

# Mortgage Loan Servicing Duty under RESPA & Reg X

## *Servicer Response to Mortgagor Requests – Inquiries and Error Notices*

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### Contents

Introduction.....	1
RESPA - Real Estate Settlement Procedures Act.....	3
12 USC 2601 et seq.....	3
12 U.S. Code § 2605 - Servicing of mortgage loans and administration of escrow accounts.....	3
RESPA "Regulation X".....	7
12 CFR Chapter X Section 1024.....	7
§ 1024.35 Error resolution procedures.....	8
Official Interpretations of this section.....	11

### Introduction

Anyone dealing with mortgage servicers should understand the legal requirements under the Real Estate Settlement Procedures Act (RESPA) and the associated Code of Federal Regulations (Regulation X). See below text for duties the servicer owes to the mortgagor in handling qualified written requests and notices of error and resolving those errors.

Take note of the duty in 12 USC 2605(1)(a) and the meaning of "servicing" in 12 USC 2605(i)(3). To me this means the servicer has NO duty to provide answers to questions or correct errors unrelated to servicing. This might explain why your servicer ignores your Qualified Written Requests (QWRs).

I STRONGLY RECOMMEND that anybody with a mortgage read the items below (and follow their links) FULLY, especially if facing foreclosure. The law and regulation include these:

1. 12 USC 2601 (RESPA)
2. 12 CFR 1024 (REGULATION X)

However, it makes sense to put EVERY CULPABLE PARTY on notice through the same Notice of Grievance (NOG) a mortgagor would send the servicer in compliance with Section 20 of the standard Fannie Mae/ Freddie Mac mortgage security instrument. First of all, the contract requires it prior to taking action in court against the lender,

holder, or servicer. Second, if the servicer and servicer's attorney ignore it, that might convince a judge or jury that the servicer and lawyer simply flouted the law and other legal duties to the mortgagor. Most judges would not see their behavior in a good light.

Mortgagors whom the lender or servicer injured or, whose correspondence the servicer ignored, should write a complaint to the Consumer Financial Protection Bureau (CFPB) using the form at <http://consumerfinance.gov>, and include a copy of correspondence with the servicer. Such a complaint can include information about servicer employees who violated any provision of any of the above laws and regulations. Note the requisite timing for servicers: 5 business days to acknowledge, 30 days to correct the errors, with a possible 15-day extension.

For those considering loan modification, focus on 12 CFR 1024.41. I do not recommend loan mods because they only benefit the bank and most borrowers will eventually face foreclosure when they cannot pay the balloon. Furthermore, I consider them outrageously expensive. Servicers and lawyers who arrange them often get a huge stipend for the effort, and that gets added on top of the loan balance.

When it comes to negotiating a settlement like a refinance, mortgagors have far better negotiating power if they can prove the lender or agents injured them at the inception of the loan. You see, if the borrower injured the holder by breaching the note and failing to make timely payments, the borrower has ZERO negotiating power. But if the lender injured the borrower FIRST, at the inception of the loan, and the lender knows the borrower can prove it, that gives the borrower a huge negotiating advantage.

For that reason, I recommend that all mortgagors get a competent professional to examine their mortgage-related documents comprehensively. That constitutes the ONLY methodology with a 80%+ chance of convincing the holder to settle in a way that benefits the borrower (such as refinancing a reduced loan balance at a low fixed rate for 30 years).

Call me if you want to get your mortgage examined. I can explain all the details to you and give you strategic guidance free.

For more information on the value of a mortgage examination and the futility of fighting foreclosure of a valid mortgage, see <http://lixo.org>.

