



Implementation Guide



2016 Mortgage Servicing Rule

## Table of Contents

### 1 – Summary

<i>Section</i>	<i>Topic</i>	<i>Page</i>
1.1	Issuance of Final Rule August 2016	1 – 1
1.2	Successors in Interest	1 – 1
1.3	Definition of Delinquency	1 – 4
1.4	Requests for Information	1 – 5
1.5	Force-placed Insurance	1 – 5
1.6	Early Intervention	1 – 6
1.7	Loss Mitigation	1 – 7
1.8	Prompt Payment Crediting	1 – 9
1.9	Periodic Statements	1 – 9
1.10	Small Servicer	1 – 9
1.11	Technical Corrections and Clarifications	1 – 11
1.12	Interpretive Rule	1 – 11

### 2 – Small Servicer Rules

2.1	Overview	2 – 1
2.2	Definition of Small Servicer	2 – 1
2.3	Successor in Interest	2 – 2
2.4	Delinquency	2 – 3
2.5	Loss Mitigation	2 – 3
2.6	Requests for Information	2 – 3
2.7	Force-placed Insurance Notices	2 – 4
2.8	Prompt Payment Crediting	2 – 4

### 3 – Delinquency Fact Sheet

3.1	Overview	3 – 1
3.2	Definition of Delinquency	3 – 1
3.3	Payment Tolerances	3 – 2
3.4	Breaches of Other Terms of the Mortgage Loan Obligation	3 – 3
3.5	“Rolling” Delinquencies	3 – 4
3.6	Loan Modifications	3 – 4
3.7	Applying the Definition of Delinquency	3 – 5
3.8	Prohibition on Foreclosure Referrals	3 – 5
3.9	Early Intervention Requirements	3 – 6
3.10	Continuity of Contact	3 – 7
3.11	Periodic Statements	3 – 7

## 4 – Foreclosure Protections

4.1	Summary of Borrower Protections	4 – 1
4.2	Principles for the Future of Loss Mitigation	4 – 4

## 5 – Safe Harbors

5.1	Background and Summary	5 – 1
5.2	Application of the Interpretive Rule	5 – 6
5.3	Regulatory Requirements	5 – 13
5.4	Endnotes	5 – 16

## 6 – CFPB Examination Guide

6.1	Examination Objectives	6 – 1
6.2	Applicability	6 – 1
6.3	Compliance to Federal Laws	6 – 2
6.4	Compliance to Guidance and Bulletins	6 – 3
6.5	UDAAP and Other Risks to Consumers	6 – 4
6.6	Compliance Management System	6 – 5
6.7	Servicing and Loan Ownership Transfers	6 – 6
6.8	Payment Processing, Account Maintenance and Optional Products	6 – 9
6.9	Error Resolution, Consumer Inquiries, and Complaint Procedures	6 – 13
6.10	Maintenance of Escrow Accounts and Insurance Products	6 – 15
6.11	Consumer Reporting	6 – 17
6.12	Information Sharing and Privacy Notices	6 – 18
6.13	Collections and Accounts in Bankruptcy	6 – 19
6.14	Loss Mitigation, Early Intervention and Continuity of Contact	6 – 22
6.15	Foreclosures	6 – 28
6.16	Examination Conclusions	6 – 30
6.17	Glossary (CFPB Examination Procedures)	6 – 31

## SECTION 1

### Summary of Changes

*Adapted from the CFPB Announcement Published August 4, 2016:*

*Executive Summary of the 2016 Mortgage Servicing Rule*

#### 1.1 Issuance of Final Rule August 2016

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On August 4, 2016, the Consumer Financial Protection Bureau (CFPB) issued a final rule referred to as the 2016 Mortgage Servicing Rule which amends certain mortgage servicing provisions in Regulation X and Regulation Z. Concurrently with the issuance of the 2016 Mortgage Servicing Rule, the Bureau issued an interpretive rule under the Fair Debt Collection Practices Act (FDCPA), relating to servicers' compliance with certain mortgage servicing provisions as amended by the 2016 Mortgage Servicing Rule.

The 2016 Mortgage Servicing Rule's key changes and the interpretive rule (2016 FDCPA Interpretive Rule) are summarized below. The key provisions affecting small servicers are provided in Section 2 of this manual, also highlighted in a separate table entitled *Small Servicers and Key Provisions of the 2016 Mortgage Servicing Rule*, available on the CFPB website. This summary and the table provide high-level summaries of the 2016 Mortgage Servicing Rule, but are not substitutes for it. The 2016 Mortgage Servicing Rule, available on the CFPB website, is the definitive source regarding its requirements.

