

***AMENDMENTS TO THE CFPB MORTGAGE SERVICING
REGULATIONS EFFECTIVE OCTOBER 19, 2017***

NATIONAL FAIR HOUSING ALLIANCE

WEBINAR PRESENTATION

OCTOBER 18, 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 at the end 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 (Fannie Mae/Freddie Mac loans)
- 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 (Term for LTV used in Fannie Mae, Freddie Mac and HAMP Guidelines)
- NPV Net Present Value
- P&I Principal & Interest
- PITIA Monthly Payment of Principal, Interest, Taxes, Insurance, Homeowner Association/Condominium Dues
- PSA Pooling and Servicing Agreement (for Securitized Loans)
- PLS Private Label Securities
- PMI Private Mortgage Insurance
- TPP Trial Period Plan

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Common Acronyms & Abbreviated Terms CFPB Mortgage Servicing Regulations

- CFPB Consumer Financial Protection Bureau
- CFR Code of Federal Regulations
- Dodd-Frank Act Dodd-Frank Wall Street Reform and Consumer Protection Act
- FDCPA Fair Debt Collections Practices Act
- LPI Lender Placed Insurance, referred to a "Force-Placed Insurance" in the CFPB regulations
- NOE Notice of Error
- RESPA Real Estate Settlement and Procedures Act
- Regulation X RESPA Regulations

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Common Acronyms & Abbreviated Terms CFPB Mortgage Servicing Regulations

- RFI Request for Information
- TILA Truth in Lending Act
- Regulation Z TILA Regulations

Other Acronyms

- DASP Distressed Asset Stabilization Program
 - Sale by HUD of seriously delinquent FHA-insured loans
 - After this sale, loan is no longer FHA-insured and new servicer is not required to review pursuant to FHA loss mitigation options
- NPL Non-Performing Loan (Delinquent)
- SEC Securities and Exchange Commission

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2016 AMENDMENTS TO THE 2013 RESPA AND TILA MORTGAGE SERVICING REGULATIONS "2016 MORTGAGE SERVICING RULE"

Go to right side bar "Printed Version pdf" for the official version in the Federal Register.

[HTTPS://WWW.FEDERALREGISTER.GOV/DOCUMENTS/2016/10/19/2016-18901/AMENDMENTS-TO-THE-2013-MORTGAGE-RULES-UNDER-THE-REAL-ESTATE-SETTLEMENT-PROCEDURES-ACT-REGULATION-X](https://www.federalregister.gov/documents/2016/10/19/2016-18901/amendments-to-the-2013-mortgage-rules-under-the-real-estate-settlement-procedures-act-regulation-x)

Implementation and Guidance Tools from the CFPB

<https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/mortserv/#guides>

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CONSUMER FINANCIAL PROTECTION BUREAU

MORTGAGE SERVICING REGULATIONS

AMENDMENTS TO RESPA AND TILA REGULATIONS ARE EFFECTIVE ON OCTOBER 19, 2017 **EXCEPT** AMENDMENTS RELATING TO BORROWERS IN BANKRUPTCY AND SUCCESSORS IN INTEREST WHICH ARE EFFECTIVE APRIL 19, 2018

RESPA Regulation X 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 Regulation Z 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

- Read the Official Bureau Interpretations in the Appendix at the bottom of the table of contents page.

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CONSUMER FINANCIAL PROTECTION BUREAU

MORTGAGE SERVICING REGULATIONS

RESPA Regulation X Official Bureau Interpretations

https://www.ecfr.gov/cgi-bin/text-idx?SID=a45139c86eb3d16799f924f117d48c89&mc=true&node=sp12.8.1024.c&rgn=div6#ap12.8.1024_141.1

TILA Regulation Z Official Bureau Interpretations

https://www.ecfr.gov/cgi-bin/text-idx?SID=7302c0c2feb2064ea59aa36962fd3a16&mc=true&node=ap12.9.1026_161.1&rgn=div9

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OVERVIEW OF AMENDMENTS EFFECTIVE APRIL 19, 2018 Borrowers in Active Bankruptcy

TILA 12 CFR 1026.41 Periodic Statements for Residential Mortgage Loans

- Servicers will be required to send modified mortgage statements or modified coupon books to borrowers in bankruptcy.
- Mortgage statements and coupon books will be tailored for bankruptcy requirements, such as including notice that “this is not an attempt to collect a debt.”
- See CFPB’s October 4, 2017 announcements – next slide

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RECENT CFPB INTERIM FINAL RULE AND NOTICE OF PROPOSED RULEMAKING

On October 4, 2017, the CFPB issued a notice of proposed rulemaking relating to the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books under Regulation Z in connection with a consumer’s bankruptcy case. Comments on the proposal are due 30 days after it is published in the Federal Register.

