgage transfer disclosures (§ 1026.39). The final rule requires small servicers to comply with each of these provisions with respect to successors in interest once a servicer has confirmed the successor in interest's identity and ownership interest in the property.

The Bureau does not believe that the application of these requirements to confirmed successors in interest will have a significant impact on the small entities subject to the Mortgage Servicing Rules. While the Bureau does not have representative data on the number of loans that are serviced by small servicers and for which the underlying property has been transferred to a successor in interest, the Bureau expects that such loans make up a small fraction of the total loans serviced by any small servicer. The final rule does not require small servicers to develop new policies and procedures, but rather to continue to apply existing policies and procedures for

servicing loans subject to the servicing rules to what the Bureau believes is a relatively small set of loans previously subject to the Mortgage Servicing Rules before the interest in the property was transferred to a successor in interest.

In addition, given that under the Garn-St Germain Act small servicers are effectively obligated to service loans secured by property that has been transferred to a successor in interest, many small servicers are likely servicing such loans using the same policies and procedures that they use to service other mortgage loans that are already subject to the Mortgage Servicing Rules. Given that there are fixed costs associated with developing servicing policies and procedures and systems to implement those policies and procedures, it may be less costly for servicers to apply the same policies and procedures with respect to successors in interest that they apply to all other loans they service, rather than developing separate policies, procedures and systems to service loans for successors in interest. Moreover, as discussed in the 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, the Bureau believes that small servicers generally depend on a relationship-based business model that depends on repeat business and could suffer significant harm from any major failure to treat customers properly because small servicers are particularly vulnerable to "word of mouth."[435] A servicer that had a practice of servicing loans for confirmed successors in interest using lower standards than those used to service other loans would risk reputational harm and an associated loss of business.

Small servicers are also subject to § 1024.36(i), which generally requires a servicer to respond to a written request that indicates that the person making the request may be a successor in interest by providing the person with a description of the documents the servicer reasonably

[435] 78 FR 10696, 10843 (Feb. 14, 2013); 78 FR 10902, 10978 (Feb. 14, 2013).

requires to confirm the person's identity and ownership interest in the property. Small servicers are required to treat the person making the request as a borrower for the purposes of the procedural requirements of § 1024.36(c) through (g)—that is, servicers must respond to these requests the way they must respond to other written information requests, by generally acknowledging receipt of the request within five days and responding within 30 or 45 days without charge.

However, because small servicers are exempt from § 1024.38, they are not subject to § 1024.38(b)(1)(vi), which requires servicers to have policies and procedures in place to provide promptly upon request a description of what documents the servicer reasonably requires to confirm the person's status, and, upon the receipt of such documents, notify the person promptly, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. Therefore, the final rule does not necessarily require small servicers to make any changes to their policies and procedures for identifying successors in interest, but only to communicate to potential successors, using the same procedures they use to respond to other borrower requests, what documents they reasonably need to confirm a person's status as a successor in interest. Because small servicers may not need to make any changes to the documents they require and will already have procedures in place for responding to borrower requests generally, the Bureau believes that the costs to small servicers of complying with § 1024.36(i) will be small.

C. Definition of Delinquency

The final rule adds a general definition of delinquency in § 1024.31 that applies to all sections of subpart C of Regulation X, replacing the existing definition of delinquency for

purposes of §§ 1024.39 and 1024.40(a). Under the final rule, delinquency is defined as a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent, and 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. Comment 31 (Delinquency)-2 clarifies that, 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. The Bureau understands from its pre-proposal outreach and from comments that the majority of servicers credit payments made to a delinquent account to the oldest outstanding periodic payment. The Bureau also understands that some servicers that use this method may be concerned about how to calculate the length of a borrower's delinquency without increased certainty from the Bureau.[436]

The Bureau believes that the final rule's definition will clarify the application of the servicing rules—thereby reducing the costs to small servicers of complying with the rules—without imposing significant new burdens on servicers. The Bureau recognizes that, in principle, the definition could affect the circumstances under which a servicer may initiate foreclosure proceedings, because the definition of "delinquency" affects the application of § 1024.41(f)(1)'s prohibition on initiating foreclosure proceedings unless "a borrower's mortgage loan obligation is more than 120 days delinquent."[437] In particular, Comment 31 (Delinquency)-2 implies that a servicer that otherwise applies payments to the oldest outstanding periodic payment may not

[436] *See* Am. Bankers Ass'n. Letter to Bureau of Consumer Fin. Prot. (Oct. 24, 2014), *available at* http://www.aba.com/Advocacy/commentletters/Pages/default.aspx#2014.
[437] Small servicers, while otherwise exempt from the provisions of § 1024.41, are not exempt from § 1024.41(f)(1) pursuant to § 1024.41(j).

initiate foreclosure proceedings unless the borrower has missed the equivalent of at least four monthly payments. In contrast, the current rule could be interpreted to permit the servicer to commence foreclosure even if the borrower has missed only one payment, so long as the payment was missed more than 120 days ago and the borrower has not become current since. However, information gathered in pre-proposal industry outreach indicates that the majority of servicers generally do not initiate foreclosure proceedings in the case of consumers that are behind by three or fewer payments. In addition, Fannie Mae and Freddie Mac servicing guidelines generally prevent servicers from initiating foreclosure if a loan is delinquent by fewer than four monthly payments. For servicers that do not apply payments to the oldest outstanding periodic payment, the final rule will not affect their application of the 120-day pre-foreclosure review period.

