

*Middleberg Riddle Group*

# Factoring in the Latest on ECOA, TILA and RESPA (including RESPA and TILA Servicing Final Rules) Into Your Policies, Procedures and Requirements

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Truth in Lending Act (Regulation Z)  
Real Estate Settlement Procedures  
Act (RESPA, Regulation X)  
Equal Credit Opportunity Act  
(Regulation B)

# Initial Interest Rate Adjustment Notice

- Separate Document
- At least 210, but no more than 240 days before the first payment at adjusted level due
  - Within 210 days, at consummation.
- May be estimate
  - If rate and payment not known

# Contents of Notice

- Date
- Statement
  - Explanation of term of ARM
  - Effective Date
  - Future adjustments
  - Any other changes taking effect with rate adjustment

# Contents of Notice (cont'd)

- Table
  - Current and new interest rates
  - Current and new payments and date of first new payment
  - If interest-only or negative-amortizing, payment allocation
  - How rate is determined
  - Limits
  - Explanation of determination of new payment
  - If applicable, statement regarding loan principal not affected
  - Prepayment Penalty
  - Telephone number
  - Alternatives to paying new rate
  - Website to access list of homeownership counselors

# Modifications for Loss Mitigation

- No disclosure for interest rate adjustment due to modification
- Initial rate adjustment disclosures under terms of modified contract

# Notice of Interest Rate and Payment Changes

- Contents
  - Similar to Initial Notice
  - No requirement for website with homeownership counselors
- At least 60, but no more than, 120 days before payment is due
  - Unless frequently adjusting ARM, then 25 to 120 days

# Conversions

- Interest Rate Adjustment Notice when ARM converts to fixed rate
- Open-end account converts to closed-end ARM, notice required post conversion



# Payments

- Partial Payments
  - Credit
  - Return
  - Hold in suspense
- If partial payment held in suspense or unapplied funds account
  - Amount reflected on periodic statement.
  - When sufficient funds accumulated, funds treated as payment and credited

# No Pyramiding of Late Charges

# Payoff Statements

- 7 days of written request

# Periodic Statements

- Contents
  - Amount due
  - Explanation of amount due
  - Past payment breakdown
  - List of transaction activity since last statement
  - Partial payment in suspense fund explanation
  - Toll-free telephone number and, if applicable, electronic mailing address
  - Certain account information such as outstanding principal balance, current interest rate, etc.
  - Delinquency information if borrower is more than 45 days delinquent
- If fixed rate loan, may use coupon book or electronic statement in lieu of periodic statement

# Small Servicers Exemption

- Together with affiliates services 5,000 or fewer mortgage loans
- Must currently own the mortgage loan or must have been entity to which to loan was initially payable.

REAL ESTATE SETTLEMENT  
PROCEDURES ACT  
(RESPA)  
(REGULATION X)

# GENERAL (1024.30)

Applies to any mortgage loan secured by borrower's residence.

Does NOT apply to:

- Small servicer (services 5,000 mortgage loans or fewer)
- Reverse mortgage transaction
- Qualified lender of Farm Credit System institution

# DEFINITIONS (1024.31)

Federally Related Mortgage Loan

Loss Mitigation Application

Loss Mitigation Option

Qualified Written Request



# HAZARD INSURANCE (1024.17)

Servicer cannot purchase force-placed insurance unless servicer unable to disburse funds from borrower's escrow account.

# TRANSFERS OF SERVICING (1024.33)

Applies only to first lien mortgages.

Servicing Disclosure Statement at application.

Transfer notices.

# ESCROW ACCOUNTS (1024.34)

Payments from escrow accounts must be timely.

Within 20 business days of payment in full, servicer must return amounts in escrow account.

# FORCE-PLACED INSURANCE (1024.37)

Servicer cannot charge borrower a charge or fee for force-placed insurance unless there is a reasonable basis that borrower has not maintained hazard insurance.

# FORCE-PLACED INSURANCE (1024.37)

Before assessing charge servicer must:

- Deliver 45-day written notice;
- Deliver reminder notice;
- After 15 days, no evidence of insurance.

# FORCE-PLACED INSURANCE (1024.37)

Force-placed insurance notice:

- Date
- Servicer's name and mailing address
- Borrower's name and mailing address
- **Bold Print:** Requests borrower to provide hazard insurance
- Identify property
- Hazard insurance expiring or expired and no evidence
- **Bold print:** Hazard insurance required
- Promptly provide insurance information
- Requested insurance and how borrower may provide information
- **Bold print:** Cost significantly higher with less coverage
- Servicer's telephone number

# FORCE-PLACED INSURANCE (1024.37)

Reminder notice:

- Date
- **Bold Print:** Second and final notice
- Content of first notice
- **Bold print:** Cost

# FORCE-PLACED INSURANCE (1024.37)

Before each anniversary of purchasing force-placed insurance a written notice must be delivered or mailed.