#### 1.2 Successors in Interest

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The 2016 Mortgage Servicing Rule makes several changes related to successors in interest.

**First**, it adds similar definitions of "successor in interest" to subpart C of Regulation X and to Regulation Z. The two definitions vary slightly to account for the different terms used in the two regulations (*e.g.*, use of the term "borrower" in Regulation X and "consumer" in Regulation Z). Generally, a person is a successor in interest for purposes of Regulation X if a borrower transfers an ownership interest in a property securing a mortgage loan to the person by means of one of the types of transfers enumerated in the 2016 Mortgage Servicing Rule. These types of transfers are:

- (i) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- (ii) a transfer to a relative resulting from the death of a borrower;

- (iii) a transfer where the spouse or children of the borrower become an owner of the property;
- (iv) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
- (v) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property. A person does not have to assume or otherwise be liable on the mortgage loan in order to be a successor in interest under the 2016 Mortgage Servicing Rule.

**Second**, the 2016 Mortgage Servicing Rule includes provisions related to how a servicer confirms a successor in interest's identity and ownership interest in the property securing the mortgage loan.

A servicer must respond to a written request from a person indicating that the person may be a successor in interest if the request includes the name of the borrower from whom the person received an ownership interest and information that enables the servicer to identify the mortgage loan. The response must generally provide a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property as well as contact information for further assistance.

The 2016 Mortgage Servicing Rule generally requires servicers, other than small servicers and qualified lenders, to maintain certain policies and procedures with respect to successors in interest. These policies and procedures must be reasonably designed to ensure that, upon receiving notice of the existence of a potential successor in interest, the servicer can:

- 1) promptly provide a potential successor in interest with a description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and
- 2) upon receiving those documents, the servicer can promptly notify a potential successor in interest of the servicer's determination regarding the potential successor's status (*i.e.*, confirmation of the person's status as a successor in interest, a request for additional documents needed to make a determination, or a determination that the person is not a successor in interest).

## SECTION 2

### Small Servicer Rules

*Adapted from the CFPB Table Published August 4, 2016:*

*Small Servicers and Key Provisions of the 2016 Mortgage Servicing Rule*

#### 2.1 Overview

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The 2016 Mortgage Servicing Rule amends certain mortgage servicing provisions. Because small servicers are exempt from some of the servicing provisions, a number of the changes and clarifications in the 2016 Mortgage Servicing Rule do not directly affect them. This section highlights and summarizes the changes and clarifications that directly affect small servicers.

The changes outlined in this section regarding successors in interest are effective 18 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*. The other changes in this section are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

#### 2.2 Definition of Small Servicer

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Under the mortgage servicing rules, a small servicer includes a servicer that, together with any affiliates, services 5,000 or fewer mortgage loans for which the servicer or an affiliate is the creditor or assignee. When determining whether it qualifies as a small servicer, the servicer may exclude certain mortgage loans, including mortgage loans voluntarily serviced for a creditor that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees.

The 2016 Mortgage Servicing Rule provides that servicers are not required to count mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not the creditor or assignee, if the servicer does not receive any compensation or fees.

When making the small servicer determination, a servicer is also permitted to exclude seller-financed transactions for which the seller-financer meets the definition in § 1026.36(a)(5) of Regulation Z. To meet this definition, among other things, a seller-financer must provide seller financing for the sale of only one property in any 12-month period.

Reference: 12 CFR 1026.41(e)(4)

## 2.3 Successors in Interest

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The 2016 Mortgage Servicing Rule requires small servicers to respond to certain written requests that indicate that the person making the request may be a successor in interest. Generally, in response to such a request, a small servicer must timely provide the potential successor in interest with a description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property.

Generally, a person is a successor in interest for purposes of subpart C of Regulation X if a borrower (or for Regulation Z, a consumer) transfers an ownership interest in a property securing a mortgage loan (or for Regulation Z, a dwelling securing a closed-end consumer credit transaction) to the person by means of one of the types of transfers enumerated in the 2016 Mortgage Servicing Rule. These types of transfers include but are not limited to certain transfers resulting from the death of the borrower or consumer, transfers to the borrower's or consumer's spouse or children, and transfers resulting from divorce.

The 2016 Mortgage Servicing Rule provides that a confirmed successor in interest shall be considered a borrower for the purposes of specified mortgage servicing provisions of Regulations X and a consumer for the purposes of specified mortgage servicing provisions of Regulation Z. These mortgage servicing provisions apply with respect to a confirmed successor in interest regardless of whether that person has assumed the mortgage loan obligation or is otherwise liable for the mortgage debt. The same exemptions and scope limitations that apply to other borrowers or consumers apply to confirmed successors in interest.

