October 9, 2012

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, D.C. 20552

**Re: Docket No. CFPB-2012-0033 and Docket No. CFPB-2012-0034**

Dear Ms. Johnson:

The American Financial Services Association ("AFSA") appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") proposed mortgage servicing rules ("Proposed Rules") to amend Regulation Z, which implements the Truth in Lending Act ("TILA") and Regulation X, which implements the Real Estate Settlement Procedures Act ("RESPA"). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

## I. INTRODUCTION

AFSA is concerned that the CFPB has not fully examined how the Proposed Rules would affect branch-based mortgage servicers. AFSA has a wide range of members that engage in mortgage servicing. Some of AFSA's members are large, national mortgage servicers. Others are much smaller, branch-based lenders that typically offer a broader product range than conventional Fannie, Freddie or Federal Housing Administration ("FHA") lenders. These branch-based lenders provide an important source of credit for consumers who live in underserved small towns and urban settings and those who have less than perfect credit. Many of the requirements in the Proposed Rules would negatively affect the special relationship that these branch-based lenders have with their borrowers, and so we ask the CFPB review to this servicer model and amend the Proposed Rules accordingly.

We also request that the CFPB give servicers an appropriate time for implementing the final rule. Because the industry is facing a tremendous amount of regulatory change, and because the Proposed Rules would require complex and time-consuming systems changes, we ask that the CFPB provide servicers with at least two years to implement the Dodd-Frank Act requirements and 30 months to implement the provisions that the CFPB has included in the Proposed Rules.

In this letter, we are commenting on both the TILA and RESPA proposals. Most importantly, we ask that the CFPB limit both of the Proposed Rules to the requirements outlined in the Dodd-Frank Act. Currently, servicers are facing many changes mandated by the Dodd-Frank Act,

changes to state laws and regulations, local ordinances,[1] court rulings, an increase in examinations, Federal Housing Authority ("FHA") requirements, Veteran Affairs' requirements, Fannie Mae and Freddie Mac standards, and Home Affordable Modification Program ("HAMP") requirements. These changes and requirements take time to implement. We understand that with the Proposed Rules, the CFPB is attempting to develop reasonable national mortgage servicing standards. However, rushing through all of these changes to meet the statutory requirements of a few seems premature. We believe that it is crucial to pay careful attention to the costs and benefits of each of the requirements not imposed by the Dodd-Frank Act before implementing them. The CFPB must be mindful of unintended consequences to borrowers that could result in reduced access to credit. We ask that the Bureau focus on implementing the Dodd-Frank Act requirements and then, after those have been implemented by servicers, take the time to implement the other requirements in a way that will benefit, and not harm, borrowers.

## II. BRANCH-BASED OPERATIONS

In the Proposed Rules, the CFPB provides an overview of the mortgage servicing market. Although the CFPB consulted with small servicers as part of the process required under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), almost all of the Overview in the Proposed Rules deals with the large national mortgage servicers and not with smaller lenders or lenders who service their own mortgage loans — such as many AFSA member companies. The Proposed Rules thereafter essentially ignore this smaller, but very important sector of the mortgage servicing market. More significantly, as explained below, this omission creates a near impossibility of compliance with part of these Proposed Rules by these smaller mortgage servicers on a substantial portion of their portfolio: their precomputed loans.

Some of AFSA's members offer traditional installment consumer credit, including small-dollar loans, vehicle finance loans, and mortgage loans. These companies service more than the 1,000 mortgage loans that the CFPB uses as a cut-off point for its definition of a "small" servicer, though not necessarily by much. Like the small servicers the CFPB consulted with, they operate in a decentralized environment with branch offices. These branch offices, usually located in smaller communities, know their customers, and the customers know the branch personnel. Often, the same branch employee who originates the loan with the customer is the same one the customer comes to with a question about the loan. Frequently, these customers make their loan payments at the branch office in person. And, often, when a customer will be making a payment late (or when a customer did not make a payment on time) either the customer will call the branch to explain or the branch will call the customer to remind the customer of the payment in order to avoid a late fee. Since the employees often know their customers personally, doing anything other than what is in the best interest of those borrowers would jeopardize their reputation in their community and put their branch out of business.

It should also be noted that in a branch-based business model, the main lending activity is not mortgages (although such lenders do make a number of mortgage loans to serve the communities in which they operate). The mortgage loans that these branches originate are held in their own

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[1] AFSA has found over 6oo local ordinances affecting servicers that deal with vacant and foreclosed property upkeep alone. AFSA would be happy to provide a link to full list of these ordinances, which is hundreds of pages, to the CFPB upon request.

portfolio and serviced through the very same branch personnel who made the loan to the customer in the first place. Very often, these customers cannot qualify for mortgage loans from large banks or mortgage companies and/or they choose to obtain loans from their friends at the local branch.

In developing the final rules for mortgage servicing, AFSA asks the CFPB to recognize these very important differences between these smaller, branch-based lenders and the large national servicers. Imposing the unnecessary, excessive, and expensive burdens required in the Proposed Rules, especially combined with the other proposed RESPA and TILA regulations that would change the current disclosure forms, will likely lead these branch-based AFSA members to exit the mortgage lending business. This unfortunate outcome would harm consumers by further restricting credit, particularly in small towns and rural communities, as well as driving further consolidation of the mortgage business to the largest national mortgage lenders.

## III. IMPLEMENTATION DATE

AFSA asks that the CFPB provide servicers at least two years for implementation. The Proposed Rules would require substantial, complex systems changes that servicers need time to implement. As outlined in Exhibit A, these proposed requirements will necessitate programming by mortgage servicers and their software providers, as well as third-party vendors. Programming is not a simple push-button process that occurs either quickly or inexpensively. Rather, it is a prolonged process, and we ask that the CFPB give servicers as long as possible to implement these changes.

In addition, mortgage companies are currently facing a period of unprecedented regulatory change. There are proposed changes to the Home Ownership and Equity Protection Act of 1994 ("HOEPA"), appraisal regulations, loan originator compensation rules, escrow accounts, the "ability to repay" rule, and last, but certainly not least, the lengthy and complex TILA and RESPA disclosures.

Although the Dodd-Frank Act permits the CFPB to provide up to 12 months for implantation of the requirements specified in the Act, we ask that the CFPB use its exemption authority to delay the effective date. TILA Section 105(a) and (f); RESPA Section 19 (a), Dodd-Frank Section 1032(a) and Dodd Frank section 1405(b) give the CFPB the authority to delay the effective date of the affected Title XIV requirements beyond the statutory deadline. We strongly believe that the CFPB should take the time to write the clearest rules possible that would work best for servicers and borrowers alike, and so we ask that the CFPB provide servicers with a two-year time period to implement the Dodd-Frank Act requirements. We believe this additional time is warranted given the competing demands created by the Dodd-Frank Act, the discretionary items in is proposal, and other changes that continue to occur in the industry.

The implementation period for those sections of the Proposed Rules that are not required by the Dodd-Frank Act is left to the discretion of the CFPB. AFSA believes that the CFPB should remove these provisions from the final rule, but in the event that the CFPB does not remove these additional requirements, we request that the CFPB provide an implementation period of not less than 30 months for these requirements.

## IV. TILA – REGULATION Z

*A. ARM Interest-Rate Adjustment Notices – Section 1026.20*

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") requires creditors or servicers to provide borrowers with a notice regarding the initial interest rate adjustment of a hybrid adjustable-rate mortgage ("ARM") at the end of the introductory period either: (1) between six to seven months before that reset or (2) at consummation of the mortgage if the first reset occurs during the first six months after consummation. The CFPB expands this requirement beyond solely hybrid ARMs to all ARMS. We ask that the CFPB follow the statutory language and limit the notice requirements to hybrid ARMS.

Unfortunately, the statute itself is problematic because it requires the servicer to provide misleading information to borrowers by disclosing an estimate that in all likelihood will be different from the rate the borrower actually receives and the payment amount due. Confusing borrowers about their payment amounts is not sound policy. It is important to note that a 6-month advance notice requires servicers not only to guess the interest rate applicable in the future, but to also make assumptions about the future unpaid principal balance ("UPB") used to calculate the payment amount. The servicer might use the actual UPB at the time of the 6-month notice, or try to project forward six or seven months to the Rate Change Date. This "push" of estimated information may cause borrowers to act to their detriment, by either refinancing a rate that would have decreased or not refinancing a rate that ultimately increases.

In addition, as explained in more detail below, the cost of producing these new disclosures on all ARMs would be significant in terms of systems changes, mailing costs, printing, and training. Given the CFPB's stated objective to avoid surprises and provide borrowers with clear and accurate information, we urge the Bureau not to expand problematic statutory or regulatory provisions.

For these reasons, we ask that the CFPB not expand the six-month advance notice requirement beyond hybrid ARMs.

*B. Periodic Billing Statements – Section 1026.41*

AFSA has several comments on the requirement that periodic statements for residential mortgage loans to be provided each billing cycle. First, we ask that the CFPB limit the information required in the periodic statement to the statutory requirements of the Dodd-Frank Act. Second, we request that the CFPB revise the requirement to include contact information to access only the CFPB or HUD mortgage website(s) and not every individual state's state housing finance authority. Third, we suggest that the CFPB allow servicers to disclose whether there is a prepayment fee, but not what the amount of that fee is. Fourth, we believe that the definition of "small servicer" for the exemption to the periodic billing statement requirement should be broader. Lastly, we are concerned with the limited consumer-testing method used by the CFPB.

1. **Limit Periodic Statement Information to Dodd-Frank Act Requirements.**

The Dodd-Frank Act only requires that the mortgage servicers' periodic statement include: (1) the amount of the principal obligation under the mortgage, (2) the current interest rate of the loan, (3) the date on which the interest rate may next reset or adjust, (4) the amount of any prepayment fee to be charged, (5) a description of any late payment fees, (6) a telephone number and e-mail address that may be used to obtain information on the mortgage, and (7) the names and contact information of counseling agencies or programs approved by the Department of Housing and Urban Development ("HUD"). This information is generally included on AFSA's members' periodic statements already, or, to the extent not included, we believe this information could be added with relatively little trouble, relatively minor programming changes, and at relatively little additional cost to servicers.

The Proposed Rules, however, would require mortgage servicers' periodic statements to include many additional disclosures not required by the Dodd-Frank Act. Some of these additional disclosures are very problematic because: (1) they will require extensive and expensive programming changes to accomplish (to the extent they can even be disclosed), and (2) with respect to precomputed loans, it is impossible accurately to make some of the required disclosures. Therefore, while seemingly helpful, the addition of this information is significant for many servicers, like AFSA member companies. This information may not be currently stored on systems, and it will require expensive and extensive programming system changes and, with respect to precomputed mortgage loans, the information simply cannot be provided regardless of the cost.

As to programming, we include Exhibit A which is a discussion of what must be done by branch-based servicers to create and implement a programming change. From this document, it can be seen that programming is a time-consuming and expensive proposition. Yet, programming will be required to provide recent transaction activity, a breakdown of how past payments were applied, and the delinquency information that is not now produced on monthly statements. Moreover, the costs associated with this programming cannot be borne by existing customers, but must be borne by future borrowers in the form of higher financing costs (whether higher points, higher fees, or higher interest rates).

As to precomputed loans, which, incidentally have been authorized by state law for nearly a century, it is simply not possible to state the "principal" or the "interest rate" or to break down prior payments by amounts applied to "principal" or "interest:" such loans do not have principal or interest.[2] As explained in Exhibit B, the amount due each month is applied to the Total of Payments, which consists of a precomputed finance charge plus the amount of money borrowed or paid to others on the borrower's behalf. The amount paid each month is then applied to reduce the indebtedness (the "total of payments"), not to the "principal." As further explained by Exhibit B, no amount of programming can accurately state the amount of "principal" or "interest" in any payment after the loan is made, although estimates of those amounts could be determined by proper programming. The problem, though, with programming and estimating those amounts is

[2] AFSA members make precomputed loans with widely varying terms, including terms of less than sixty-one months.

that there are multiple (at least 12) different ways that these amounts could be estimated.[3] And, without stated guidance in the regulation identifying which method to use in estimating principal and interest applied from each monthly payment, there is no way a servicer can know that it has estimated "properly."

