

## Mortgage Servicing

After completing the risk assessment and examination scoping, examiners should use these procedures to conduct a mortgage servicing examination in conjunction with the compliance management system review procedures. The examination procedures contain a series of modules, grouping similar requirements together. Depending on the scope, each examination will cover one or more of the following modules:

Exam Date:	[Click&type]
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Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket#:	[Click&type]
Entity Name:	[Click&type]

### Routine Servicing

- Module 1      Servicing and Loan Ownership Transfers
- Module 2      Payment Processing, Account Maintenance, and Optional Products
- Module 3      Error Resolution, Consumer Inquiries, and Complaint Procedures
- Module 4      Maintenance of Escrow Accounts and Insurance Products
- Module 5      Consumer Reporting
- Module 6      Information Sharing and Privacy

### Default Servicing

- Module 7      Collections and Accounts in Bankruptcy
- Module 8      Loss Mitigation, Early Intervention, and Continuity of Contact

### Foreclosure

- Module 9      Foreclosures

### Conclusions

- Module 10     Examiner Conclusions and Wrap-Up

## **Examination Objectives**

To assess the quality of the regulated entity's compliance risk management systems, including internal controls and policies and procedures, for preventing violations of Federal consumer financial law in its mortgage servicing business.

To identify acts or practices that materially increase the risk of violations of Federal consumer financial law in connection with mortgage servicing.

To gather facts that help determine whether a regulated entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with mortgage servicing.

To determine, in consultation with Headquarters, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

## **Background**

A servicer may service loans on behalf of itself or an affiliate. It may service as a contractor of the trustee where a mortgage is included in a mortgage-backed security, or it may service whole loans for an outside third-party investor.<sup>1</sup> A servicer may sell the rights to service the loan separately from any ownership transfers. This is because some entities have expertise in payment processing and other servicing responsibilities, while others seek to invest in the underlying mortgages. These procedures apply whether the servicer obtained the servicing rights from another entity or the servicing responsibility is transferred within a company from the origination platform to the servicing platform.

Servicers must comply with various laws to the extent that the law applies to the particular servicer and its activities:

- The Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X, impose requirements for servicing transfers, written consumer information requests, resolution of notices of error, force-placed insurance, early intervention and continuity of contact for delinquent borrowers, loss mitigation procedures, general servicing policies and procedures, and escrow account maintenance.
- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, impose requirements on servicers regarding periodic billing statements, crediting of payments, imposition of late fee and delinquency charges, provision of payoff statements with respect to closed-end consumer credit transactions secured by a principal dwelling, and disclosures regarding rate changes for adjustable rate mortgages. For open-end mortgages, Regulation Z provisions related to payment crediting and error resolution apply to the extent that the servicer is a creditor. Additionally, TILA and Regulation Z generally impose requirements on loan owners for loan ownership transfers.

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<sup>1</sup> If the owner is a separate entity, the servicer generally has contractual commitments to the owner of the loan. In the private securitization market, the contracts generally are called Pooling and Servicing Agreements or PSAs. If Fannie Mae or Freddie Mac owns the loan, the commitments are set forth in the company's seller/servicer guides.

- The Electronic Funds Transfer Act (EFTA) and its implementing regulation, Regulation E, impose requirements if servicers within the scope of coverage obtain electronic payments from borrowers.
- The Fair Debt Collection Practices Act (FDCPA) governs collection activities and prohibits deceptive, unfair, and abusive collection practices. The FDCPA applies to entities that constitute “debt collectors” under the Act, which generally includes: (1) third parties such as servicers, collection agencies, debt buyers, and collection attorneys that collect debts on behalf of lenders if they obtain the debt at a time when it is already in default; and (2) lenders collecting their own debts using an assumed name. The FDCPA applies to debts incurred or allegedly incurred primarily for the consumer’s personal, family or household purposes.
- The Homeowners Protection Act (HPA) limits private mortgage insurance that can be assessed on consumer accounts.
- The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, impose requirements on servicers regarding the accuracy and integrity of information that they furnish to consumer reporting agencies. Additionally, the FCRA and Regulation V impose requirements on furnishers to investigate disputes concerning the accuracy of any information contained in a consumer report related to the account or other relationship the furnisher has or had with the consumer. The FCRA also limits certain information sharing between company affiliates.
- The Gramm-Leach-Bliley Act (GLBA) requires servicers within the scope of coverage to provide privacy notices and limit information sharing in particular ways.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, apply to those servicers that are creditors, such as those who participate in a credit decision about whether to approve a mortgage loan modification. The statute makes it unlawful to discriminate against any borrower with respect to any aspect of a credit transaction:
  - On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
  - Because all or part of the applicant’s income derives from any public assistance program; or
  - Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.<sup>2</sup>

Examiners should consult the following bulletins and guidance as they assess compliance with Federal consumer financial laws:

- CFPB Bulletin 2012-03: Service Providers (April 13, 2012), [http://files.consumerfinance.gov/f/201204\\_cfpb\\_bulletin\\_service-providers.pdf](http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf).

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<sup>2</sup> The Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have dispute rights for consumers, such as the Fair Credit Reporting Act. The ECOA prohibits discriminating against an applicant who has exercised a dispute right pursuant to one of the statutes outlined in the Act.

- Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders (June 21, 2012), [http://files.consumerfinance.gov/f/201206\\_cfpb\\_PCS\\_Orders\\_Guidance.pdf](http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf).
- CFPB Bulletin 2013-07: Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (July 10, 2013), [http://files.consumerfinance.gov/f/201307\\_cfpb\\_bulletin\\_unfair-deceptive-abusive-practices.pdf](http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf).
- CFPB Bulletin 2013-09: The FCRA’s requirement to investigate disputes and review “all relevant” information provided by consumer reporting agencies (CRAs) about the dispute (September 4, 2013), [http://files.consumerfinance.gov/f/201309\\_cfpb\\_bulletin\\_furnishers.pdf](http://files.consumerfinance.gov/f/201309_cfpb_bulletin_furnishers.pdf).
- CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), [http://files.consumerfinance.gov/f/201310\\_cfpb\\_mortgage-servicing\\_bulletin.pdf](http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf).
- CFPB Bulletin 2014-01: The FCRA’s requirement that furnishers conduct investigations of disputed information (February 27, 2014), [http://files.consumerfinance.gov/f/201402\\_cfpb\\_bulletin\\_fair-credit-reporting-act.pdf](http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf).
- CFPB Bulletin 2014-01: Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers (August 19, 2014), [http://files.consumerfinance.gov/f/201408\\_cfpb\\_bulletin\\_mortgage-servicing-transfer.pdf](http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf).
- CFPB Bulletin 2015-03: Private Mortgage Insurance Cancellation and Termination (August 4, 2015), [http://files.consumerfinance.gov/f/201508\\_cfpb\\_compliance-bulletin\\_private-mortgage-insurance-cancellation-and-termination.pdf](http://files.consumerfinance.gov/f/201508_cfpb_compliance-bulletin_private-mortgage-insurance-cancellation-and-termination.pdf).
- CFPB Bulletin 2015-06: Requirements for Consumer Authorizations for Preauthorized Electronic Fund Transfers (November 23, 2015), [http://files.consumerfinance.gov/f/201511\\_cfpb\\_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf](http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf).
- CFPB Bulletin 2016-01: The FCRA’s Requirement that Furnishers Establish and Implement Reasonable Written Policies and Procedures Regarding the Accuracy and Integrity of Information Furnished to all Consumer Reporting Agencies (February 3, 2016), [http://files.consumerfinance.gov/f/201602\\_cfpb\\_supervisory-bulletin-furnisher-accuracy-obligations.pdf](http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf).
- CFPB Bulletin 2017-01: Phone Pay Fees (July 31, 2017), [https://files.consumerfinance.gov/f/documents/201707\\_cfpb\\_compliance-bulletin-phone-pay-fee.pdf](https://files.consumerfinance.gov/f/documents/201707_cfpb_compliance-bulletin-phone-pay-fee.pdf).
- CFPB Bulletin 2020-02: Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers (April 24, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_policy-guidance\\_mortgage-servicing-transfers\\_2020-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_policy-guidance_mortgage-servicing-transfers_2020-04.pdf).

