American Financial Services Association
Consumer Mortgage Coalition
Mortgage Bankers Association
Residential Servicing Coalition

July 11, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Outline of Servicing Rules Under Consideration

Dear Mr. Cordray:

The undersigned trade organizations appreciate the opportunity to submit comments to the Consumer Financial Protection Bureau ("CFPB" or "Bureau") on its April 9 outline of servicing rules under consideration (the "SBREFA Outline" or "Outline"), and on the prototypes of a periodic mortgage statement under section 1420 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or the "Act").

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I. General Comments – Principles

The undersigned organizations appreciate the release of the CFPB's SBREFA Outline and its willingness to meet with trade associations and the servicing industry. We also appreciate the opportunity to voice concerns and alternatives during this process. As a preliminary matter and before addressing the specific proposals suggested in the SBREFA Outline, we would like to propose principles that we hope the CFPB will consider when drafting its Notice of Proposed Rulemaking and Final Rule. Our overarching concerns are the following.

First, it is important for the CFPB to recognize that the largest servicers are subject to settlement agreements with the state Attorneys General (the "Settlement Agreements") and that to the extent a term of the Settlement Agreements differs from a CFPB rule, those servicers must be permitted to comply with the Settlement Agreements.

Second, the Outline apparently would override existing rules, guidelines, or industry practice despite any real problems with the current practice or rule. For example, the Springside monthly statement prototype appears designed to replace existing monthly statements even though statements in use today are substantively similar. Another example is the Federal Emergency Management Agency ("FEMA") guidelines that specify what evidence of insurance coverage a borrower must supply to a servicer, when flood insurance is required. The Dodd-Frank Act did not preempt this standard, but did grant the CFPB the ability to define what is sufficient evidence. The Outline appears to be inconsistent with FEMA and other regulatory guidelines, which have in this case become industry practice. We ask that the CFPB avoid changing long-standing policy or business practices without weighing existing practices and the costs of changing them. As you are aware, change imposes significant pressure on servicer costs, resources, and capacity. The mortgage industry has been going through chronic, piecemeal regulatory changes for some time, with no end in sight. The costs are becoming prohibitive for many smaller, and even some larger, companies.

Third, the issue of preemption is a very real and serious concern for the industry as states are encouraged to exceed Dodd-Frank Act provisions and CFPB's rules. The result, however, can impact compliance, especially as it relates to the current broad interpretation of what is an unfair and deceptive act or practice ("UDAP") under state law or an unfair, deceptive, or abusive practice ("UDAAP") under the Dodd-Frank Act.[1] We are concerned that UDAP and UDAAP complaints could be lodged against servicers based on acts that *comply* with the CFPB's rules. As a result, we ask that the CFPB avoid creating overlapping laws by preempting state law, and expressly provide that compliance with the CFPB's rules will not create a state UDAP violation, state law violation, or violation under other federal laws, including § 1036. Moreover, it is

[1] The Dodd-Frank Act authorized the CFPB to define UDAAPs, but rather than give guidance on the definitions, the Act sets a few very broad parameters on the definitions. Dodd-Frank Act § 1031. The industry, as a result, can only guess what a UDAAP might be. At the same time, the Dodd-Frank Act plainly prohibits UDAAPs. Dodd-Frank Act § 1036. Consumer financial services providers, therefore, face liability without any prior notice.

important that the CFPB indicate how servicers are to comply when there are competing, but not conflicting, requirements on the same subject. For example, the CFPB may permit borrowers to provide only a policy number and agent or insurer's contact information as a means of demonstrating insurance coverage. This creates a situation where servicers may be unable to comply with investor requirements for a declarations page if the agent is unwilling or delays providing such information for any reason. We ask that the CFPB recognize that servicers have contractual obligations to investors, and are subject to several sets of guidelines, rules, and regulations.

Fourth, to the greatest extent possible, we encourage the CFPB to develop rules that indicate an outcome rather than issue prescriptive operational requirements. This would allow servicing practices to evolve with the changing needs of the market without a continuing need for complicated rule changes. Moreover, this would reduce the cost of implementation for servicers without sacrificing consumer protection, as many of the objectives in the Outline are current servicing practices (albeit using differing formats or processes).

Fifth, certain key terms in the Outline are vague. These terms require specific definition or a system of warning and correction before a violation is deemed to have occurred. For example, under "Information Management," the CFPB states: "…the *reasonableness* of a servicer's information management policies and procedures would depend upon the size of the servicer and the nature and scope of its activities."[2] This statement is vague and does not offer objective measurement standards. We, therefore, urge the CFPB to either define "reasonableness" or, better yet, provide a system of servicer warnings and opportunities for correction before a violation occurs or liability attaches. In addition, we believe that the CFPB should recognize overall good performance or, conversely, identify systematic failures rather than allow the imposition of liability for technical and immaterial cases of non-compliance.