From this discussion and the information provided in Exhibit B, it is clear that the information proposed to be added to the Dodd-Frank Act requirements is focused on Interest-bearing type of mortgage loan products only and cannot be applied to precomputed loans. Therefore, we believe that the CFPB should use the authority granted to the Bureau under the Dodd-Frank Act to make an exception to the requirement to disclose this information in the periodic statement. Or, in the alternative, after the CFPB undertakes a thorough cost-benefit analysis to small businesses and determines that the usefulness of the information outweighs substantially the significant costs to small businesses (which we do not think could be concluded), then the CFPB simply must modify the Proposed Rule to delineate exactly the requirements for precomputed loan servicers. If the CFPB fails to do at least this, then it will subject precomputed loan servicers to virtually unlimited legal liability based on arguments over how to estimate "more accurately."

Turning now to the requirement that certain delinquency information be added, it must be recognized that once a borrower becomes delinquent, branch-based lenders who service their own loans have already begun to send a series of delinquency and loss mitigation notices.[4] These notices already fully inform the delinquent borrower of the real-time status of the loan and problems associated with delinquency, including adverse credit reporting and the possibility of foreclosure and loss of the residence. Through the use of these already-required notices, delinquent borrowers receive virtually all of the information that would be provided by including the proposed language on the monthly statements. Yet, requiring branch-based servicers to reprogram their systems to include such redundant information on periodic billing statements will cause them to incur significant expenses, both up-front and on-going. These expenses and inconveniences are discussed on Exhibits A and B attached hereto.

2. **Require Servicers to Provide Only CFPB or HUD Housing Counselor Information, and Not Counseling Information for All States**

The Dodd-Frank Act requires that the periodic statement contain, "The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publically available by the Secretary of Housing and Urban Development *or* [emphasis added] a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989)." We appreciate that the CFPB recognized the potential for

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[3] There are at least 12 calendars that could be used, each of which would create a slightly different estimate of "interest" and "principal" earned or paid in a given payment period. However, five or six of those calendars are more prevalent that the others.

[4] Some of the notices that are currently being sent to borrowers that are in default are required by the servicer's internal policies or those of the secondary market. See, for example, the Fannie Mae Letters and Notices Guidelines that appear as part of their Servicing Guide: https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/exhibits/pdf/lettandntcesguidel100111.pdf. Other notices are required by state law. Attached as Exhibit C is a list of state law notices required in default and loss mitigation situations.

information overload for consumers and the burden on servicers, and so reduced the requirement to the contact information to access the state housing finance authority for the state in which the property is located and the website and telephone number to access either the CFPB list or the HUD list of homeownership counselors or counseling organizations.

Although the Proposed Rules require the periodic statement to include the contact information for any state housing finance authority *and* the HUD list of homeownership counselors or counseling organizations, the Dodd-Frank Act only requires contact information either HUD "*or*" the state authority. We believe that the HUD contact information – website and phone number – that is provided in the Sample Clause for Housing Counselor Contact Information, H-28(D), is sufficient because it already lists the various state housing authorities. As explained in the next paragraph, adding state-specific information on every periodic statement is not necessary, and would be overly burdensome for multi-state lenders because requiring such additional information would require a different billing statement for each state. This would substantially increase the servicers' costs. Moreover, if the CFPB does feel that such information is beneficial to the borrower, we ask that instead of providing the contact information of the state housing finance authority, the CFPB only require servicers to provide the link to the HFA directory of state housing finance authorities, provided by the National Council of State Housing Agencies ("NCSHA"): http://www.ncsha.org/housing-help. The CFPB could also require servicers to provide NCSHA's phone number: 202-624-7710. Alternatively, the CFPB could permit servicers to send H-28(D) annually, in a letter to the borrower. Borrowers, especially those who are not delinquent, do not need that information with every periodic statement. It will be costly for servicers to provide and a waste of paper.

As mentioned above, requiring state-specific counseling information will be burdensome and expensive for servicers. This is because such information will not fit on a one-page billing statement like AFSA's members currently use or on the sample periodic statement proposed by the CFPB. Because the information (especially when added to the delinquency information discussed below) will not fit on one 8 ½" x 11" piece of paper, servicers will be forced either to: (1) print the statement on legal size paper (not a popular option), (2) add a second sheet, or (3) create and print double-sided statements. Any of these options will add costs to the lender because: (1) if the statement becomes a legal-length piece of paper, it must be folded one more time (for which an increased monthly charge will be incurred by the servicer from its statement provider/mailer), (2) if the statement becomes two pages, as is expected if the delinquency information is also required to be included, then the statement provider will charge more to print, collate and add the second page to the envelope sent to the customer, or (3) if the decision is made to print the additional information on the back side of the billing statement, then the statement provider will in fact charge the servicer for the cost of producing a two-sided (usually in color) document rather than a one-sided document. While this may seem trivial, these are real, hard costs that are just not warranted under the circumstances. Additionally, producing a separate statement form for each state will require extensive system changes and/or multiple "printings" of statements, by state, for those servicers who operate in more than one state. Breaking down a single printing, folding, and mailing run into two or more state-specific runs will definitely increase the monthly cost to the mortgage servicer. Accordingly, it is simply inappropriate to require this additional disclosure on a periodic statement. Providing it by other means is a much better and less costly alternative that should be adopted.

### 3. Prepayment Penalty

The Proposed Rules require including the amount of any prepayment penalty on the periodic statement. AFSA does not support disclosing prepayment penalty amounts on periodic statements because the disclosure would almost always be inaccurate, as well as because consumers do not request this information, and we request that the CFPB use its exemption authority to remove this requirement. The amount of a prepayment penalty is only relevant to borrowers who are interested in pre-paying their loans, and they can get that information from their lender by request. Including the amount of a prepayment penalty would impose an operational burden to over-disclose information that most borrowers do not need. Instead, the CFPB should allow the servicer to provide a statement that a prepayment penalty exists (when it does) and provide a phone number which the borrower can call to obtain the information.

The Proposed Rules do not explain how to calculate the prepayment penalty, and for what prepayment date, so any such calculation would almost certainly be inaccurate. The amount of a prepayment penalty varies based on when a prepayment occurs, how much is prepaid, what payments will or will not be made before then, and what fees may be charged before then.

Additionally, we are concerned with the overbroad definition of a prepayment penalty. We ask that that with regard to precomputed real estate secured loan products of sixty-one months or less, the CFPB expressly declare that a rule of 78ths refunding method is not a prepayment penalty under these rules. A better alternative would be for the CFPB to disclose only the existence of a prepayment penalty in place of the amount.

### 4. Change the Small Servicer Exemption Trigger

The CFPB includes a few exemptions to the requirement to provide a periodic statement, including a small servicer exemption. However, the definition of "small servicer" for the purpose of the exemption is too small. A nondepository institution should be exempt from the requirement to provide a periodic statement if the mortgage servicer is not required to collect Home Mortgage Disclosure Act ("HMDA") data. In other words, if the servicer meets the HMDA tests for location and asset size or lending activity – if its home purchase loan originations (including refinances of home purchase loans) in the preceding calendar year came to less than 10 percent of all its loan originations (measured in dollars) – the servicer should be defined as "small."

Finally, we agree with the CFPB that the servicing industry is not monolithic and that producing a periodic statement with the proposed elements requires sophisticated programming to place individualized information on each borrower's statement for each billing cycle. Please see Exhibit A for information about the costs and time-consuming nature of such requirements. AFSA also agrees that because small servicers maintain small portfolios, they cannot spread fixed costs across a large number of loans the way that larger servicers can. Additionally, small servicers already have incentives to provide high levels of customer contact and information, so the disclosures in the periodic statements are not necessary.

## 5. Consumer Testing Is Inadequate

The CFPB states that it engaged in consumer testing of the periodic statement. AFSA strongly supports the use of consumer testing on disclosure forms before changes are required. However, the proposed changes will affect millions of consumers and hundreds of servicers in at least 50 different states, Guam, the Virgin Islands, and Puerto Rico. Yet, the CFPB's testing is woefully inadequate. The CFPB commissioned IFC International to conduct a series of "cognitive interviews," a method used to improve the clarity of survey questionnaires. Although cognitive interviewing is a widely used pre-test technique, "there is no standard definition of what a cognitive interview is and no set of standardized interview practices."[5] Furthermore, the differences in approach to cognitive interviewing are known to produce significantly different results,[6] and the reliability of cognitive survey methods, particularly cognitive interviewing, is questionable at best.[7] Cognitive interviews are used to effectively and accurately represent large populations using small samples. In fact, though, research indicates that sample sizes much larger than those used by ICF fail to consistently detect problems.[8] These and other issues have prompted many research organizations, such as the international European Statistical System, the National Center for Health Statistics, and the U.S. Census Bureau, to specify that cognitive interviews be used *only* as a "pre-field" technique to prepare forms or surveys for intensive field testing (see, e.g., the Handbook of Recommended Practices for Questionnaire Development and Testing in the European Statistical System, 2006 edition[9]).

We understand that the CFPB had a limited timeframe in which to conduct consumer testing, as the rule needs to be finalized by January 2013. However, in light of the fact that the consumer testing that was done was preliminary at best, and definitely not conclusive, we ask that the CFPB limit the final rule to the statutory requirements on periodic statements and allow servicers flexibility in implementing these requirements. Changes in disclosure forms are very expensive for companies, and as explained above, these changes will in fact require significant start-up and on-going monthly costs. Such changes should not be made without *real* consumer testing to confirm the need for changes.

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[5] Blair, Johnny, F. Conrad, A. C. Ackerman, and G. Claxton. *The Effect of Sample Size on Cognitive Interview Findings*. 2004. Available on-line at: http://sitemaker.umich.edu/fred.conrad/files/sample_size_asa_format_final.pdf, pg. 89

[6] DeMaio, T. J., & A. Landreth, *Cognitive interviews: Do different methods produce different results*. 2004 and Presser, S., J. M. Rothgeb, M. P. Couper, J. T. Lessler, E. Martin, J. Martin, & E. Singer, *Methods for Testing and Evaluating Survey Questionnaire*. 2003. P. 89–108. Available on-line at: http://poq.oxfordjournals.org/content/68/1/109.full

[7] Collins, Debbie. Pretesting Survey Instruments: An Overview of Cognitive Methods. May, 2003. Available on-line at: http://www.jstor.org/stable/4038871

[8] Conrad, Frederick G. and Johnny Blair. *Sources of Error in Cognitive Interviews*. Spring 2009. Available on-line at:http://sitemaker.umich.edu/fred.conrad/files/conrad___blair__poq__2009.pdf

[9] Brancato, G., S. Macchia, M. Murgia, M. Signore, G. Simeoni, K. Blanke, T. Körner, A. Nimmergut, P. Lima, R. Paulino, J.H.P. *Handbook of Recommended Practices for Questionnaire Development and Testing in the European Statistical System*. 2006. Available on-line at: http://epp.eurostat.ec.europa.eu/portal/page/portal/research_methodology/documents/Handbook_questionnaire_development_2006.pdf

Additionally, we ask that should the CFPB decide to use cognitive interviews as a testing method in the future, the CFPB also use other, more reliable methods of testing before finalizing a form used by hundreds of millions of consumers.

*C. Prompt Payment Crediting and Payoff Payments – Section 1026.36*

The Proposed Rules provide that if a servicer holds a partial payment in a suspense or unapplied funds account, once there are sufficient funds in the account to cover a full contractual payment, the servicer must apply those funds to the oldest outstanding payment due. We agree with the CFPB that servicers should disclose on the periodic statement that the funds are being held in such accounts. However, we do not agree that servicers should have to include language on the periodic statement explaining what must be done for the payments to be applied. There is not enough space on the periodic statement for a sufficient explanation of how the funds are handled, especially since many customers have unique circumstances, such as payment stops, loans in foreclosure, etc. Instead, AFSA recommends that servicers be permitted to provide clear, detailed information about how the funds are handled in a separate letter. The letter will have space to provide a clear explanation and the periodic statement will be less overwhelming without the information about how such funds are handled. This is especially true of AFSA members: state laws require our members to post all payments, in any amount, upon receipt. Therefore, all of this information on a periodic billing statement would be, at best, irrelevant surplus, and at worst confusing, to our member companies' customers.