In addition, the Bureau believes that it is particularly unlikely that a small servicer would initiate foreclosure proceedings with respect to a borrower who is not at least four payments behind. As the Bureau stated in the 2013 RESPA Servicing Final Rule, the vast majority of small servicers are community banks and credit unions that generally maintain a "relationship" model that depends on repeat business and are particularly vulnerable to reputational harm from a failure to treat customers well. The Bureau believes that such servicers would be particularly unlikely to initiate foreclosure proceedings in a case where a consumer had fallen behind by a few mortgage payments but continued to make regular payments going forward. For these reasons, the Bureau expects that the final rule's definition will not impose meaningful new constraints on servicers.

D. Changes to Force-Placed Insurance Notices

The final rule includes changes to force-placed insurance notices, which pursuant to

§ 1024.37 servicers must deliver to borrowers before they can charge borrowers for force-placed insurance, to modify the prescribed notices slightly to accommodate the circumstance where a consumer's hazard insurance coverage is insufficient, rather than expiring or expired. This change is intended to reduce the burden on servicers and borrowers by providing greater clarity in circumstances where the form of notice that is currently required does not accurately describe the deficiency in the borrower's insurance coverage. The change represents a minor amendment to the required force-placed insurance notice and the Bureau does not believe that it will impose any significant burden on servicers.

Certification

Accordingly, the undersigned certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995[438] (Paperwork Reduction Act or PRA). The collection of information contained in the final rule, and identified as such, has been submitted to OMB for review under section 3507(d) of the PRA. Notwithstanding any other provision of law, under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, this information collection unless the information collection displays a currently valid control number.

The final rule amends 12 CFR part 1024 (Regulation X), which implements the Real Estate Settlement Procedures Act (RESPA), and 12 CFR part 1026 (Regulation Z), which

[438] 44 U.S.C. 3501 through 3521.

implements the Truth in Lending Act (TILA). Regulations X and Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation X is 3170-0016 and for Regulation Z is 3170-0015. Information collections for the final rule would be authorized under OMB control numbers 3170-0027 for Regulation X and 3170-0028 for Regulation Z.

On December 15, 2014, notice of the proposed rule was published in the *Federal Register*. The Bureau invited comment on: (1) whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (2) the accuracy of the estimated burden associated with the proposed collections of information; (3) how to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. The comment period for the proposed information collection expired on March 16, 2015.

The Bureau received two comments addressing the PRA notice. An industry commenter noted the Bureau's estimate of the one-time hourly burden of complying with the proposed rule's successor in interest provisions and noted that the estimated time would not be sufficient for a servicer to become equipped to originate mortgage loans. However, the final rule does not require servicers to originate mortgage loans. Another industry commenter noted the Bureau's estimate of the one-time and ongoing burden of providing two new notices: the notice to consumers when a loss mitigation application is complete and the notice provided when evaluation of a loss mitigation application is delayed because necessary information from third parties has not been submitted. This commenter expressed concern that the estimated costs

would increase the cost of servicing, and that this would have negative implications for consumers. The Bureau discusses the impacts of these notices on consumers and servicers in the Dodd-Frank Act section 1022(b) discussion above.

The Bureau is requiring six new information collection requirements, or changes to existing information collection requirements, in Regulation X:

1. Provisions requiring servicers to communicate with potential successors in interest about their requirements for confirming a successor in interest's identity and ownership interest in the property and to treat confirmed successors in interest as borrowers for purposes of the Mortgage Servicing Rules in Regulation X.
2. Minor changes to force-placed insurance notices to address the circumstance in which a borrower's hazard insurance coverage is insufficient (rather than expired or expiring) and permit the consumer's account number to be included on the notice.
3. Provisions requiring servicers to provide early intervention written notices to consumers in bankruptcy and to consumers who have provided the servicer with a cease communications notice under the FDCPA.
4. Requirement that servicers provide a notice to consumers when a loss mitigation application is complete.
5. Requirement that servicers provide a notice to consumers if their determination with respect to a loss mitigation application is delayed beyond a date that is 30 days after receipt of a complete loss mitigation application because information from third parties required to evaluate the application has not been submitted.
6. Requirement that servicers comply with the loss mitigation provisions of Regulation X with respect to multiple loss mitigation applications from the same borrower. Servicers

that offer loss mitigation options in the ordinary course of business are required to follow certain procedures when evaluating loss mitigation applications, including (1) providing a notice telling the borrower if the loss mitigation application is incomplete, approved, or denied (and, for denials of loan modification requests, a more detailed notice of the specific reason for denial and appeal rights), (2) providing a notice of the appeal determination, and (3) providing servicers of senior or second liens encumbering the property that is the subject of the loss mitigation application copies of the loss mitigation application.

