

MAINE BANKERS

Association

TESTIMONY OF
BILL KANY, ESQ., SACO AND BIDDEFORD SAVINGS INSTITUTION
MARCH 5, 2014
**LD 1389 - IN "QUALIFIED SUPPORT" OF THE PROPOSED AMENDMENT WITH SUGGESTED
MODIFICATIONS**

Good afternoon Senator Valentino, Representative Priest and members of the Judiciary Committee. My name is Bill Kany and I am a resident of Saco. Today, I am representing the 31 member banks of the Maine Bankers Association (MBA). MBA's member banks employ over 9,000 Maine residents from across our state. I am the Senior Vice President and Director of Legal and Government Affairs at Saco and Biddeford Savings Institution. Saco and Biddeford Savings Institution is a mutual savings bank and we have been serving Maine communities since 1827.

I am the Chair of MBA's Collections Working Group and a member of the Association's Legislative Committee. I also have the interesting perspective of being an attorney who was in private practice for 25 years before becoming a banker and I have handled 100s of foreclosures for plaintiffs and defendants and continue to represent our bank in all foreclosures.

First, MBA would like to thank Attorney General Mills and her staff for coordinating and managing the Working Group to review the foreclosure process. I was one of the representatives of MBA on that group and the forums provided stakeholders with an opportunity to express their thoughts and concerns about the process.

MBA's is testifying in "qualified support" of LD 1389, in part, because the landscape of mortgage servicing changed dramatically effective January 10, 2014. We feel our proposed modifications to the amendment are required to incorporate some of those changes while clarifying other aspects of the amendment. The servicing rule changes were made by the federal Consumer Financial Protection Bureau (CFPB). I have attached to my testimony Exhibit I, which is an overview of the rule changes and more specifically information regarding new requirements relating to early intervention and loss mitigation procedures.

The new rules implement a 120-day after delinquency delay on commencing a foreclosure for most residential mortgage loans. The CFPB stated: "The new 120-day delay under the rules is designed to

give borrowers time to learn about workout options and file an application for mortgage assistance.” Maine has one of the longest foreclosure timelines in the country. This 120-day delay is not going to help improve our timeline unless the state takes a serious look at moving the mediation program out of the court foreclosure process.

Maine’s foreclosure diversion law does not allow for mediation until a foreclosure is filed against a customer. Maine’s current process appears to be working in cross purposes to the CFPB’s attempt to protect consumers.

A voluntary pre-foreclosure mediation program would increase the chances of success and reduce costs for the consumer. Lenders and servicers should not have to bring a foreclosure action against a consumer before they are able to mediate through a state approved program. We are not asking for the mediation program to be eliminated, but the current structure is not helping consumers avoid a foreclosure filing. In fact, it is counter-productive to the consumer protections instituted by the CFPB, and it is not assisting the state in expediting the foreclosure process.

With that said, I would like to review MBA’s suggested modifications to the AG’s amendment, attached Exhibit II. We have not addressed moving the mediation process, but we hope the committee will consider reviewing this issue.

Part A

The transfer tax addressed in this section is appropriated to the Maine Bureau of Consumer Credit Protection (BCCP) to fund pre-foreclosure outreach to consumers. MBA supports this section, and as I will discuss in a moment, is proposing another legislative change which should result in cost savings to the Bureau and those savings can also be used to fund more credit counseling for consumers.

Part B

MBA is in support of this section provided our suggested modifications are made because we feel Maine consumers, municipalities, communities and lenders will benefit from addressing the abandoned property issue. Our suggested changes to this section are included in Exhibit II. The major changes involve making sure all properties involved in a civil foreclosure proceedings are eligible, with some specific exceptions, and that the redemption period be eliminated if the property is determined by the court to be abandoned.

Part C

We support this section provided it is amended to account for the loss mitigation application (LMA) requirements outlined in the new CFPB changes 12 CFR Part 1024.41 that allow for a customer to submit a loss mitigation application up to 37 days prior to a foreclosure sale. Attached Exhibit III outlines the timeline for the CFPB Loss Mitigation Application (LMA).

