

***FANNIE MAE AND FREDDIE MAC  
“FLEX MODIFICATION”***

***NATIONAL FAIR HOUSING ALLIANCE***

***WEBINAR PRESENTATION  
SEPTEMBER 26, 2017***

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## ***Reference Materials***

- Links to access all guidelines referenced in the presentation are provided on the slides in the “On-Line Resources” section of the presentation.
- A link to download a copy of today’s presentation with additional materials will be sent to attendees after the webinar.

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## ***Common Mortgage Servicing Acronyms***

- ARM                      Adjustable Rate Mortgage
- BRP                      Borrower Response Package
- CFPB                     Consumer Financial Protection Bureau
- CFR                      Code of Federal Regulations
- DTI                        Debt to Income
- FMV                      Fair Market Value
- GMI                        Gross Monthly Income
- GSEs                      Fannie Mae and Freddie Mac are “Government Sponsored Enterprises”
- HTI                        Housing Expense-to-Income Ratio

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## ***Common Mortgage Servicing Acronyms***

- HAMP            Home Affordable Modification Program
- LTV            Loan to Value
- MTMLTV       Mark-to-Market Loan to Value
- NPV           Net Present Value
- P&I            Principal & Interest
- PITIA          Monthly Payment of Principal, Interest, Taxes, Insurance,  
Homeowner Association/Condominium Dues
- PLS            Private Label Securities
- PMI            Private Mortgage Insurance
- TPP            Trial Period Plan

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## ***FANNIE MAE AND FREDDIE MAC “FLEX MODIFICATION”***

EFFECTIVE DATE

OPTIONS PRIOR TO EFFECTIVE DATE

FLEX MODIFICATION TYPES

FLEX MODIFICATION TARGET MODIFIED P&I (PRINCIPAL AND INTEREST)

ELIGIBILITY CRITERIA

INELIGIBILITY CRITERIA

FLEX MODIFICATION TERMS

COMPARISON: FLEX AND HAMP FEATURES

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## ***FANNIE MAE AND FREDDIE MAC FLEX MODIFICATION EFFECTIVE DATE***

Servicers **must implement Flex Modification no later than October 1, 2017**

- Early Implementation was voluntary:
  - Freddie Mac servicers February 15, 2017
  - Fannie Mae servicers March 1, 2017
  - Nationstar (now “Mr. Cooper”) began early implementation

Replaces HAMP and Standard and Streamlined Modifications

- Fannie Mae Lender Letter LL-2016-06
- Freddie Mac Bulletin 2016-22

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## ***FLEX MODIFICATION TYPES***

### **FLEX MODIFICATION**

- Review based on complete Borrower Response Package (BRP) received prior to 90 days delinquency
- Distinguishes between short and long-term hardships
- Modification for long term hardships only

### **STREAMLINED FLEX MODIFICATION – GSEs NOT USING TERM “STREAMLINED”**

- No borrower documentation required
- Servicer reviews after 90 days delinquent to determine eligibility and sends Streamlined offer to eligible borrowers

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## ***FLEX MODIFICATION***

### **Flex Modification Based on Complete BRP Received Prior to 90 days Delinquency**

- Completed and signed Form 710 Uniform Borrower Assistance Form or its equivalent
- Income documentation outlined in Form 710 based on income type
- Hardship documentation per Form 710 based on hardship type
- IRS Form 4506T-EZ or 4506T Request for Individual Tax Return Transcript signed by borrower *if requested by servicer* - **4506-T is no longer required in all situations**
  - ***Change regarding prior mandatory collection of 4506-T or EZ was effective mid- February 2017***
    - *Freddie Mac Bulletin 2017-1*
    - *Fannie Mae Serv Announcement 2017-02*

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## ***STREAMLINED FLEX MODIFICATION***