The CFPB also issued an interim final rule amending a provision of the 2016 Mortgage Servicing Final Rule (12 CFR 1024.39) relating to the timing for servicers to provide modified written early intervention notices under Regulation X to borrowers who have invoked their cease communication rights under the Fair Debt Collection Practices Act. Comments on the interim final rule are due 30 days after it is published in the Federal Register.

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OVERVIEW OF AMENDMENTS EFFECTIVE APRIL 19, 2018

Successor in Interest

- A non-borrower who obtains title (or was already on title but not a borrower) after death, divorce, separation from borrower or other exempt transfer of the property.
- See Garn-St. Germain Act **12 U.S.C. § 1701j-3. Preemption of due-on-sale prohibitions** in webinar materials for origin of RESPA and TILA definition of a “successor in interest.”
- See CFPB Bulletin 2013-12 in webinar materials for discussion of Successors in Interest after death of a borrower.

RESPA 12 CFR 1024.38(b)(1)(vi) Communication with Successors in Interest

- Current RESPA rule only addresses obligation of Servicers to communicate and work with heirs after death of the borrower. Amendment expands successors to include protections for non-borrowers after divorce or legal separation and certain other transfers of the property.

OVERVIEW OF AMENDMENTS EFFECTIVE APRIL 19, 2018

Amendments “Successors in Interest”

RESPA Regulations Amended

- 1024.30 Scope
- 1024.31 Definitions
- 1024.32 General Disclosure Requirements
- 1024.35 Error Resolution Procedures
- 1024.36 Request for Information
- 1024.38 General Servicing Policies, Procedures and Requirements

OVERVIEW OF AMENDMENTS EFFECTIVE APRIL 19, 2018

Amendments “Successors in Interest”

TILA Regulations Amended

- 1026.2 Definitions and Rules of Construction
- 1026.20 Disclosure Requirements Regarding Post-Consummation Events
- 1026.39 Mortgage Transfer Disclosures (Sale of Loan)

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OVERVIEW OF AMENDMENTS EFFECTIVE APRIL 19, 2018

RESPA and TILA Amendments “Successors in Interest”

- Amended definition of “borrower” (RESPA) and “consumer” (TILA) to include a confirmed “Successor in Interest” and amended obligations of Servicers with respect to potential and confirmed successors in interest to original borrower.
- See webinar materials for RESPA and TILA definitions of “Successor in Interest.”

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***RESPA REGULATION X AMENDMENTS TO
THE 2013 MORTGAGE SERVICING
REGULATIONS EFFECTIVE OCTOBER 19, 2017***

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

Regulations and Revised Official Interpretations

- 1024.31 Definitions
- 1024.36 Request for Information Revised Official Interpretation
- 1024.37 Force-Placed Insurance
- 1024.38 General Servicing Policies, Procedures and Requirements
- 1024.39 Early Intervention Requirements for Certain Borrowers
- 1024.41 Loss Mitigation Procedures and Revised Official Interpretation

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.31 Definitions - Added definition of “delinquency”

- Loan and borrower delinquent beginning on date a periodic payment to cover principal, interest and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid.
- Used for Regulation X mortgage servicing provisions (e.g., 45 days delinquent early intervention notice; 120 day delinquent before initiating foreclosure); and Reg Z periodic statement provision.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.36 Request for Information Revised Official Interpretation

¶136(a) Information Request

Request for Information for Investor/Owner of Mortgage Loans

2. (i) ... The Government National Mortgage Association [Ginnie Mae] is not the owner or assignee for purposes of such requests for information solely as a result of its role as the guarantor of the security in which the loan serves as the collateral.

Use Request for Information Regulation to determine whether seriously delinquent FHA-insured loan is still FHA-insured, i.e., loan has not been sold in HUD's DASP Program.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.36 Request for Information Revised Official Interpretation

¶136(a) Information Request

Request for Information for Investor/Owner of Mortgage Loans
(below refers to securitized loans not owned by Fannie Mae or Freddie Mac)

2. (ii) Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee. The servicer complies with §1024.36(d) by identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.36 Request for Information Revised Official Interpretation

¶136(a) Information Request

Securitized loans not owned by Fannie Mae or Freddie Mac

Example: A response from the Servicer that owner of the loan is “Bank of America, Trustee” is an incomplete response. This revised Official Interpretation makes clear that Servicer must respond to provide borrower with the full name of the trust.

Obtaining full name of the trust enables you to search the SEC website to find the Pooling and Servicing Agreement (PSA). It is the PSA that the Servicer relies upon regarding any asserted investor restrictions that limit or prohibit specific loss mitigation options.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.37 Force-Placed Insurance

- Amended the disclosures and model forms to account for situations where a Servicer sends a notice regarding “insufficient” hazard insurance.