Part D

MBA supports this section and has no suggested changes.

Part E

MBA suggests a modification to Part E to ensure that previous lienholders extinguished by the tax lien foreclosure, including but not limited to mortgage holders and attachment creditors, are paid off prior to distributing any money to the former owners.

Part F

MBA is in strong opposition to this part because it seeks to regulate “residential real estate property preservation company” without defining what it is. MBA members frequently must rely on the services of outside agents to protect their mortgage collateral, and therefore, this definition and the impact that these provisions may have on Maine banks are of significant concern to the MBA.

Part G

MBA feels that the reference to the Federal Deposit Insurance Corporation forms and worksheets referenced in this section are outdated and should be removed. We also want to make sure that mediators are trained in all aspects of the RESPA Loss Mitigation Application Process.

We have proposed an addition to Part G that would allow a mortgagee to retain the services of a court authorized mediator prior to a foreclosure filing. MBA has and will continue to advocate in the future for moving the mediation to a pre-foreclosure process to make it truly a foreclosure diversion program. Moving the entire mediation process to a pre-foreclosure status is truly better for the consumer because it can avoid the filing of a foreclosure action which is even more detrimental to a consumer’s credit and it can enable all parties to work out an arrangement far earlier in the process. In addition, the CFPB’s 120 day waiting period and requirement that lender’s communicate loss mitigation options to

borrowers early in the process are intended to encourage pre-foreclosure resolutions. However, MBA feels the voluntary pre-foreclosure mediation process we have suggested may be a means of seeing how effective early mediation may be.

MBA has proposed two additional sections to the AG's proposed amendment. Section H requires a lender to send a notice to Maine's Bureau of Consumer Credit Protection 3 days after the Right-to-Cure Notice has expired in instances in which the borrower does not cure. Based on the information from our members, about 85% of people who receive a default notice cure the default and in many instances the same borrowers are receiving up to 6 such notices in a single year. This change should reduce administrative costs for the Bureau, and the cost savings can be applied to funding additional consumer credit counseling. In addition, the new CFPB's 120-day delay and the early intervention requirements enhance consumer protections and allow for a 35 day delay in notifying the BCCP. Section I requires the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection to post a list of authorized mediators on their website.

The regulatory landscape relating to foreclosures has changed dramatically since Maine passed its foreclosure law five years ago. Elected officials, along with all stakeholders, must ensure that a comprehensive review of Maine's current foreclosure law is completed to prevent compliance uncertainty and potentially conflicting legal requirements.

MBA will continue to work with interested stakeholders to ensure that Maine's foreclosure mitigation program has strong consumer protections without hindering the availability of credit for the 95% of Mainers who are not facing foreclosure. Maine's current system may negatively impact the future cost and availability of credit.

I want to thank you for the opportunity to testify. I will be glad to review in more detail MBA's recommended changes to the AG's proposed amendment if the committee feels that would be helpful.

Bill Kany, Esq.
Senior Vice President, Director of Legal and Government Affairs
Saco and Biddeford Savings Institution
(207) 602-7381-Email: kanyw@sbsavings.com

§1024.39 Early intervention requirements for certain borrowers.

(a) *Live contact.* A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if appropriate.

(b) *Written notice.* (1) *Notice required.* Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower's delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.

(2) *Content of the written notice.* The notice required by paragraph (b)(1) of this section shall include:

- (i) A statement encouraging the borrower to contact the servicer;
- (ii) The telephone number to access servicer personnel assigned pursuant to §1024.40(a) and the servicer's mailing address;
- (iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;
- (iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and
- (v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

(3) *Model clauses.* Model clauses MS-4(A), MS-4(B), and MS-4(C), in appendix MS-4 to this part may be used to comply with the requirements of this paragraph (b).

(c) *Conflicts with other law.* Nothing in this section shall require a servicer to communicate with a borrower in a manner otherwise prohibited by applicable law.