- **Servicer reviews for the Streamlined offer when**
  - Borrower becomes 90 days delinquent OR
  - When borrower with a Step-Rate Mortgage becomes 60 days delinquent within the 12 months following the first payment due date resulting from an interest rate adjustment
- **Servicer authorized to continue proactive solicitation for Streamlined Flex Modification at its discretion but must not solicit if property has a scheduled foreclosure sale date**
  - Within 60 days of the evaluation date if the property is in a judicial foreclosure state or within 30 days of the evaluation date if the property is in a non-judicial foreclosure state
  - *Unless the Servicer is required to continue contact attempts by applicable law*  
Freddie Mac Bulletin 2017-6; Fannie Mae Serv Announcement 2017-04

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## ***FLEX MODIFICATION TARGET PAYMENTS***

### **FLEX MODIFICATION WITH COMPLETE BRP PRIOR TO 90 DAYS DELINQUENT**

- **Targeted** modified payment:
  - ☐ 20% reduction in principal and interest (P&I) payment **and**
  - ☐ 40% maximum Housing Expense-to-Income (HTI) Ratio
    - PITIA not greater than 40% of borrower's gross monthly income
    - As in HAMP, PITIA excludes monthly Mortgage Insurance Premium (MIP) and subordinate mortgages

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## ***FLEX MODIFICATION TARGET PAYMENTS***

### **STREAMLINED FLEX – BRP NOT REQUIRED**

- **Targeted** modified payment: 20% reduction in P&I payment
- GSEs appear to be dropping the term “Streamlined” with the Flex Modification.
- Fannie Mae Lender Letter refers to “soliciting the borrower” for a Fannie Mae Flex Modification

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## ***FLEX MODIFICATION TARGET PAYMENTS NOT MET***

- For BRP and Streamlined Options – borrower eligible for modification even if target payment is not achieved as long as proposed Flex P&I modified payment is less than or equal to existing contractual payment
- Exception – If reviewed for imminent default (current or less than 31 days delinquent), proposed Flex P&I payment must be less than existing contractual payment
- Unlike HAMP where modification would be denied if the targeted 31% GMI payment could not be achieved

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## ***FLEX MODIFICATION ELIGIBILITY CHECKLIST***

- ☐ Conventional First Lien Mortgage Loan
- ☐ Property and Delinquency Criteria
  - Principal residence
    - At least 60 days delinquent or
    - If current or less than 60 days delinquent – meets imminent default criteria
  - Second home or investment property must be at least 60 days delinquent
  - Property may be vacant or condemned
- ☐ Origination date at least 12 months prior to evaluation date

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## ***FLEX MODIFICATION ELIGIBILITY CHECKLIST***

- ☐ Modified P&I Criteria
  - Must be less than pre-modified payment for borrower who was current or less than 31 days delinquent at time of evaluation **OR**
  - Must be less than or equal to pre-modified payment for borrower 31 or more days delinquent at time of evaluation
- ☐ If an ARM or Interest-Only Mortgage
  - Modification must result in fully amortizing loan and may not be a bi-weekly or daily simple interest loan

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## ***FLEX MODIFICATION ELIGIBILITY CHECKLIST***

- ☐ Modified loan retains first lien priority
- ☐ Borrower satisfied all requirements of the TPP
  - Timely first TPP payment is evidence of acceptance of TPP offer
  - Timely payments: Borrower made all TPP payments by the last day of the month in which it is due
  - TPP may be extended up to an additional 9 months to obtain approval in bankruptcy
- ☐ Borrower executed and returned the Flex Loan Modification Agreement
- ☐ Servicer or Fannie Mae/Freddie Mac (depending upon the entity that is the mortgagee of record) executes and dates the Flex Loan Modification Agreement

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## ***FLEX MODIFICATION INELIGIBILITY CHECKLIST***

- ☐ Loan is subject to any of the following:
  - Recourse Agreement
  - Indemnification Agreement – Fannie Mae
    - Freddie Mac eligible if certain conditions are met
  - An approved liquidation workout option
  - An active and performing forbearance plan or repayment plan – Freddie Mac
    - unless otherwise directed by Fannie Mae
  - A current offer for another mortgage loan modification or other workout option
  - An active and performing modification Trial Period Plan