The Bureau is also requiring two new information collection requirements, or changes to existing information collection requirements, in Regulation Z:

7. Requirement that servicers treat confirmed successors in interest as consumers for purposes of the Mortgage Servicing Rules in Regulation Z.
8. Requirement that servicers provide periodic statements to consumers in bankruptcy.

These information collections are required to provide benefits for consumers and are mandatory.[439] Because the Bureau does not collect any information, no issue of confidentiality arises. The likely respondents would be federally insured depository institutions (such as commercial banks, savings banks, and credit unions) and non-depository institutions (such as mortgage brokers, real estate investment trusts, private-equity funds, *etc*.) that service consumer mortgages.[440]

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[439] *See* 15 U.S.C. 1601 *et seq*.; 12 U.S.C. 2601 *et seq*.

[440] For purposes of this PRA analysis, references to "creditors" or "lenders" shall be deemed to refer collectively to commercial banks, savings institutions, credit unions, and mortgage companies (*i.e.*, non-depository lenders), unless otherwise stated. Moreover, reference to "respondents" shall generally mean all categories of entities identified in the sentence to which this footnote is appended, except as otherwise stated or if the context indicates otherwise.

Under the rule, the Bureau accounts for the entire paperwork burden for respondents under Regulation X. The Bureau generally also accounts for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository institutions. The Bureau and the FTC generally both have enforcement authority over non-depository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden to non-depository institutions. Other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

Using the Bureau's burden estimation methodology, the Bureau believes the total estimated industry burden under Regulation X for the approximately 10,730 respondents subject to the final rule will be approximately 128,000 hours for one time changes and 64,000 hours annually. Using the Bureau's burden estimation methodology, the total estimated industry burden under Regulation Z for the approximately 10,730 banks, savings institutions, credit unions, and mortgage companies subject to the final rule, including Bureau respondents,[441] is approximately 7,000 hours for one-time changes and 8,300 hours annually. The estimates presented in this part IX represent weighted averages across respondents. The Bureau expects that the amount of time required to implement each of the changes for a given institution may

[441] For purposes of this PRA analysis, the Bureau's depository respondents with respect to the changes to Regulation Z are 120 depository institutions and depository institution affiliates that service closed-end consumer mortgages. The Bureau's non-depository respondents are an estimated 862 non-depository servicers. Unless otherwise specified, all references to burden hours and costs for the Bureau respondents for the collection requirements under the changes to Regulation Z are based on a calculation of the burden from all of the Bureau's depository respondents and half of the burden from the Bureau's non-depository respondents.

vary based on the size, complexity, and practices of the respondent.

For purposes of this PRA analysis, the Bureau estimates that there are 9,868 depository institutions and credit unions subject to the final rule, and an additional 862 non-depository institutions. Based on discussions with industry, the Bureau assumes that all depository respondents except for one large entity and 95% of non-depository respondents (and 100% of small non-depository respondents) use third-party software and information technology vendors. Under existing contracts, vendors would absorb the one-time software and information technology costs associated with complying with the final rule for large- and medium- sized respondents but not for small respondents.

A. Information Collection Requirements—Regulation X

The Bureau believes the following aspects of the final rule are information collection requirements under the PRA.

1. Successors in Interest

Under the final rule, servicers are generally required (1) to respond to a written request from a person that indicates that the person may be a successor in interest by providing that person with a description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and (2) to have policies and procedures reasonably designed to ensure that the servicer can provide promptly upon request a description of what documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property, and, upon the receipt of such documents, notify the person promptly, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. Servicers are also subject to Regulation X's mortgage

servicing requirements, including loss mitigation requirements, with respect to confirmed successors in interest.

All respondents will have a one-time burden under this requirement associated with reviewing the regulation and developing a compliance plan. Certain respondents will have one-time burden in hours from training personnel in compliance with the requirement. The Bureau estimates that one-time hourly burden to comply with the disclosure requirements to be eight hours and forty-five minutes, on average, per respondent.

Respondents will have ongoing burden in hours and vendor costs associated with the information technology used in producing the required disclosures. All respondents will have ongoing vendor costs associated with distributing (*e.g.*, mailing) the required disclosures and some will have production costs associated with the new disclosures. The Bureau estimates this ongoing burden to be 10 minutes and $0.44, on average, for each respondent.