Sixth, we are pleased that the CFPB recognizes differences in the size and diversity of servicers and business models and is considering flexibility and alternative compliance options for smaller servicers that achieve the same objective at lower costs and burdens. We also ask that the CFPB consider providing smaller servicers additional time to comply with some requirements.

Finally, new standards should not impair the ability of servicers and investors to transfer servicing to better performing servicers, or to entities specializing in certain types of mortgage loans.

We turn now to the specific provisions of the SBREFA Outline.

[2] SBREFA Outline p. 22 (emphasis added).

II. Lender-Placed Insurance

The SBREFA Outline addresses the Dodd-Frank Act's requirements for lender-placed insurance, specifically the timing and content of the borrower notice requirements, the termination of lender-placed insurance and cost refunds, and the need for providing "sufficient demonstration of coverage by the consumer."[3]

The Outline also suggests additional requirements not dictated by the Dodd-Frank Act, including providing borrowers with a good-faith estimate of the lender-placed insurance premium, and amending RESPA Regulation X to require servicers to advance from an escrow account payments for a borrower's insurance premium even if the borrower is delinquent. These raise certain issues we discuss below.

A. Advancing Insurance Premiums

The CFPB Outline suggests that servicers may be required to pay for insurance from an escrow even if the borrower is delinquent.[4] It is unclear whether the CFPB will require servicers to advance insurance premiums despite the lack of an escrow or a negative escrow balance.

The circumstances under which servicers are required to make advances are undergoing change today. As the CFPB considers this issue, we recommend taking into consideration servicer advances more broadly. We look forward to a more thorough discussion of the related issues as this rulemaking advances.

B. Sufficient Demonstration of Coverage Must Include Key Policy Information

The Dodd-Frank Act requires a servicer to "accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent or as otherwise required by the Bureau of Consumer Financial Protection."[5]

Based on proposed forms (Outline Exhibits D-1 through D-3), the CFPB would only require that a policy number and an agent's or insurer's contact information be provided to the servicer to constitute sufficient demonstration of insurance. Several problems exist with requiring such minimal information.

We believe the Dodd-Frank language quoted above requires a sufficient demonstration of coverage to include the policy number and agent or insurer contact information, *in addition to* standard information required by FEMA, the bank regulators, Fannie Mae and Freddie Mac (the "GSEs"), and the industry to confirm appropriate borrower-purchased

[3] SBREFA Outline p. 13.
[4] SBREFA Outline pp. 14-15.
[5] Dodd-Frank Act § 1463, RESPA § 6(l)(2).

insurance. There is no reason to believe the Dodd-Frank Act was intended to overrule FEMA or other agency standards for demonstrations of coverage, which have worked well for years.

Under investor guidelines and other requirements that Dodd-Frank did not repeal, servicers today accept as proof of hazard and wind coverage a copy of a declarations page, certificate of insurance, or copy of the insurance policy identifying the named insured, insured property address, coverage amount, date of coverage (to ensure coverage has not expired), deductible amounts (to comply with agency requirements), and the named mortgagee. Similar, but not identical, evidence is required for flood insurance policies.[6] Obtaining this evidence is important because servicers are required to comply

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[6] *See, e.g.,* the following Comptroller and FEMA guidance:

"Evidence of Insurance: The National Flood Insurance Program does not recognize an oral binder or contract of insurance. A copy of the flood insurance application, premium payment, and declarations page submitted to the lender is sufficient evidence of proof of purchase." Comptroller's Handbook – Flood Disaster Protection, (May 1999), p. 47.

"Acceptable proof of coverage may be a copy of the Flood Insurance Application and premium payment, or a copy of the Declarations Page. The NFIP does not recognize binders or certificates of insurance." FEMA, Mandatory Purchase of Flood Insurance Guidelines (Sept. 2007) p. 26.

"As a condition of making, increasing, extending, or renewing a loan on the residential condominium unit and as frequently as required, a mortgagee must obtain:

- A copy of the RCBAP [Residential Condominium Building Association Policy] documenting the amount of insurance—ideally, insured at RCV, or at least the unit's portion equaling the statutory requirement. (Effective October 1, 2007, the Declarations Page of each RCBAP issued or renewed must show the building's replacement cost value and the number of units within that building); or
- A copy of the RCBAP and Dwelling Form (or application and paid receipt) jointly equaling at least the minimum statutorily required amount of insurance; or
- A copy of the Dwelling Form equaling the minimum amount required to meet statutory requirements.