AFSA appreciates that the CFPB is not requiring the use of suspense accounts, as was proposed in the Bureau's April Small Business Review Panel Outline. We support the ability, but not the requirement, to use suspense accounts for partial payments. Small servicers cannot afford the cost of implementing mandatory suspense accounts, so this flexibility is welcome.

The Proposed Rules require servicers to provide pay-off statements within seven business days of a written request, as mandated by the Dodd-Frank Act. Current regulation provides servicers with a safe harbor if the pay-off statement is provided within five business days, but permits longer periods if the servicer experiences a high volume of requests. For most loans, seven business days is sufficient time to produce a pay-off statement, but seven business days may not be sufficient time for more complex loans or situations. The CFPB has the authority to provide certain exemptions to the pay-off provisions, such as the reverse mortgage exemptions it is considering. AFSA supports the exemption for reverse mortgages, which require an appraisal to calculate the pay-off amount. We also suggest that the CFPB provide an exemption for "shared appreciation mortgage loans" because they also necessitate appraisals, yet they are a helpful loan product for many consumers because they can promote affordable home ownership and home retention.

The CFPB asks whether requiring servicers to make coupon book information available would impose significant burden or costs that exceed consumer benefits. Whether or not a coupon book requirement would be overly burdensome depends on how the CFPB defines "coupon book." If the coupon book was merely a 12 month statement on a piece of paper, the requirement to make the book available would not impose a significant burden. However, if servicers had to make coupon books that looked like the current bank coupon books available, the cost burden would

exceed the benefit to the consumer. AFSA does not believe that the CFPB should require servicers to make coupon book information available, but if it does, we ask that the CFPB make such a requirement flexible.

## V. RESPA – REGULATION X

### *A. Oral Requests for Information and Error Resolution – Section 1024.35(a) and Section 1024.36(a)*

The Proposed Rules would allow borrowers to make oral requests for information and error resolution. This requirement is unnecessary, especially for branch-based servicers, and would significantly increase compliance costs. Since allowing borrowers to make oral requests for information and error resolution was not imposed by the Dodd-Frank Act, we ask that the CFPB remove it from the final rule.

It is clear that the CFPB believes that most requests for information and error resolution are made over the phone and is trying to design a procedure that permits consumers to call rather than write letters. However, we strongly disagree with the CFPB's apparent presumption that servicers universally ignore the borrower's oral requests for information and error resolution, necessitating elaborate procedures. This is far from the truth in branch-based business models, for the reasons stated in section II above. The reality is that such servicers perform these duties accurately and well.

Many AFSA members operate out of small branch offices. These branch employees are very involved and concerned about the quality of customer service. The employees know their borrowers, the customers know the employees, and even transact most of the business in person at the branch office. The borrowers know where to go if there is a question or a problem, and the employees work to resolve issues quickly. In fact, the majority of requests for information or error resolution are handled and resolved immediately, to the borrower's satisfaction usually while the borrower is on the phone or at the branch. The borrower does not need to wait five days for a letter from the lender, as proposed. AFSA members could not stay in business without providing this level of service, which is far superior to the level of service that the CFPB is attempting to mandate with this provision.

Most borrowers do not want or need acknowledgement that they made a request or that they called, as they already know that. They do not seek documentation of the results because usually they are trying to confirm balances, or confirm that a payment was received, or obtain the address to which to send additional payments, etc. Requiring branch-based servicers to establish the proposed procedures would impose a burdensome compliance exercise with no benefit to the borrower.

When a case or complaint escalates, it makes sense to require an elaborate procedure to acknowledge and communicate resolution. This is, of course, the intent of the qualified written request. That is, if the borrower committed to write his or her dispute or request, then it was sufficiently serious to impose timelines and liability. The same should be true under the CFPB's Proposed Rules. To access the protections outlined in the Proposed Rules, borrowers should

commit to writing. Such writings do not need to be elaborate, only sufficient to identify the borrower, the account and the complaint or request. Once the written complaint is delivered to the servicer, there is nothing prohibiting communication and further explanation by telephone. In fact, we anticipate such oral communications to be necessary. If the borrower is willing to expend this small effort, then the servicer too should be obligated to perform in a prescribed manner. If the borrower does not wish to document the concern, however, then one should presume the issue was not serious.

In order to comply with the requirements in these sections, AFSA members would have to establish a procedure just to ensure that they have provided a written response to the customer about issues that have already been resolved. Branch offices would have to draft template notices of resolutions, put tracking systems in place to document compliance with prescribed response times, audit the process to ensure compliance, and train branch employees. All of these procedures incur costs, which, necessarily, will be passed on to the borrower.

It will be difficult for branch-based servicers to put tracking systems in place to document compliance with prescribed response times. Some AFSA members believe that in order to comply with these provisions, they would have to record all phone calls, and even all conversations at the branch office, just in case a borrower asked a question about a mortgage loan. One of our members with only 55 branches handles over a million calls a year between mortgage and non-mortgage accounts. While some of this member's branches have phone systems capable of being upgraded for a switch to recording, others have systems that would have to be completely replaced. The cost for that installation alone ranges in the thousands of dollars. A system to record calls and store the records would be incredibly expensive. Another AFSA member's phone service provider estimated that it would cost $700,000 to begin setting up a system to record calls and over $1.5 million to fully implement such a system. This is prohibitively expensive for this member, and other smaller servicers. Moreover, recording calls would have a chilling effect on the special relationship that branch offices have with the borrowers. Additionally, a record of all phone calls could end up being fodder for plaintiffs' attorneys, eager to pounce on the smallest error.

Instead of requiring highly prescriptive and redundant procedures and requirements that will not result in any improvement in customer service, but will unnecessarily increase costs, the CFBP should remove the requirements the Proposed Rules would impose on servicers as a result of oral requests for information and error resolution.

*B. Error Resolution Procedures – Section 1024.35*

AFSA supports the proposed definition of "error." It includes the types of issues that servicers are in a position to address and excludes matters relating to origination, underwriting, and secondary market transactions, which the servicer is not in a position to address. This narrowed focus is consistent with the language in RESPA that error resolutions relate only to "standard servicer's duties[.]"

However, AFSA opposes the requirement that a servicer may not adversely report to credit reporting agencies for 60 days after an error is asserted because this requirement will be very difficult or impossible to comply with. There are at least two reasons.

One, as drafted, the prohibition would appear to proscribe adverse reporting in all situations, including even when the alleged error does not require investigation under section 1024.35(g): duplicative, overbroad or unduly burdensome, or untimely disputes. This leaves the servicer in the untenable position of knowing that the alleged error is not a true "error" yet having to stop what is otherwise accurate credit reporting. This cannot be what the CFPB intended. Thus, the CFPB should clarify that adverse reporting is permitted in those circumstances.

Two, smaller servicers will have considerable difficulty in implementing this requirement. Consider the situation where, in a branch-based business model, a customer orally alleges an error and the branch personnel determine quickly that the error did not occur, and dutifully notifies the customer as required. Notwithstanding that this was done within hours of the oral dispute, the branch would nonetheless have to go into its credit reporting processes and manually override them to *stop* what is in fact correct reporting. While we acknowledge the desireability of not adversely reporting incorrectly, it is incongruous that correct reporting should be stopped by the simple oral assertion of an error – however incorrect or even proffered in bad faith by the borrower.

*C. Information Requests – Section 1024.36*

AFSA commends the CFPB for granting exemptions to the information requests requirements. We appreciate that the servicers would not be required to respond to requests that are duplicative, irrelevant, overbroad or unduly burdensome, or untimely. AFSA members receive many communications from borrowers that are copies of form letters (often found on the internet) that are not actually true requests for information, but attempts to trap servicers into an error which the borrower could then exploit in litigation.

*D. Lender-Placed Insurance – Section 1024.37*

Although the Dodd-Frank Act requires servicers to wait 45 days before placing insurance on a property, we take this opportunity to express our concern with the fact that, because of that requirement, a property could go without insurance for those 45 days.

Additionally, the proposed requirement that charges for lender-placed insurance be bona fide and reasonable is ambiguous, exposes lenders to class action litigation risk and improperly infringes on the states' Departments of Insurance sole authority to regulate policy rates. What is "reasonable" is always in the eye of the beholder and is subject to widely varying interpretation. Hence, the states' Departments of Insurance should be the judges of the propriety of these charges, not courts and juries.

Property and casualty policy rates are filed and approved by the states' Departments of Insurance. This filing and approval creates a statutory presumption that the rates are reasonable in relation to the benefits provided. This is known as the "filed rate doctrine." The Dodd-Frank

Act did not authorize the CFPB to invade the jurisdiction of the state Insurance Commissioners and conduct a reexamination of previously approved insurance rates. It stands to reason that if the CFPB is allowed to invade the states' Departments of Insurance administrative arena and reexamine the issue of whether a given insurance rate is reasonable or excessive, the CFPB will necessarily be substituting its determinations as to the permissible insurance rates for those previously determined to be reasonable by the Insurance Commissioners' and supplanting the CFPB's opinion in matters expressly delegated to the states' Insurance Commissioners expertise and jurisdiction. CFPB intervention in the rate making area would open the door to conflicting determinations regarding what constitutes an unreasonable or excessive charge.

*E. Reasonable Information Management Policies and Procedures – Section 1024.38*

The regulations imposed on servicers under this section are very broad and non-specific. It will be very difficult for servicers to comply with this section. We understand that the CFPB is concerned with borrowers who have been harmed as a result of a servicer's lacking adequate practices to provide servicer personnel with appropriate borrower information. We also realize that the CFPB is responding to the allegations that major servicers demonstrated failures to document and verify information relating to borrower mortgage loan accounts in connection with foreclosure proceedings. However, that issue has been addressed for major servicers in the 49-state attorney general mortgage settlement. Branch-based servicers, who hold the loans they originate in their own portfolio, have not had these issues. Often, if the borrower has a question about her loan, she can ask a question to the person that actually made her the loan. These branch operations have strong incentives to keep their customers happy, and do not need these onerous regulations, which will not help borrowers, but will raise compliance costs, and therefore costs for the borrowers.

AFSA is specifically concerned about the requirement in proposed section 1024.38(c)(2) that servicers create a defined standard "servicing file," which would be provided to the borrower upon request. Much of the proposed information that must be retained and remitted to the borrower is proprietary, confidential, and generally not appropriate or helpful to borrowers. The Proposed Rules would require so much information that a consumer would likely be overwhelmed, and possibly not understand the information presented. Moreover, the requirement would impose costly compliance burdens, disproportionate to whatever problem there may be. From an operations perspective, a servicer could not simply push a button and print the requested information. For example, telephone records and collection notes would have to be produced by accessing individual screens one at a time and printing each screen shot manually, which is very time-consuming and costly.

We note that the Dodd-Frank Act does not require information management policies and procedures. Given that there are multiple layers of information management systems, and given that the CFPB needs to finalize a number of critical mortgage rules by January 2013, we suggest that the CFPB finish its required rulemakings before taking on an optional rulemaking.

*F. Early Intervention Requirements for Certain Borrowers – Section 1024.39*

AFSA understands the CFPB's concern that there are currently no uniform minimum national standards for all servicers of mortgage loans. However, we do not believe that the notice requirements specified in this section will help borrowers make contact with their servicers to discuss their options. AFSA members already reach out to delinquent borrowers, usually by phone, so the requirement to make three calls on three separate dates is unnecessary. The written notice will likely go unheeded by struggling borrowers. Moreover, including information about the foreclosure process – such as the number of days after a payment that the creditor will start the foreclosure process – in the written notice creates a litigation concern, since that information is likely to change. Furthermore, servicers already are subject to state and federal laws relating to debt collection practices, such as the Fair Debt Collection Practices Act ("FDCPA") and the Bankruptcy Code's automatic stay provisions. Additional regulations may contradict these laws and will undoubtedly place unnecessary burdens on servicers.

As with several other requirements in the Proposed Rules, this one seems to address concerns that the CFPB perceives it has with the largest servicers and is not based on any research with regard to other servicers. Branch-based servicers are invested in their communities and the customers. Their high-touch, customer-focused model makes these requirements unnecessary.