(d) *Exemptions—(1) Borrowers in bankruptcy.* A servicer is exempt from the requirements of this section for a mortgage loan while the borrower is a debtor in bankruptcy under Title 11 of the United States Code.

(2) *Fair Debt Collections Practices Act.* A servicer subject to the Fair Debt Collections Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) with respect to a borrower is exempt from the requirements of this section with regard to a mortgage loan for which the borrower has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 78 FR 63004, Oct. 23, 2013]

REGULATION X-(RESPA) MODEL NOTICE

APPENDIX MS-4—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE

MS-4(A)—STATEMENT ENCOURAGING THE BORROWER TO CONTACT THE SERVICER AND ADDITIONAL INFORMATION ABOUT LOSS MITIGATION OPTIONS (§1024.39(B)(2)(I), (II) AND (IV))

Call us today to learn more about your options and instructions for how to apply. [The longer you wait, or the further you fall behind on your payments, the harder it will be to find a solution.]

[Servicer Name]

[Servicer Address]

[Servicer Telephone Number]

[For more information, visit [Servicer Web site] [and][or] [Email Address]].

MS-4(B)—AVAILABLE LOSS MITIGATION OPTIONS (§1024.39(B)(2)(III))

[If you need help, the following options may be possible (most are subject to lender approval):]

- [Refinance your loan with us or another lender;]
- [Modify your loan terms with us;]
- [Payment forbearance temporarily gives you more time to pay your monthly payment;] [or]
- [If you are not able to continue paying your mortgage, your best option may be to find more affordable housing. As an alternative to foreclosure, you may be able to sell your home and use the proceeds to pay off your current loan.]

MS-4(C)—HOUSING COUNSELORS (§1024.39(B)(2)(V))

For help exploring your options, the Federal government provides contact information for housing counselors, which you can access by contacting [the Consumer Financial Protection Bureau at [Bureau Housing Counselor List Web site]] [the Department of Housing and Urban Development at [HUD Housing Counselor List Web site]] or by calling [HUD Housing Counselor List Telephone Number].

[78 FR 10887, Feb. 14, 2013]

Exhibit I- Maine Bankers Association

LD 1389

MORTGAGE SERVICING RULES: Coverage¹

Regulation X (12 CFR 1024)	Closed-End, Principal Residence	Closed-End, Non-Principal Residence	Open-End	Servicers and Loan Types Exempt from Coverage
Error Resolution and Information Requests (.35 and .36)	X	X		
Force-Placed Insurance (.37)	X	X		Small Servicer ² must comply with requirements of 1024.37 but, per 1024.17(k)(5)(iii), is permitted to purchase force-placed insurance if less expensive than escrow payment for borrower's hazard insurance.
Policies, Procedures, and Requirements (.38)	X	X		Small Servicer, Reverse Mortgages, Qualified Lender³
Early Intervention (.39)	X			Small Servicer, Reverse Mortgages, Qualified Lender
Continuity of Contact (.40)	X			Small Servicer, Reverse Mortgages, Qualified Lender
Loss Mitigation Procedures (.41)	X			Small Servicers (except, per 1024.41(j), small servicers may not file for foreclosure if borrower is performing pursuant to a loss mitigation agreement OR is 120 or fewer days delinquent), Reverse Mortgages, Qualified Lender
Mortgage Servicing Transfers (.33)	X	X		Certain Transfers: between affiliates; resulting from servicer/subservicer mergers or acquisitions; OR between master servicers without changing subservicer. Servicing Disclosure Statement required for first lien only.
Escrow Accounts (.17 and .34)	X	X	X (.17 only)	Small servicer is permitted to purchase force-placed insurance if less expensive than escrow payment for borrower's hazard insurance, per 1024.17(k)(5)(iii).