FEMA, Mandatory Purchase of Flood Insurance Guidelines (Sept. 2007) p. 46.

"D. Evidence of Insurance: A copy of the Flood Insurance Application and premium payment, or a copy of the declarations page, is sufficient evidence of proof of purchase for new policies. The NFIP does not recognize binders. However, for informational purposes only, the NFIP recognizes certificates or evidences of flood insurance, and similar forms provided for renewal policies if the following information is included;

1. Policy Form/Type (GP, DP, RCBAP, PRP)
2. Policy Term
3. Policy Number
4. Insured's Name and Mailing Address
5. Property Location
6. Current Flood Risk Zone
7. Rated Flood Risk Zone (zone used for rating, including when grandfathering or issuing coverage under the 2-year PRP Eligibility Extension)
8. Grandfathered: Y/N
9. Mortgagee Name and Address
10. Coverage Limits; Deductibles
11. Annual Premium

*For RCBAP, include the number of units and Replacement Cost Value (RCV) of the building.

with investor requirements that demand such documentation, over which the policyholder, not the servicer, has authority and control.

Under this construction of the Dodd-Frank language, consumers need only contact their agents and indicate *where* the declarations page or other evidence should be sent, but not *what* must be sent. Insurance agents are familiar with how to meet servicers' requests for evidence of insurance and would bear the burden of production to the servicer. Also, by including contact information, the servicer can call the agent directly to correct any deficiency in the information. Importantly, the servicer would not need to go through the consumer, an unnecessary potential bottleneck. Servicers welcome the ability to communicate directly with the agent because it is faster than having to go through the consumer, and will, therefore, prevent unnecessary lender-placed coverage in some cases.

The approach in the Outline creates a number of problems. First, requiring borrowers to provide only a policy number and contact information does not permit the servicer to comply with other agencies' guidance.

Second, importantly for consumers, it does not demonstrate that a borrower has maintained any insurance on the property. The policy number provided may be that of a lapsed policy, and the contact information provided may be the name of an agent pulled from the cover of a dated telephone book. In contrast, the declarations page or certificate of insurance that servicers and regulators generally require accurately establishes whether the borrower's policy is active and provides appropriate coverage. The approach in the Outline risks letting insurance lapse, which is contrary to investor requirements and the Flood Disaster Protection Act of 1973.[7]

Third, the CFPB's interpretation would put unnecessary financial and resources strains on servicers to track down specific policy information for thousands of borrowers in order to comply with GSE, FHA, and other investor requirements. In contrast, the current process is simple, takes little effort for each borrower to complete, and allows servicers' resources to be used more efficiently.

We, therefore, urge the CFPB to continue the current industry and agency standard, along with the policy number and agent's or insurer's contact information, as a reasonable form of confirmation of insurance.

FEMA, Flood Insurance Manual, Page GR 15 (May 1, 2012).

[7] § 42 U.S.C. § 4012a(b).

C. Servicers May Be Unable to Provide "Good-Faith Estimates"

The CFPB may expand the content of lender-placed insurance notices to require that servicers provide a "good-faith estimate of the cost of force-placed insurance premiums the borrower may be charged."[8] We understand the CFBP believes this estimate will encourage borrowers to seek voluntary coverage. It is unclear, however, whether servicers have the legal authority or the capacity to provide such estimates.

First, we are concerned with the use of the phrase "good faith estimate." In RESPA and TILA, that phrase imposes cost tolerances that cannot be exceeded. To provide a binding estimate, an insurance binder would be required. This must come from a licensed insurance agent or carrier, not a servicer.

Second, even without tolerances, some servicers, especially smaller servicers, that perform their own tracking of insurance lapses and cancellations do not have the information necessary to make a good-faith estimate of insurance premiums. Servicers are not privy to the insurer's pricing formulas and do not have access to the cost until the policy is issued.

Third, we are concerned about the customer service impact of providing consumers estimates that turn out to differ significantly from the actual cost of insurance. For example, Fannie Mae recently issued Announcement SVC 2012-04, requiring lower insurance coverage for severely delinquent borrowers. Although Fannie Mae has delayed implementation of this guidance, under it, the actual cost of the policy could vary greatly from the time the servicer provides an estimate and actually places a policy if the borrower becomes 120 days delinquent or, conversely, cures a 120-day delinquency during the interim period.

Fourth, we are concerned with servicers' UDAP and UDAAP liability from disparities between estimated and actual costs, especially given the difficulties of producing accurate estimates of third party charges.