Bob Hurt

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# RESPA - Real Estate Settlement Procedures Act

## 12 USC 2601 et seq

<http://www.law.cornell.edu/uscode/text/12/chapter-27>

- [§ 2601. Congressional findings and purpose](#)
- [§ 2602. Definitions](#)
- [§ 2603. Uniform settlement statement](#)
- [§ 2604. Home buying information booklets](#)
- [§ 2605. Servicing of mortgage loans and administration of escrow accounts](#)
- [§ 2606. Exempted transactions](#)
- [§ 2607. Prohibition against kickbacks and unearned fees](#)
- [§ 2608. Title companies; liability of seller](#)
- [§ 2609. Limitation on requirement of advance deposits in escrow accounts](#)
- [§ 2610. Prohibition of fees for preparation of truth-in-lending, uniform settlement, and escrow account statements](#)
- [§§ 2611 to 2613. Repealed.1](#)
- [§ 2614. Jurisdiction of courts; limitations](#)
- [§ 2615. Contracts and liens; validity](#)
- [§ 2616. State laws unaffected; inconsistent Federal and State provisions](#)
- [§ 2617. Authority of Bureau](#)

## 12 U.S. Code § 2605 - Servicing of mortgage loans and administration of escrow accounts

### (e) Duty of loan servicer to respond to borrower inquiries

#### (1) Notice of receipt of inquiry

##### (A) In general

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the

servicer shall provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

**(B) Qualified written request**

For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that—

- (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and
- (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

**(2) Action with respect to inquiry**

Not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall—

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

### **(3) Protection of credit rating**

During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section [1681a](#) of title [15](#)).

### **(4) Limited extension of response time**

The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.

### **(f) Damages and costs**

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

#### **(1) Individuals**

In the case of any action by an individual, an amount equal to the sum of—

- (A) any actual damages to the borrower as a result of the failure; and
- (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.

#### **(2) Class actions**

In the case of a class action, an amount equal to the sum of—

- (A) any actual damages to each of the borrowers in the class as a result of the failure; and
- (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$2,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of—
  - (i) \$1,000,000; or
  - (ii) 1 percent of the net worth of the servicer.

#### **(3) Costs**

In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

#### **(4) Nonliability**

A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

#### **(i) Definitions**

For purposes of this section:

##### **(1) Effective date of transfer**

The term "effective date of transfer" means 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.

##### **(2) Servicer**

The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include—

**(A)** the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section [1823 \(c\)](#) of this title or as receiver or conservator of an insured depository institution; and

**(B)** the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

**(i)** termination of the contract for servicing the loan for cause;

**(ii)** commencement of proceedings for bankruptcy of the servicer; or

**(iii)** commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

##### **(3) Servicing**

The term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to

the terms of any loan, including amounts for escrow accounts described in section [2609](#) of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

# RESPA "Regulation X"

## 12 CFR Chapter X Section 1024

[http://www.ecfr.gov/cgi-bin/retrieveECFR?  
gp=1&SID=bb265d1de996f8912f92e0d35b2f2e4a&ty=HTML&h=L&r=PART&n=12y8.0.2.8.17](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=bb265d1de996f8912f92e0d35b2f2e4a&ty=HTML&h=L&r=PART&n=12y8.0.2.8.17)

Code of Federal Regulations Title 12: Banks and Banking

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

Contents

### Subpart A—General Provisions

- §1024.1 Designation.
- §1024.2 Definitions.
- §1024.3 E-Sign applicability.
- §1024.4 Reliance upon rule, regulation or interpretation by the Bureau.
- §1024.4 Reliance upon rule, regulation, or interpretation by the Bureau.
- §1024.5 Coverage of RESPA.

### Subpart B—Mortgage Settlement and Escrow Accounts

- §1024.6 Special information booklet at time of loan application.
- §1024.7 Good faith estimate.
- §1024.8 Use of HUD-1 or HUD-1A settlement statements.
- §1024.9 Reproduction of settlement statements.
- §1024.10 One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; recordkeeping.
- §1024.11 Mailing.
- §1024.12 No fee.
- §1024.13 [Reserved]
- §1024.14 Prohibition against kickbacks and unearned fees.
- §1024.15 Affiliated business arrangements.
- §1024.16 Title companies.
- §1024.17 Escrow accounts.
- §§1024.18--1024.19 [Reserved]
- §1024.20 List of homeownership counseling organizations.
- §1024.21 Mortgage servicing transfers.
- §1024.22 Severability.
- §1024.23 E-SIGN applicability.