MORTGAGE SERVICING RULES: Coverage¹

Regulation Z (12 CFR 1026)	Closed-End, Principal Residence	Closed-End, Non-Principal Residence	Open-End	Servicers and Loan Types Exempt from Coverage
Periodic Statement (.41)	X	X		Small Servicer, Reverse Mortgages, and Timeshares. Fixed-Rate Loans with Coupon Books exempt from some requirements.
ARM Disclosures (.20(c) and (d))	X			ARM with term of 1 year or less
Prompt Crediting (.36)	X			
Payoff Statement (.36)	X	X	X	

¹ This chart is not a substitute for the rules. Only the rules and the Official Interpretations can provide complete and definitive information regarding their requirements. The complete rules, including the Official Interpretations and small entity compliance guide, are available at <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>.

² Small Servicer (1026.41(e)(4)(ii)): Servicer or affiliate services 5,000 or fewer mortgage loans and the servicer or affiliate owns or originated all 5,000 loans OR the servicer is a Housing Finance Agency per 24 CFR 226.5.

³ Qualified Lender per 12 CFR 617.7000.

December 23, 2013

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR Data is current as of February 28, 2014

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Title 12: Banks and Banking
PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)
Subpart C—Mortgage Servicing

§1024.41 Loss mitigation procedures.

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in §1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in §1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(b) *Receipt of a loss mitigation application.* (1) *Complete loss mitigation application.* A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.

(2) *Review of loss mitigation application submission.* (i) *Requirements.* If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer shall:

(A) Promptly upon receipt of a loss mitigation application, review the loss mitigation application to determine if the loss mitigation application is complete; and

(B) Notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section. The notice to the borrower shall include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

(ii) *Time period disclosure.* The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

(3) *Determining Protections.* To the extent a determination of whether protections under this section apply to a borrower is made on the basis of the number of days between when a complete loss mitigation application is received and when a foreclosure sale occurs, such determination shall be made as of the date a complete loss mitigation application is received.

(c) *Evaluation of loss mitigation applications.* (1) *Complete loss mitigation application.* If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving a borrower's complete loss mitigation application, a servicer shall:

(i) Evaluate the borrower for all loss mitigation options available to the borrower; and

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(2) *Incomplete loss mitigation application evaluation.*—(i) *In general.* Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

(ii) *Reasonable time.* Notwithstanding paragraph (c)(2)(i) of this section, if a servicer has exercised reasonable diligence in obtaining documents and information to complete a loss mitigation application, but a loss mitigation application remains incomplete for a significant period of time under the circumstances without further progress by a borrower to make the loss mitigation application complete, a servicer may, in its discretion, evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option. Any such evaluation and offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of paragraph (i) of this section.

(iii) *Payment forbearance.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program offered pursuant to this section.

(iv) *Facially complete application.* If a borrower submits all the missing documents and information as stated in the notice required pursuant to §1026.41(b)(2)(i)(B), or no additional information is requested in such notice, the application shall be considered facially complete. If the servicer later discovers additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it was facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of paragraph (c). A servicer that complies with this paragraph will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B).

(d) *Denial of loan modification options.* If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria.

(e) *Borrower response.* (1) *In general.* Subject to paragraphs (e)(2)(ii) and (iii) of this section, if a complete loss mitigation application is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a complete loss mitigation application is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(2) *Rejection.* (i) *In general.* Except as set forth in paragraphs (e)(2)(ii) and (iii) of this section, a servicer may deem a borrower that has not accepted an offer of a loss mitigation option within the deadline established pursuant to paragraph (e)(1) of this section to have rejected the offer of a loss mitigation option.

(ii) *Trial Loan Modification Plan.* A borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.

(iii) *Interaction with appeal process.* If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower's deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1)(ii) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.

(f) *Prohibition on foreclosure referral.—(1) Pre-foreclosure review period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i) A borrower's mortgage loan obligation is more than 120 days delinquent;
- (ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or
- (iii) The servicer is joining the foreclosure action of a subordinate lienholder.

(2) *Application received before foreclosure referral.* If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;
- (ii) The borrower rejects all loss mitigation options offered by the servicer; or
- (iii) The borrower fails to perform under an agreement on a loss mitigation option.

(g) *Prohibition on foreclosure sale.* If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial

foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer; or

(3) The borrower fails to perform under an agreement on a loss mitigation option.