Given these factors, we urge the CFPB to limit the identification of cost to the last or "placement" letter in the warning letter cycle. In earlier communications, a warning that the cost may be much higher than the cost of insurance the consumer purchases directly would provide sufficient motivation to act that the CFPB seeks.

[8] SBREFA Outline p. 14.

III. Prompt Crediting of Payments

The SBREFA Outline restates § 1464 of the Dodd-Frank Act and Regulation Z with regard to the application of conforming payments. Servicers would be permitted to retain partial payments in suspense or return them. 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.

With regard to the application of delinquent payments, the Outline and CFPB staff explanation appear to follow standard industry practice, which is to apply a full payment to the oldest outstanding payment due. As a result, we support the Outline as drafted regarding partial payments.

IV. Pay-Off Amounts

The SBREFA Outline restates the Dodd-Frank Act's pay-off provisions and would require servicers to provide pay-off statements within seven business days of a written request.[9] This would amend Regulation Z, which currently 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.[10]

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. We support the exemption for reverse mortgages, which require an appraisal to calculate the pay-off amount. For the same reason, we suggest 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. We also urge the CFPB to permit a reasonable amount of time to prepare pay-off quotes for loans in delinquency or foreclosure because they necessitate reconciliation of outstanding third-party charges.

V. Error Resolution Would Create Extra-judicial Discovery and Foreclose Servicers' Rights to Prevent Abuses

The CFPB's Outline states that the CFPB is considering requiring error resolution and inquiry response procedures for all federally-related mortgages.

RESPA, as amended by the Dodd-Frank Act, requires servicers of federally-related mortgages to acknowledge receipt of a qualified written request ("QWR") within five days of receipt,[11] and to respond within 30 days, explaining what the servicer found or

[9] SBREFA Outline p. 16.
[10] Official Commentary 226.36(c)(1)(iii)-1.
[11] RESPA § 6(e)(1)(A).

corrected.[12] With notice to the borrower of the reason, the servicer can extend the 30-day response period by 15 days.[13] RESPA defines a QWR as a written correspondence, separate from a loan payment, that enables the servicer to identify the borrower and account and that either "includes a statement of the reasons for the belief of the borrower . . . that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower."[14] Servicers bear liability, including liability for statutory damages, for failing to comply with QWR procedures.[15]

The Dodd-Frank Act amended RESPA to prohibit certain actions by servicers.[16] New prohibitions relevant here include:

- Charging fees for responses to "valid" QWRs as defined in *required* CFPB regulations;
- Failing to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan or avoiding foreclosure, or other "standard servicer's duties;
- Failing to respond within 10 business days to a request to provide the identity, address, and other relevant contact information about the owner or assignee of a borrower's loan; and
- Failing to comply with any other obligation the CFPB finds, by regulation, to be appropriate to carry out the consumer protection purposes of RESPA.

The CFPB is considering "a comprehensive set of requirements for investigating and correcting errors and for responding to borrower inquiries." It is important that any definition of "error" be limited to servicing errors.

A. Inaccurate Disclosure Is Too Broad

The CFPB's Outline suggests that the CFPB may define error broadly to include, among other things, "failure to provide accurate disclosures to borrowers."[17] This definition is not limited to servicing the loan and could therefore include origination disclosures. We believe this definition is too broad because it could create inappropriate, extra-judicial discovery, which we discuss below.

The definition of "error" should be limited to a servicer's failure to provide accurate *required* disclosures. Disclosure laws today sometimes require disclosures that are confusing, which may mislead borrowers to act to their detriment (*see* the discussion of ARM rate adjustment disclosures below). Disclosures that comply with applicable law should never be defined as an "error."

Nor should servicers be required to "correct" disclosures that meet applicable law, but

[12] RESPA § 6(e)(2).
[13] RESPA § 6(e)(4).
[14] RESPA § 6(e)(1)(B).
[15] RESPA § 6(f).
[16] Dodd-Frank Act § 1463(a), RESPA § 6(k).
[17] SBREFA Outline p. 16.

still mislead or confuse consumers. Servicers may be unwilling to deviate from a form, such as a TILA model form, because of potential liability. The solution to misleading or confusing disclosure forms is to continue to pursue the CFPB's needed efforts to improve the underlying forms, particularly the origination disclosure forms, not to make servicers liable for the forms or to require servicers to fix them case-by-case.