*G. Continuity of Contact – Section 1024.40*

The CFPB explains that it included this section in response to mortgage servicers who did not have the infrastructure needed to handle the high volumes of delinquent mortgages, loan modification requests, and foreclosures that they faced. This section would require servicers to: (1) assign personnel to delinquent borrowers, (2) provide delinquent borrowers with live, telephonic responses to inquiries and, as applicable, assist the borrower with loss mitigation options, as well as (3) establish policies and procedures reasonably designed to ensure that servicers personnel available to the borrower can perform an enumerated list of functions where applicable.

This section is not required by the Dodd-Frank Act. We ask that the CFPB remove it, or that the Bureau at least allow branch-based servicers flexibility in meeting the requirements. Branch-based servicers do not need to be required to assign personnel to delinquent borrowers, nor is there a need to require branch-based servicers to provide delinquent borrowers with live, telephonic responses to inquiries or assist with loss-mitigation options. Branch-based servicers have small staffs who only service a limited number of loans. Borrowers have access to these employees in person, by mail, email, telephone, and voicemail. The employees, in turn, have full access to all loan documents and payment history. (In most if not all states, the branch must retain the *original* loan documents.) Borrowers often work with the same person throughout the life of the loan. Moreover, many times, the borrowers come into the branch to meet with the same employee that made the loan originally.

All of this means that servicers who operate out of small branch offices meet their borrowers needs quickly and efficiently. The extensive requirements outlined in this section, which basically create a centralized system, are unnecessary for smaller servicers. The decentralized

system used by branch-based servicers benefits consumers because employees at the branches often deal with their borrowers face to face and have a high incentive to provide good customer service.

*H. Loss Mitigation Procedures – Section 1024.41*

The CFPB believes that the procedures outlined in this section are necessary because of the extensive loss mitigation activity in the mortgage market. The Bureau also claims, in the Background section of the Proposed Rules, that servicers may have a financial incentive to foreclose rather than engage in loss mitigation.

AFSA members do not have a financial incentive to foreclosure and so engage in loss mitigation as soon as a borrower shows any signs of trouble. Many AFSA members hold the mortgage loans that they make and service in portfolio. They do not want to foreclose because they do not want the actual property in their portfolio. Thus, they work hard with their borrowers to keep the borrowers in their homes.

As noted above, the loss-mitigation procedures that the CFPB proposes would turn the effective business model used by branch-based servicers into a more-remote, centralized model. We believe that such a centralized business model would be a disservice to borrowers who get prompt loss-mitigation help from their local branch office, and so we ask that the CFPB remove this section.

At the very least, AFSA asks that the CFPB remove proposed section 1024.41(j). This section provides that any servicer that receives a complete loss mitigation application shall: (1) within 5 days, determine if any other servicers service mortgage loans that have senior or subordinate liens encumbering the property that is the subjection of the loss mitigation applications, and (2) provide the loss mitigation application received from the borrower to the other servicer. First and foremost, this section conflicts with privacy laws and regulations. AFSA disagrees that a borrower's application should be forwarded to another servicer without permission from the borrower. Maintaining the borrower's privacy is a legal requirement, and important to the servicer-borrower relationship. Furthermore, the borrower may not even want this information shared with another servicer, especially if the borrower is not delinquent on the other debt. These requirements, in addition to conflicting with other regulations, will create confusion for the borrower.

Additionally, the five-day timeframe is unrealistic to identify other servicers of senior or subordinate liens. The servicer would have to perform a title search to identify the lien holder and may have to conduct further research to identify the servicer (if different). This level of investigation cannot be done in five days. Moreover it adds additional expense to the delinquency that ultimately must be repaid by the borrower.

## VI. CONCLUSION

The CFPB is proposing many new requirements that would be costly and time-consuming to for servicers to implement. Additionally, a number of these requirements would hurt, rather that help, the special relationship that branch-based servicers have with their borrowers. In light of these considerations, we hope that the CFPB will limit this rulemaking to the requirements imposed by the Dodd-Frank Act and allow servicers two-years to implement the final rule.

We look forward to continuing to work with the CFPB on this proposal. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

Bill Himpler
Executive Vice President
American Financial Services Association

**EXHIBIT A**
**Programming & System Change Steps**

In these proposed rules, the CFPB requires small and large servicers alike to make significant system and/or accounting changes. These proposed requirements will necessitate programming by mortgage servicers and their software providers, as well as third party vendors. Programming is not a simple push-button process that occurs either quickly or inexpensively. Rather, it is a prolonged process, and we ask that the CFPB give servicers as long as possible to implement these changes. This process as applied to a branch-based mortgage servicer is detailed in the following six step explanation.

**Step 1. Mortgage Servicer Initial Implementation.** Upon receipt of a notice of final rulemaking, a mortgage servicer must obtain legal counsel and guidance about how to comply with the rule. For companies with large legal departments, this step is somewhat less burdensome than for companies with either one in-house attorney or no in-house attorneys. For these companies, they must rely, in part or in whole, upon the expertise of outside counsel for guidance. Whether obtained by inside counsel or outside counsel, this legal advice must be conveyed to the person in the servicer's organization responsible for "Compliance." Compliance must then determine what system changes will be needed and how to accomplish the needed system changes. This will inevitably require consultation with either the servicer's own information technology (IT) department, or with the IT Department of the servicer, and, in many instances, it will require consultation with both the inside IT Department and the servicer's IT Department. Determining what is required and how it will be accomplished is neither easy nor quick and often results in numerous conversations between the Legal Department (or outside counsel) and Compliance. (Note: lawyers are not usually systems people and often do not have a grasp on the intricacies of branch operations or branch software systems, so that Compliance has to interpret what the lawyer is saying and then determine how to implement the change on the company's system.) Therefore, this conferencing situation can and often is somewhat lengthy.

After conferring with the attorneys, Compliance often must then work with its branch personnel (Operations) to develop the format or specific methods of complying with the new requirements that best meet the company's business model. This process is probably not as lengthy, but is nonetheless important and cannot be skipped.

When the company determines how it should comply, it then has to involve the software provider.

**Step 2. Software Service Provider Implementation.** The following is a re-typed description from the manual from one of AFSA's member company's software service providers that outlines the software service provider's steps to implement the servicer's requested changes:

> *Application Change*
>
> Application program changes are normally initiated by company research personnel; in addition requests are received from clients which are sent to

Customer Service Representatives (CSR). If the request results in a need for a program change, a Work Order Form is created by the Client or Customer Service Representative and placed in the appropriate category in the project tracking system. Many work orders do not require program changes, but rather additional Customer Service assistance.

Once the Work Order Form has been completed, the Work Order is assigned to a program team. The program team then assigns the work order to a programmer on their team. For large projects a team of system analysts and product managers is formed that design and develop the application.

The programmer to whom the Work Order Form is assigned prepares a Change Management Form that includes a description of the change, a plan for making the change that includes programming, testing, and implementation, and places for supervisor and other approvals. The Change Management Form is kept on-line so it can be changed as needed and tracked according to the change number.

After the Change Management Form is completed, it is given to the programmer's supervisor and the appropriate product manager for approval. The supervisor and product manager determine whether the change should go to the design committee. If so, a design is created and approved by the design committee.

After approval by the supervisor and the product manager, the programmer makes the changes in a development environment to the program and tests it as noted in the Change Management Form. The programmer then documents the results of his testing in the Change Management Form. Documentation of testing is reviewed and approved by the programmer's supervisor, the product manager, and the software testing manager. For certain small changes the programmer's testing is reviewed by the programming supervisor as part of the sign-off process on the change management document. The changes are then tested again by the project manager who signs off that assignment in the electronic project tracking system. The changes are then sent to the Quality Assurance team and tested a third time. The testing documentation is scanned and stored electronically in PDF format with the Change Management Form.

Once testing is deemed adequate, documentation approved, customer service orientation indicated, and the report warehouse designated along with JCL changes, the Release Manager moves the change from the Test Library to the Release Library.

After transfer to the Release Library, and the updating of documentation (if any), the Change Management Form is registered and "closed" on the

> tracking system and the Work Order and Change Management Form are stored electronically.
>
> Prior to the scheduled quarterly or semi-annual release dates, the programs in the Release Library are Beta Tested. Beta testing is accomplished by moving the Release Library to a test system where interested clients can perform their own testing. On the release date the programs are moved into the Production Library by the Release Manager.

During the servicer's process detailed above, invariably and inevitably the software provider will contact the servicer's Compliance and/or IT Department for clarification and to resolve problems that may be specific to that provider's software and/or systems. Depending on the nature and extent of the request, these contacts may need to be in-person (necessitating travel across the country) or telephonic. Again, depending on the nature and extent of the request, there may be two or as many as 20 different contacts between the software provider and the servicer in order for the servicer to complete a "release" that it believes may meet the servicer's needs (also known as the programming changes required by the new law or regulation).

Another issue that can arise during this process is that software servicers typically work for multiple companies so that if each company determines to comply with the law in a slightly different way based on that company's operations or internal systems, then the servicer may have to program its system in multiple ways.

**Step 3**. **Servicer Testing.** Upon receipt of the "release" containing the updated software program from the software service provider, the mortgage servicing company must then test the release to ensure that it actually performs as intended. This process will typically involve initial testing with hypothetical situations to ensure the results are as expected and subsequent testing on a "live" database. Very frequently, this process uncovers unforeseen errors or issues with either the software programming, "mapping" of information on documents to be provided to customers (such as periodic billing statements), or other issues that will need to be resolved between Compliance and the software service provider. Very frequently, in the process of programming the new requirements, old functionality is adversely affected and must be restored.

**Step 4 A. Updating Software.** When the software is finally tested and is deemed accurately to perform the newly required features, the software must be updated on all of the branch computers as well as on the Home Office computers. While this process might appear to be "turn-key", invariably, problems will arise with a few or many of the branch computers that will require further input from the Compliance Department and/or software service provider. However, when this step is done, or more accurately prior to this step, if time permits (and we sure hope it will permit), the next step must be accomplished: training of personnel.

**Step 4 B. Third Party Service Provider Involvement.** Depending on the new requirement, a mortgage servicer may be required to involve a third party in implementing the changes. In the situation where, for example, the changed legal requirements necessitate changing monthly billing statements, many of AFSA's members will need to involve their third party billing statement providers in the change. Specifically, the software service provider must

work with the billing statement provider to send the newly required information to the billing statement provider, and the billing statement provider must incorporate those changes in a new billing statement format.

**Step 5. Training.** Branch personnel including Home Office personnel, training departments, and others, must be trained on the new requirements and the new functionality of the software. While we state that this is a "Step 5", this step is actually being performed to some extent during Steps 3 and/or 4. Ideally, the training department (if the servicer is large enough to have one, and if not, then someone within the servicer's hierarchy who has this job responsibility), must develop training materials and scenarios with which to educate and train existing personnel on the new requirements and how the system will implement the new requirements. To a large extent, this cannot be done until after Steps 1 and 2 are completed and will ideally be started during Steps 3 or 4. However, full training of personnel cannot be completed until the system is updated and any problems are resolved. Keep in mind also that even though personnel are trained, there will be a period of time during which they will have many questions and will require further training (depending on the size of the organization and the number of branches).

**Step 6. Auditing for Compliance.** This step involves the servicer's personnel (its Audit Department if it has one or perhaps its Compliance Department) periodically auditing to determine that the new requirements are being implemented as intended.

We hope that the CFPB will acknowledge from this outline that the process of making programming changes to software service provider's systems is an involved and detailed process that cannot be accomplished in a matter of weeks or months.

**EXHIBIT B**

**Precomputed Loans**

October 5, 2012

Mr. Bill Himpler
Executive Vice President
American Financial Services Association
919 18th St., NW, Suite 300
Washington, D.C. 20006

Dear Mr. Himpler:

In response to your request for assistance in providing background and information on precomputed loans, I have included the attached compilation. Precomputed loans can often best be viewed by comparing and contrasting their attributes and properties with those of interest bearing loans.

As you know, Carleton, Inc. is a creator of lending software and has been in the business of specializing in consumer credit lending calculations for over 45 years. We consulted with the Federal Reserve Board as a member of the Consumer Affairs Committee regarding the creation of Appendix J of Regulation Z during the Simplification of the Truth in Lending Act from 1979 to 1982. We are pleased at the opportunity to once again utilize our expertise in consumer credit math to further better understanding of the concepts involved.

Your speculation that certain elements of the proposed rule are incongruous with the long standing properties and practices of servicing precomputed loans is quite correct. Hopefully the presentation of this information will promote a wider understanding of the concept of precomputed loans.