- CFPB Bulletin 2021-02: Compliance Bulletin and Policy Guidance: Supervision and Enforcement Priorities Regarding Housing Insecurity (March 31, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_bulletin-2021-02\\_supervision-and-enforcement-priorities-regarding-housing\\_WHcae8E.pdf](https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2021-02_supervision-and-enforcement-priorities-regarding-housing_WHcae8E.pdf).
- CFPB Advisory Opinion: Equal Credit Opportunity (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements (May 18, 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_revoking-terms-of-existing-credit-arrangement\\_advisory-opinion\\_2022-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_revoking-terms-of-existing-credit-arrangement_advisory-opinion_2022-05.pdf).
- CFPB Circular 2022-07: Reasonable Investigation of Consumer Reporting Disputes (November 10, 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_reasonable-investigation-of-consumer-reporting-disputes\\_circular-2022-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_reasonable-investigation-of-consumer-reporting-disputes_circular-2022-07.pdf).

Examiners should also review the following COVID-19 related temporary regulatory changes:

- CFPB Interim Final Rule, Treatment of Certain COVID-19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA), Regulation X (June 23, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_interim-final-rule\\_respa\\_covid-19-related-loss-mitigation-options.pdf](https://files.consumerfinance.gov/f/documents/cfpb_interim-final-rule_respa_covid-19-related-loss-mitigation-options.pdf).
- CFPB Final Rule, Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X (June 25, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_covid-mortgage-servicing\\_final-rule\\_2021-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing_final-rule_2021-06.pdf).<sup>3</sup>

To carry out the objectives set forth in the **Examination Objectives** section, the examination process also will include assessing other risks to consumers that are not governed by specific statutory or regulatory provisions. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to servicers' interactions with consumers.<sup>4</sup>

Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the Bureau's policymaking. The standards the CFPB will use in assessing UDAAPs are:

- A representation, omission, act, or practice is deceptive when:
  1. the representation, omission, act, or practice misleads or is likely to mislead the consumer;

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<sup>3</sup> The provisions in 12 CFR 1024.39(e) enhancing the live contact requirements for borrowers experiencing COVID-19-related hardships were in effect from August 31, 2021 through October 1, 2022. The provisions in 12 CFR 1024.41(f)(3) providing special procedural foreclosure protections for certain delinquent borrowers were in effect from August 31, 2021 through December 31, 2021. The streamlined loss mitigation application provisions in 12 CFR 1024.41(c)(2)(v)-(vi) apply to certain loss mitigation programs made available to consumers experiencing a "COVID-19-related hardship." See 12 CFR 1024.31 for definition (generally, a financial hardship due, directly or indirectly, to the declared COVID-19 national emergency). The reasonable diligence requirements described in comment 41(b)(1)-4.iv apply to certain short-term payment forbearance programs made available to consumers experiencing a "COVID-19-related hardship."

<sup>4</sup> Dodd-Frank Act, Sec. 1036, PL 111-203 (July 21, 2010) (12 U.S.C. 5531, 5536).

2. the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
  3. the misleading representation, omission, act, or practice is material.
- An act or practice is unfair when:
    1. it causes or is likely to cause substantial injury to consumers;
    2. the injury is not reasonably avoidable by consumers; and
    3. the injury is not outweighed by countervailing benefits to consumers or to competition.
  - An abusive act or practice:
    1. materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or
    2. takes unreasonable advantage of—
      - a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
      - the inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
      - the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. As set out in the **Examination Objectives** section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a violation of any federal consumer financial law could be cited, including a UDAAP violation.

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## **Compliance Management System**

1. Review the entity’s compliance management system using the Compliance Management Review section of the CFPB examination procedures.

## **RESPA/Regulation X**

### **Service Provider Oversight**

Depending on the facts and circumstances, mortgage servicers may be legally responsible for the activities of service providers. Examiners should ensure that such entities appropriately manage their relationships with service providers. Examiners should evaluate policies, procedures, complaints, and copies of any agreements between entities and service providers acting on behalf of the entity for purposes of assessing risks to consumers.

2. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(1), for more information.
3. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Facilitating Oversight of, and Compliance by, Service Providers provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(3), for more information.

As a framework for the analysis of whether the servicer’s policies and procedures are reasonably designed to achieve the objective of facilitating oversight of, and compliance by, service providers, please refer to CFPB Bulletin 2012-03 (April 13, 2012) regarding service providers.<sup>5</sup> Assess the level of risk of consumer injury presented by a service provider and then determine whether the servicer has policies and procedures<sup>6</sup> that achieve the required objectives related to service provider oversight for each major service provider, as appropriate based on risk assessments and other circumstances.

### **Record Retention and Servicing File**

4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Record Retention provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(c)(1), for more information.

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<sup>5</sup> CFPB issued a bulletin highlighting its expectation that supervised banks and nonbanks oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law. See CFPB Bulletin 2012-03, Service Providers (April 13, 2012), [http://files.consumerfinance.gov/f/201204\\_cfpb\\_bulletin\\_service-providers.pdf](http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf).

<sup>6</sup> For each reference to the procedures required by Regulation X (12 CFR 1024.38) in this section and subsequent modules, the term “procedures” refers to the actual practices followed by a servicer for achieving the objectives set forth in 12 CFR 1024.38(b) (12 CFR part 1024 Supplement I, Comment 1024.38(a)-2).

5. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Servicing File provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(c)(2), for more information.