2. Changes to Force-placed Insurance Disclosures

The final rule makes minor changes to the content of required force-placed insurance notices, which are required before a servicer may charge a borrower for force-placed insurance.

All respondents will have a one-time burden under this requirement associated with reviewing the regulation and developing a compliance plan. All respondents will also have one-time burden in hours or vendor costs from changing existing systems to accommodate the required new disclosure. The Bureau estimates the one-time hourly burden to comply with the disclosure requirements to be one hour and 15 minutes and $70, on average, per respondent.

Because the content of the required notices will not change substantially under the final rule and the circumstances under which the disclosures are required will not change, there will not be an ongoing burden under the final rule.

3. Early Intervention Written Notices

The final rule requires that servicers send written early intervention notices to borrowers in bankruptcy and borrowers who have exercised their cease communication rights under the FDCPA. These notices must meet certain requirements that do not apply to the early intervention notices that must be sent to other borrowers. Borrowers have rights under the FDCPA only with respect to accounts that were delinquent at the time the servicer acquired the servicing rights. Therefore, servicers that do not acquire servicing rights in the course of their business are not subject to these modified disclosure requirements.

All respondents will have a one-time burden under this requirement associated with reviewing the regulation and developing a compliance plan. Certain respondents will have one-time burden in hours or vendor costs from changing existing systems to accommodate the required new disclosure. The Bureau estimates the one-time hourly burden to comply with the disclosure requirements to be nine hours and 30 minutes, on average, per respondent.

Respondents will have ongoing burden in hours and vendor costs associated with the information technology used in producing the disclosure. All respondents will have ongoing vendor costs associated with distributing (*e.g.*, mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be four hours and $380, on average, for each respondent.

4. Notice of Complete Loss Mitigation Application

The final rule requires a servicer to provide a written notice to a borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the borrower's complete application. The Bureau understands that the practice of providing borrowers with a written notice informing them that their loss mitigation application is complete is a common

business practice (*i.e.*, a "usual and customary" business practice) today for most mortgage servicers. However, the Bureau understands that the specific content of the required notices may not reflect existing common practices.

All respondents will have a one-time burden under this requirement associated with reviewing the regulation and developing a compliance plan. In addition, while the Bureau considers borrower notifications that loss mitigation applications are complete as the normal course of business, institutions may still have to incur one-time costs associated with modifying their existing disclosures to comply with the final rule's disclosure provisions. As a result, the Bureau's one-time burden incorporates these costs. The Bureau estimates this one-time burden to be ten hours and 20 minutes, on average, for each respondent.

5. Notice Regarding Outstanding Third-Party Information

The final rule requires written notice to borrowers within thirty days following receipt of a complete loss mitigation application if the servicer has not received information from a party other than the servicer or the borrower that is necessary to make a determination of which loss mitigation options, if any, to offer the borrower.

All respondents will have a one-time burden under this requirement associated with reviewing the regulation and developing a compliance plan. Certain respondents will have one-time burden in hours or vendor costs from creating software and information technology capability to produce the disclosure. The Bureau estimates that one-time hourly burden to comply with the disclosure requirements to be ten hours and 20 minutes, on average, per respondent.

Respondents will have ongoing burden in hours and vendor costs associated with the information technology used in producing the disclosure. All respondents will have ongoing

vendor costs associated with distributing (*e.g.*, mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be 10 minutes and $12, on average, for each respondent.

6. Requirement to Evaluate Multiple Loss Mitigation Applications

Currently, servicers (other than small servicers) are required to comply with the loss mitigation provisions of § 1024.41 only once during the life of a loan, including the provision of up to three notices per loss mitigation application. Under the final rule, servicers must comply with the loss mitigation provisions of § 1024.41 for borrowers who have previously completed a loss mitigation application, so long as the borrower has become current in the period following the completion of the prior application.

All respondents will have a one-time burden under this requirement associated with reviewing the regulation and developing a compliance plan. Certain respondents will have a one-time burden from revising their systems to provide for evaluation of borrowers for subsequent loss mitigation applications. The Bureau estimates this one-time burden to be four hours and 30 minutes, on average, for each respondent. The Bureau estimates the ongoing burden to be 103 hours and $181, on average, for each respondent.

B. Information Collection Requirements—Regulation Z

1. Successors in Interest under Regulation Z

Under the final rule, servicers are subject to Regulation Z's mortgage servicing requirements with respect to confirmed successors in interest. All respondents will have a one-time burden under this requirement associated with reviewing the regulation and developing a compliance plan. The Bureau estimates that one-time hourly burden to comply with the disclosure requirements to be one hour and 50 minutes, on average, per respondent.