A small servicer generally has to respond to notices of error and requests for information from a confirmed successor in interest.

A small servicer also may need to provide a confirmed successor in interest with force-placed insurance notices, servicing transfer notices, escrow related notices, and interest rate or payment adjustment notices, unless the servicer is providing the specific notice to another borrower or consumer. A small servicer is required to promptly credit payments, including those from a successor in interest, and to respond to a confirmed successor in interest's payoff statement requests.

Reference: See 12 CFR 1024.31 and 1026.2(a)(27) for definitions. See also various other provisions of Regulation X and Regulation Z

## SECTION 3

### Delinquency Fact Sheet

*Adapted from the CFPB Document Published August 4, 2016:*

*Factsheet on Delinquency the 2016 Mortgage Servicing Rule*

#### 3.1 Overview

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The mortgage servicing provisions of Regulation X and Regulation Z include requirements that are triggered by a borrower's delinquency. On August 4, 2016, the Consumer Financial Protection Bureau (Bureau) issued a final rule (2016 Mortgage Servicing Rule) that defines the term "delinquency" for specified mortgage servicing provisions of Regulation X, including the early intervention and continuity of contact requirements, as well as the 120-day prohibition on making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

The 2016 Mortgage Servicing Rule also makes corresponding changes to specific mortgage servicing provisions of Regulation Z regarding delinquency-related disclosures on periodic statements for mortgage loans.

This factsheet discusses the 2016 Mortgage Servicing Rule's definition of delinquency and how it applies to Regulation X's specified mortgage servicing provisions and Regulation Z's periodic statement provisions for mortgage loan. However, this factsheet is not a substitute for the 2016 Mortgage Servicing Rule.

The changes relating to delinquency in the 2016 Mortgage Servicing Rule are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

#### 3.2 Definition of Delinquency

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The 2016 Mortgage Servicing Rule defines "delinquency" as a period of time during which a borrower and the borrower's mortgage loan obligation are delinquent, and states that a borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and (if applicable) escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid.

The delinquency begins on the date the periodic payment becomes due and unpaid even if the servicer will not assess a late charge if the borrower makes the periodic payment within a certain time frame after the periodic payment is due.



**Example:**

*Borrower's mortgage loan requires borrower to make periodic payments of principal, interest, and escrow by the first of each month. However, borrower will not incur a late fee if borrower makes the periodic payment by the 15th of the month. If borrower fails to make the January periodic payment, the period of delinquency for purposes of Regulation X's specified mortgage servicing provisions and Regulation Z's periodic statement provision begins on January 2, not January 16.*

### **3.3 Payment Tolerances**

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The 2016 Mortgage Servicing Rule does not require a servicer to treat a periodic payment as timely if the amount paid is not sufficient to cover principal, interest, and (if applicable) escrow. It does, however, address how a servicer calculates a delinquency for purposes of the specified mortgage servicing provisions if the servicer has a policy of treating such payments as timely.

It provides that, in this circumstance, the period of delinquency does not begin and a borrower is not delinquent for purposes of the specified mortgage servicing provisions if the servicer treats as timely a payment that is insufficient to cover a periodic payment of principal, interest, and (if applicable) escrow for any given billing cycle.

Additionally, a servicer cannot rescind or change its decision to treat the payment as timely for purposes of determining the date on which the borrower's delinquency began, but may later collect the amounts included in a payment tolerance from the borrower.

**Example:**

*Borrower's mortgage loan requires borrower to make periodic payments of principal, interest, and escrow in the amount of \$1010 by the first of each month. On June 1, the borrower makes a payment in the amount of \$1001. In accordance with its policy, servicer treats the payment of \$1001 as timely payment of the periodic payment due on June 1. Assume borrower does not have any other periodic payments that are due and unpaid as of June 1. Borrower is not delinquent for purposes of Regulation X's specified mortgage servicing provisions or Regulation Z's periodic statement provision. However, servicer may require borrower to pay the \$9.00 difference.*

Although the Bureau understands that servicers generally treat payments as timely only if the difference between the full amount of the periodic payment and the amount the borrower actually pays is a small amount, the 2016 Mortgage Servicing Rule does not require that the difference be within any specific dollar range.

### 3.5 "Rolling" Delinquencies

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The Bureau understands that many servicers apply a borrower's payment to the oldest outstanding periodic payment due on the mortgage loan. Although the 2016 Mortgage Servicing Rule does not require a servicer to apply payments in this manner, it does address how a servicer calculates the period of delinquency in those circumstances.