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## **Module 1 – Servicing and Loan Ownership Transfers**

Examiners should engage in several steps to assess potential violations of law in connection with servicing and loan ownership transfers. First, examiners should review policies and procedures and obtain a sample of servicing records, for loans transferred within the previous year. Examiners also may need to review copies of the electronic and paper documents transferred from the prior servicer. Additionally, they should review relevant records such as copies of monthly statements sent to consumers, copies of the RESPA disclosures, and evidence of delivery. If consumer complaints or document review indicate potential violations in these areas, examiners also should conduct interviews of consumers from the sample and ask questions relevant to each topic area below. For more information, please also refer to CFPB Bulletin 2014-01 (August 19, 2014) and CFPB Bulletin 2020-02 (April 24, 2020) regarding servicing transfers.<sup>7</sup>

### **RESPA/Regulation X**

#### **Servicing Transfers**

1. Assess compliance with the Regulation X Mortgage Servicing Transfers provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.33, for more information.
2. Assess compliance with the Regulation X Error Resolution Procedures and Requests for Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.35 and .36, for more information.
3. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information and Facilitating Transfer of Information During Servicing Transfers provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a), (b)(1)(i), (b)(1)(ii), and (b)(4), for more information.
4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Record Retention provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(c)(1), for more information.

#### **Escrow Transfers**

To assess whether the servicer is complying with obligations under Regulation X to notify consumers of changes in the escrow account requirements resulting from a transfer of servicing, examiners should sample from the list of loans transferred within the previous year that included escrow accounts. For

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<sup>7</sup> CFPB issued a bulletin highlighting its expectations of supervised banks and nonbanks for mortgage servicing transfers in accordance with Regulation X. See CFPB Bulletin 2014-01, Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers (August 19, 2014), [http://files.consumerfinance.gov/f/201408\\_cfpb\\_bulletin\\_mortgage-servicing-transfer.pdf](http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf). Because supervisory examinations conducted after the publication of Bulletin 2014-01 continued to uncover inadequacies in servicers' policies and procedures for transferring all the loan information and documents to the new servicer in a timely and accurate manner, the CFPB issued another bulletin highlighting its expectations for the handling of information and documents during mortgage servicing transfers. See CFPB Bulletin 2020-02, Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers (April 24, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_policy-guidance\\_mortgage-servicing-transfers\\_2020-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_policy-guidance_mortgage-servicing-transfers_2020-04.pdf).

the loans in the sample, examiners should review copies of consumer disclosures regarding the escrow accounts and evidence of delivery.

5. Assess compliance with the Regulation X Escrow Accounts provisions. Please refer to the examination procedures regarding RESPA, 12 CFR 1024.17(e) and (i)(4), for more information.

## FDCPA

6. Assess compliance with the FDCPA provisions regarding Notice of Debt and Disputed Debts provisions. Please refer to the examination procedures regarding debt collection, 15 U.S.C. 1692g(a) and (b), for more information.

## Other Risks to Consumers

7. Determine whether the servicer takes steps to facilitate the transfer of the consumer's automated clearing house (ACH) payments in connection with the transfer of servicing rights. For example, determine whether the servicer takes steps, including making disclosures, so that consumers do not inadvertently fail to make a timely mortgage payment or make a double mortgage payment following the transfer.
8. Determine whether a servicer who receives servicing transfers complies with the terms of loss mitigation agreements entered into by the borrower and the prior servicer.

## TILA/Regulation Z

### Ownership Transfer

Examiners should determine whether the servicer is required to transmit the loan ownership transfer notice. The institution would have this obligation if it acquired legal title to more than one mortgage loan debt obligation, whether through a purchase, an assignment, or other transfer, in any twelve-month period. A mortgage loan is defined as a closed-end consumer credit loan secured by a dwelling or real property and an open-end consumer credit loan that is secured by the principal dwelling of a consumer. (12 CFR 1026.39(a)(1) and (2)).<sup>8</sup>

To assess whether the servicer is complying with obligations under Regulation Z to notify consumers of changes in the loan ownership, examiners should sample from the list of loans in which the servicer acquired legal title to the mortgage loan within the previous year. For the loans in the sample, examiners should review copies of consumer disclosures regarding loan ownership and evidence of delivery.

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<sup>8</sup> A servicer of a mortgage loan is not treated as an owner of the obligation 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 obligation.

Contractually, the loan owner may have delegated the Regulation Z obligation to the servicer. Although the loan owner cannot delegate its obligation under law, examiners should assess whether the servicer is fulfilling its commitment, if applicable.

9. Assess compliance with the Regulation Z Mortgage Transfer Disclosures provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.39, for more information.

## **Module 2 – Payment Processing, Account Maintenance, and Optional Products**

To assess payment processing, account maintenance, and optional product posting and fee practices, examiners should review policies, procedures, complaints, and a sample of servicing records from consumer accounts including periodic statements, consumer payment records, and bills from vendors *documenting* any services related to the consumer's loan account. If consumer complaints or document review indicates potential violations in these areas, examiners also should conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

### **Payment Processing**

#### **TILA/Regulation Z**

1. Assess compliance with the Regulation Z Payment Processing and No Pyramiding of Late Fees provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.36(c)(1) and (2), for more information.
2. Assess compliance with the Regulation Z Payments provisions for open-end mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.10, for more information.

#### **Other Risks to Consumers**

3. Determine whether payments are applied and fees are assessed according to the terms of the note.
4. Determine whether the servicer charges fees for making payments (such as phone or online payment fees).
  - a. Determine whether the servicer discloses any fees for making payments before charging the fees.
  - b. Determine whether any such disclosures, whether oral or in writing, are clear, prominent, and specific to the transaction type.
  - c. Determine whether the servicer advises consumers of available payment method alternatives with lower fees before accepting payments via methods with higher fees.
  - d. Determine whether the servicer accepts referral fees from third-party companies in connection with processing payments.
5. Determine whether the servicer monitors failed electronic fund transfers and refrains from initiating transfers to a particular depository account after receiving notice that the specific account was closed.
6. Determine whether the servicer charges fees for activities required by the loan owner/investor (such as home inspection and Broker Price Opinion fees) that exceed the expenses incurred to engage in the activity.

## **Optional Products and Services**

7. Determine whether the servicer offers optional products or services (such as debt cancellation, bi-weekly payment plans, payment protection, or credit protection) and, if so, which products and/or services the servicer offers.

## **ECOA**

8. Determine whether each such optional product or service is offered and provided in a manner consistent with ECOA. Targeted marketing of these products on the basis of race, for example, may indicate an increased risk of potential ECOA violations and require further inquiry. In consultation with Headquarters, assess whether marketing is targeted on such a basis to particular consumers or in particular areas.