Certain respondents will have ongoing vendor costs associated with distributing (*e.g.*, mailing) the required disclosures and some will have production costs associated with the new required disclosures. The Bureau estimates this ongoing burden to be 10 minutes and $7, on average, for each respondent.

2. Periodic Statements

Under the final rule, respondents that are not small servicers must provide periodic statements to certain consumers in bankruptcy.

All respondents that are not small servicers will have a one-time burden under this requirement associated with reviewing the regulation and developing a compliance plan. Certain respondents will have one-time burden in hours or vendor costs from changing existing systems to produce the required new disclosure. The Bureau estimates that one-time hourly burden to comply with the disclosure requirements to be 31 hours, on average, per respondent.

Respondents will have ongoing burden in hours and vendor costs associated with the information technology used in producing the disclosure. Certain respondents will have ongoing vendor costs associated with distributing (*e.g.*, mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be 43 hours and $4,273, on average, for each respondent.

C. Summary of Burden Hours—Regulation X

The estimated burden on Bureau respondents from the changes to Regulation X is summarized below. Under the final rule, the Bureau accounts for the entire paperwork burden for respondents under Regulation X.

	Respondents	Disclosures per Respondent	Hours Burden per Disclosure	Total Burden Hours	Total Vendor Costs
Ongoing					

Successors in Interest—Regulation X	10,730	6	0.016	1,086	$4,731
Force-Placed Insurance	10,730	0	0	0	$0
Early Intervention Written Notices	592	1,261	0.003	2,239	$223,890
Notice of Complete Loss Mitigation Application	592	0	0	0	$0
Third-Party Information	592	44	0.003	67	$6,681
Loss Mitigation—Subsequent Applications	592	709	0.144	60,571	$107,100
One-Time					
Successors in Interest—Regulation X	10,730	1	8.745	93,830	$0
Force-Placed Insurance	10,730	1	1.272	13,652	$729,936
Early Intervention Written Notices	592	1	9.514	5,632	$0
Notice of Complete Loss Mitigation Application	592	1	10.277	6,084	$0
Third-Party Information	592	1	10.327	6,114	$60,000
Loss Mitigation—Subsequent Applications	592	1	4.505	2,667	$0

Totals may not be exact due to rounding.

D. Summary of Burden Hours—Regulation Z

The estimated burden on Bureau respondents from the changes to Regulation Z is summarized below. The Bureau accounts for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository institutions. The Bureau and the FTC generally both have enforcement authority over non-depository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden to non-depository institutions.

	Bureau Respondents	Disclosures per Bureau Respondent	Hours Burden per Disclosure	Total Burden Hours for Bureau Respondents	Total Vendor Costs for Bureau Respondents
Ongoing					
Successors in Interest—Regulation Z	551	35	0.003	56	$5,678
Periodic Statements in Bankruptcy	193	23,938	0.002	8,247	$824,670
One-Time					
Successors in Interest—Regulation Z	551	1	1.842	1,015	$0
Periodic Statements in Bankruptcy	193	1	30.935	5,971	$0

Totals may not be exact due to rounding.

List of Subjects

12 CFR Part 1024

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 (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 (3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph (d). A request to the Bureau for approval of any changes other than the permissible changes specified in

paragraphs (d)(2) and (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 of this part, 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

5. Effective April 19, 2018, § 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.

6. Section 1024.31 is amended by:

a. Adding a definition of *Delinquency* in alphabetical order; and

b. Effective April 19, 2018, adding definitions of *Confirmed successor in interest* and *Successor in interest* in alphabetical order.

The additions 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.

* * * * *

7. Effective April 19, 2018, § 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.

8. Effective April 19, 2018, § 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.

* * * * *

9. Effective April 19, 2018, § 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 (i)(2) must otherwise comply with the requirements of paragraph (i)(1). Notwithstanding paragraph (f)(1)(i) of this section, if a potential successor in interest subsequently provides orally or in writing the required information specified by the servicer pursuant to this paragraph (i)(2), 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) of this section. 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.

10. 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) and (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.

* * * * *

11. Section 1024.38 is amended by:

a. Adding paragraph (b)(2)(vi); and

b. Effective April 19, 2018, revising paragraph (b)(1)(vi).

The addition and revision 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).

* * * * *

12. 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.

13. Section 1024.41 is amended by:

a. Revising paragraphs (c)(1) introductory text and (c)(2)(iii) and (iv);

b. Adding paragraphs (c)(3) and (4);

c. Revising paragraphs (f)(1)(iii) and (i); and

d. Adding paragraph (k).

The revisions and additions read as follows:

§ 1024.41 Loss mitigation procedures.