B. The CFPB's Approach Would Create Extra-judicial Discovery

The CFPB proposes that, after resolving an alleged error and upon the borrower's request, the servicer would be required to provide within 15 days "the relevant documents used in that investigation."[18] The borrower's request for documents may be made at any time, even years after the initial allegation of error. This is too broad and is not contemplated by RESPA.

The CFPB's proposed definition of "error" is not limited to inaccurate servicing disclosures, so an alleged error during either the loan origination process or servicing could turn the servicer's obligation to provide "relevant documents" into a means of discovery without judicial oversight. This is particularly troublesome in areas with potential for increased litigation against lenders and servicers, including the ability-to-repay rule, the disparate impact theory of liability in discrimination cases, and the Dodd-Frank UDAAP prohibition. For example, consumers' attorneys could use the extra-judicial discovery process to file and extract unjust settlements of weak or baseless claims in such cases, because the mere allegation against a servicer can be so devastating to the servicer's reputation, and because the cost of defending multiple lawsuits is so high, that settlement is often the only realistic option.

Legitimate lawsuits use a discovery process governed by long-standing, neutral rules designed to be fair to both plaintiffs and defendants. Lawsuits that fail to allege facts supporting a legally-cognizable claim never reach the discovery phase. A requirement that a mortgage servicer supply within 15 days, to each of its customers who asks, every piece of paper related to every alleged error would effectively create a means of extra-judicial discovery outside of the normal discovery protections. It would require the servicer to produce every piece of paper even if the alleged error has no basis in fact. Plaintiffs' attorneys could use it to conduct free, extra-judicial fishing expeditions.

Because of the potential ramifications, lenders would need to add the cost of this extra-judicial discovery to the cost of *every* new loan. Given the Dodd-Frank cap on points and fees for qualified mortgages and qualified residential mortgage loans, this extra origination cost would be recouped through the interest rate. Increasing the interest rate would push the loan closer to the HOEPA[19] threshold. This, in turn, means that fewer loans would be available. *A servicing rule should not constrain loan originations.*

Moreover, the scope of the extra-judicial discovery is too broad. It reaches "the relevant documents" used in investigating alleged errors. Attachment E to the SBREFA Outline

[18] SBFEFA Outline p. 19.
[19] The Home Ownership and Equity Protection Act of 1994, as amended. Public Law 103-325 §§ 151-158.

says servicers would not need to produce information about the servicer's financial data, personnel, trade secrets, or other confidential information in response to *inquiries*, but there is no such exclusion when responding to alleged errors. Servicers have legitimate, business reasons to withhold privileged information and trade secrets, and the CFPB does not have authority to require servicers to divulge to consumers and their lawyers protected attorney-client communications, attorney work product, or trade secrets.

The SBREFA Outline describes its definition of "error" as clear and formulated to prevent uncertain compliance standards. The definition, however, appears to have almost no limits. The definition needs to be clearly limited to errors that the servicer is capable of addressing. It should not provide free, extra-judicial discovery without regard to the reason for the inquiry or request.

Instead of requiring servicers to produce all documents potentially relevant to an error, servicers should be permitted to disclose the documents that, in the servicer's judgment, enable the consumer to understand the error resolution. If an issue remains unresolved after the consumer reviews the documents provided by the servicer, the consumer can report the issue to the CFPB. Otherwise, the consumer should be required to seek discovery within the protections of the long-standing discovery rules.

The error resolution process must be consistent with the Dodd-Frank Act's amendment to RESPA concerning valid QWRs, as discussed below. This amendment gives servicers a statutory right not to respond to burdensome QWRs, and the error resolution procedure described in the SBREFA Outline would conflict with this statutory right.

C. The CFPB Must Define a "Valid" Qualified Written Request to Curb Consumer Abuses

The current Regulation X definition of QWR is straightforward,[20] but it has been in place so long that it has become distorted. It has become common practice for borrowers and their attorneys to submit requests identified as a 'qualified written request' but that fail to identify a specific error and allege only general violations. These lengthy letters request every conceivable document for a loan to which a servicer might have access.[21] The requests are designed for the purpose of delay, to remove accurate delinquency information from credit reports, and to extract unwarranted statutory penalties from servicers. They waste valuable time and resources, and in the Dodd-Frank Act, Congress prohibited them.

[20] The definition includes a written correspondence from the borrower to the servicer (other than notice with a payment) that identifies, or enables the servicer to identify, the name and account, and states why the borrower believes the account is in error, if applicable, or that provides sufficient detail on the information, relating to loan's servicing, that the borrower seeks. A written request is not a qualified written request if it is delivered to a servicer more than one year after either the date of a servicing transfer or when the loan amount was paid in full. 12 C.F.R. §§ 1024.21(a), 1021(e)(2).