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## ***FLEX MODIFICATION INELIGIBILITY CHECKLIST***

- ☐ Loan has been modified 3 or more times previously, regardless of the modification program or dates of prior modifications
- ☐ Borrower failed Flex Mod TPP within 12 months of being evaluated for eligibility for another Flex Mod
- ☐ Borrower became 60 days or more delinquent within first 12 months of Flex Modification effective date and has not brought the mortgage current following the delinquency

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## ***FLEX MODIFICATION EXCEPTION CRITERIA***

- If the eligibility criteria are not satisfied but servicer determines there are acceptable mitigating circumstances, the servicer may submit a request to Fannie Mae or Freddie Mac for review and approval to offer Flex Mod TPP (see Bulletin 2016-22, Freddie Mac Flex Mod. Ref. Guide March 2017 p. 4.)
- Examples of exceptions:
  - Unusual hardship
  - 3 or more previous modifications
  - Failed TPP less than 12 months ago
  - Became delinquent on prior mod after <12 months
- No exceptions for non-conventional loans (FHA, VA, RH) or loans subject to a recourse agreement.

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## ***FLEX MODIFICATION WATERFALL***

Fannie Mae LL 2016-06 at p. 4-6; Freddie Mac Bulletin at p. 4-6

1. Capitalize eligible arrearages
2. Set modification interest rate to a fixed rate depending upon whether existing rate is fixed, step-rate or ARM **and** whether post-modification LTV (loan-to-value) is less than, greater than or equal to 80%  
(see p.4-6 for more details regarding ARMS and Step-Rates)
  - Use existing interest rate if capitalized LTV less than 80%
  - Use lesser of existing rate or posted Flex Mod Rate if LTV is 80% or greater
  - LTV - Guidelines use term "Mark-to-Market Loan to Value" - MTMLTV
3. Extend term to 480 months from the modification effective date

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## ***FLEX MODIFICATION WATERFALL***

4. Forbear principal *ONLY IF* capitalized unpaid principal balance (UPB) LTV ratio is greater than 100%
  - Forbear lesser of
    - An amount that would create a post-modification LTV ratio of 100% using interest-bearing principal balance **OR**
    - 30% of the gross post-modification UPB of the mortgage loan
  - No authority to forgive principal
5. Provide or increase principal forbearance based on whether loan is
  - Less than 90 days past due when borrower submitted complete BRP **OR**
  - Greater than or equal to 90 days past due and borrower did not submit a complete BRP before the 90<sup>th</sup> day of delinquency

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## ***FLEX MODIFICATION WATERFALL***

5. If the loan is **less than 90 days past due when borrower submitted complete BRP**
  - Provide or increase principal forbearance (if permitted by FB cap below) until a 20% P&I payment reduction **AND** a 40% HTI are achieved **but must NOT forbear more than**
    - An amount that would create a post-modification LTV ratio less than 80% using the interest-bearing principal balance **OR**
    - 30% of the gross post-modification UPB of the loan
  - Interest must not accrue on any principal forbearance
  - ***Complete BRP prior to 90 days delinquency is the only time income information is used in Flex Mod evaluation***

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## ***FLEX MODIFICATION WATERFALL***

5. If the loan is **greater than or equal to 90 days past due** and **borrower did not submit a complete BRP before the 90<sup>th</sup> day of delinquency**
  - Provide or increase principal forbearance until a 20% P&I payment reduction is achieved **but must NOT forbear more than**
    - An amount that creates post-modification LTV ratio less than 80% using the interest-bearing principal balance **OR**
    - 30% of the gross post-modification UPB of the loan
  - Interest must not accrue on any principal forbearance
  - *HTI is not a factor for loans 90 or more days past due – no income info is considered*

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## ***DETERMINING FLEX MODIFICATION TERMS***

### **Final Modification Terms are Heavily Dependent on LTV**

- Specific acceptable methods to determine current fair market value are described in Fannie Mae and Freddie Mac servicing guidelines and the Fannie Mae “e-learning course”
- **Servicer may not rely on local tax assessment value to determine fair market value**
- If capitalized UPB results in LTV less than 80%, no forbearance will be offered

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Fannie Mae offers an on-demand eLearning course that walks you through the Fannie Mae Flex Modification analysis. The course covers Flex Modification eligibility, terms, trial period plan, and how to complete a modification. It also describes the servicer's responsibilities in implementing Flex Mod and retiring the current Standard and Streamlined Modifications.