## **Other Risks to Consumers**

9. Review marketing materials, whether they are telemarketing scripts, direct mail, web-based, or other media, and determine whether each optional product's costs and terms are clearly and prominently disclosed. If consumer complaints or document review indicates potential violations in these areas and the servicer engages in telemarketing, monitor call center activity, and statements of representatives marketing the products. If the servicer engages in web-based marketing, monitor Internet communications related to the marketing.
10. Determine whether the servicer added on optional products or services without obtaining explicit authorization from the consumer. If the servicer obtains written authorization, review records of consumers who received additional products or services to ensure that written authorization has been provided and retained.
11. For bi-weekly payment plan solicitations, determine whether the servicer clearly and conspicuously explains the terms and conditions, including, where applicable, whether the servicer will be crediting payments bi-weekly or only monthly.
12. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act requires a servicer to reduce the interest rate that a servicemember must pay on private and federal student loans to 6 percent upon receiving a written request and a copy of the servicemember's military orders calling them into military service. The servicer must reduce the servicemember's interest rate to 6 percent when:
  - The loan is a pre-service obligation – entered into prior to the borrower entering military service;
  - The borrower has submitted a written request to the servicer; and
  - The borrower has provided a copy of their military orders to the servicer.

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## **Periodic Statements and Other Disclosures**

Examiners must review the servicer's policies, procedures, and systems to assess the adequacy of periodic statements and other required disclosures, including whether applicable disclosures are furnished when required by Regulation Z. Examiners also should review a sample of periodic statements and other required disclosures.

### **RESPA/Regulation X and TILA/Regulation Z**

#### *Periodic Statements*

13. Assess compliance with the Regulation Z General Disclosure Requirements and Periodic Statements provisions for open-end mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.5 and .7, for more information.
14. Assess compliance with the Regulation Z General Rules and Periodic Statements for Residential Mortgage Loans provisions and the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.31 and .41 and Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information.
15. Assess compliance with the Regulation Z General Rules and Requirements for Home Equity Plans provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.31 and .40, for more information.

#### *Adjustable Rate Mortgage Disclosures*

16. Assess compliance with the Regulation Z General Disclosure Requirements and Initial Rate Adjustment provisions and the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.17 and .20(d), and Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information.
17. Assess compliance with the Regulation Z General Disclosure Requirements and Rate Adjustments with a Corresponding Change in Payment provisions and the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.17 and .20(c), and Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information. See also CFPB Bulletin 2013-12 (October 15, 2013), providing implementation guidance for certain mortgage servicing rules.<sup>9</sup>

### **EFTA/Regulation E and RESPA/Regulation X**

18. If the servicer is within the scope of coverage and obtains electronic payments from borrowers, assess compliance with the Regulation E Electronic Fund Transfers provisions and the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely

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<sup>9</sup> See CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), [http://files.consumerfinance.gov/f/201310\\_cfpb\\_mortgage-servicing\\_bulletin.pdf](http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf).

and Accurate Information provisions. Please refer to the examination procedures regarding Regulation E, 12 CFR 1005 and Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information. See also CFPB Bulletin 2015-06 (November 23, 2015) regarding preauthorized electronic fund transfers.<sup>10</sup>

## **Payoff Statements**

### **TILA/Regulation Z**

19. Assess compliance with the Regulation Z General Rules and Payoff Statements provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.31 and .36(c)(3), for more information.

## **Treatment of Credit Balances**

### **TILA/Regulation Z**

20. Assess compliance with the Regulation Z Treatment of Credit Balances provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.11 and .21, for more information.

## **Changes to Existing Credit Arrangements**

### **ECOA/Regulation B**

21. Determine whether the servicer's procedures for maintaining or modifying existing credit arrangements are consistent with ECOA/Regulation B anti-discrimination requirements. See also CFPB Advisory Opinion (May 18, 2022) regarding revocations or unfavorable changes to the terms of existing credit arrangements.<sup>11</sup>

22. Assess compliance with the ECOA/Regulation B adverse action notification provisions. Please refer to the examination procedures regarding Regulation B, 12 CFR 1002.9, for more information. See also CFPB Advisory Opinion (May 18, 2022) regarding revocations or unfavorable changes to the terms of existing credit arrangements.<sup>12</sup>

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<sup>10</sup> CFPB issued a bulletin highlighting its expectations of supervised banks and nonbanks for preauthorized electronic fund transfers. See CFPB Bulletin 2015-06: Requirements for Consumer Authorizations for Preauthorized Electronic Fund Transfers (November 23, 2015), [http://files.consumerfinance.gov/f/201511\\_cfpb\\_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf](http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf).

<sup>11</sup> See CFPB Advisory Opinion: Equal Credit Opportunity (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements (May 18, 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_revoking-terms-of-existing-credit-arrangement\\_advisory-opinion\\_2022-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_revoking-terms-of-existing-credit-arrangement_advisory-opinion_2022-05.pdf).

<sup>12</sup> See *id.*

**TILA/Regulation Z**

23. Assess compliance with the Regulation Z limitations on modifying a home equity plan. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.40(f), for more information.

**Successors in Interest**

**RESPA/Regulation X**

24. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(1)(vi), for more information. See also CFPB Bulletin 2013-12 (October 15, 2013) providing implementation guidance for certain mortgage servicing rules.<sup>13</sup>

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<sup>13</sup> See CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), [http://files.consumerfinance.gov/f/201310\\_cfpb\\_mortgage-servicing\\_bulletin.pdf](http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf).

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## **Module 3 – Error Resolution, Consumer Inquiries, and Complaint Procedures**

Examiners should review notices of error, consumer inquiries (including requests for information), and complaints and call specific complaining consumers to interview them regarding their experiences. Examiners should listen to live calls and taped calls to assess the quality and training of call center personnel. Examiners should determine the root cause of notices of error, consumer inquiries, and complaints, whether they were resolved adequately (including appropriate remediation for all consumers affected by the root cause), whether they were resolved in a timely manner. In addition to reviewing individual notices of error, inquiries, and complaints, examiners should review the related policies and procedures. As part of this review, examiners should assess whether complaints drive adjustments to business practices, where appropriate. Examiners should also review the escalation paths available to borrowers, including those available for borrowers facing imminent foreclosure.

### **RESPA/Regulation X**

#### **Error Resolution Procedures**

1. Assess compliance with the Regulation X Error Resolution Procedures provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.35, for more information.

#### **Requests for Information**

2. Assess compliance with the Regulation X Requests for Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.36, for more information.

#### **Policies and Procedures**

3. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a), (b)(1)(ii) and (b)(1)(iii), for more information. See also the Consumer Complaint Response part of the Compliance Management Review section of the CFPB examination procedures.
4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Informing Borrowers of the Written Error Resolution and Information Request Procedures provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(5), for more information.

### **TILA/Regulation Z**

#### **Billing Error Resolution**

5. Assess compliance with the Regulation Z Billing Error Resolution provisions for open-end mortgages. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.13, for more information.