### Subpart C—Mortgage Servicing

- §1024.30 Scope.
- §1024.31 Definitions.

- § 1024.32 General disclosure requirements.
- § 1024.33 Mortgage servicing transfers.
- § 1024.34 Timely escrow payments and treatment of escrow account balances.
- § 1024.35 Error resolution procedures.
- § 1024.36 Requests for information.
- § 1024.37 Force-placed insurance.
- § 1024.38 General servicing policies, procedures, and requirements.
- § 1024.39 Early intervention requirements for certain borrowers.
- § 1024.40 Continuity of contact.
- § 1024.41 Loss mitigation procedures.

Appendix A to Part 1024—Instructions for Completing HUD-1 and HUD-1a Settlement Statements; Sample HUD-1 and HUD-1a Statements

Appendix B to Part 1024—Illustrations of Requirements of RESPA

Appendix C to Part 1024—Instructions for Completing Good Faith Estimate (GFE) Form

Appendix D to Part 1024—Affiliated Business Arrangement Disclosure Statement Format Notice

Appendix E to Part 1024—Arithmetic Steps

Appendix MS—Mortgage Servicing

Appendix MS-1 to Part 1024

Appendix MS-2 to Part 1024

Appendix MS-3 to Part 1024

Appendix MS-4—Model Clauses for the Written Early Intervention Notice

Supplement I to Part 1024—Official Bureau Interpretations

## § 1024.35 Error resolution procedures.

<http://www.bankersonline.com/regs/12-1024/12-1024-035.html>

For the Official Board Interpretations applicable to this section, see below.

(a) *Notice of error.* A servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error. A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.

(b) *Scope of error resolution.* For purposes of this section, the term "error" refers to the following categories of covered errors:

- (1) Failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.
- (2) Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.
- (3) Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of 12 CFR 1026.36(c)(1).
- (4) Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner as required by § 1024.34(a), or to refund an escrow account balance as required by § 1024.34(b).
- (5) Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.



(6) Failure to provide an accurate payoff balance amount upon a borrower's request in violation of section 12 CFR 1026.36(c)(3).

(7) Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by § 1024.39.

(8) Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer.

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of § 1024.41(f) or (j).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(g) or (j).

(11) Any other error relating to the servicing of a borrower's mortgage loan.

(c) *Contact information for borrowers to assert errors.* A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to assert an error. If a servicer designates a specific address for receiving notices of error, the servicer shall designate the same address for receiving information requests pursuant to § 1024.36(b). A servicer shall provide a written notice to a borrower before any change in the address used for receiving a notice of error. A servicer that designates an address for receipt of notices of error must post the designated address on any website maintained by the servicer if the website lists any contact address for the servicer.

(d) *Acknowledgment of receipt.* Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving a notice of error from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the notice of error.

(e) *Response to notice of error.* (1) *Investigation and response requirements.* (i) *In general.* Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either:

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

(ii) *Different or additional error.* If during a reasonable investigation of a notice of error, a servicer concludes that errors occurred other than, or in addition to, the error or errors alleged by the borrower, the servicer shall correct all such additional errors and provide the borrower with a written notification that describes the errors the servicer identified, the action taken to correct the errors, the effective date of the correction, and contact information, including a telephone number, for further assistance.

(2) *Requesting information from borrower.* A servicer may request supporting documentation from a borrower in connection with the investigation of an asserted error, but may not:

(i) Require a borrower to provide such information as a condition of investigating an asserted error; or

(ii) Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation pursuant to paragraph (e)(1)(i)(B) of this section.