(h) *Appeal process.* (1) *Appeal process required for loan modification denials.* If a servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale or during the period set forth in paragraph (f) of this section, a servicer shall permit a borrower to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program available to the borrower.

(2) *Deadlines.* A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides the offer of a loss mitigation option to the borrower pursuant to paragraph (c)(1)(ii) of this section.

(3) *Independent evaluation.* An appeal shall be reviewed by different personnel than those responsible for evaluating the borrower's complete loss mitigation application.

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

(i) *Duplicative requests.* A servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower's mortgage loan account.

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013]

JANUARY 2014

Have a mortgage? What you can expect under federal rules



Consumer Financial
Protection Bureau

You've got support when you look for information or help.

As you manage your mortgage payments, you rely on getting accurate and prompt information from your mortgage servicer. Federal rules for mortgage servicers support you. The rules help you understand how your payments work, give you tools if you have problems making your payments, and give you protections from wrongful actions taken by servicers.

Your mortgage servicer is the company that collects your monthly mortgage payments. Your mortgage servicer also works with you if you have trouble making your payments.

You'll receive billing information in writing.

Servicers have to give you a written mortgage statement each billing cycle showing the following information, as it applies to your situation:

Current bill

- What you owe
- How much money is applied to principal, interest, and escrow
- Late payment fees and the date you need to pay the amount to avoid the fee
- Payment options, if your mortgage loan has multiple payment options, and an explanation of whether the principal balance will increase, decrease, or stay the same under each option

Past payments

- How your total payments have been applied, since your last statement and since the beginning of the year
- Transaction activity, with the amount and date of charges or credits that affect your current bill
- Information on partial payments (that is, payments you made that were less than the full amount owed) and what must be done for the money to be applied to your loan balance

Other account information

- The principal amount you currently owe on your loan
- The interest rate, and if you have an interest rate that could change, the next date it is scheduled to change
- The penalty for paying off your loan early, if there is one
- General contact information for your servicer
- The special mailing address, if there is one, for written requests for information about your loan or for reporting an error your servicer has made
- How to contact a housing counselor for help

If you're more than 45 days behind on your payments: Notice of delinquency

- The date you became delinquent
- Your account history for the past six months
- How much to pay to bring your account current
- Possible risks and costs, such as foreclosure, if you don't bring your payments up to date
- Information about any foreclosure avoidance options that you've agreed to, if applicable
- Information about housing counseling
- A notice whether the servicer has started the foreclosure process

Your servicer doesn't have to send a monthly statement if it has already sent you a book of coupons to send in with your payments. The coupon book must also contain certain information about your account and about how to contact the servicer. If you are 45 days behind on your payments, the servicer must send you a written notice that includes all the information listed under "notice of delinquency" above.

There are exceptions if your lender is a small servicer. Small servicers are exempt from this rule and many other requirements. Small servicers (together with related companies) can service no more than 5,000 mortgages each year, where they and their related companies are the lender.

Or, they can be Housing Finance Agencies—government agencies that offer a specified number of mortgages with low rates for low- and middle-income homeowners.

Your payments will be credited promptly.

Servicers have to apply your full payments to your account as of the day they come in. If you pay only part of what you owe, the servicer may hold your partial payment(s) in a special account. And the servicer must tell you about this on your monthly statement. When that special account collects enough money to make a full payment of principal, interest, and any applicable escrow, the servicer has to credit that payment to your account.

You'll get a quick response when you ask about paying off your loan.

If you write to ask how much it will cost to pay off your mortgage, the servicer generally has seven business days after receiving your request to answer you.

You can't be charged for insurance you don't need, or overcharged for force-placed insurance.

If you fail to keep your home insured, your lender usually has the right to buy and charge you for insurance to cover the lender's interest in your home. This insurance is called "force-placed insurance."

Force-placed insurance is usually more expensive than a policy you buy, and it generally protects only the lender, not you. The insurance cost varies. The servicer can't overcharge you. It is allowed to charge you only the amount permitted by state insurance regulations or an amount that is reasonably related to the costs of providing the insurance.