If a servicer applies a borrower's payment to the oldest outstanding periodic payment, the borrower's payment advances the date that the borrower's delinquency began, regardless of whether there is a period during which a periodic payment is due and unpaid.

**Example:**

*Borrower's mortgage loan requires borrower to make periodic payments of principal, interest, and escrow by the first of each month. Borrower does not make the payment that is due on January 1. On January 31, borrower is 30 days delinquent. On February 3, borrower makes a periodic payment. The servicer applies payments to the oldest outstanding periodic payment (i.e., the periodic payment that was due on January 1). On February 4, borrower is 3 days delinquent for purposes of Regulation X's specified mortgage servicing provisions and Regulation Z's periodic statement provision.*

### 3.6 Loan Modifications

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For permanently modified mortgage loans, the periodic payment due is the periodic payment amount that the modified loan contract requires, not the periodic payment amount that the pre-modified loan contract required. If the borrower has made the periodic payment that is due under the permanently modified loan contract, no periodic payment is due and unpaid.

Because a delinquency only exists until no periodic payment is due and unpaid, a borrower performing on a permanent loan modification is not delinquent. In contrast, a temporary loss mitigation program does not modify the existing loan contract. A borrower may continue to accumulate a delinquency according to the loan contract during the duration of the temporary loss mitigation program.

## SECTION 4

### Foreclosure Protections

*Adapted from the following CFPB Documents:*

*Consumer Financial Protection Bureau Expands Foreclosure Protections (August 4, 2016)*

*CFPB's Principles for the Future of Loss Mitigation (August 2, 2016)*

#### 4.1 Summary of Borrower Protections

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The updated rule requires servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan, clarifies borrower protections when the servicing of a loan is transferred, and provides important loan information to borrowers in bankruptcy. The changes also help ensure that surviving family members and others who inherit or receive property generally have the same protections under the CFPB's mortgage servicing rules as the original borrower. The rule establishes new protections for consumers, including:

***Requiring servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan:***

Under the CFPB's existing rules, a mortgage servicer must give borrowers certain foreclosure protections, including the right to be evaluated under the CFPB's requirements for options to avoid foreclosure, only once during the life of the loan. The final rule will require that servicers give those protections again for borrowers who have brought their loans current at any time since submitting the prior complete loss mitigation application. This change will be particularly helpful for borrowers who obtain a permanent loan modification and later suffer an unrelated hardship, such as the loss of a job or the death of a family member, that could otherwise cause them to face foreclosure.

***Expanding consumer protections to surviving family members and other homeowners:***

If a borrower dies, existing CFPB rules require that servicers have policies and procedures in place to promptly identify and communicate with family members, heirs, or other parties, known as "successors in interest," who have a legal interest in the home. The final rule establishes a broad definition of successor in interest that generally includes persons who receive property upon the death of a relative or joint tenant; as a result of a divorce or legal separation; through certain trusts; or from a spouse or parent. The final rule ensures that those confirmed as successors in interest will generally receive the same protections under the CFPB's mortgage servicing rules as the original borrower.

## SECTION 5

### Safe Harbors

*Adapted from the CFPB Interpretive Rule Issued August 4, 2016:*

Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

#### 5.1 Background and Summary

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The Bureau of Consumer Financial Protection (Bureau) is issuing this interpretive rule under the Fair Debt Collection Practices Act (FDCPA) to clarify the interaction of the FDCPA and specified mortgage servicing rules in Regulations X and Z. This interpretive rule constitutes an advisory opinion for purposes of the FDCPA and provides safe harbors from liability for servicers acting in compliance with specified mortgage servicing rules in three situations:

- 1) Servicers do not violate FDCPA section 805(b) when communicating about the mortgage loan with confirmed successors in interest in compliance with specified mortgage servicing rules in Regulation X or Z;
- 2) servicers do not violate FDCPA section 805(c) with respect to the mortgage loan when providing the written early intervention notice required by Regulation X § 1024.39(d)(3) to a borrower who has invoked the cease communication right under FDCPA section 805(c); and (3) servicers do not violate FDCPA section 805(c) when responding to borrower-initiated communications concerning loss mitigation after the borrower has invoked the cease communication right under FDCPA section 805(c).

This rule is effective 12 months from date of publication in the Federal Register except that the interpretation contained in Part II.A. is effective 18 months from the date of publication in the Federal Register.

### ***A. Proposed Rule***

On December 15, 2014, the Bureau published for notice and comment a proposed rule to amend Regulations X and Z.<sup>10</sup> Among other things, the Bureau proposed three sets of rules relating to successors in interest.