1024.38 General Servicing Policies, Procedures and Requirements

- 12 CFR § 1024.38(b)(2) Objectives Properly evaluating loss mitigation applications.
- Added (b)(2)(vi)
Promptly identify and obtain documents or information not in the borrower’s control that the Servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of 1024.41(c)(4).

RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.39 Early Intervention Requirements for Certain Borrowers

- Amended to clarify the obligations of servicers to establish or make good faith efforts to establish live contact with delinquent borrowers.
- Servicers must provide multiple early intervention notices in certain circumstances.

RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017**1024.41(c)(2)(iii) Revised****Previously titled: Payment Forbearance****As Amended: Short-Term Loss Mitigation Options**

Clarifies that a Servicer may offer a “short-term payment forbearance program or a short-term repayment plan to a borrower based upon an evaluation of an incomplete loss mitigation application.”

Revised section includes required notices to borrower when a short-term option is offered and prohibits servicer from initiating foreclosure or moving for foreclosure judgment/conducting a sale if borrower is performing pursuant to a short-term offer.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017**1024.41 Added (c)(3) Notice of Complete Application**

- Amendment requires servicers to notify borrowers within five business days when loss mitigation applications are complete.
- Amendment remedies a significant loophole in the current rule 1024.41(b)(2)(i)(B) that only requires servicer to send notice that application is complete in circumstances where the borrower’s initial submission was a complete application, i.e., in the five day acknowledgment of receipt of application letter.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.41 Added (c)(3) Notice of Complete Application

Notice must include

- The date the servicer received the complete application.
- That the servicer expects to complete its evaluation within 30 days of the date it received the complete application.
- That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:
 - (1) First notice or filing not yet made OR
 - (2) First notice or filing made – servicer will not move for judgment or conduct sale.

RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.41 Added (c)(3) Notice of Complete Application

Notice must include

- That the servicer may need additional information at a later date to evaluate the application, in which case:
 - the servicer will request that information from the borrower and give the borrower a reasonable opportunity to submit it,
 - the evaluation process may take longer, and
 - the foreclosure protections could end if the servicer does not receive the information as requested

RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

RESPA 12 CFR 1024.41 Loss Mitigation Procedures

1024.41 Added (c)(4) Information Not in the Borrower's Control

- (i) Reasonable Diligence. If Servicer requires documents or information not in borrower's control to determine loss mitigation options, if any, servicer must exercise reasonable diligence in obtaining such documents or information.
 - Except for certain circumstances, Servicer must not deny a complete loss mitigation application solely because Servicer lacks required documents or information not in borrower's control.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

RESPA 12 CFR 1024.41(g) Prohibition on Foreclosure Sale "Dual Tracking" – Revised Official Interpretation

¶41(g) Prohibition on foreclosure sale.

3. *Interaction with foreclosure counsel.* The prohibitions in §1024.41(g) against moving for judgment or order of sale or conducting a sale may require a servicer to act through foreclosure counsel retained by the servicer in a foreclosure proceeding. If a servicer has received a complete loss mitigation application, the servicer must instruct counsel promptly not to make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, unless one of the conditions in §1024.41(g)(1) through (3) is met. **A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation.**

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.41(i) Duplicative Requests

Current Rule

A servicer is only required to comply with the requirements of 12 CFR 1024.41 for a single complete loss mitigation application for a borrower's account.

As amended

"A servicer must comply with the requirements of this section for a borrower's loss mitigation application, **unless** the servicer has previously complied with the requirements of this section for a **complete** loss mitigation application submitted by the borrower **and the borrower has been delinquent at all times since submitting the prior complete application.**"

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.41(i) Duplicative Requests as Amended

- Subsequent evaluation under loss mitigation rule applies only to borrowers who brought their loans current at any time since submitting the prior complete loss mitigation application.
- For example
 - Borrower who obtained a loan modification or brought loan current (without modification) and later suffered another hardship.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

1024.41(i) Duplicative Requests

Amendment:

- Excludes borrowers who were denied loss mitigation and remained delinquent but subsequently has a change in circumstances, such as increased income and submits a second application.
- Remember – Duplicate Request Rule applies per servicer. If borrower remained delinquent and then loan was transferred, new servicer must review complete application pursuant to 1024.41 protections as the “first complete application.”

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

Additional Requests for Loss Mitigation

Remember – the borrower can submit an application and the servicer must review if investor or insurer/guarantor (FHA/VA/USDA) guidelines permit or require. The borrower just does not get benefit of all the dual-tracking and other protections available under the CFPB loss mitigation procedures rule.

Always review investor/insurer guidelines to determine whether servicer must review borrower.