* * * * *

(c) * * *

(1) *Complete loss mitigation application.* Except as provided in paragraph (c)(4)(ii) of this section, if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving 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 (c)(2)(iii), 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 (c)(2)(iii). A servicer may offer a short-term payment forbearance program in conjunction with a short-term repayment plan pursuant to this paragraph (c)(2)(iii).

(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 (c)(2)(iv) 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.

14. Revise the heading for appendix MS–Mortgage Servicing to read as follows:

APPENDIX MS TO PART 1024—MORTGAGE SERVICING

* * * * *

15. Revise appendix MS–3 to part 1024 to read as follows:

APPENDIX MS–3 TO PART 1024

MODEL FORCE-PLACED INSURANCE NOTICE FORMS

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MS–3(A)—Model Form for Force-Placed Insurance Notice Containing Information Required by § 1024.37(c)(2)

MS–3(B)—Model Form for Force-Placed Insurance Notice Containing Information Required by § 1024.37(d)(2)(i)

MS–3(C)—Model Form for Force-Placed Insurance Notice Containing Information Required by § 1024.37(d)(2)(ii)

MS–3(D)—Model Form for Force-Placed Insurance Notice Containing Information Required by § 1024.37(e)(2)

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.]

16. 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.

17. In supplement I to part 1024—Official Bureau Interpretations:

a. Under *§1024.30—Scope*, after the entry *30(b) Exemptions*:

i. The heading *Paragraph 30(c)(2)* is added, and paragraph 1 under that heading is added.

ii. Effective April 19, 2018, the heading *30(d) Successors in interest* is added, and paragraphs 1 through 3 under that heading are added.

b. Under *§1024.31–Definitions*:

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

ii. Effective April 19, 2018, the heading *Successor in interest* is added, in alphabetical order, and paragraphs 1 and 2 under that heading are added.

c. Effective April 19, 2018, after the entry for *§1024.31–Definitions*, add the entry *§1024.32–General Disclosure Requirements*.

d. Under *§1024.36—Requests for Information*:

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

ii. Effective April 19, 2018, after the entry for *Paragraph 36(f)(1)(iv)*, the heading *36(i) Potential successors in interest* is added, and paragraphs 1 through 3 under that heading are added.

e. Under *§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 newly redesignated heading *37(d)(5) Updating notice with borrower information*, paragraph 1 is revised.

f. The heading for *Section 1024.38* is revised and under that heading:

i. Effective April 19, 2018, after the entry for *Paragraph 38(b)(1)(iv)*, the heading *Paragraph 38(b)(1)(vi)* is added, and paragraphs 1 through 5 under that heading are added.

ii. After the entry for *Paragraph 38(b)(2)(v)*, the heading *38(b)(3) Facilitating oversight of, and compliance by, service providers*, the heading *Paragraph 38(b)(3)(iii)*, and paragraph 1 under that heading are added.

g. Under *§1024.39—Early Intervention Requirements for Certain Borrowers*:

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

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

added.

iii. After the entry for *Paragraph 39(b)(2)(iv)*, 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 *§1024.40—Continuity of Contact*, under *40(a) In general*, paragraph 3 is revised.

i. Under *§1024.41—Loss Mitigation Procedures:*

i. Effective April 19, 2018, 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)(i) Requirements*, paragraph 1 is added.

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

v. The heading for *41(c)* is revised.

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

vii. The heading for *41(c)(2)(iii)* is revised, paragraphs 1 through 3 under that heading are revised, and paragraphs 4 through 6 under that heading are added.

viii. After the entry for *41(c)(2)(iv) Facially complete application*, the heading *41(c)(3) Notice of complete application* is added.

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

x. The heading *41(c)(4) Information not in the borrower's control* is added.

xi. The heading *41(c)(4)(i) Diligence requirements* is added, and paragraphs 1 and 2 under that heading are added.

xii. The heading *41(c)(4)(ii) Effect in case of delay* is added, and paragraphs 1 and 2 under that heading are added.

xiii. Under *41(d) Denial of loan modification options*, paragraph (c)(1)(4) is removed.

xiv. Under *41(g) Prohibition on foreclosure sale*, paragraph 3 is revised, and paragraph 5 is added.

xv. Under *41(i) Duplicative requests*, paragraphs 1 and 2 are revised.

xvi. The heading *41(k) Servicing transfers* is added, and paragraph 1 under that heading

is added.

xvii. The heading *41(k)(1) In general* is added.

xviii. The heading *41(k)(1)(i) Timing of compliance* is added, and paragraphs 1 through 3 under that heading are added.

xix. The heading *41(k)(1)(ii) Transfer date defined* is added, and paragraph 1 under that heading is added.

xx. The heading *41(k)(2) Acknowledgment notices* is added.

xxi. The heading *41(k)(2)(ii) Prohibitions* is added, and paragraphs 1 through 3 under that heading are added.

xxii. The heading *41(k)(3) Complete loss mitigation applications pending at transfer* is added, and paragraphs 1 and 2 under that heading are added.

xxiii. The heading *41(k)(4) Applications subject to appeal process* is added, and paragraphs 1 and 2 under that heading are added.