If it is determined that the course of action on precomputed loans is to impute an interest rate and estimate earned interest for each loan period, that will be a complex and time intensive undertaking. I would be glad to render my assistance to both AFSA and the CFPB if that process becomes a reality.

There are a myriad of items open for consideration when discussing the creation of one "standardized" approach to finding an applicable interest rate and then applying that rate consistently to recognize interest income. The most significant being a uniform calendar for recognizing time intervals that will accrue interest.

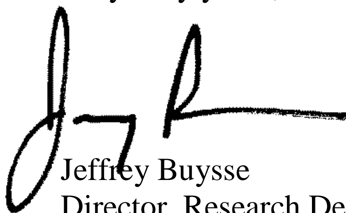
Given that these are precomputed mortgage loans, I would envision a process much like the Appendix J approach to the computation of the annual percentage rate where the time counting calendar employed is the method often referred to as the "Federal Calendar."

The rate the servicer computes, which is a basic internal rate of return, would then be applied to the outstanding loan principal each period in a manner consistent with that time counting calendar to allocate interest for that specific period.

It is especially true with consumer credit calculations that the "devil is in the details" and any loan irregularities, e.g. odd first/final payment amounts, long first payment intervals etc., would make the rate calculation more difficult for many servicers and need to be addressed. It undoubtedly will be a difficult task for many servicers regardless.

As always, our desire is to provide timely information within our sphere of expertise so that the parties involved in the process can make accurate and informed decisions that support the goals of the regulatory process while providing a reasonable and practical framework for adherence and compliance.

Very truly yours,



Jeffrey Buysse
Director, Research Department

# Interest Bearing
# Vs.
# Precomputed Loans

Historically, the structure of any consumer credit transaction, including mortgage loans, has followed one of two forms: precomputed transactions or interest bearing, aka “simple interest”, transactions. To promote simplicity, credit transactions in general will be referred to as “loans” throughout this discussion.

**Precomputed Loans**
Precomputed loans pre-date automated computing power and were born out of a time when lending calculations needed to be done with a pencil and paper. While a minority in today’s market, they remain a popular choice for many lenders due to simplicity and historical pattern of practice.

When the contract is precomputed, the borrower’s contractual obligation is to repay the total of payments. The “debt” is the total amount the borrower will pay until maturity and all interest charges for the life of the loan have truly been ”precomputed” in that amount.

Precomputed loans are generally addressed at the state level. One of the best definitions is contained in the Ohio Revised Code Sec. 1321.51(g):

*“(G) “Precomputed loan” means a loan in which the debt is a sum comprising the principal amount and the amount of interest computed in advance on the assumption that all scheduled payments will be made when due”*.

The servicing of a precomputed loan traditionally takes the form of a ledger card approach where the debt is expressed as the total amount to repay and each payment is subtracted from that total as payments are received and posted. In today’s industry, electronic systems have replaced physical manually computed ledger cards but the process remains the same.

Traditionally, a precomputed loan may incorporate an interest charge computed using add-on, simple or discount interest. The purpose is to compute a charge for the entire duration of the loan. For that reason, when a borrower prepays the loan before maturity, a refund of precomputed interest that is unearned by the lender must be credited to the account to arrive at the net payoff owed by the borrower. The method for computing the rebate may vary and is addressed by contract language and applicable state law.

**Characteristics of Precomputed Transactions**

- Borrower legally obligated to repay disclosed total of payments.
- A precomputed contract discloses equal level payment amounts. A 12 month contract would contain 12 equal payments of the same amount.
- Interest for the duration of the loan until maturity is computed at loan consummation and not subject to change due to paying habits of borrower.
- Outstanding debt is reduced by the full amount of each payment.
- No allocation of the payment is made each period between interest and principal
- In the event of prepayment in full, a refund of unearned interest must be computed to arrive at the net payoff amount of the loan. The refund method employed is as stated in the loan contract and generally subject to state law.
- There is no disclosure of a stated interest rate. The only rate evident on a PC loan contract is the Truth in Lending Act APR.

**Interest Bearing Loans**

When the contract is interest bearing, the borrower's contractual obligation is to repay the stated principal amount plus interest accruing at a stated interest rate. The "debt" is the principal amount and interest is added to the debt only as it is earned.

Once again, the Ohio Revised Code Section 132.51 provides a very succinct definition of 'interest bearing':

*"(F) "Interest-bearing loan" means a loan in which the debt is expressed as the principal amount and interest is computed, charged, and collected on unpaid principal balances outstanding from time to time".*

**Characteristics of Interest Bearing Transactions**

- Borrower legally obligated to repay the stated principal plus interest at a stated rate.
- An interest bearing contract discloses an odd final payment amount.
- Interest for each period is computed on the outstanding principal balance for the time actually outstanding since the last posted payment.
- Outstanding debt is reduced according to simple interest amortization where the payment is allocated first to accrued interest and then to principal.
- In the event of prepayment in full, the net payoff amount is the principal balance as of the last payment made plus any accrued interest up to the prepayment date.
- Interest accrues at the stated rate contained in the promissory note language of the credit contract.

**Upon Entering the Servicing Phase of the Loan Cycle**

Precomputed loans track the balance of the total of payments (including unearned interest) and interest for all scheduled periods has been computed at the onset of the transaction until maturity. Regardless of whether the borrower pays early or late, the amount of interest designated to a period will not change. (Concurrently, if a consumer pays late, no additional interest is added or must be paid.)

Interest bearing loans track the principal balance (not including unearned interest) as the "outstanding balance due" and interest for a specific period is computed at the stated rate at the time a payment is posted. (Concurrently, if a consumer pays late, additional interest is added and must be paid.)

**Data Available to the Servicer**

It is important to note that strictly from an initial disclosure perspective, the two types of transactions may be difficult to distinguish. Since original disclosures are based on the best information known at the point of consummation and the assumption that all future payments will be made in the scheduled amounts and on scheduled payment dates, the total interest/finance charges originally disclosed may be identical. The differences in the methods are, though, clearly illustrated and highlighted during the servicing of the loan.

Important points for consideration:

- Neither the outstanding principal balance nor the computational interest rate may be available to the servicer upon booking a precomputed contract into the servicing system.
- Servicers have only the disclosure of the TILA APR as available rate data. In the mortgage industry, pre-paid finance charge fees are common, e.g. points and origination fees, so the TILA APR is a distinct and separate value compared to the effective rate at which interest accrues.
- These fees are often fully earned or "non-refundable" upon prepayment by the borrower. For that reason, attempting to allocate a payment between "interest" and "principal" by applying the TILA APR to the outstanding balance would provide an inaccurate portrayal of interest accrual.
- Borrower paying habits will not affect the amount of interest earned on a precomputed contract. Only additional delinquency charges and various "other charges" may accrue during the servicing of the loan.
- Servicing systems may compute refunds of unearned interest by the Sum of the Digits (Rule of 78ths) in accordance with state law. Any system ability to accrue interest will most likely be done on that same basis.

## The Illustrations

The following example transactions are presented for the purpose of illustrating the properties and characteristics discussed in this exhibit. Consumer credit transactions contain numerous parameters and variables that affect the resulting calculated values. These illustrations are fairly simple in order to reinforce basic concepts and avoid unnecessarily overshadowing the issues at hand.

**Illustration B1**
A 12 month $1,000 principal amount precomputed loan. This exhibit is a proof of concept illustration to compare and contrast the basic characteristics of precomputed and interest bearing loans. The loan data is not representative of the vast majority of mortgage loans in the industry, but the short term and small dollar amount allow for clear and easy analysis of what transpires over the life of the loan.

Important Points to Note:

- Original Outstanding Balance Due is the Total of Payments which includes unearned interest.
- The reduction in the Outstanding Balance Due is by the total amount of the scheduled payment posted.

**Illustration B2**
The same transaction data as B1 except servicing takes place for a "simple interest" loan. The interest for any specific period is a function of applying the stated interest rate of 10% to the outstanding balance of the principal for the actual number of calendar days outstanding between payment dates. Each day of interest is applied at 1/365 of the stated annual interest rate.

Important Points to Note:

- Original Outstanding Balance Due is the Principal Balance which does not include unearned interest.
- The reduction in the Outstanding Balance Due is by the amount of the payment allocated to principal reduction once the interest charge has been computed for the period.

**Illustration B3**
This illustration is another precomputed loan with a 60 month term and $5,000 principal balance. It is more representative of actual loans extended by finance companies in today's market.

Important Points to Note:

- Original Outstanding Balance Due is the Total of Payments which includes unearned interest.
- The reduction in the Outstanding Balance Due is by the total amount of the scheduled payment posted.

**Illustration B4**
This illustration is the Interest Bearing companion transaction to B3.

Important Points to Note:

- Original Outstanding Balance Due is the Principal Balance which does not include unearned interest.
- The reduction in the Outstanding Balance Due is by the amount of the payment allocated to principal reduction once the interest charge has been computed for the period.

**Illustration B1**
**SERVICING A**
**PRECOMPUTED LOAN**

Original Principal $ 1000.00
Original Term12 months

| Payment No. | Date | Outstanding Balance Due |
|---|---|---|
| | 9/1/12 | $1,054.92 |
| **1** | 10/1/12 | $ 967.01 |
| **2** | 11/1/12 | $ 879.10 |
| **3** | 12/1/12 | $ 791.19 |
| **4** | 1/1/13 | $ 703.28 |
| **5** | 2/1/13 | $ 615.37 |
| **6*** | 3/1/13 | $ 527.46 |
| **7** | 4/1/13 | $ 439.55 |
| **8** | 5/1/13 | $ 351.64 |
| **9** | 6/1/13 | $ 263.73 |
| **10** | 7/1/13 | $ 175.82 |
| **11** | 8/1/13 | $ 87.91 |
| **12** | 9/1/13 | $ 0.00 |

12 Monthly Payments @ $ 87.91
Total Interest @ $ 54.92

*If prepaid in full as of 6th monthly payment, refund amount:

Rule of 78ths: $14.79
Gross Payoff Amount: $527.46
Less: rebate R78 (14.79)
Net Payoff $512.67

**Illustration B2**
**SERVICING AN**
**INTEREST BEARING LOAN**

Original Principal $ 1000.00
Original Term12 months
10% Interest Rate

| | | ***Payment*** | ***Allocation*** | |
|---|---|---|---|---|
| **Pmt No.** | **Date** | ***Interest*** | ***Principal*** | **Outstanding Bal. Due** |
| | 9/1/12 | | | $1,000.00 |
| **1** | 10/1/12 | $ 8.22 | $ 79.69 | $ 930.21 |
| **2** | 11/1/12 | $ 7.82 | $ 80.09 | $ 840.22 |
| **3** | 12/1/12 | $ 6.91 | $ 81.00 | $ 759.21 |
| **4** | 1/1/13 | $ 6.45 | $ 81.46 | $ 677.75 |
| **5** | 2/1/13 | $ 5.76 | $ 82.15 | $ 595.60 |
| **6**** | 3/1/13 | $ 4.57 | $ 83.34 | $ 512.25 |
| **7** | 4/1/13 | $ 4.35 | $ 83.56 | $ 428.70 |
| **8** | 5/1/13 | $ 3.52 | $ 84.39 | $ 344.31 |
| **9** | 6/1/13 | $ 2.92 | $ 84.99 | $ 259.32 |
| **10** | 7/1/13 | $ 2.13 | $ 85.78 | $ 173.54 |
| **11** | 8/1/13 | $ 1.47 | $ 86.44 | $ 87.11 |
| **12** | 9/1/13 | $ .74 | $ 87.17 | $ 0.00 |
| | Total Interest | $ 54.86 | | |