The servicer must warn you at least 45 days before it charges you for a force-placed insurance policy. The notification tells you what kind of insurance you need. You might use the time to shop for a better or lower-cost policy.

If you choose to buy your own policy, the notification also tells you to how to prove to the servicer that you have insurance. The servicer has to remind you—at least 30 days after sending the first notification and at least 15 days before it charges you for force-placed insurance—if you still haven't provided proof to the servicer that you have the insurance you need.

If you provide proof of your own insurance after you've been billed for force-placed insurance, the servicer has to cancel its force-placed insurance. You'll receive a refund of the premiums and fees paid while your own policy was in effect.

You might have an escrow account from which the servicer pays your insurance bill. In that case, the servicer generally must continue your existing insurance policy if possible, rather than buy force-placed insurance.

Your complaints and information requests will be resolved quickly.

If your servicer doesn't properly apply a payment or charges improper fees, you should send your servicer a complaint in writing. When you write to your mortgage servicer to ask for information or to complain about certain errors, the servicer generally has seven days (excluding weekends and holidays) to acknowledge your letter.

Then, the servicer has 30 to 45 business days to resolve the complaint—which means they have to respond to information requests, resolve any alleged errors, or explain to you why they believe no error was made.

Examples of errors include when the servicer:

- Does not apply your payment correctly
- Charges improper fees
- Gives you inaccurate information about foreclosure and loss mitigation options
- Starts a foreclosure process or foreclosure sale in violation of the loss mitigation rules
- Makes any error relating to the servicing of your mortgage loan

If the error is related to foreclosure, the servicer generally has to respond before the date of the foreclosure sale. There's an exception: If the servicer receives a complaint within seven days of the sale, the servicer just has to make a good-faith effort to respond to it.

Many servicers have set up specific addresses for information requests and errors, so that your request is received by specially trained employees. This address appears on your monthly periodic statement or coupon book and on the servicer's Web site. Take care to mail your request to the correct address.

Your servicer has to follow good customer service policies.

Mortgage servicers have to set up their business so they can:

- Access correct information about your loan
- Tell you how to submit complaints and requests for information
- Respond promptly and correctly to your complaints and requests for information
- Pass along correct information about your account when the servicer transfers the servicing of your loan to another company
- Properly evaluate an application for relief if you are having difficulties paying your loan
- Keep records for at least one year after you pay off your loan, or after the loan is transferred to a new servicer

If you have an adjustable-rate mortgage, you'll have at least two months' warning when your payments are about to change.

If you take out an adjustable-rate mortgage, the servicer must notify you about the first interest rate adjustment well in advance. You'll get the first notice at least seven months before you owe a payment at the adjusted interest rate. The advance notification needs to show:

- An estimate of the new interest rate and payment amount
- Alternatives available to you
- How to contact a HUD-approved mortgage counselor

For the first interest rate adjustment, and for any adjustments that come later that give you a different payment amount, your servicer must send you another notice, at least 60 days in advance, telling you what your new payment will be.

You can get help if you're having trouble paying your mortgage.

Your servicer must tell you about the help that's available to you, and must consider you for that help, if you are having trouble paying your mortgage. You'll have to complete specified steps at the right times.

A good first step is to get expert advice in a face-to-face or telephone meeting with a HUD-approved housing counselor. Housing counselors talk to homeowners like you full-time. There is little or no cost to you. You can find a HUD-approved housing counseling agency near you, by visiting consumerfinance.gov or calling **888-995-HOPE (4673)**.

You'll be contacted when you're having trouble making your payments.

When you don't pay your mortgage, your mortgage servicer must try to contact you to talk about the situation no later than 36 days after your payment was due.

The servicer has to tell you in writing about mortgage workout options that may be available no later than 45 days after you are late on the payment.

The mortgage servicer has to assign personnel to help you once you're 45 days late on your mortgage, and sooner if you've asked for help.

You can apply for help, so do it promptly.