To access this course and other resources at your convenience:

<https://www.fanniemae.com/singlefamily/servicing-training>

Go to “Borrower Solutions and Default Management” – then to “Flex Modification” in right hand box under tab “Online Courses/Microlearning”

A printout of the e-learning course will be included in the materials you will receive after the webinar.

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### ***EXAMPLE #1: EQUITY IN THE HOUSE***

#### ***LTV < 80% AFTER CAPITALIZATION OF ARREARS***

- Step 1 -New capitalized UPB \$75,000 and Property Valuation \$100,000
- Step 2 - Current Interest Rate is fixed.
  - No reduction in interest rate because new capitalized balance is < **80% LTV**
  - See Waterfall Step 2 for additional interest rates situations
- Step 3 - Extend term to 480 months from mod effective date at current rate
- Step 4 No forbearance allowed because LTV < **100 % AFTER CAPITALIZATION OF ARREARS**
- Servicer offers modification if modified P&I is ≤ contractual P&I, even if target 20% reduction in P&I is not met
  - Except modified P&I must be less than contractual if borrower is current or less than 31 days delinquent
- Step 5 Income is not a factor in this example whether or not the borrower applies before the loan is 90 days delinquent because no additional forbearance allowed because **LTV < 80% AFTER CAPITALIZATION OF ARREARS**

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### ***EXAMPLE #2: THE DIFFERENCE 90 DAYS MAKES***

- Step 1 New Capitalized UPB \$120,000, Property Value \$100,000 result is LTV > 100%
- Step 2 Current interest rate is 5.5% fixed, P&I \$575, T&I \$200. Flex mod rate is 4.5%.
- Step 3 – Extend term to 480 months from mod effective date
- Step 4 in Waterfall: Forbear **lesser of**: amount to create post-mod LTV of 100% or 30% of gross post-mod UPB (\$20,000 vs \$36,000)
- First forbear \$20K to create 100% MTMLTV: \$100,00 Interest Bearing

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### ***EXAMPLE #2: THE DIFFERENCE 90 DAYS MAKES***

- Amortize \$100K at 4.5% over 480 months
  - P&I of \$449.56, PITI of \$649.56. Reduction in P&I is 22.2%. HTI is 43.3%
  - Approve if >90 days behind *because income is irrelevant*
  - *If complete BRP less than 90 days*: modified P&I must be \$400 to achieve target 40% HTI.
  - Forbear another \$11,100 (within 30% forbearance cap), amortize remaining \$88,900 480 months at 4.5%: P&I \$399.66 – PITI \$599.66 (\$49.90 less)

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## ***SHOULD BORROWER SUBMIT BRP AFTER 90 DAYS?***

### ***YES***

- All borrowers should submit a complete BRP which triggers servicer compliance with the CFPB Loss Mitigation Rule 12 CFR §1024.41

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## ***COMPARISON OF FLEX AND HAMP MODIFICATION FEATURES***

### **Similarities**

- Servicers have delegated authority to offer TPP and modification to eligible borrowers
- Unpaid late fees are waived and no up front contribution or modification fee
- Escrows are required
- Borrowers in active Chapter 13 or Chapter 7 bankruptcy are eligible upon request to servicer for review/modification may need bankruptcy court approval
- Allows for simultaneous assumption and modification
  - Freddie Mac § 9207.2
- Mortgage insurer must approve if servicer does not have delegated authority from insurer to offer Flex modification