[21] Examples of the boilerplate purported QWRs discussed in this paragraph are included in Exhibit 1 to this letter.

Congress did so by prohibiting servicers from charging fees for responding to *valid* qualified written requests, a new term that Congress directed the CFPB to define by regulation.[22] In other words, Congress prohibited abusive QWRs by giving servicers a statutory right, upon receiving an *invalid* QWR, either to charge a fee for responding to it, or to decline to respond. It is therefore necessary that a CFPB regulation clearly define valid and invalid QWRs.

It is important to note that Congress amended the existing procedures for responding to QWRs in only a few ways. Congress:

- Reduced the time in which QWR responses are required;[23]
- Prohibited servicers from charging fees for responding to valid QWRs;[24]
- Required servicers to take timely action to correct a list of *servicing* errors;[25] and
- Prohibited servicers from failing to perform "standard" servicing duties.[26]

In other words, Congress did not envision a wholesale redesign of standard servicing duties relating to consumer requests for information or allegations of errors. It intended that servicers address servicing errors and requests for information, while freeing servicers from the costs of abusive QWRs.

The legislative history of the valid QWR provision supports this view that Congress never envisioned a wholesale rewrite of servicers' duties to supply information:

> [This section] also bars servicers from charging fees for responding to valid qualified written requests placed by the borrower, with regulations promulgated to determine the interpretation of what constitutes a valid qualified written request. The section further prohibits mortgage servicers from failing to take timely action to respond to a borrower's requests to correct errors relating to the allocation of payments, obtain final balances for purposes of paying off the loan, or avoid foreclosure.[27]

The SBREFA Outline mentions valid inquiries in Attachment E, where the CFPB outlines its approach to errors and inquiries. Attachment E notes that servicers would not be required to respond to an inquiry that "requires the servicer to review lengthy, mostly irrelevant text to find a valid inquiry[.]" This is part of what Congress enacted – servicers do not need to respond to invalid inquiries. The Outline, however, does not exclude the servicer from having to respond to an invalid *error allegation*. Error allegations are QWRs,[28] and Congress left this definition intact. If a servicer receives an inquiry that requires the servicer to review lengthy, mostly irrelevant text to find a valid

[22] Dodd-Frank Act § 1463(a), RESPA § 6(k)(1)(B) (emphasis added).
[23] Dodd-Frank Act § 1463(c), amending RESPA § 6(e).
[24] Dodd-Frank Act § 1463(a), adding RESPA § 6(k)(1)(B).
[25] Dodd-Frank Act § 1463(a), adding RESPA § 6(k)(1)(C).
[26] *Id.*
[27] H. Rep. 111-94, at 92 (2009).
[28] RESPA § 6(e)(1)(B); 12 C.F.R. § 1024.21(e)(2)(i).

allegation of error, the servicer has a statutory right not to respond. In other words, plaintiffs' attorneys are newly required to make inquiries or to allege errors in QWRs *in a "valid" manner*. This is how Congress prohibited abusive QWRs. In case of either an invalid inquiry or an invalid error allegation in a QWR, the servicer has a statutory right to require a fee for the response.

We suggest that the definition of valid QWR exclude any QWR, either seeking information or alleging an error, that:

- "[R]equires the servicer to review lengthy, mostly irrelevant text to find a valid" QWR, as the CFPB suggests;
- Is unreasonably long or difficult to review;
- Requests an unreasonable amount of information in light of the reason for the request; or
- Alleges general violations of law or general errors, without tying the allegations to specific facts related to the specific consumer's loan.

We also suggest that a heightened standard of invalidity be applied if the QWR is prepared, in whole or part, by or on the advice of a lawyer, as lawyers are able to research the QWR requirements and draft a reasonable, non-abusive QWR. To this end, the CFPB should adopt a bright-line rule that an inquiry or error allegation written by or on advice of a lawyer that exceeds 1,000 words (*i.e.*, approximately two pages single-spaced) is not a valid QWR. In addition, the CFPB should specify that multiple QWRs drafted by a lawyer, relating to the same loan, and sent to a servicer in any 30-day period should be considered a single QWR for purposes of the 1,000-word limit.

The fee the servicer charges for responding to invalid QWRs should be sufficient to cover the servicer's actual costs in responding to the invalid QWR. This should include attorneys' fees reasonably incurred in responding to an invalid QWR.

It is imperative that the CFPB's regulations enable servicers to distinguish between valid and invalid QWRs with ease.