If you're having trouble paying your mortgage, you can apply for help from your servicer. The first step is to tell your servicer you are interested in a foreclosure prevention option, such as a loan workout or short sale.

Before 45 days have passed after your first missed payment, your servicer is required to mail you information about how to apply for mortgage assistance (sometimes called a loss mitigation application). You'll probably be asked for income documents and other financial information along with the application. Fill out the application completely and return it with the documents as soon as you can.

Once you have submitted an application, the servicer has five days to review it. The servicer will either confirm your application is complete or give you a list of additional information and documents it needs. Plus, the servicer will give you a date by which you should return the information and documents. When you submit the additional information and documents to the servicer by that date, you can get the most protection available to you under federal rules, even if the servicer asks for more documents later on.

But, you need to act fast. Once you're 120 days behind on your payments, the servicer can start the foreclosure process if you haven't submitted a complete application.

You'll find out your options.

The servicer uses your loss mitigation application to put together your foreclosure prevention options. The servicer must evaluate you for all the foreclosure prevention options available to you, as long as your complete application is received at least 37 days before your scheduled foreclosure sale. However, that doesn't mean the servicer or the owner of your loan has to offer any specific foreclosure prevention (or loss mitigation) options.

Loss mitigation options could include:

- Temporarily suspending or reducing your payments (a forbearance)
- Permanently changing your loan terms to an amount you can afford (a modification)
- Allowing you to leave your home without repaying the full amount you owe, through a short sale or other foreclosure alternative

Within 30 days after you submit a complete application, the servicer generally has to tell you in writing what foreclosure prevention options you are eligible for. They also have to tell you what options they considered but did not offer, and why.

If you submit your complete mortgage assistance application at least 90 days prior to a scheduled foreclosure sale, you're entitled to 14 days to accept or reject the foreclosure prevention offer. If you submit the complete application at least 37 days prior to a scheduled foreclosure sale, you're entitled to seven days to accept or reject the offer.

You can seek review of the mortgage servicer's decision about your loan modification request.

If a servicer denies you a loan modification, on a trial or permanent basis, you can ask for a review of this decision—as long as you sent in a complete mortgage assistance application at least 90 days before your foreclosure sale. Your appeal needs to be submitted within 14 days after the servicer's determination of which other loss mitigation options, if any, it will offer. The servicer has to assign the review to someone who was not involved in the initial decision and must give you a response in writing within 30 days of your request.

If the servicer decides not to change the offer after the review, or makes you a new offer, you're entitled to 14 days to accept that offer.

You may have protections against foreclosure.

A servicer may not start a foreclosure if you're less than 120 days behind on your payments. If you send in a complete application after the 120-day mark, and foreclosure has started, you may still have protections.

If you're more than 120 days late on your payments, your loan is already in foreclosure, and you've sent in a complete application more than 37 days before the sale, then your servicer can't start foreclosure until:

- The servicer decides you don't qualify for any workout.
- You reject the workout options the servicer offers you.
- You make a workout agreement and then don't do what you promised to do in the workout agreement (like making timely payments).

You have to respond quickly to the options your servicer offers. If your foreclosure date is close, you may get only seven days to say yes to a loan workout.

Where to find out more

Information about these and other rules is available at <http://consumerfinance.gov/regulations>.

You can get more mortgage facts and help at <http://consumerfinance.gov/mortgage>. Looking for a new mortgage? Take a look at the booklet, *Shopping for a mortgage? What you can expect under federal rules*, posted on that page.