11 Monthly Payments @ $ 87.91
1 Final Payment @ $ 87.85
Total Interest @ $ 54.86

**If prepaid in full as of 6th monthly payment:

Net Payoff = $512.25

## Illustration B3
## SERVICING A
## PRECOMPUTED LOAN

Original Principal $ 5000.00
Original Term60 months
10% Interest Rate

| Payment No. | Date | Outstanding Balance Due |
|---|---|---|
| | 9/1/12 | $ 6,373.80 |
| **1** | 10/1/12 | $ 6,267.57 |
| **2** | 11/1/12 | $ 6,161.34 |
| **3** | 12/1/12 | $ 6,055.11 |
| **4** | 1/1/13 | $ 5,948.88 |
| **5** | 2/1/13 | $ 5,842.65 |
| **6** | 3/1/13 | $ 5,736.42 |
| **7** | 4/1/13 | $ 5,630.19 |
| **8** | 5/1/13 | $5,523.96 |
| **9** | 6/1/13 | $ 5,417.73 |
| **10** | 7/1/13 | $ 5,311.50 |
| **11** | 8/1/13 | $ 5,205.27 |
| **12** | 9/1/13 | $ 5,099.04 |
| **13** | 10/1/13 | $ 4,992.81 |
| **14** | 11/1/13 | $ 4,886.58 |
| **15** | 12/1/13 | $ 4,780.35 |
| **16** | 1/1/14 | $ 4,674.12 |
| **17** | 2/1/14 | $ 4,567.89 |
| **18** | 3/1/14 | $ 4,461.66 |
| **19** | 4/1/14 | $ 4,355.43 |
| **20** | 5/1/14 | $ 4,249.20 |
| **21** | 6/1/14 | $ 4,142.97 |
| **22** | 7/1/14 | $ 4,036.74 |
| **23** | 8/1/14 | $ 3,930.51 |
| **24** | 9/1/14 | $ 3,824.28 |
| **25** | 10/1/14 | $ 3,718.05 |
| **26** | 11/1/14 | $ 3,611.82 |
| **27** | 12/1/14 | $ 3,505.59 |
| **28** | 1/1/15 | $ 3,399.36 |
| **29** | 2/1/15 | $ 3,293.13 |
| **30*** | 3/1/15 | $ 3,186.90 |

(continued on next page)

| Payment No. | Date | Outstanding Balance Due |
|---|---|---|
| **31** | 4/1/15 | $ 3,080.67 |
| **32** | 5/1/15 | $ 2,974.44 |
| **33** | 6/1/15 | $ 2,868.21 |
| **34** | 7/1/15 | $ 2,761.98 |
| **35** | 8/1/15 | $ 2,655.75 |
| **36** | 9/1/15 | $ 2,549.52 |
| **37** | 10/1/15 | $ 2,443.29 |
| **38** | 11/1/15 | $ 2,337.06 |
| **39** | 12/1/15 | $ 2,230.83 |
| **40** | 1/1/16 | $ 2,124.60 |
| **41** | 2/1/16 | $ 2,018.37 |
| **42** | 3/1/16 | $ 1,912.14 |
| **43** | 4/1/16 | $ 1,805.91 |
| **44** | 5/1/16 | $ 1,699.68 |
| **45** | 6/1/16 | $ 1,593.45 |
| **46** | 7/1/16 | $ 1,487.22 |
| **47** | 8/1/16 | $ 1,380.99 |
| **48** | 9/1/16 | $ 1,274.76 |
| **49** | 10/1/16 | $ 1,168.53 |
| **50** | 11/1/16 | $ 1,062.30 |
| **51** | 12/1/16 | $ 956.07 |
| **52** | 1/1/17 | $ 849.84 |
| **53** | 2/1/17 | $ 743.61 |
| **54** | 3/1/17 | $ 637.38 |
| **55** | 4/1/17 | $ 531.15 |
| **56** | 5/1/17 | $ 424.92 |
| **57** | 6/1/17 | $ 318.69 |
| **58** | 7/1/17 | $ 212.46 |
| **59** | 8/1/17 | $ 106.23 |
| **60** | 9/1/17 | $ 0.00 |

60 Monthly Payments @ $ 106.23
Total Interest @ $1,373.80

*If prepaid in full as of 30th monthly payment, refund amount:

Rule of 78ths: $349.08
Gross Payoff Amount: $3,186.90
Less: rebate R78 (349.08 )
Net Payoff $2,837.82

**Illustration B4**
**SERVICING AN**
**INTEREST BEARING LOAN**

Original Principal $ 5000.00
Original Term 60 months
10% Interest Rate

| | | ***Payment*** | ***Allocation*** | |
|---|---|---|---|---|
| **Pmt No.** | **Date** | ***Interest*** | ***Principal*** | **Outstanding Bal. Due** |
| | 9/1/12 | | | $ 5,000.00 |
| **1** | 10/1/12 | $ 41.10 | $ 65.13 | $ 4,934.87 |
| **2** | 11/1/12 | $ 41.91 | $ 64.32 | $ 4,870.55 |
| **3** | 12/1/12 | $ 40.03 | $ 66.20 | $ 4,804.35 |
| **4** | 1/1/13 | $ 40.80 | $ 65.43 | $ 4,738.92 |
| **5** | 2/1/13 | $ 40.25 | $ 65.98 | $ 4,672.94 |
| **6** | 3/1/13 | $ 35.85 | $ 70.38 | $ 4,602.56 |
| **7** | 4/1/13 | $ 39.09 | $ 67.14 | $ 4,535.42 |
| **8** | 5/1/13 | $ 37.28 | $ 68.95 | $ 4,466.47 |
| **9** | 6/1/13 | $ 37.93 | $ 68.30 | $ 4,398.17 |
| **10** | 7/1/13 | $ 36.15 | $ 70.08 | $ 4,328.09 |
| **11** | 8/1/13 | $ 36.76 | $ 69.47 | $ 4,258.62 |
| **12**** | 9/1/13 | $ 36.17 | $ 70.06 | $ 4,188.56 |
| **13** | 10/1/13 | $ 34.43 | $ 71.80 | $ 4,116.76 |
| **14** | 11/1/13 | $ 34.96 | $ 71.27 | $ 4,045.49 |
| **15** | 12/1/13 | $ 33.25 | $ 72.98 | $ 3,972.51 |
| **16** | 1/1/14 | $ 33.74 | $ 72.49 | $ 3,900.02 |
| **17** | 2/1/14 | $ 33.12 | $ 73.11 | $ 3,826.91 |
| **18** | 3/1/14 | $ 29.36 | $ 76.87 | $ 3,750.04 |
| **19** | 4/1/14 | $ 31.85 | $ 74.38 | $ 3,675.66 |
| **20** | 5/1/14 | $ 30.21 | $ 76.02 | $ 3,599.64 |
| **21** | 6/1/14 | $ 30.57 | $ 75.66 | $ 3,523.98 |
| **22** | 7/1/14 | $ 28.96 | $ 77.27 | $ 3,446.71 |
| **23** | 8/1/14 | $ 29.27 | $ 76.96 | $ 3,369.75 |
| **24** | 9/1/14 | $ 28.62 | $ 77.61 | $ 3,292.14 |
| **25** | 10/1/14 | $ 27.06 | $ 79.17 | $ 3,212.97 |
| **26** | 11/1/14 | $ 27.29 | $ 78.94 | $ 3,134.03 |
| **27** | 12/1/14 | $ 25.76 | $ 80.47 | $ 3,053.56 |
| **28** | 1/1/15 | $ 25.93 | $ 80.30 | $ 2,973.26 |
| **29** | 2/1/15 | $ 25.25 | $ 80.98 | $ 2,892.28 |
| **30** | 3/1/15 | $ 22.19 | $ 84.04 | $ 2,808.24 |

(continued on next page)

| | | *Payment* | *Allocation* | |
|---|---|---|---|---|
| **Pmt No.** | **Date** | ***Interest*** | ***Principal*** | **Outstanding Bal. Due** |
| **31** | 4/1/15 | $ 23.85 | $ 82.38 | $ 2,725.86 |
| **32** | 5/1/15 | $ 22.40 | $ 83.83 | $ 2,642.03 |
| **33** | 6/1/15 | $ 22.44 | $ 83.79 | $ 2,558.24 |
| **34** | 7/1/15 | $ 21.03 | $ 85.20 | $ 2,473.04 |
| **35** | 8/1/15 | $ 21.00 | $ 85.23 | $ 2,387.81 |
| **36** | 9/1/15 | $ 20.28 | $ 85.95 | $ 2,301.86 |
| **37** | 10/1/15 | $ 18.92 | $ 87.31 | $ 2,214.55 |
| **38** | 11/1/15 | $ 18.81 | $ 87.42 | $ 2,127.13 |
| **39** | 12/1/15 | $ 17.48 | $ 88.75 | $ 2,038.38 |
| **40** | 1/1/16 | $ 17.31 | $ 88.92 | $ 1,949.46 |
| **41** | 2/1/16 | $ 16.56 | $ 89.67 | $ 1,859.79 |
| **42** | 3/1/16 | $ 14.27 | $ 91.96 | $ 1,767.83 |
| **43** | 4/1/16 | $ 15.01 | $ 91.22 | $ 1,676.61 |
| **44** | 5/1/16 | $ 13.78 | $ 92.45 | $ 1,584.16 |
| **45** | 6/1/16 | $ 13.45 | $ 92.78 | $ 1,491.38 |
| **46** | 7/1/16 | $ 12.26 | $ 93.97 | $ 1,397.41 |
| **47** | 8/1/16 | $ 11.87 | $ 94.36 | $ 1,303.05 |
| **48** | 9/1/16 | $ 11.07 | $ 95.16 | $ 1,207.89 |
| **49** | 10/1/16 | $ 9.93 | $ 96.30 | $ 1,111.59 |
| **50** | 11/1/16 | $ 9.44 | $ 96.79 | $ 1,014.80 |
| **51** | 12/1/16 | $ 8.34 | $ 97.89 | $ 916.91 |
| **52** | 1/1/17 | $ 7.79 | $ 98.44 | $ 818.47 |
| **53** | 2/1/17 | $ 6.95 | $ 99.28 | $ 719.19 |
| **54** | 3/1/17 | $ 5.52 | $100.71 | $ 618.48 |
| **55** | 4/1/17 | $ 5.25 | $100.98 | $ 517.50 |
| **56** | 5/1/17 | $ 4.25 | $101.98 | $ 415.52 |
| **57** | 6/1/17 | $ 3.53 | $102.70 | $ 312.82 |
| **58** | 7/1/17 | $ 2.57 | $103.66 | $ 209.16 |
| **59** | 8/1/17 | $ 1.78 | $104.45 | $ 104.71 |
| **60** | 9/1/17 | $ .89 | $104.71 | $ 0.00 |
| | Total Interest | $1,373.17 | | |

59 Monthly Payments @ $ 106.23
1 Final Payment @ $ 105.60
Total Interest @ $1,373.17

**If prepaid in full as of 12th monthly payment:

Net Payoff = $4,188.56

**EXHIBIT C**
**State Law Notices Required in Default and Loss Mitigation Situations**

# Mortgage: Servicing > Q & A Drilldown

**Default-Related Notice Obligations > Notice of Default, Right to Cure or Right to Reinstate > Does state law impose a notice of default , right to cure or right to reinstate requirement? If yes, identify the requirements and include any safe harbor language or model form.**

| State: | Short Answer: |
|---|---|
| **Alaska** | Yes. The trustee must record a Notice of Default and send a copy of the Notice to the borrower. The borrower generally has the right to cure the default at any time prior to the sale of the property. The right to cure is essentially a right to reinstate. |
| **Arkansas** | ***Farm Property:*** Yes. A creditor must provide the borrower with a mediation notice before the creditor may commence a foreclosure.<br><br>***All Loans:*** Yes. At least 10 days before initiating a power of sale foreclosure, the mortgagee, trustee, or beneficiary must mail certain information. At least 30 days before selling the property, the mortgagee, trustee, or beneficiary must mail a notice of default and intention to sell. |
| **California** | Yes, California law requires a trustee, mortgagee, or beneficiary, or any of their authorized agents (including servicers) to record a notice of default and mail a copy of the notice to the trustor or mortgagor, as applicable, by registered or certified mail and, simultaneously, by first-class mail. |
| **Colorado** | ***Loans Subject to the UCCC/All Lenders:*** Yes. In connection with loans subject to the Colorado Uniform Consumer Credit Code (the "UCCC"), Colorado law imposes a right to cure notice requirement. |
| **Connecticut** | A pre-foreclosure notice must be sent to certain borrower/mortgagors, advising of the right to attempt to resolve the loan delinquency or default with the mortgagee or with a consumer credit counseling agency, and the right to contact the Connecticut Housing Finance Authority (CHFA) to obtain information about and apply for emergency mortgage assistance payments if the borrower/mortgagor and mortgagee are unable to resolve the delinquency or default. This pre-foreclosure notice requirement generally applies to consumer-purpose mortgage loans secured by a first or second lien priority mortgage on 1-4 family Connecticut residential property used as the borrower/mortgagor's principal residence if the only default under the loan is monetary (i.e., required payments of principal, interest, mortgage insurance, |