**Other Risks to Consumers**

6. Determine whether the servicer has an adequate process to identify and escalate requests for information, notices of error, or complaints that may involve regulatory compliance issues.
7. Where the borrower is facing imminent foreclosure, determine whether the servicer has an adequate process for expedited evaluation and resolution of requests for information, notices of error, or complaints that may involve regulatory compliance issues. Such an adequate process could include a dedicated phone line that connects directly to a live representative or another path for borrowers or borrower advocates to resolve identified regulatory compliance issues in advance of an imminent foreclosure.

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## **Module 4 – Maintenance of Escrow Accounts and Insurance Products**

Examiners should review policies and procedures and obtain a sample of servicing records. For the loans in the sample, examiners should assess whether the servicer is complying with the law in the areas listed below. If the file review indicates potential risks, examiners also should conduct interviews of a sample of consumers and staff, if appropriate, to assess consumer experiences with escrow accounts, force-placed insurance products, and private mortgage insurance.

### **RESPA/Regulation X and TILA/Regulation Z**

#### **Escrow Account Requirements**

1. Assess compliance with the Regulation X Escrow Accounts provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.17, for more information.
2. Assess compliance with the Regulation X Timely Escrow Payments and Treatment of Escrow Account Balances provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.34, for more information.
3. Assess compliance with the Regulation Z Escrow Account Cancellation Notice for Certain Mortgage Transactions provisions. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.20(e), for more information.

#### **Force-Placed Insurance**

4. Assess compliance with the Regulation X Escrow Accounts (Timely Payment of Hazard Insurance) provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.17(k)(5), for more information.
5. Assess compliance with the Regulation X Force-Placed Insurance provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.37, for more information.

#### **Policies and Procedures**

6. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information.

#### **Other Risks to Consumers**

7. Determine whether the servicer informs delinquent consumers that they will receive a refund of escrow surplus where the servicer does not plan to send a refund.
8. Determine whether the servicer correctly disburses funds from escrow accounts and refrains from using funds from particular consumers' escrow accounts to pay home insurance premiums owed by other consumers.

## **Homeowners Protection Act of 1998**

### **Treatment of Private Mortgage Insurance**

9. Assess compliance with Homeowners Protection Act. Please refer to the examination procedures regarding the HPA, 12 U.S.C. 4902, 4903(a)(3), and 4904 for more information. See also CFPB Bulletin 2015-03 (August 4, 2015) regarding private mortgage insurance.<sup>14</sup>

### **Policies and Procedures**

10. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(1)(i), for more information.

### **Other Risks to Consumers**

11. Determine whether the servicer informs borrowers of private mortgage insurance cancellation standards that are inconsistent with the HPA.
12. Determine whether the servicer accurately represents the reason(s) consumers are ineligible to cancel private mortgage insurance.

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<sup>14</sup> CFPB issued a bulletin highlighting its expectation of supervised banks and nonbanks for private mortgage insurance cancellation and termination. See CFPB Bulletin 2015-03: Private Mortgage Insurance Cancellation and Termination (August 4, 2015), [http://files.consumerfinance.gov/f/201508\\_cfpb\\_compliance-bulletin\\_private-mortgage-insurance-cancellation-and-termination.pdf](http://files.consumerfinance.gov/f/201508_cfpb_compliance-bulletin_private-mortgage-insurance-cancellation-and-termination.pdf).

## **Module 5 – Consumer Reporting**

Examiners should review policies, procedures, direct disputes, indirect disputes, complaints, and obtain a sample of loan servicing records. For the loans in the sample, compare the information in the servicer’s system of record with the information reported to the consumer reporting agencies. Particular concerns in the mortgage servicing context include ensuring that servicers report short sales accurately, instead of reporting transactions as resulting in a foreclosure when they actually resulted in a short sale, and ensuring that servicers report loan modification outcomes accurately. If consumer complaints or document review indicates potential FCRA violations, examiners also should conduct interviews of consumers from the sample.

### **FCRA/Regulation V Furnisher Requirements**

1. Assess compliance with the FCRA/Regulation V Furnisher Requirements. Please refer to the FCRA examination procedures, 12 CFR 1022.40-43 and 15 U.S.C. 1681s-2, for more information. See also CFPB Bulletin 2013-09 (September 4, 2013) regarding furnishers’ responsibilities to investigate disputes, CFPB Bulletin 2014-01 (February 27, 2014) and CFPB Circular 2022-07 (November 10, 2022) regarding investigations of disputed information, and CFPB Bulletin 2016-01 (February 3, 2016) regarding required policies and procedures.<sup>15</sup>

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<sup>15</sup> CFPB has issued three bulletins and one circular highlighting its expectations of supervised banks and nonbanks with respect to certain FCRA compliance issues, *see*:

- CFPB Bulletin 2013-09: The FCRA’s Requirement to Investigate Disputes and Review “All Relevant” Information Provided by Consumer Reporting Agencies (CRAs) About the Dispute (September 4, 2013), [http://files.consumerfinance.gov/f/201309\\_cfpb\\_bulletin\\_furnishers.pdf](http://files.consumerfinance.gov/f/201309_cfpb_bulletin_furnishers.pdf);
- CFPB Bulletin 2014-01: The FCRA’s Requirement that Furnishers Conduct Investigations of Disputed Information (February 27, 2014), [http://files.consumerfinance.gov/f/201402\\_cfpb\\_bulletin\\_fair-credit-reporting-act.pdf](http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf); and
- CFPB Bulletin 2016-01: The FCRA’s Requirement that Furnishers Establish and Implement Reasonable Written Policies and Procedures Regarding the Accuracy and Integrity of Information Furnished to all Consumer Reporting Agencies (February 3, 2015), [http://files.consumerfinance.gov/f/201602\\_cfpb\\_supervisory-bulletin-furnisher-accuracy-obligations.pdf](http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf).
- CFPB Circular 2022-07 Reasonable Investigation of Consumer Reporting Disputes (November 10, 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_reasonable-investigation-of-consumer-reporting-disputes\\_circular-2022-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_reasonable-investigation-of-consumer-reporting-disputes_circular-2022-07.pdf).

## **Module 6 – Information Sharing and Privacy**

### **Privacy Notices**

1. Assess compliance with Privacy of Consumer Financial Information Regulation that implements the GLBA. Please refer to the GLBA examination procedures, 12 CFR 1016.4 and.5, for more information.

### **Information Sharing With Affiliates**

2. Assess compliance with the FCRA Affiliate Marketing Rule. Please refer to the FCRA examination procedures, 12 CFR 1022.21, for more information.

## **Module 7 – Collections and Accounts in Bankruptcy**

Examiners should review policies, procedures, complaints, and obtain a sample of servicing records of consumers in default, including a sufficient number of loans in which the consumer has filed for bankruptcy, to assess collection practices. Examiners should obtain collection call records and listen to a sample of collection calls. If consumer complaints or document review indicates potential violations in these areas, examiners also should conduct interviews of consumers from the sample and ask questions relevant to each topic area below. In connection with these steps, examiners should evaluate the following.