If evidence of insurance coverage, within 15 days:

- Cancel the force-placed insurance
- Refund any charge



# FORCE-PLACED INSURANCE (1024.37)

Evidence of coverage:

- Policy declaration page
- Insurance certificate
- Insurance policy

# ERROR RESOLUTION PROCEDURES (1024.31)

## Qualified written request

- Correct an error
- Request information related to servicing the loan

# NOTICE OF ERROR

Borrower written notice asserting error

- Name of borrower
- Information to identify borrower's mortgage loan account
- Error

Servicer must establish address for submitting notice

# NOTICE OF ERROR

Service provider must respond

- Correct error
- Investigate and provide statement of results

# NOTICE OF ERROR

Responses to notices of error

- 7 days: inaccurate payoff
- Prior to foreclosure sale or within 30 days, error related to foreclosure
- All others, 30 days

15 day extension if borrower notified.

If no error, no charge to borrower for copies of documents

# NOTICE OF ERROR

Not required to comply if:

- Same error
- Notice of error is overbroad
- Notice of error more than one year after
  - Servicing transferred
  - Balance discharged

# REQUESTS FOR INFORMATION

Servicer may, by written notice to borrower, establish an address that borrower must use to request information.

Within 5 business days, written response acknowledging receipt of request.

# REQUESTS FOR INFORMATION

Response:

- Providing requested information
  - Contact information, including telephone number
- Or
- Conducting reasonable search for information and providing the borrower with written notification
  - Information is not available
  - Basis of determination
  - Contact information



# REQUESTS FOR INFORMATION

## Timing

- 10 business days for identity of and contact information
- 30 business days for all other requests

# REQUESTS FOR INFORMATION

## No Response Required

- Information substantially the same
- Information confidential, proprietary or privileged
- Not related to borrower's account
- Overly broad and burdensome
- More than a year

# REQUESTS FOR INFORMATION

No fee can be charged.

During time period servicer can

- Furnish adverse information to consumer reporting agency
- Pursue available remedies

# RESPA AND STATE LAWS (1024.13)

No federal preemption

State law gives greater protection; it governs.

# GENERAL SERVICING POLICY AND PROCEDURES (1024.38)

Servicer's policies and procedures reasonably designed to ensure that the servicer can:

- Provide accurate and timely disclosures
- Investigate, respond to, and if needed, make corrections in response to borrower complaints
- Provide borrower accurate and timely information and documents in response to requests for information
- Submit accurate and compliant foreclosure documents or filings
- Prompt identification and communication with deceased borrower's successor in interest

# GENERAL SERVICING POLICY AND PROCEDURES (1024.38)

Policies and procedures reasonably designed to ensure that servicer can:

- Provide accurate loss mitigation options;
- Identify specific loss mitigation options for which borrowers are eligible
- Promptly provide borrower's information for loss mitigation option to personnel
- Identify needed documents and information for loss mitigation application
- Properly evaluate borrower's loss mitigation application
- Provide personnel with documents and information reflecting actions of service providers

# GENERAL SERVICING POLICY AND PROCEDURES (1024.38)

- Periodically review service providers
- Facilitate sharing of accurate and current information regarding borrower's loss mitigation application and foreclosure proceedings
- As transferor servicer, timely transfer information and documents relating to transferred loan
- As transferee servicer, identify necessary documents or information not received

# GENERAL SERVICING POLICY AND PROCEDURES (1024.38)

Record retention: One year after discharge  
or transfer of servicing

Policies and procedures to promptly obtain  
information from servicer providers



# EARLY INTERVENTION REQUIREMENTS (1024.39)

Live contact with delinquent borrower within 36 days of delinquency

Written notice with delinquent borrower within 45 days of delinquency

- Written notice required only once during 180-day period
- Contents
  - Statement to contact servicer
  - Telephone number and mailing address
  - If applicable, available loss mitigation options
  - If applicable, application instructions or information regarding how to obtain more information about loss mitigation options
  - Website(s) for homeownership counseling

# CONTINUITY OF CONTACT (1024.40)

For a delinquent borrower a servicer must:

- Assign personnel within 45 days of delinquency
- Make available, via telephone, personnel to respond to borrower's inquiries
  - As applicable, assist with loss mitigation options until 2 payments are made
  - Live response to borrower in a timely manner

# CONTINUITY OF CONTACT (1024.40)

## Personnel's responsibility

- Provide accurate information about:
  - Loss mitigation options
  - Actions borrower must take to be evaluated for loss mitigation options
    - Status of loss mitigation application
    - Circumstances where servicer may make referral to foreclosure
    - Applicable loss mitigation deadlines

# CONTINUITY OF CONTACT (1024.40)

- Retrieve in a timely manner
  - Complete borrower's payment history
  - All written information for loss mitigation application
- Provide complete record of borrower's payment history and information to others evaluating application
- Provide information to submit notice of error or information request

# LOSS MITIGATION PROCEDURES (1024.41)

Loss mitigation application 45 or more days  
before foreclosure sale

- Review to determine completeness
- Within 5 days of receipt, notify borrower application is complete or incomplete
- If incomplete, information needed and deadline for submission.