If you have a problem with your mortgage, you can also submit a complaint with the CFPB:

Online: www.consumerfinance.gov/complaint

By telephone: (we provide services in more than 180 languages)

8 a.m. to 8 p.m. ET, Monday–Friday:

(855) 411-CFPB (2372)

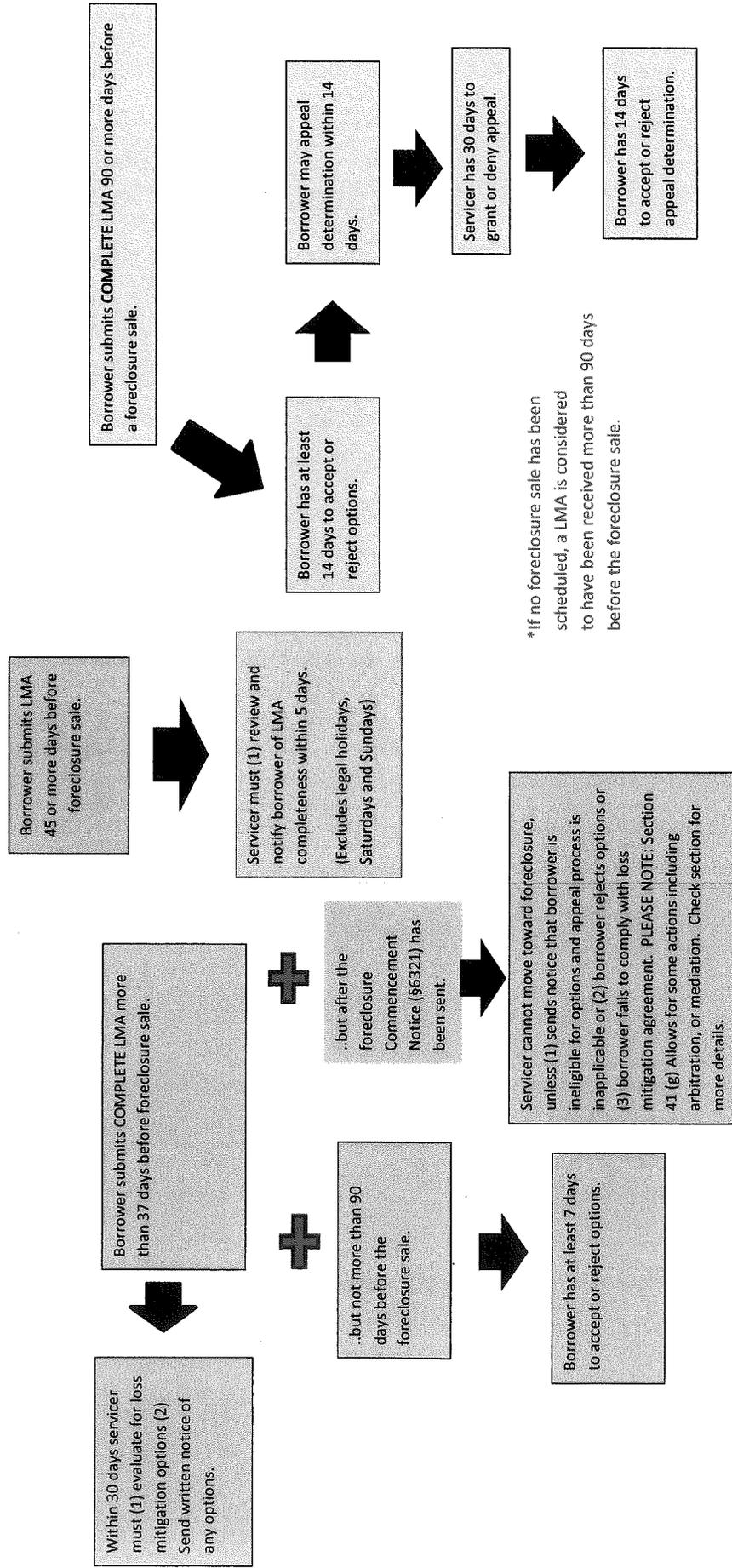
Español (855) 411-CFPB (2372)

TTY/TDD (855) 729-CFPB (2372)

By mail: Consumer Financial Protection Bureau
P.O. Box 4503
Iowa City, Iowa 52244

By fax: (855) 237-2392

CFPB LOSS MITIGATION APPLICATION (LMA) FLOWCHART



APPEALS PROCESS. If a servicer received a complete loss mitigation application 90 days or more before a foreclosure sale or during the pre-foreclosure review period, a servicer shall permit a borrower to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program available to the borrower.