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## ***COMPARISON OF FLEX AND HAMP MODIFICATION FEATURES***

### **Differences**

- No pre-January 2009 loan origination requirement
- No minimum monthly pre-modified PITIA payment threshold
- **No individual NPV test**
- No borrower incentives
- Eligible for modification even if target payment not achieved
- May be evaluated for Flex Modification more than once even if failed a Flex TPP or Flex Modification (if time requirements met - see eligibility slides)
- No collection of Government Monitoring Data
- Dodd-Frank Affidavit not required

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## ***PRIVATE LABEL SECURITIES (PLS) AND LOANS HELD IN PORTFOLIO***

### **Mortgage Bankers Association**

September 2016 "One Mod" Proposal: *Life After Hamp – The Future of Loss Mitigation*  
<https://www.mba.org/issues/residential-issues/one-mod-a-post-hamp-loan-modification>

MBA Working Group drafted proposal to offer recommendations to the servicing industry and to Fannie Mae/Freddie Mac regarding post-HAMP loss mitigation protocols

Some but not all features of One Mod proposal were adopted by Fannie Mae and Freddie Mac in the Flex Modification

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## ***IN-HOUSE/PROPRIETARY MODIFICATIONS PLS AND PORTFOLIO LOANS***

- They seem to be all over the place
- Temporary interest rate and payment reductions
- Return of the “up front contribution” – Rushmore
- Criteria are vague, mysterious, and contradictory:
  - Denied because “Income is insufficient to afford required payment”
  - Denied because “Current payment is affordable based on your income”

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## ***DEALING WITH MYSTERY MOD PROGRAMS***

- CFPB Loss Mitigation Regulation 12 CFR 1024.41: (a) no right to any specific loss mitigation program BUT (d) denial notice must state specific reasons for the denial
- Appeal denials and demand specificity about loan mod eligibility criteria and the inputs considered in your case
- Send Request for Information re: loss mitigation review (12 CFR 1024.36) and/or use discovery if in litigation
- File CFPB Complaint: <https://www.consumerfinance.gov/complaint/>
- Share information with advocates

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## ***DOCUMENTING WHAT IS OFFERED POST-HAMP***

- Send examples of TPPs, modifications, forbearance agreements to [dcipollone@nationalfairhousing.org](mailto:dcipollone@nationalfairhousing.org)

If another organization announces a similar collection effort, send to either Diane or other agency. We will collaborate and share information received.

Include

1. Identity of investor or whether FHA/VA/RH loan
2. Is the offer affordable in the long term?
3. Will borrower accept the offer?
4. Please send final modification agreement if you first send a TPP

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## ***DOCUMENTING WHAT IS OFFERED POST-HAMP***

- Features to look for regarding loss mitigation options offered on securitized loans and loans held in servicer's portfolio:
  - whether modification is temporary or permanent
  - upfront contribution
  - does not capitalize all arrearages
  - loan modification administrative fee
  - interest bearing balloons
  - waivers of claims and defenses
  - requiring borrower discharged in bankruptcy to reaffirm the debt
  - other features not in borrower's best interests

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## ***On-Line Resources End of HAMP***

- <https://www.hmpadmin.com>
  - MHA Supplemental Directive 16-02
  - MHA Supplemental Directive 16-03
- Fannie Mae:  
<https://www.fanniemae.com/content/guide/servicing/d2/3.2/07.html>
- Freddie Mac:  
[http://www.freddiemac.com/singlefamily/service/mha\\_modification.html](http://www.freddiemac.com/singlefamily/service/mha_modification.html)

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## ***On-Line Resources Servicing Guidelines as of 9/25/17***

Confirm whether client's loan is owned by Fannie Mae or Freddie Mac

- Fannie Mae <https://www.knowyouroptions.com/loanlookup>
- Freddie Mac <https://ww3.freddiemac.com/loanlookup/>

Confirm whether loan is still FHA Insured, i.e., has not been sold by HUD through the DASP program