This discussion of valid and invalid QWRs has demonstrated that Congress intended servicers to respond to reasonable requests for information and to reasonable allegations of error, while not intending a wholesale revision to servicers' duties. Congress also intended to end abusive QWRs. Replacing today's problem of QWR abuse with a new problem – extra-judicial discovery without basis – would contradict the Congressional goal of curbing QWR abuses and focusing servicers on responding to reasonable consumer communications. Therefore, the error resolution approach in the SBREFA outline, requiring servicers to respond to massive requests for information far removed from "standard" servicer duties, is well beyond the CFPB's authority.

The CFPB's regulatory definition of valid QWR will need to survive a cost-benefit analysis. We encourage the CFPB to consider the cost of abusive QWRs on credit availability and on servicers large and small, when it analyzes the costs of its definition.

Today, lenders have no choice but to include the cost of the QWR abuses in pricing loans.

D. Routine Inquiries

The CFPB is considering excluding routine inquiries from the definition of error, and we agree that such an exclusion is reasonable and sensible. Many consumer inquiries to servicers present routine questions that do not require a notice of receipt, a timeline for responding, or contact information for further assistance. However, in Exhibit E, CFPB indicates that servicers would also need to provide written acknowledgement and response to these routine inquiries. A routine inquiry is not a QWR, and resolution of a routine request should not be held to the same response standards. Responding to routine requests should certainly not risk RESPA liability.

Many questions are resolved by a single phone call. Many more are resolved when a consumer logs onto a website to access account information, or visits a branch location. Any matter resolved within five business days, regardless of the method of communication used, should be excluded from the definition of "error." Requests for documents or information also should be excluded if the servicer places the information in the mail or otherwise delivers it within five business days.

E. Verbal Inquiries

Attachment E to the SBRFA Outline would require a written acknowledgment of receipt, and a response with contact information within 30 days, for *all* inquiries.

Routine oral or web-based inquiries or disputes cannot be subject to the QWR timelines and liability. Although all servicers permit borrowers to inquire verbally about alleged errors in connection with servicing their loans, a QWR, by its nature, must be in writing and submitted to the required address for a servicer to be liable for non-compliance. The QWR process only works if the servicer knows when it has received a QWR. Allowing borrowers, for example, to make an oral request of any mortgage company or bank employee, even those known not to be able to address their inquiry or dispute, would create unmanageable liability for servicer. A casual remark about a loan made to an employee of the servicer theoretically could subject the servicer to liability and trigger statutory damages under RESPA, as well as UDAAP liability. Congress clearly did not intend to saddle servicers with this unchecked liability.

Moreover, from an operational standpoint, requiring servicers to respond in writing to all oral inquiries is not practical or necessary. Many inquiries made by phone can be resolved on the initial phone call and do not merit a written response.

The CFPB should not mandate a written response for simple verbal requests resolved by phone or electronically.

F. Open-End Credit

The CFPB may exclude home equity lines of credit ("HELOCs") from the error resolution and QWR rules because TILA and Regulation Z already set forth error resolution procedures for HELOCs.

The Regulation Z error resolution procedures for open-end credit differ from RESPA because of the different nature of open- and closed-end credit. The error resolution rules for open-end credit need to address, for example, that the creditor may not bill a disputed amount or its finance charge pending resolution of the alleged error, the creditor's ability to deduct disputed amounts from the credit limit pending resolution, and so on. Trying to combine this Regulation Z error resolution procedures with that for closed-end credit would be a complex project with no apparent advantage.

For consumers, the familiarity with the Regulation Z error resolution rules for open-end credit is an advantage. The rules have been in place for years and consumers are commonly aware of their rights in the event of an unauthorized charge or other billing error. This alone is strong reason to keep the rules separate.

However, amended RESPA § 6(k) applies to federally-related mortgages, including HELOCs. It requires servicers to take timely action to respond to borrower requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties. We suggest that the CFPB deem compliance with the Regulation Z billing error resolution procedures for open-end credit in § 1026.13 to be compliance with the RESPA § 6(k)(C) requirements.

The RESPA prohibition on fees for responding to valid QWRs, and thereby the servicer's right to charge for responding to invalid QWRs, applies to HELOCs, without regard to TILA or Regulation Z.

G. Requests for Owner Contact Information

Consistent with the Dodd-Frank Act, the CFPB may require servicers to respond within 10 days to requests for contact information for the owner or assignee of a loan. The CFPB may require the response to include an address and telephone number. Under TILA § 131(g) and 12 C.F.R. § 1026.39, consumers already receive notices when their loans are transferred that include this owner contact information.

The policy that consumers should be informed of the identity of the loan owner may be based on a mistaken belief that investors in securitized mortgage loans have the capacity to handle consumer inquiries about individual loans.