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

j. The heading for *Appendix MS* is revised.

k. Effective April 19, 2018, under the heading for *Appendix MS*, paragraph 2 is revised.

The revisions and additions read as follows:

Supplement I to Part 1024—Official Bureau Interpretations

* * * * *

Subpart C—Mortgage Servicing

§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 this subpart 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 this subpart. 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.

§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 this subpart, 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.

§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.

* * * * *

§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.

§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).

* * * * *

§1024.38—General Servicing Policies, Procedures, and Requirements

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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.

* * * * *

§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.

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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.

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39(b)(1) Notice required.

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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 45th 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.

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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.

§1024.40—Continuity of Contact

40(a) In general.

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

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§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.

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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:

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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.

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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.

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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).

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41(c) Evaluation of loss mitigation applications.

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

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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.

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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).

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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.

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41(g) Prohibition on foreclosure sale.

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3. *Interaction with foreclosure counsel*. The prohibitions in § 1024.41(g) against moving for judgment or order of sale or conducting a sale may require a servicer to 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.

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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).

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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)

18. 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

19. Effective April 19, 2018, § 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

20. Effective April 19, 2018, § 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) of this chapter, 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) of this chapter, that the confirmed successor in interest has not revoked.

Subpart E—Special Rules for Certain Home Mortgage Transactions

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

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

* * * * *

(c) * * *

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

* * * * *

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

* * * * *

22. Effective April 19, 2018, § 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) of this chapter, 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) of this chapter, that the confirmed successor in interest has not revoked.

23. Section 1026.41 is amended by:

a. Revising paragraphs (d)(8)(i) and (e)(4)(iii)(A);

b. Adding paragraphs (e)(4)(iii)(D) and (e)(6); and

c. Effective April 19, 2018:

i. Revising paragraph (e)(5); and

ii. Adding paragraphs (f) and (g).

The revisions and additions 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 financer 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 (e)(5)(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 (e)(5)(ii) of this section, the servicer shall designate the same address for purposes of both paragraphs (e)(5)(i)(B)(*1*) and (e)(5)(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 paragraphs (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 paragraphs (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) of this chapter, 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) of this chapter, that the confirmed successor in interest has not revoked.

24. 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), H–14, and H–30(C); and

d. Adding H–30(E) and H–30(F).

The additions 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 ÷ $10,000 = 6; 6 × ____ = $____ per month.)]

[Example

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

The example is based on the following assumptions:

Amount	$10,000
Term	_____
Change date	_____
Payment adjustment	(frequency)
Interest adjustment	(frequency)
[Margin]*	____
Caps ____ [periodic interest rate cap]	
____ [lifetime interest rate cap	

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

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

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

Year	**Index (%)**	**Margin (Percentage points)**	**Interest Rate (%)**	**Monthly Payment ($)**	**Remaining Balance ($)**
1982					
1983					
1984					
1985					
1986					
1987					
1988					

1989					
1990					
1991					
1992					
1993					
1994					
1995					
1996					

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

* * * * *

H–14—VARIABLE RATE MORTGAGE SAMPLE

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

How Your Interest Rate and Payment Are Determined

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

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

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

current interest rate and margin.

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

• Your interest rate will equal the index rate plus our margin unless your interest rate "caps" limit the amount of change in the interest rate.

How Your Interest Rate Can Change

• Your interest rate can change yearly.

• Your interest rate cannot increase or decrease more than 2 percentage points per year.

• Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

How Your Monthly Payment Can Change

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

• [For example, on a $10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of $106.03 to a maximum of $145.34 in the fourth year. To see what your payment is, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000÷$10,000=6; 6×106.03=$636.18 per month.)]

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

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

[Example

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

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

Year (as of 1st week ending in July)	**Index (%)**	**Margin* (percentage**	**Interest Rate**	**Monthly Payment**	**Remaining Balance**

		points)	(%)	($)	($)
1982	14.41	3	17.41	145.90	9,989.37
1983	9.78	3	**15.41	129.81	9,969.66
1984	12.17	3	15.17	127.91	9,945.51
1985	7.66	3	**13.17	112.43	9,903.70
1986	6.36	3	***12.41	106.73	9,848.94
1987	6.71	3	***12.41	106.73	9,786.98
1988	7.52	3	***12.41	106.73	9,716.88
1989	7.97	3	***12.41	106.73	9,637.56
1990	8.06	3	***12.41	106.73	9,547.83
1991	6.40	3	***12.41	106.73	9,446.29
1992	3.96	3	***12.41	106.73	9,331.56
1993	3.42	3	***12.41	106.73	9,201.61
1994	5.47	3	***12.41	106.73	9,054.72
1995	5.53	3	***12.41	106.73	8,888.52
1996	5.82	3	***12.41	106.73	8,700.37