First, the Bureau proposed rules to define successors in interest for purposes of Regulation X's subpart C and Regulation Z as those persons who acquired an ownership interest in the property securing a mortgage loan in a transfer protected from due-on-sale enforcement by the Garn-St Germain Depository Institutions Act of 1982.

Second, the Bureau proposed rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest in the property.

Third, the Bureau proposed to apply specified mortgage servicing rules in Regulations X and Z to successors in interest whose identity and ownership interest in the property have been confirmed by the servicer.

The Bureau proposed these changes to address the significant problems that successors in interest continue to encounter with respect to the servicing of mortgage loans secured by their property—such as lack of access to information about the mortgage loan—which can lead to unnecessary foreclosures.

The Bureau also proposed to maintain the IFR's exemption from the live contact requirements of § 1024.39(a) with regard to a mortgage loan for which a borrower has invoked the cease communication protections of FDCPA section 805(c), for a servicer subject to the FDCPA with respect to that loan, while partially eliminating the exemption from the written early intervention notice requirements of § 1024.39(b) to require that a servicer provide a modified written notice to the borrower, if loss mitigation options are available.

In addition to the information set forth in § 1024.39(b)(2), the proposal would have required that the modified written early intervention notice include a statement that the servicer may or intends to invoke its specified remedy of foreclosure.

## SECTION 6

### **CFPB Examination Guide**

*Adapted from the June 2016 CFPB Mortgage Servicing Examination Procedures*

#### **6.1 Examination Objectives**

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The CFPB examination objectives are as follows:

- 1) To assess the quality of the regulated entity's compliance risk management systems, including internal controls and policies and procedures, for preventing violations of Federal consumer financial law in its mortgage servicing business.
- 2) To identify acts or practices that materially increase the risk of violations of Federal consumer financial law in connection with mortgage servicing.
- 3) To gather facts that help determine whether a regulated entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with mortgage servicing.
- 4) To determine, in consultation with Headquarters, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

#### **6.2 Applicability**

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A servicer may service loans on behalf of itself or an affiliate. It may service as a contractor of the trustee where a mortgage is included in a mortgage-backed security, or it may service whole loans for an outside third-party investor.

A servicer may sell the rights to service the loan separately from any ownership transfers. This is because some entities have expertise in payment processing and other servicing responsibilities, while others seek to invest in the underlying mortgages. These procedures apply whether the servicer obtained the servicing rights from another entity or the servicing responsibility is transferred within a company from the origination platform to the servicing platform.

7. Assess compliance with the Regulation X Denial of Loan Modification Options provisions. Reference: Regulation X, 12 CFR 1024.41(d)
8. Assess compliance with the Regulation X Borrower Response provisions. Reference: Regulation X, 12 CFR 1024.41(e)
9. Assess compliance with the Regulation X Appeal Process provisions. Reference: Regulation X, 12 CFR 1024.41(h)

## **Other Risks to Consumers**

### ***Application Process***

10. Determine whether information provided to consumers about loss mitigation alternatives is clear, prominent, and readily understandable.
11. Determine whether the servicer is providing military homeowners who have informed the servicer that they have received military Permanent Change of Station orders with accurate, clear, and readily understandable information about available assistance options for which the consumer may qualify.
12. Determine whether the servicer advises consumers to stop payments in order to qualify for loss mitigation relief.
13. Determine whether the servicer timely converts consumers who successfully complete trial modifications to permanent modifications.

### ***Consequences of Loss Mitigation***

14. Determine whether the servicer discloses any rescheduling of payments that may occur under an existing obligation in a clear, prominent, and understandable manner.
15. Determine whether the servicer discloses any material negative consequences that may occur as a result of the borrower's failing to make payments during the loss mitigation process.
16. Determine whether the servicer discloses any material negative consequences that may occur as a result of a completed loan modification (e.g., decreased credit score, income tax implications if principal reduction is offered, and any increase in monthly payment amount).

## 6.16 Glossary (CFPB Examination Procedures)

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

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

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

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

**Forbearance:** a foreclosure alternative in which the servicer reduces or suspends the consumer's mortgage payments for an agreed period of time. At the end of that time, the consumer resumes making the regular payments as well as a lump sum payment or additional monthly payments to bring the loan current. Forbearance may be an option if the consumer's income is reduced temporarily and the mortgage is affordable.

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

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

**HAMP:** The Home Affordable Modification Program (HAMP) is a temporary government program established by the U.S. Treasury to encourage loan modifications through use of financial incentives paid to borrowers, mortgage servicers, and investors. The deadline for HAMP eligibility is December 31, 2016. More information is available at [www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov).

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

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