Under the FDCPA, a “debt collector” is defined as any person who regularly collects, or attempts to collect, consumer debts for another person or institution, or uses interstate commerce or the mail in a business the principal purpose of which is consumer debt collection, or uses some name other than its own when collecting its own consumer debts, with certain exceptions. The definition includes, for example, an institution that regularly collects debts for an unrelated institution.

The debt collector definition has an exception that frequently applies to mortgage servicing: an institution is not a debt collector under the FDCPA when it collects debts that were *not* in default when they were obtained by the servicer.<sup>16</sup> Thus, a servicer that purchases the servicing rights for a portfolio of loans will be a debt collector to the extent it meets the general definition of debt collector only for loans that were in “default” when the servicer obtained them.<sup>17</sup>

Examiners should obtain a sample of collection call records and assess whether collectors complied with the requirements listed in the debt collection examination procedures. Examiners should also assess collection activities and listen to a sample of collection calls to identify potential risks to consumers where the FDCPA may not apply. For more information, please also refer to CFPB Bulletin 2013-07 (July 10, 2013), which provides guidance on unfair, deceptive, or abusive acts or practices in the collection of consumer debts.<sup>18</sup>

### **FDCPA**

1. Assess compliance with the FDCPA. Please refer to the examination procedures regarding debt collection for more information.

### **Other Risks to Consumers**

2. Determine whether the servicer contacts borrowers in an appropriate manner:

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<sup>16</sup> 15 U.S.C. 1692a (6)(F)(iii).

<sup>17</sup> The FDCPA itself does not contain a definition of the term “default.” In determining whether a debt is in default, the following factors, among others, are generally considered: the creditor’s customary policies and practices; terms of the contract; determinations by the originator; and State law.

<sup>18</sup> See CFPB Bulletin 2013-07: Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (July 10, 2013), [http://files.consumerfinance.gov/f/201307\\_cfpb\\_bulletin\\_unfair-deceptive-abusive-practices.pdf](http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf).

- a. Employees and third-party contractors clearly indicate to consumers that they are calling about the collection of a debt.
  - b. Employees and third-party contractors do not disclose the existence of a consumer's debt to the public without the consent of the consumer, except as permitted by law.
  - c. The entity has policies on avoiding repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.
3. Determine whether the servicer's representatives make misrepresentations or use deceptive means to collect debts.
  4. Determine whether collections staff transfer borrowers to loss mitigation staff, in accordance with the institution's policies and procedures, to discuss forbearances, loan modifications (including streamlined modifications), and other loss mitigation alternatives.

## **Bankruptcy**

### **Other Risks to Consumers**

5. Determine whether the servicer properly identifies accounts as being in active bankruptcy to ensure that the servicer provides protection from foreclosure or collections to which the borrower is entitled under federal bankruptcy law.
6. For consumers who have filed for bankruptcy, determine whether the servicer informs the debtor of the total amount due, including principal, interest, fees, expenses, or other charges, as of the date the debtor filed for bankruptcy, and whether the servicer provides the debtor with an escrow account statement prepared as of the date the debtor filed for bankruptcy.
7. For consumers who have filed for chapter 13 bankruptcy, determine whether the servicer provides notice of any change in the payment amount due, including any change that results from an interest rate or escrow account adjustment, to the debtor, the debtor's counsel, the bankruptcy trustee, and the court, before a payment in the new amount is due.
8. For consumers who have filed for chapter 13 bankruptcy, determine whether the servicer provides notice of fees or other amounts charged to the account to the debtor, the debtor's counsel, the bankruptcy trustee, and the court during the pendency of the bankruptcy case.
9. Determine whether payments received from a consumer or bankruptcy trustee are properly applied to the consumer's account.

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## **Module 8 – Loss Mitigation, Early Intervention, and Continuity of Contact**

Examiners should review policies, procedures, complaints, and obtain a sample of servicing records of consumers who are delinquent or at imminent risk of default to assess loss mitigation activity. If consumer complaints or document review indicates potential concerns in these areas, examiners also should conduct interviews of consumers from the sample who sought loss mitigation in the prior year and ask questions relevant to each topic area below. For more information, please also refer to CFPB Bulletin 2013-12 (October 15, 2013), which provides implementation guidance for certain mortgage servicing rules.<sup>19</sup>

### **RESPA/Regulation X**

#### **Early Intervention Requirements for Certain Borrowers**

1. Assess compliance with the Regulation X Early Intervention Requirements for Certain Borrowers – Live Contact provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.39(a), for more information. See also CFPB Bulletin 2013-12 (October 15, 2013) providing implementation guidance for certain mortgage servicing rules.<sup>20</sup>
2. Assess compliance with the Regulation X Early Intervention Requirements for Certain Borrowers – Written Notice provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.39(b), for more information.

#### **Continuity of Contact**

3. Assess compliance with the Regulation X Continuity of Contact provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.40, for more information.

#### **Loss Mitigation Procedures**

4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Properly Evaluating Loss Mitigation Applications provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(2), for more information.
5. Assess compliance with the Regulation X Receipt of a Loss Mitigation Application provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(b), for more information.

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<sup>19</sup> See CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), [http://files.consumerfinance.gov/f/201310\\_cfpb\\_mortgage-servicing\\_bulletin.pdf](http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf).

<sup>20</sup> See CFPB Bulletin 2013-12: Implementation Guidance for Certain Mortgage Servicing Rules (October 15, 2013), [http://files.consumerfinance.gov/f/201310\\_cfpb\\_mortgage-servicing\\_bulletin.pdf](http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf).

6. Assess compliance with the Regulation X Evaluation of Loss Mitigation Applications provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(c), for more information.
7. Assess compliance with the Regulation X Denial of Loan Modification Options provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(d), for more information.
8. Assess compliance with the Regulation X Borrower Response provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(e), for more information.
9. Assess compliance with the Regulation X Appeal Process provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(h), for more information.

## Other Risks to Consumers

### Application Process

10. Determine whether information provided to consumers about forbearances, loan modifications (including streamlined modifications), and other loss mitigation alternatives is clear, prominent, and readily understandable.
11. Determine whether any information is provided to consumers about the servicer's participation in homeowner assistance programs (such as the Homeowner Assistance Fund) and, if such information is provided, determine whether the information is accurate.
12. Determine whether the servicer sends loss mitigation offer letters with response deadlines that had already passed or were about to pass by the time consumers received the letters.
13. Determine whether the servicer is providing military homeowners who have informed the servicer that they have received military Permanent Change of Station orders with accurate, clear, and readily understandable information about available assistance options for which the consumer may qualify.<sup>21</sup>
14. Determine whether the servicer advises consumers to stop payments in order to qualify for loss mitigation relief.
15. Determine whether the servicer timely converts consumers who successfully complete trial modifications to permanent modifications.