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

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

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

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

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

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

* * * * *

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

Springside Mortgage

Customer Service: 1-800-555-1234
www.springsidemortgage.com

Mortgage Statement
Statement Date: 3/20/2012

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Account Number		**1234567**
Payment Due Date		**4/1/2012**
Amount Due	**Option 1 (Full):**	**$1,829.71**
	Option 2 (Interest-Only):	**$1,443.25**
	Option 3 (Minimum):	**$1,156.43**

If payment is received after 4/15/12, $160 late fee will be charged.

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

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

Transaction Activity (2/20 to 3/19)

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

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

Springside Mortgage

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

Amount Due		
Due By 4/1/2012:	❑ **Option 1 (Full):**	**$1,829.71**
	❑ **Option 2 (Interest-Only):**	**$1,443.25**
	❑ **Option 3 (Minimum):**	**$1,156.43**
$160 late fee will be charged after 4/15/12		
Additional Principal	$	.
Additional Escrow	$	.
Total Amount Enclosed	**$**	**.**

Make check payable to Springside Mortgage.

1234567 34571892 342359127 P

* * * * *

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

Springside Mortgage

Customer Service: 1-800-555-1234
www.springsidemortgage.com

Mortgage Statement

Statement Date: 8/20/2015

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

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

Bankruptcy Message

Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan 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 you want to stop receiving statements, write to us.

Explanation of Payment Amount

Principal	$386.46
Interest	$1,048.07
Escrow (Taxes and Insurance)	$235.18
Regular Monthly Payment	**$1,669.71**
Total Fees and Charges	$160.00
Past Unpaid Amount	$2,009.42
Total Payment Amount	**$3,839.13**

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
Total	**$1,000.00**	**$11,668.26**

Account History

Recent Account History

- Payment due 5/1/15: Fully paid on time
- Payment due 6/1/15: Fully paid on 7/3/15
- Payment due 7/1/15: Unpaid balance of $339.71
- Payment due 8/1/15: Unpaid balance of $1829.71
- Current payment date 9/1/15: $1,669.71
- **Total: $3,839.13 unpaid amount that, if paid, would bring your loan current.**

If You Are Experiencing Financial Difficulty: See back for information about mortgage counseling or assistance.

Important Messages

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

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	$	.
Total Amount Enclosed	**$**	**.**

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

Mortgage Statement
Statement Date: 8/20/2015

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Account Number	**1234567**
Payment Date	**9/1/2015**
Payment Amount	**$3,569.88**

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)	$375.00
Regular Monthly Payment	**$1,939.94**
Total Fees and Charges	$190.00
Past Unpaid Amount	$1,439.94
Total Payment Amount	**$3,569.88**

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
Total	**$836.43**	**$16,771.06**

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
Total Paid During Bankruptcy	$1,345.72
Current Balance	$10,765.88

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.

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

Payment Date:	**9/1/2015**
Payment Amount:	**$3,569.88**
Additional Principal	$.
Additional Escrow	$.
Total Amount Enclosed	**$.**

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

1234567 34571892 342359127 DN

25. In supplement I to part 1026:

a. Effective April 19, 2018, under *Section 1026.2—Definitions and Rules of Construction*:

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

ii. After the entry for 2(a)(25) Security Interest, the heading Paragraph 2(a)(27), the heading 2(a)(27)(i) Successor in interest, and paragraphs 1 and 2 under that heading are added.

b. Effective April 19, 2018, under *Section 1026.20—Disclosure requirements regarding post-consummation events*, 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 Paragraph 36(c)(1)(i), paragraphs 4 and 5 are added.

ii. Effective April 19, 2018, 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.

iv. After the entry for *41(d)*, the heading *41(d)(1) Amount due* is added, and paragraphs 1 through 3 under that heading are added.

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

vi. After the entry for *41(d)(4)*, the heading *41(d)(8) Delinquency information* is added, and paragraphs 1 and 2 under that heading are added.

vii. After the entry for *41(d)(8)*, the heading *41(e) Exemptions* is added.

viii. The heading for *41(e)(5)* is revised, and under that heading paragraphs 1 through 3 are revised, and paragraph 4 is added.

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

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

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

xii. 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.

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

xiv. 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.

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

xvi. 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.

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

xviii. 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.

xix. 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.

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

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

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

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

xxiv. 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.

* * * * *

Paragraph 2(a)(27)

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)(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

* * * * *

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 of this part 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.

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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.

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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)(*1*) or (e)(5)(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)(*1*) or (e)(5)(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)(*1*) or (e)(5)(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) and (2) and (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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Richard Cordray,

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