# LOSS MITIGATION PROCEDURES (1024.41)

Loss mitigation application 37 or more days before foreclosures sale, within 30 days of receipt of the application

- Evaluate the borrower for all loss mitigation options
- Provide written notice of servicer's determination
  - Time for borrower to accept or reject offer
  - Right of appeal if denial

# LOSS MITIGATION PROCEDURES (1024.41)

If short-term payment forbearance program,  
servicer cannot proceed with foreclosure.

# LOSS MITIGATION PROCEDURES (1024.41)

If loss mitigation application 90 or more days before foreclosure sale, borrower may accept or reject loss mitigation offer no earlier than 14 days after offer. If application <90 days but > 37 days before foreclosure sale, 7 days to accept offer.



# LOSS MITIGATION PROCEDURES (1024.41)

First notice or filing of foreclosure

- 120 days delinquency
- Violation of due on sale clause
- Servicer joining subordinate lienholder's foreclosure action

# CFPB BULLETIN 2014-01 COMPLIANCE BULLETIN AND POLICY GUIDANCE MORTGAGE SERVICING TRANSFERS

Facilitating transfer of information during mortgage servicing transfers and properly evaluating loss mitigation applications.

# GENERAL TRANSFER – RELATED POLICIES AND PROCEDURES

- Ensuring that contracts require transferor provide all necessary documents and information at loan boarding
- Developing tailored transfer instructions for each deal and conducting meeting to discuss and clarify key issues
  - Proprietary modifications
  - Data field descriptions
  - Document indexing
  - Specific regulatory or settlement requirements
  - Tailored testing protocols to evaluate compatibility of transferred data with transferee's systems and data mapping protocols
  - Quality control work after transfer of preliminary data to validate data on transferee's system matches transferor's data
  - Alternative protocols to ensure transferee can comply with servicing obligations

# GENERAL TRANSFER – RELATED POLICIES AND PROCEDURES

CFPB examiners may consider transferee servicer's post-transfer policies and procedures

- Implementing a process to validate data to ensure it transferred correctly and is functional and to address errors
- Effectively ordering and labeling incoming information
- Conducting regular scheduled calls with transferor servicers

# GENERAL TRANSFER – RELATED POLICIES AND PROCEDURES

Pending loss mitigation applications or approved trial modification plans

- Transferor flags loans
- Transferor lists such loans
- Documentation be transferred pre-boarding
- Transferee ensures receipt of information including documents
  - Missing information or documents
  - Review documents
  - Properly evaluate borrowers
- Transferee monitors newly transferred loans and determines if partial payments are for trial or permanent modifications

# GENERAL TRANSFER – RELATED POLICIES AND PROCEDURES

Timely transfer of all information and documents

Error resolution procedures: Transferor servicers obligation to respond is one year

# GENERAL TRANSFER – RELATED POLICIES AND PROCEDURES

## Force-Placed Insurance

- Reasonable basis
- Transferee servicer need not resend notices

# GENERAL TRANSFER – RELATED POLICIES AND PROCEDURES

## Early Intervention

- Live contact – 36 days delinquent
- Transferee servicer must comply with 45-day notice requirement



# GENERAL TRANSFER – RELATED POLICIES AND PROCEDURES

## Continuity of Contact

- Identify borrowers 45+ days delinquent at transfer
- Accurate information to borrower
- Timely retrieval of payment history and information

# GENERAL TRANSFER – RELATED POLICIES AND PROCEDURES

## Loss Mitigation

- Evaluations that take longer than 30 days from the date transferor received complete application
- Application information sent to transferee by the date of transfer
- Before borrower accepts offer
  - Notices sent
  - Documents and information evaluated
  - Documents and information sufficient
- After borrower accepts offer
  - All agreements
  - Documentation borrower accepted offer

# If Appropriate, Plans for Handling Servicing Transfers

- Number of loans
- Total servicing volume
- Servicing platforms
- Detailed description of compliance
- Detailed description of transaction and system testing for transfer
- Identify and correct errors
- Training plans
- Customer service plan

# EQUAL CREDIT OPPORTUNITY ACT (Regulation B) (12 CFR 1002)

## Modification Agreements

# Thank you!

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