### Appeals Process

16. Determine whether the servicer sends loss mitigation denial notices with appeal deadlines that are less than fourteen days from the day consumers received the notices.

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<sup>21</sup> See Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders (June 21, 2012), [http://files.consumerfinance.gov/f/201206\\_cfpb\\_PCS\\_Orders\\_Guidance.pdf](http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf).

**Consequences of Loss Mitigation**

17. Determine whether the servicer discloses any rescheduling of payments that may occur under an existing obligation in a clear, prominent, and understandable manner, and whether the payment due dates on consumer communications align with the due dates in the servicer's system.
18. Determine whether the servicer discloses any material negative consequences that may occur as a result of the borrower's failing to make payments during the loss mitigation process.
19. Determine whether the servicer discloses any material negative consequences that may occur as a result of a forbearance or loan modification (e.g., decreased credit score, income tax implications if principal reduction is offered, and any increase in monthly payment amount).
20. Determine whether the servicer discloses future changes in the modified loan terms (e.g., with respect to any principal forbearance or temporary interest rate reductions).
21. Determine whether the servicer asks consumers to waive their legal rights under the Servicemembers Civil Relief Act or any other law as a prerequisite to the servicer either providing information to the consumer about available options or evaluating the consumer's eligibility for assistance.
22. Determine whether the servicer includes any waiver of legal rights in its loan modification or other foreclosure alternative agreements.
23. Determine whether the servicer accurately captures escrow amounts due when evaluating borrowers for loss mitigation.
24. Determine whether the servicer applies payments and assesses fees according to the terms of loss mitigation agreements.

**Forbearances**

25. Determine whether the servicer accurately represents the payment amounts, if any, required for consumers to accept deferral offers or other permanent loss mitigation options at the end of forbearance periods.

**Short Sales**

26. If the servicer is offering short sales as a loss mitigation tool, determine whether it provides clear, timely disclosures to the consumer about the process.
27. If the servicer demands deficiency payments upon agreeing to a short sale to recoup any principal not recovered through the short sale, determine whether the servicer discloses in a clear, prominent, and understandable manner that it or an investor will demand a deficiency payment or related cash contribution and the approximate amount of that deficiency.

**Deeds In Lieu of Foreclosures**

28. If the servicer offers deeds in lieu of foreclosures, determine whether it provides clear, timely disclosures about requirements and cost to the consumer.

## **ECOA**

### **Providing Appraisals and Other Valuations**

29. Assess compliance with the Regulation B Providing Appraisals and Other Valuations provisions. Please refer to examination procedures regarding Regulation B, 12 CFR 1002.14(a)(1) and (2), for more information.

### **Disparate Treatment in Loss Mitigation**

As discussed above, examiners should obtain a sample of servicing records of consumers in default or at imminent risk of default to assess loss mitigation activity. While conducting the review of the servicer's loss mitigation activities discussed above, examiners must be mindful of activities that may indicate disparate treatment of consumers in violation of the ECOA on the bases of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. An examination of whether a servicer's loss mitigation program involves disparate treatment of consumers in violation of the ECOA will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

Examiners should:

30. Determine whether the file documents indicate that decisions were made based upon any protected status.
31. Determine whether there were clear policies and procedures for making loss mitigation decisions or whether there was broad employee discretion. If employees have discretion, determine whether the procedures, controls, and monitoring that govern the exercise of discretion are adequate to mitigate the risk of disparate treatment.
32. Assess policies and procedures for assessing fees, with a specific focus on discretion.
33. Determine whether there were adequate processes and controls for policy exceptions and adequate documentation of decisions.
34. Review complaints of discrimination and litigation alleging discrimination.
35. Review any internal fair lending audits or reports.
36. Assess policies and procedures for considering various types of income of an applicant or the spouse of an applicant.
37. Assess policies and procedures for servicing loans held by borrowers with limited English proficiency (LEP borrowers). Among other things, assess whether the institution (a) identifies borrowers that may require non-English language assistance; (b) provides an option for customer service calls in a language other than English; (c) has customer service personnel available to provide assistance in languages other than English and, if so, (i) whether they are dedicated service

personnel and (ii) whether they receive the same training, and have the same authority, as other customer service personnel; and (d) provides translations of English language documents to LEP borrowers.

## **Disparate Impact in Loss Mitigation**

An examination of whether a servicer's loss mitigation program results in adverse impact on a prohibited basis group will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

Examiners, in consultation with Headquarters, should:

38. Obtain information sufficient to determine whether loss mitigation workouts have been provided to consumers in compliance with ECOA and Regulation B. For example, this may involve an analysis of the distribution of members of a particular prohibited basis group in the pool of delinquent borrowers versus the distribution receiving a range of loss mitigation outcomes, including: reinstatement, repayment plan, forbearance, loan modification, short sale, deed-in-lieu, and foreclosure.
39. Obtain information sufficient to determine whether loan modifications have been provided in compliance with ECOA and Regulation B. For example, this may involve an analysis of processing times and loan modification attributes including interest rate, principal, and monthly payment reductions for members of a particular prohibited basis group compared to other borrowers.
40. Obtain information sufficient to determine whether the rate and timing of foreclosures are in compliance with ECOA and Regulation B. For example, this may include analyzing the representation of members of particular prohibited basis groups among seriously delinquent borrowers versus their representation among borrowers who lose their homes to foreclosure.

To complete a disparate impact analysis of a servicer's loss mitigation program, and determine whether a facially neutral policy or practice that has an adverse effect on a prohibited basis group meets a legitimate business need that cannot reasonably be achieved by a less discriminatory alternative, refer to Section B of the CFPB's Fair Lending Examination Procedures and consult with Headquarters.

## **Module 9 – Foreclosures**

Examiners should review policies, procedures, complaints, and obtain a sample of servicing records of consumers whose loans have been referred to foreclosure. For the loans in the sample, examiners should focus on whether the consumer is in fact in default and whether all amounts due are correct. Examiners should review amounts set forth in foreclosure affidavits, compare them to amounts recorded in the servicer’s primary computer system, and compare them to all statements made in communications from the borrower, including consumer complaints. In appropriate cases, examiners should compare the filing dates reflected in the servicer’s records to the dates identified in public records. Examiners also should review all complaints of consumers whose loans were referred to foreclosure in the prior year. In reviewing foreclosure practices, examiners should focus on the following areas:

### **RESPA/Regulation X**

#### **Dual Tracking**

1. Assess compliance with the Regulation X Prohibition on Foreclosure Referral provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(f), for more information.
2. Assess compliance with the Regulation X Prohibition on Foreclosure Sale provisions. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(g), for more information.
3. If the servicer is a small servicer, assess compliance with Regulation X Small Servicer Requirements. Please refer to examination procedures regarding Regulation X, 12 CFR 1024.41(j).