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RESPA REGULATION X EFFECTIVE OCTOBER 19, 2017

New Section 12 CFR 1024.41(k) Servicing Transfers Moved from Official Commentary to Regulation

- Generally the new servicer must comply with loss mitigation requirements within the same timeframes that applied to the prior servicer but provides limited extensions under certain circumstances.
- If a borrower submits an application shortly before transfer, the new servicer must send an acknowledgment notice within 10 business days of the transfer date.
- If the application was complete prior to transfer, the new servicer must evaluate the application within 30 days of the transfer date.
- If the new servicer needs more information to evaluate the applications, borrower retains certain foreclosure protections.
- If the borrower submits an appeal, the new servicer has 30 days to make a determination on the appeal.

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TILA REGULATION Z AMENDMENTS TO THE 2013 MORTGAGE SERVICING REGULATIONS EFFECTIVE OCTOBER 19, 2017

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TILA REGULATION Z AMENDMENTS EFFECTIVE OCTOBER 19, 2017

Regulations and Revised Official Interpretations

- 1026.36 Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling
- Revised Official Interpretation 1026.36(c) Periodic Payments/Prompt Crediting
- 1026.41 Small Servicer and Charged-Off Loans

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TILA REGULATION Z AMENDMENTS EFFECTIVE OCTOBER 19, 2017

1026.36(c) Periodic Payments

“Prompt Crediting of Payments” Clarified Official Interpretation

Paragraph 36(c)(1)(i)

4. *Temporary loss mitigation programs.* If a loan contract has not been permanently modified but the consumer has agreed to a temporary loss mitigation program, a periodic payment under §1026.36(c)(1)(i) is the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract, regardless of the payment due under the temporary loss mitigation program.

5. *Permanent loan modifications.* If a loan contract has been permanently modified, a periodic payment under §1026.36(c)(1)(i) is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract.

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TILA REGULATION Z AMENDMENTS EFFECTIVE OCTOBER 19, 2017

1026.41 Periodic Statements for Residential Mortgage Loans Small Servicer Exemption

- Revised 1026.41(e)(4)(iii)(A) definition of mortgage loans that are not considered in determining whether a servicer qualifies as a “Small Servicer” as follows:
 - (A) Mortgage loans voluntarily serviced by the Servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees.
- Added
 - (D) Excludes certain seller-financed transactions from being counted towards the 5,000 loan limit.

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TILA REGULATION Z AMENDMENTS EFFECTIVE OCTOBER 19, 2017

1026.41 Periodic Statements for Residential Mortgage Loans Charged-off Mortgage Loans

- Added 1024.41(e)(6) Exempts Servicers from the periodic mortgage statement requirement for charged-off mortgage loans IF
 - The Servicer has charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account AND Servicer sends borrower within 30 days of charge-off or the last periodic statement, a periodic statement conspicuously labeled “Suspension of Statements & Notice of Charge Off - Retain This Copy for Your Records.”

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TILA REGULATION Z AMENDMENTS EFFECTIVE OCTOBER 19, 2017

1026.41 Charged-off Mortgage Loans

This periodic statement must clearly and conspicuously explain that:

- The mortgage loan has been charged off
- The Servicer will not charge any additional fees or interest on the account
- The Servicer will no longer provide borrower with a periodic statement for each billing cycle

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TILA REGULATION Z AMENDMENTS EFFECTIVE OCTOBER 19, 2017

1026.41 Charged-off Mortgage Loans

This periodic statement must clearly and conspicuously explain that

- The lien on the property remains in place and borrower remains liable for mortgage loan obligation and any obligations arising from or related to the property (such as property taxes and insurance)
- The borrower may be required to pay the balance on the account in the future, for example, upon sale of the property
- **The balance on the account is not is not being canceled or forgiven**
- The loan may be purchased, assigned, or transferred

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DOCUMENTING WHAT IS OFFERED POST-HAMP AND SERVICER COMPLIANCE WITH AMENDED SERVICING REGULATIONS

- Send examples of TPPs, modifications, forbearance agreements and denial letters to 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.

Please Include

1. Identity of investor or whether FHA/VA/USDA 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

Resources

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

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

Confirm whether a delinquent 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 10/16/17

FANNIE MAE GUIDELINES

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 10/16/17

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
SERVICING GUIDELINES AS OF 10/16/17

FHA SINGLE FAMILY HOUSING POLICY HANDBOOK 4000.1

Access the FHA Single Family Policy Handbook 4000.1 online at ALLREGs or PDF format:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/handbook_4000-1

- **Mortgage servicing guidelines are found in Section III: Servicing and Loss Mitigation**

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

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Save the Date

National Fair Housing Alliance
Fair Housing Act 50th Anniversary National Conference
June 10-12, 2018
Washington, DC

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QUESTIONS AND ANSWERS