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| | etc. are contractually delinquent) and the mortgagee has a present intention to commence foreclosure. This pre-foreclosure notice advises the borrower of the right to "attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise" and the right to contact CHFA to obtain information about the possible availability of emergency mortgage assistance payments "if the mortgagor and mortgagee are unable to resolve the delinquency or default." In addition, certain "nonprime" home loan borrowers have a right to cure a default and reinstate after a foreclosure action has been commenced (but before entry of judgment), not before commencement of foreclosure. |
| **Delaware** | For mortgage loans secured by owner-occupied one-to-four family primary residential property, a notice of intent to foreclose is required prior to initiating a mortgage foreclosure action, unless there is an applicable exemption from the notice requirement. The notice must include information concerning the nature of the default, the amount required to cure the default, and any other actions required to cure the default. Delaware law does not otherwise impose requirements related to notice of default, right to cure or right to reinstate. |
| **Florida** | ***High Cost Home Loans Under the Fair Lending Act:*** Yes.<br><br>***All Other Loans:*** No. Depending on the parties' course of dealing with respect to late payments and other defaults, however, it is possible that a servicer will have to send the borrower a notice of strict compliance with the terms of the loan agreement before initiating foreclosure proceedings. |
| **Georgia** | Yes, a right to cure notice is required in connection with "high-cost home loans." |
| **Hawaii** | ***Loans Serviced by Mortgage Servicers:*** Effective July 1, 2010, Hawaii has adopted mortgage servicer licensing and regulatory requirements. In the event of delinquency or default on the part of the borrower, the servicer must inform the borrower of the facts concerning the loan and nature and extent of the delinquency or default, and, if the borrower replies, must negotiate with the borrower subject to the servicer's duties under the mortgage servicing contract. (There is no "safe harbor" language or "model" form.)<br><br>***Standard Power of Sale Process***: The Hawaii attorney handling the foreclosure sale, the mortgagee, or the mortgagee's successor must provide specified information to any person entitled to notice (mortgagor, borrower, guarantor, Hawaii Director of Taxation, board of directors of apartment owners or homeowners association of the condominium or co-op that is being foreclosed, prior or junior lien creditors who have requested notice).<br><br>***Nonjudicial Power of Sale Foreclosure Moratorium:*** Section 40 of Hawaii Laws 2011, Act 48, SB 651, adopted a non-codified moratorium on all new nonjudicial foreclosure actions under the standard nonjudicial foreclosure |

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| | process to begin May 5, 2011, and to end on July 1, 2012. No foreclosure by power of sale pursuant to H.R.S. § 667-5 shall be initiated and the Registrar of the Bureau of Conveyances shall not record an affidavit or notice of sale pursuant to this section during the moratorium period.<br><br>***Alternate Power of Sale Process:*** A "foreclosing mortgagee" must deliver a written notice of default to the mortgagor, borrower, any guarantor, any prior or junior creditor having a recorded lien on the mortgaged property before the recordation of the notice of default, the Hawaii Director of Taxation, the Director of Finance of the county where the mortgaged property is located, and any other person entitled to receive notice under H.R.S. § 667-5.5 (board of directors of apartment owners or homeowners association of the condominium or co-op that is being foreclosed). The notice must contain specified information, and a cautionary warning printed in all capital letters in the specified text. |
| **Idaho** | ***Notice of Default:*** Yes. The servicer must send a notice of default to anyone who owns an interest in the property.<br><br>***Right to Reinstate:*** A notice of a right to reinstate is not required. However, Idaho law provides for a right to reinstate. |
| **Illinois** | Yes. In addition, the High Risk Home Loan Act imposes cure requirements. See Explanation. |
| **Indiana** | A creditor must send to the debtor by certified mail a presuit notice, which includes, among other information, a notice of default. Indiana law does not require notice of right to cure or right to reinstate. |
| **Iowa** | The following right to cure notices are required before a judicial foreclosure may be initiated:<br><br>• **Iowa Consumer Credit Code Notice of Right to Cure Default (ICCC Loans of $25,000 or Less and HELOCs)** – The Notice of Right to Cure must be sent after default and at least 20 days before the debt can be accelerated.<br>• **Notice of Right to Cure Default for Owner Occupied Properties** – The notice must be sent at least 30 days before taking action against the borrower, the debt or the property.<br>• **Notice to National Guard or Reserve Members**<br><br>– This new law will require publication of information about foreclosures to national guard and reserve members and their dependents. |
| **Kansas** | ***First Lien Loans (LTV Greater than 100%) and Junior Lien Loans:*** Yes. |

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| **Kentucky** | ***High Cost Home Loans:*** Yes. |
| **Maine** | Yes. |
| **Maryland** | Applicable Maryland law requires a secured party to send the mortgagor a default notice and a right to reinstate notice. |
| **Massachusetts** | Effective August 7, 2010, notice of default generally must be provided to the mortgagors of loans secured by"residential property" no less than 150 days before the mortgagee (or its agent) accelerates the maturity of the unpaid balance of a mortgage, forecloses, or takes any other action to seize the home, except where the creditor has made certain good faith efforts to discuss foreclosure alternatives with the mortgagor, in which case the right to cure period decreases to 90 days. Additionally, with respect to closed-end loans secured wholly or partially by a junior lien on owner occupied 1-6 family property with an official tax assessed value of $40,000 or less as of loan closing, the mortgagee (or its agent) must provide at least 15 days prior written notice to the mortgagors of its intention to commence foreclosure proceedings. Lenders also must send notice of the right to cure a payment default before a covered "high cost" mortgage loan may be accelerated due to the consumer's failure to meet the repayment terms of the loan. |
| **Michigan** | ***Notice to Borrower:*** Before commencing a foreclosure-by-advertisement proceeding involving a borrower's principal residence, the foreclosing party must send the borrower a notice describing the default and the borrower's right to request a meeting to negotiate a loan modification with a person designated in the notice. The foreclosing party must also publish information similar to that contained in the notice in the same manner as it would publish the notice of the foreclosure sale. There is no safe harbor language or model form for either notice.<br><br>***Cure Requirements/ Foreclosure Limitations:*** If the borrower properly requests a meeting to negotiate a loan modification and qualifies under certain loan modification guidelines, then, in effect, the borrower must be given the opportunity to cure the default by entering into a loan modification within those guidelines or on other terms agreed to by the borrower. If the borrower is not given this opportunity to cure, the foreclosing party may only proceed with a foreclosure by judicial action.<br><br>***Notice to Co-signer*:** A cosigner must be provided 30-days written notice before taking any collection action against a cosigner or reporting adverse information about the cosigner to a consumer credit reporting agency. There is no safe harbor language or model form for the notice. |
| **Minnesota** | Yes, for many loans, Minnesota requires the mortgage to include a right to cure notice provision similar to that in the Fannie Mae uniform instrument. This notice also is commonly included in other mortgage loans. For this reason, the |

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| | mortgage instrument should be consulted. |
| **Mississippi** | Yes. |
| **Missouri** | ***All Second Lien Loans of $2,500 or More:*** Yes. If the loan is a second mortgage loan in an amount of $2,500 or more, Missouri law requires a notice of right to cure be sent to the borrower. |
| **Nebraska** | Yes. The trustee must record a notice of default and send that notice to the borrower and any other party that has requested the notice at least one month before the notice of sale. |
| **Nevada** | Yes, there is a notice of default requirement. The notice of default and election to sell must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust. Nevada law also requires the trustee to provide the borrower with a notice regarding counseling and mediation rights. There is no safe harbor language or model form for either of these notices. |
| **New Jersey** | Yes, New Jersey imposes a notice of default requirement and grants a right to cure the default and reinstate the contract. |
| **New Mexico** | Yes, under the Home Loan Protection Act, in connection with "home loans." |
| **New York** | New York does not impose a notice requirement regarding a borrower's default, the borrower's right to cure or the borrower's right to reinstate the loan or HELOC. However, effective January 14, 2010, a lender/servicer/assignee must provide a statutory form of notice to the borrower warning of the impending foreclosure or other action which could result in the loss of the borrower's home. This notice must be sent at least 90 days prior to commencing a foreclosure or similar legal action concerning a 1-4 family owner occupied principal dwelling- including a cooperative unit. |
| **North Carolina** | ***All Loans:*** Yes. All lenders must send an Attorneys' Fees Notice, a Notice of Foreclosure Hearing, and a Subprime Loan Pre-Foreclosure Notice. Please note that the Mortgage Chapter requires an additional notice within the Notice of Foreclosure Hearing statutes. The Chapter requires servicers to send a written statement that contains certain loan information to the borrower within 30 days before the notice of hearing. Please note that effective November 1, 2010, the Subprime Loan Pre-Foreclosure Notice is required for all home loans.<br><br>***Licensed Mortgage Servicers and Exempt Persons:*** Yes. In addition to the notices set forth above for all loans, licensed mortgage servicers and certain persons exempt from licensure under the Secure and Fair Enforcement Mortgage Licensing Act must send a Pre-Foreclosure Notice and provide a right to reinstate. |

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| **North Dakota** | Yes. Applicable North Dakota law requires a service to send the borrower a pre-foreclosure notice. |
| **Ohio** | Regulations promulgated under the Ohio Second Mortgage Loan Act provide that in the case of any default of a mortgage loan the registrant must, in its written notice of the payment deficiency, provide a toll-free number by which the borrower can discuss the payment problem and workout options. |
| **Oklahoma** | Yes, a notice of intent to foreclose and right to cure is required. |
| **Oregon** | Yes, in connection with non-judicial foreclosures, but there is no safe harbor language or model form. The notice must be recorded and then served on the borrower. |
| **Pennsylvania** | Yes. The Loan Interest and Protection Law and the Homeowners' Emergency Mortgage Assistance Act require a lender or servicer to send a pre-foreclosure default notice to the borrower on most first- and junior-lien residential mortgage loans.<br><br>While the statutes each contain a separate notice requirement, the Pennsylvania Housing Finance Agency has prepared an official notice form that combines the requirements from both statutes. That official notice complies with the notice requirements of both statutes.<br><br>The notice that is sent must be in the official form. The notice must be sent at least 33-days before the lender or servicer accelerates the loan, commences legal action, or takes possession of the property. |
| **Rhode Island** | Yes. |
| **South Carolina** | Applicable South Carolina law requires a servicer to send a borrower a right to cure for junior lien loans and lines of credit. |
| **South Dakota** | ***All Lenders/Loans Secured by Mortgages Subject to the 180 Day Redemption Mortgage Act:*** A notice of acceleration is required. |
| **Tennessee** | Yes, with respect to high cost home loans. Note that Tennessee law does not otherwise require such a notice, but if a servicer engages in a pattern of accepting late payments without accelerating, case law suggests a notice should be provided to the debtor if the servicer thereafter intends to accelerate due to default. See Explanation for additional details. |
| **Texas** | Yes. Notice of default and right to cure is required. Note also that the Tax Lien Lending Law imposes a notice requirement on servicers. |
| **Utah** | Yes, a notice of default must be filed, and, after recordation, a copy of the filed default notice must be sent to the borrower. |
| **Vermont** | Vermont law requires a servicer to send a notice of intention to foreclose at |

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|---|---|
| | least 30 days before publication of the notice of sale.<br><br>A plaintiff in a foreclosure action must also send a notice a notice to homeowner with the complaint. |
| **Virginia** | ***First Lien High-Risk Mortgage Loans:*** Yes. |
| **Washington** | Yes. Washington law requires a notice of default, which includes notice of the borrower's right to reinstate. Washington law does not impose a notice of right to cure requirement. |
| **Washington DC** | Yes. |
| **West Virginia** | Yes. A creditor may not accelerate the unpaid balance, commence any action, or demand or take possession of the collateral until after it sends the borrower a notice of default and right to cure. |
| **Wisconsin** | ***Second Lien Loans with an Amount Financed of $25,000 or Less***: Yes. |