#### **Policies and Procedures**

4. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Accessing and Providing Timely and Accurate Information provisions. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a), (b)(1)(ii), (b)(1)(iv), and (b)(1)(v), for more information.
5. Assess compliance with the Regulation X General Servicing Policies, Procedures, and Requirements – Facilitating Oversight of, and Compliance by, Service Providers provisions (including both service providers performing foreclosure-related services and service providers performing other services). Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.38(a) and (b)(3), for more information.

#### **Other Risks to Consumers**

6. Determine whether the servicer has foreclosed on any consumers paying on a trial modification agreement, permanent modification agreement, forbearance agreement, or other similar agreement.
7. Determine whether the servicer has foreclosed on any consumer with whom the servicer had agreed to a modification agreement, forbearance agreement, or other similar agreement, but the first payment was not yet due.

8. Determine whether the servicer has initiated any foreclosure actions where the servicer has represented to consumers that it would not initiate foreclosure actions or would not initiate foreclosure actions during a specific time period.
9. Determine whether the servicer represents to consumers that they will begin foreclosure or that foreclosure will occur before the servicer actually intends to initiate foreclosure.
10. Determine whether the servicer has initiated any foreclosure actions where the servicer knew or should have known that a prior servicer waived the charges that caused the consumer's default.
11. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act prohibits servicers from foreclosing on any active duty military consumer, or any consumer within one year of active duty servicer, with pre-service obligations, unless the servicer satisfies certain requirements. Examiners should determine whether compliance policies and procedures include checking the Department of Defense's Manpower Database prior to completing a foreclosure and documenting the results.

## Walkaways

12. Evaluate the servicer's process for informing consumers about changes in the foreclosure process, including decisions not to go forward.
13. Evaluate the servicer's process for informing consumers about determinations to charge off loans for accounting purposes or to release liens but not related debts prior to full repayment of the loan.

## ECOA

14. See above, Module 8. Examiners should collect information sufficient to determine whether there has been disparate treatment discrimination in violation of the ECOA and Regulation B in the servicer's foreclosure processing as part of the file review. Examiners should consult with Headquarters to determine whether there has been disparate impact discrimination in foreclosure processing as part of the loss mitigation data analysis discussed above.

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## **Module 10 – Examiner Conclusions and Wrap-Up**

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity’s risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.
2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether each violation is a pattern or practice, or an isolated situation that occurred despite appropriate controls.
3. Identify action needed to correct violations and weaknesses in the institution’s compliance management system, as appropriate.
4. Discuss findings with the institution’s management and, if necessary, obtain a commitment for corrective action
5. Record violations according to Bureau policy in the Report of Examination/Supervisory Letter and CFPB’s electronic database system to facilitate analysis and reporting.
6. If the examiner believes enforcement action may be appropriate, contact appropriate agency personnel for guidance.
7. Prepare a memorandum for inclusion in the work papers and CFPB’s official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

## **GLOSSARY**

**BPOs:** broker price opinions, which provide estimates of the property value.

**Consumer Reporting Agency:** a person which, for monetary fees, dues, or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

**Deed in Lieu of Foreclosure:** a foreclosure alternative in which the consumer voluntarily transfers the property title to the servicer in exchange for cancellation of the remainder of the debt.

**Escrow Account:** an account the servicer maintains to pay property taxes and insurance on behalf of the borrower.

**Forbearance:** a foreclosure alternative in which the servicer reduces or suspends the consumer's mortgage payments for an agreed period of time. At the end of that time, the consumer resumes making the regular payments as well as a lump sum payment or additional monthly payments to bring the loan current. Forbearance may be an option if the consumer's income is reduced temporarily and the mortgage is affordable. Borrowers with federally backed mortgages who affirm they are experiencing a financial hardship during the COVID-19 national emergency have the right to request and obtain forbearance for up to 180 days and to request and obtain an extension for another 180 days (for a total of 360 days) under the CARES Act.<sup>22</sup>

**Force-Placed Insurance:** an insurance policy taken out by a lender or creditor when it determines that a consumer has breached the mortgage contract by failing to carry appropriate insurance on the home that is collateral for the mortgage.

**Foreclosure Trustee:** an individual or company chosen to administer the assets of the beneficiary and facilitate the foreclosure process.

**Loan Instruments:** the promissory note and the security instrument that detail the rights and obligations of the parties.

**Loan Modification:** a foreclosure alternative in which the servicer changes one or more of the terms of the mortgage contract, typically to lower the monthly payments. Modifications may include reducing the interest rate, extending the term of the loan, or adding missed payments to the loan balance. A modification also may involve reducing the amount of money the consumer owes by forgiving a portion of the mortgage debt, which is known as "principal forgiveness."

**Loss Mitigation:** a process for considering alternatives to foreclosure when consumers fall behind on their mortgage payments or are at risk of default.

**PITI Payment:** principal, interest, taxes, and insurance payment

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<sup>22</sup> Pub. L. 116-136, § 4022(c)(1), 134 Stat. 281, 490 (Mar. 27, 2020).

**Promissory Note:** a document that evidences the debt and the promise to repay.

**Property Inspection Fees:** fees for inspections of the property so that the servicer can make sure that it is occupied and not abandoned.

**Property Preservation Fees:** fees for services purchased to maintain the property in good condition and typically include lawn mowing, winterizing, and making repairs.

**Proprietary Loan Modifications:** loan modifications other than HAMP modifications. The eligibility requirements and structure of these modifications depend on the servicer and the investor that owns the particular loan.

**Reinstatement:** a process by which, after going into default, the consumer pays the loan servicer the entire past-due amount, plus any late fees or penalties, by an agreed date. This option may be appropriate if the consumer's problem paying the mortgage is temporary.

**Repayment Plan:** a foreclosure alternative in which the servicer allows the consumer a fixed amount of time to repay the amount he is behind by adding a portion of what is past due to the regular payment. This option may be appropriate if the consumer has missed a small number of payments and can afford the mortgage.

**Security Instrument:** a document that evidences the lien on the property. Depending on the state, the security instrument is called either a deed of trust or mortgage deed.

**Short Sale:** a foreclosure alternative in which the servicer allows the consumer to sell the home for less than the mortgage balance before it forecloses on the property and may agree to forgive any shortfall between the sale price and the mortgage balance.

**Streamlined Modification:** a loan modification that servicers may offer to borrowers who meet certain requirements without requiring borrowers to submit complete financial or hardship documentation. A Flex Modification, available on government-sponsored enterprise loans, is an example.

**Suspense Account:** an account holding funds that are earmarked for — but not immediately credited to — the consumer's loan account. Also called an unapplied funds account.

**Uniform Instruments:** form instruments developed by Fannie Mae and Freddie Mac that are used to document the large majority of mortgage loans.