(3) *Time limits.* (i) *In general.* A servicer must comply with the requirements of paragraph (e)(1) of this section:

(A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.

(B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.

(C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.

(ii) *Extension of time limit.* For asserted errors governed by the time limit set forth in paragraph (e)(3)(i)(C) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for responding to errors asserted under paragraph (b)(6), (9), or (10) of this section.

(4) *Copies of documentation.* A servicer shall provide to the borrower, at no charge, copies of documents and information relied upon by the servicer in making its determination that no error occurred within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receiving the borrower's request for such documents. A servicer is not required to provide documents relied upon that constitute confidential, proprietary or privileged information. If a servicer withholds documents relied upon because it has determined that such documents constitute confidential, proprietary or privileged information, the servicer must notify the borrower of its determination in writing within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receipt of the borrower's request for such documents.

(f) *Alternative compliance.* (1) *Early correction.* A servicer is not required to comply with paragraphs (d) and (e) of this section if the servicer corrects the error or errors asserted by the borrower and notifies the borrower of that correction in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the notice of error.

(2) *Error asserted before foreclosure sale.* A servicer is not required to comply with the requirements of paragraphs (d) and (e) of this section for errors asserted under paragraph (b)(9) or (10) of this section if the servicer receives the applicable notice of an error seven or fewer days before a foreclosure sale. For any such notice of error, a servicer shall make a good faith attempt to respond to the borrower, orally or in writing, and either correct the error or state the reason the servicer has determined that no error has occurred.

(g) *Requirements not applicable.* (1) *In general.* A servicer is not required to comply with the requirements of paragraphs (d), (e) and (i) of this section if the servicer reasonably determines that any of the following apply:

(i) *Duplicative notice of error.* The asserted error is substantially the same as an error previously asserted by the borrower for which the servicer has previously complied with its obligation to respond pursuant to paragraphs (d) and (e) of this section, unless the borrower provides new and material

information to support the asserted error. New and material information means information that was not reviewed by the servicer in connection with investigating a prior notice of the same error and is reasonably likely to change the servicer's prior determination about the error.

(ii) *Overbroad notice of error.* The notice of error is overbroad. A notice of error is overbroad if the servicer cannot reasonably determine from the notice of error the specific error that the borrower asserts has occurred on a borrower's account. To the extent a servicer can reasonably identify a valid assertion of an error in a notice of error that is otherwise overbroad, the servicer shall comply with the requirements of paragraphs (d), (e) and (i) of this section with respect to that asserted error.

(iii) *Untimely notice of error.* A notice of error is delivered to the servicer more than one year after:

(A) Servicing for the mortgage loan that is the subject of the asserted error was transferred from the servicer receiving the notice of error to a transferee servicer; or

(B) The mortgage loan is discharged.

(2) *Notice to borrower.* If a servicer determines that, pursuant to this paragraph (g), the servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (g)(1) of this section upon which the servicer has made such determination.

(h) *Payment requirements prohibited.* A servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to a notice of error.

(i) *Effect on servicer remedies.* (1) *Adverse information.* After receipt of a notice of error, a servicer may not, for 60 days, furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error.

(2) *Remedies permitted.* Except as set forth in this section with respect to an assertion of error under paragraph (b)(9) or (10) of this section, nothing in this section shall limit or restrict a lender or servicer from pursuing any remedy it has under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.

## **Official Interpretations of this section.**

Section 1024.35—Error Resolution Procedures

35(a) Notice of error.

1. *Borrower's representative.* A notice of error is submitted by a borrower if the notice of error is submitted by an agent of the borrower. 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 that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the notice of error as having been submitted by the borrower.