**Loss Mitigation and Refinancing > Borrower Counseling > Does state law require post-origination borrower counseling or any other post-origination mandatory outreach efforts in connection with a pending or threatened acceleration or foreclosure (including after foreclosure has been initiated)? If so, identify the specific requirements. (*Note to User: This response only covers statutes and regulations. It does not cover local court practices, pronouncements, press releases or general requests from regulators*).**

| State: | Short Answer: |
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| **Arizona** | Effective July 29, 2010, Arizona law requires a lender or servicer to attempt to contact the borrower to explore options to avoid foreclosure on certain properties at least 30 days before the notice of a trustee's sale is recorded. |
| **California** | Yes, with respect to any loan, secured by real property that is owner-occupied as the principal residence of a borrower and that contains no more than four dwelling units, which was made between January 1, 2003 and December 31, 2007 (inclusive). |
| **Colorado** | Yes. In the event of a default consisting solely of the failure by the original grantor of the deed of trust to make one or more required payments, the holder of a residential mortgage loan must give the original grantor of the deed of trust a "Notice Prior to Residential Foreclosure – Hotline." In addition, no later than 15 calendar days following the filing of a Notice of Election and Demand and accompanying documents and the determination of the public trustee that the filing is complete, the holder who filed the Notice of Election and Demand or the holder's attorney must serve a "Notice of the Opportunity for Foreclosure Deferment" on any "eligible borrower." |

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| **Connecticut** | There is no Connecticut requirement that a mortgagor or borrower obtain post-origination counseling in connection with a pending or threatened acceleration or foreclosure. A pre-foreclosure notice must be sent to certain borrower/mortgagors, advising of the right to attempt to resolve the loan delinquency or default with the mortgagee or with a consumer credit counseling agency, and the right to contact the Connecticut Housing Finance Authority (CHFA) to obtain information about and apply for emergency mortgage assistance payments if the borrower/mortgagor and mortgagee are unable to resolve the delinquency or default. This pre-foreclosure notice requirement generally applies to consumer-purpose mortgage loans secured by a first or second lien priority mortgage on 1-4 family Connecticut residential property used as the borrower/mortgagor's principal residence if the only default under the loan is monetary (i.e., required payments of principal, interest, mortgage insurance, etc. are contractually delinquent) and the mortgagee has a present intention to commence foreclosure. This pre-foreclosure notice advises the borrower of the right to "attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise" and the right to contact CHFA to obtain information about the possible availability of emergency mortgage assistance payments "if the mortgagor and mortgagee are unable to resolve the delinquency or default." In addition, effective October 1, 2012, if and when a mortgagee sends a notice of intent to accelerate a mortgage loan secured by 1-4 family residential Connecticut real property to the mortgagor, the mortgagee must include a copy of the Judicial Branch's Form JD-CV-126 (as revised for use effective October 1, 2012). |
| **Delaware** | For certain mortgage foreclosure actions involving owner-occupied one-to-four family primary residential property, the defendant must be given an opportunity to apply for relief under a federal loss mitigation program or a proprietary loss mitigation program offered by the plaintiff for which the defendant may be eligible.<br>In addition, while post-origination borrower counseling is not required, the notice of intent to foreclose that must be provided in connection with certain mortgage loans secured by one-to-four family primary residential property includes information regarding counseling options.<br>Delaware law does not otherwise require post-origination mandatory outreach efforts in connection with a pending or threatened acceleration or foreclosure (including after foreclosure has been initiated). |
| **Florida** | Yes. |
| **Hawaii** | ***Loans Serviced by Mortgage Servicers***: Yes, effective July 1, 2010, Hawaii has adopted mortgage servicer licensing and regulatory requirements. In the event of delinquency or default on the part of the borrower, the servicer must inform the borrower of the facts concerning the loan and nature and extent of the delinquency or default, and, if the borrower replies, must negotiate with the |

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| | borrower subject to the servicer's duties under the mortgage servicing contract. (There is no "safe harbor" language or "model" form.)<br><br>***All Loans in Default for Which Nonjudicial Foreclosure Proceedings Have Begun***: Effective October 1, 2011, Hawaii has adopted Mortgage Foreclosure Dispute Resolution Provisions which apply solely to nonjudicial foreclosures conducted by power of sale, and residential property occupied by one or more mortgagors who are owner-occupants (a defined term). Under the new law, "dispute resolution" means a facilitated negotiation between a mortgagor and mortgagee for the purpose of reaching an agreement for a mortgage loan modification or other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is unavoidable. The foreclosing mortgagee must, at the election of the owner-occupant, participate in the Mortgage Foreclosure Dispute Resolution Program before the foreclosing mortgage may hold a public sale. |
| **Idaho** | Effective September 1, 2011, if the loan is made by a state or federally regulated beneficiary and is secured by a deed of trust encumbering a borrower's primary residence, the beneficiary or its agent must send a Notice of Opportunity to Request Loan Modification with the notice of default that makes borrowers aware that they may contact the beneficiary about loss mitigation programs, apply for a loan modification, and/or contact housing counselors certified through the Department of Housing and Urban Development. |
| **Illinois** | Yes. |
| **Indiana** | A creditor must send to the debtor by certified mail a presuit notice informing the debtor, among other things, that the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor. |
| **Iowa** | Yes, if the property is a one to two-family dwelling that is owner-occupied, a mortgagee is required to send the borrower a Mortgage Mediation Notice, in the form prescribed by the Iowa Attorney General. The same notice must be given twice: (1) at the time of acceleration or other initial communication from the mortgagee's attorney to the borrower and (2) with the petition for judicial foreclosure. |
| **Maine** | Yes. |
| **Maryland** | ***<u>Licensed Mortgage Lender</u>***: Maryland law imposes a duty of good faith and fair dealing on mortgage servicers that requires servicers to (1) make borrowers in default aware of loss mitigation options and services offered by the servicer; and (3) pursue loss mitigation when possible.<br><br>***<u>All Lenders</u>***: Maryland requires the secured party on a loan secured by owner-occupied residential property to send the mortgagor or grantor and the record |

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| | owner an application to participate in a loss mitigation program. This application must be sent along with the notice of intent to foreclose that is sent at least 45 days before the filing of an action to foreclose. In addition, when the secured party files the foreclosure action, the secured party must give the mortgagor a notice of filing that advises the mortgagor of available housing counsel and financial assistance programs and governmental agencies and nonprofit organizations that the mortgagor may contact for helpful information about the foreclosure process. |
| **Massachusetts** | Effective August 7, 2010, a mortgagee is entitled to reduce certain mortgagor's right to cure period from 150 to 90 days if the mortgagee engages in certain good faith efforts to to discuss foreclosure alternatives with the mortgagor. |
| **Michigan** | Yes. Before commencing a foreclosure-by-advertisement proceeding involving a borrower's principal residence, the foreclosing party must advise the borrower of the right to request a meeting with a designated person to attempt to negotiate a loan modification and that the borrower may bring a housing counselor to such a meeting. A list of housing counselors prepared by the state must be enclosed with the notice.<br><br>In addition, the law directs the borrower to contact a housing counselor as part of the process of requesting a meeting with the designated person to attempt to negotiate a loan modification. If the borrower properly requests such a meeting and qualifies under certain loan modification guidelines, then, the borrower must be given the opportunity to modify the loan within those guidelines or on other terms agreed to by the parties. If the borrower is not given this opportunity, the foreclosing party may only proceed with a foreclosure by judicial action. |
| **Minnesota** | Yes, if mortgage is foreclosed through a power of sale provision and the borrower is entitled to a notice of the right to counseling. |
| **Montana** | **Effective October 1, 2011:** Yes. |
| **Nevada** | Yes, under certain circumstances. |
| **New Jersey** | Yes. |
| **New York** | Yes. Mandatory settlement conferences are required in virtually all foreclosure actions of a 1-4 family owner occupied principal dwelling. |
| **North Carolina** | ***Licensed Mortgage Servicers and Exempt Persons:*** Yes.<br><br>***Subprime Loans:*** Yes. Please note that effective November 1, 2010, the Emergency Program to Reduce Home Foreclosures Act will no longer apply to "subprime loans," but rather to all "home loans." |

| **Ohio** | ***Ohio Second Mortgage Loan Act Loans:*** Yes, in a variable rate loan with an initial fixed rate period a notice must be provided at least six months before the adjustment to a variable rate. A counseling disclosure must be included in the notice. |
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| **Pennsylvania** | Yes. On loans secured by owner-occupied residential real property, borrowers must be advised to meet with a consumer credit counselor.<br><br>Counseling may also be required in connection with a modification of a residential mortgage loan by a licensed lender. |
| **Rhode Island** | Yes, Rhode Island requires a notice of the availability of counseling prior to foreclosure |
| **South Carolina** | Applicable South Carolina foreclosure processes require a mortgagee to document that it provided notice to the mortgagor of their potential eligibility of loan modifications. |
| **Virginia** | ***First Lien High-Risk Mortgage Loans:*** Yes. |
| **Washington** | Yes. |
| **Washington DC** | Yes. |

| **Loss Mitigation and Refinancing > Notice of Refinancing > Does state law require a notice of right to refinance amounts due under an existing mortgage loan? If so, indicate when the notice must be sent (e.g., before a balloon payment is due), the contents of the notice, and include any safe harbor or model form.** | |
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| State: | Short Answer: |
| **California** | Yes, with respect to closed-end loans that have a balloon payment feature if the borrower has a contractual right to refinance the final payment. |
| **Iowa** | Yes, for savings and loan associations. |
| **Maine** | ***First Lien Closed End Loans:*** Yes, with respect to balloon loans.<br><br>***Second Lien Closed-End Non-Purchase Money Loans:*** Yes, with respect to balloon loans. |
| **Massachusetts** | Notice of the right to renew or extend the term of an existing loan is implicitly required in connection with certain balloon first mortgage loans if the maturity date of the promissory note is earlier than the maturity date of the mortgage deed given to secure repayment of the note. |

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| **New York** | A notice of maturity and adjustment may be required for certain closed-end balloon loans subject to Part 80 or Part 82 of the General Regulations of the Banking Board. |

| **Loss Mitigation and Refinancing > Notice of Right to Modify > Does state law require a servicer to send the borrower any notice of the borrower's right to modify an existing mortgage loan? If yes, identify the requirements and include any safe harbor or model form.** | |
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| State: | Short Answer: |
| **Arkansas** | Yes. |
| **Delaware** | For certain mortgage foreclosure actions involving owner-occupied one-to-four family primary residential property, the defendant must be given an opportunity to apply for relief under a federal loss mitigation program or a proprietary loss mitigation program offered by the plaintiff for which the defendant may be eligible. The plaintiff may establish that it provided the defendant with the opportunity to apply for such relief if, for example, the plaintiff provides the defendant with a list of the applicable loss mitigation programs in which the plaintiff participates and instructions for how to initiate an application for each such program. |
| **Hawaii** | ***All Loans in Default for Which Nonjudicial Foreclosure Proceedings Have Begun***: Effective October 1, 2011, Hawaii has adopted Mortgage Foreclosure Dispute Resolution Provisions which apply solely to nonjudicial foreclosures conducted by power of sale, and residential property occupied by one or more mortgagors who are owner-occupants (a defined term). Under the new law, "dispute resolution" means a facilitated negotiation between a mortgagor and mortgagee for the purpose of reaching an agreement for a mortgage loan modification or other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is unavoidable. The foreclosing mortgagee must, at the election of the owner-occupant, participate in the Mortgage Foreclosure Dispute Resolution Program before the foreclosing mortgage may hold a public sale. These provisions are set to sunset September 30, 2014. |
| **Idaho** | Yes. |
| **Massachusetts** | Notice of the right to renew or extend the term of an existing loan is required in connection with certain balloon first mortgage loans if the maturity date of the promissory note is earlier than the maturity date of the mortgage deed given to secure repayment of the note. |
| **Michigan** | Yes. Before commencing a foreclosure-by-advertisement proceeding involving a borrower's principal residence, the foreclosing party must send the borrower a notice describing the default and the borrower's right to request a meeting to |

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| | negotiate a loan modification with a person designated in the notice. The foreclosing party must also publish information similar to that contained in the notice in the same manner as it would publish the notice of the foreclosure sale. There is no safe harbor language or model form for either notice. |
| **New York** | Yes, in certain circumstances. |

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