- Call HUD National Servicing Center, Oklahoma at (877) 622-8525
- Send Request for Information CFPB 12 CFR § 1024.36 to the servicer's designated address

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## ***ON-LINE RESOURCES***

### ***SERVICING GUIDELINES AS OF 9/25/17***

#### **FANNIE MAE GUIDELINES**

Fannie Mae Lender Letter LL -2016-06 Announcing Flex Modification

<https://www.fanniemae.com/content/announcement/ll1606.pdf>

Access current and prior Fannie Mae Servicing Guides, Lender Letters, Servicing Announcements and forms via Fannie Mae website with link to servicing guide on AllRegs

<https://www.fanniemae.com/singlefamily/servicing>

- Part D - Providing Solutions to a Borrower
  - **D2: Assisting a Borrower Who is Facing Default or in Default**

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## ***ON-LINE RESOURCES***

### ***SERVICING GUIDELINES AS OF 9/25/17***

#### **FREDDIE MAC GUIDELINES**

Freddie Mac Bulletin 2016-22 Announcing Flex Modification December 14, 2016

<http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bl1622.pdf>

Freddie Mac Flex Modification Web Page - Access Flex Mod Fact Sheet and Term Sheet

[http://www.freddiemac.com/singlefamily/service/flex\\_modification.html](http://www.freddiemac.com/singlefamily/service/flex_modification.html)

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## ***ON-LINE RESOURCES***

### ***SERVICING GUIDELINES AS OF 9/26/17***

#### **FREDDIE MAC GUIDELINES**

Access current and prior Freddie Mac Servicing Guides, Bulletins, Industry Letters and forms on AllRegs via Freddie Mac website: <http://www.freddiemac.com/singlefamily/guide/>

Mortgage Servicing Sections

- **Series 9000 Servicing Default Management**
  - **Chapter 9101 – Delinquency Management for Mortgages Secured by Primary Residences**

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## ***ON-LINE RESOURCES AS OF 9/26/17***

### **CONSUMER FINANCIAL PROTECTION BUREAU MORTGAGE SERVICING REGULATIONS**

**THESE ARE THE REGULATIONS CURRENTLY IN EFFECT. AMENDMENTS TO SOME OF THESE REGULATIONS TAKE EFFECT ON OCTOBER 19, 2017**

**RESPA Subpart C – Mortgage Servicing (Real Estate Settlement Procedures Act)**

<http://www.ecfr.gov/cgi-bin/text-idx?SID=a45139c86eb3d16799f924f117d48c89&mc=true&node=sp12.8.1024.c&rgn=div6>

**TILA Subparts C and E (Truth in Lending Act)**

[http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1026\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1026_main_02.tpl)<sup>42</sup>

## ***ON-LINE RESOURCES AS OF 9/26/17***

### **MFY SPREADSHEETS**

- MFY Legal Services, now known as “Mobilization for Justice” has developed spreadsheets with explanations to check eligibility for the Flex Mod, FHA-HAMP and the current Fannie Mae/Freddie Mac Standard and Streamlined Modifications.
- The spreadsheets are accessible here:  
<http://mobilizationforjustice.org/projects/foreclosure-prevention-project/>

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*Reminder – Please send all types of TPPs and Loan  
Modification Offers to*

*Diane Cipollone*

[dcipollone@nationalfairhousing.org](mailto:dcipollone@nationalfairhousing.org)

*410.693.0943*



### *Save the Date for Upcoming Webinar*

**Wednesday, October 18, 2017 – 2:00-3:30 p.m. Eastern time**  
***Amendments to the CFPB Mortgage Servicing Regulations***

The October webinar will cover amendments regarding notice of a complete application, transfer of servicing, dual tracking, and the duplicate request rule, which are effective Oct. 19, 2017. The webinar will also include a brief overview of additional new regulations regarding successors in interest and the amendments relating to monthly statements for borrowers in bankruptcy, which are effective April 19, 2018. **Registration information will be sent in early October.**



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## ***QUESTIONS AND ANSWERS***



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