2. *Information request.* A servicer should not rely solely on the borrower's description of a submission to determine whether the submission constitutes a notice of error under § 1024.35(a), an information request under § 1024.36(a), or both. For example, a borrower may submit a letter that claims to be a "Notice of Error" that indicates that the borrower wants to receive the information set forth in an annual escrow account statement and asserts an error for the servicer's failure to provide the borrower an annual escrow statement. Such a letter may constitute an information request under § 1024.36(a) that triggers an obligation by the servicer to provide an annual escrow statement. A servicer should not rely on the borrower's characterization of the letter as a "Notice of Error," but must evaluate whether the letter fulfills the substantive requirements of a notice of error, information request, or both.

#### 35(b) Scope of error resolution.

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

- i. An error relating to the origination of a mortgage loan;
- ii. An error relating to the underwriting of a mortgage loan;
- iii. An error relating to a subsequent sale or securitization of a mortgage loan;
- iv. An error relating to a determination to sell, assign, or transfer the servicing of a mortgage loan. However, an error relating to the failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer is an error for purposes of § 1024.35.

2. *Unreasonable basis.* For purposes of § 1024.35(b)(5), a servicer lacks a reasonable basis to impose fees that are not bona fide, such as:

- i. A late fee for a payment that was not late;
- ii. A charge imposed by a service provider for a service that was not actually rendered;
- iii. A default property management fee for borrowers that are not in a delinquency status that would justify the charge; or
- iv. A charge for force-placed insurance in a circumstance not permitted by § 1024.37.

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

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

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in the following contexts:

- i. The written notice designating the specific address, required pursuant to § 1024.35(c) and § 1024.36(b).

- ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.
- iii. Any website the servicer maintains in connection with the servicing of the loan.
- iv. Any notice required pursuant to §§ 1024.39 or .41 that includes contact information for assistance.

3. *Multiple offices.* A servicer may designate multiple office addresses for receiving notices of errors. However, a servicer is required to comply with the requirements of § 1024.35 with respect to a notice of error received at any such designated address regardless of whether that specific address was provided to a specific borrower asserting an error. For example, a servicer may designate an address to receive notices of error for borrowers located in California and a separate address to receive notices of errors for borrowers located in Texas. If a borrower located in California asserts an error through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received a notice of error and must comply with the requirements of § 1024.35.

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

35(e) Response to notice of error.

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

Paragraph 35(e)(1)(i).

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

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

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

35(e)(3) Time limits.

35(e)(3)(i) In general.

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

1. *Foreclosure sale timing.* If a servicer cannot comply with its obligations pursuant to § 1024.35(e) by the earlier of a foreclosure sale or 30 days after receipt of the notice of error, a servicer may cancel or postpone a foreclosure sale, in which case the servicer would meet the time limit in § 1024.35(e)(3)(i)(B) by complying with the requirements of § 1024.35(e) before the earlier of 30 days after receipt of the notice of error (excluding legal public holidays, Saturdays, and Sundays) or the date of the rescheduled foreclosure sale.

35(e)(3)(ii) Extension of time limit.

1. *Notices alleging multiple errors; extension of time.* A servicer may treat a notice of error that alleges multiple errors as separate notices of error and may extend the time period for responding to each asserted error for which an extension is permissible under § 1024.35(e)(3)(ii).

35(e)(4) Copies of documentation.

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

35(g) Requirements not applicable.

35(g)(1) In general.

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

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

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

1. *Examples of overbroad notices of error.* The following are examples of notices of error that are overbroad:

- i. Assertions of errors regarding substantially all aspects of a mortgage loan, including errors relating to all aspects of mortgage origination, mortgage servicing, and foreclosure, as well as errors relating to the crediting of substantially every borrower payment and escrow account transaction;
- ii. Assertions of errors in the form of a judicial action complaint, subpoena, or discovery request that purports to require servicers to respond to each numbered paragraph; and
- iii. Assertions of errors in a form that is not reasonably understandable or is included with voluminous tangential discussion or requests for information, such that a servicer cannot reasonably identify from the notice of error any error for which § 1024.35 requires a response.

35(h) Payment requirements prohibited.

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



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