From the consumer's point of view, providing investor contact information may cause consumers to believe mistakenly that contacting the investor will promote helpful communication. But even if a consumer could get through to an investor, most if not all investors would simply direct the consumer to contact the servicer. The delay caused by

a consumer contacting the investor directly could have cause dire ramifications in time-sensitive situations like foreclosure proceedings.

Today, transfer notices may include "other information regarding the transaction."[29] Transfer notices, and notices of owner or assignee provided upon request, should be permitted to include a message that the consumer should not send payments to the owner or assignee and that questions should be directed to the servicer.

The CFPB may find it appropriate to eliminate the requirement for transfer notices, and require only the notice of owner or assignee upon request. This would ensure that consumers obtain the owner information when they need it, while reducing the risk of borrowers missing a deadline to their detriment by contacting, or sending a payment to, the owner directly.

VI. The Springside Prototype Monthly Statement

We support clear mortgage disclosures, including periodic statements that contain the information consumers need. To achieve this goal without imposing unnecessary regulatory burden, we would like to suggest a process for evaluating disclosure models that will be benefit all participants.

We believe a high level set of principles should be established for creating the consumer statements, including:

- ***Identify elements that will be required in a statement and permit different formats and layouts for their disclosure.***
- Avoid "piling on" information that the Dodd-Frank Act does not require, that is not critical to a periodic statement, and that is available through other means (such as prepayment penalty amounts and housing counselors).
- Allow the statement form to be flexible so that servicers may include additional content, alternate form length and number of pages, alternate colors, and allow different placement of items.
- Avoid the use of "free form" or other customized narrative text in dynamic disclosures because of the technology challenges that it presents.
- Allow the use of different terminology that has a similar meaning.
- Permit estimates in certain cases (identified as such) or other conditional information (*e.g.*, "This is not a pay-off figure" next to the principal balance).
- Recognize the limitations on requiring new information on existing loans (*e.g.*, information that consumers rarely request that is available only by manual retrieval).
- Adopt lower-cost, reasonable alternatives.

The comments below address our views on the latest Springside prototype forms.

[29] 12 C.F.R. § 1026.39(e).

A. Avoiding Unnecessary Regulatory Burden

The Springside periodic statement prototype is quite similar in content to periodic statements in use today. We are pleased that the CFPB stated:

> With regard to the periodic statement and the ARM notices, the CFPB is considering a proposal that would require them to contain certain items and to group some of those items together for clarity and emphasis, but would permit servicers and creditors to customize the form in other respects.[30]

Periodic statements in use today group items together for clarity and emphasis and contain the information that consumers need. Therefore, we suggest that the CFPB permit servicers to use periodic statements that differ from Springside in format and layout, as long as they contain the minimum required information in an easily readable type size. Retooling technology systems to revise the format of a periodic statement is quite costly, and we do not believe it should be required if the servicer already is providing suitable disclosures. Furthermore, allowing servicers to continue using their existing statements provides flexibility to handle many issues that require differing disclosures, such as differing loan products, loan modifications, and bankruptcies.

Unfortunately, the SBREFA Outline does not recognize the operational burdens of revising periodic statements. Instead, it states:

> The CFPB is mitigating the one-time costs by providing servicers with a tested form. . . . Routine systems updates may mitigate the software costs since improved software would, in part, already be budgeted.[31]

Providing a tested form does not mitigate the costs of implementing the form. When a new form communicates substantially the same information as a current form, implementation of the new form requires unnecessary costs that provide no benefit to borrowers or servicers. Moreover, routine system updates for which servicers have already budgeted do not contemplate a whole form redesign with new content.
The CFPB could address the regulatory burden of revised periodic statements by identifying any problems with periodic statements in use today. We suggest that the CFPB test the existing disclosures before mandating entirely new forms. We also recommend that the CFPB require revisions only if the disclosures do not provide sufficient information and the benefits of the revision outweigh the massive costs.

If revising the format of existing periodic statements is required, we encourage the CFPB to clarify the information that will be required so that servicers may begin implementing the new statements. Servicers believe that reformatting their existing statements reasonably will require 18 months. The Dodd-Frank Act requires Title XIV regulations to be effective within one year of becoming final. One year does not provide enough time to implement a complete form redesign, given all of the other rules the industry

[30] SBREFA Outline p. 5.
[31] SBREFA Outline p. 8.

needs to implement at the same time, especially for smaller lenders. We also request that the CFPB not require paper statements to be printed double-sided or on legal-size paper, and that it permit monthly statements be electronic, in compliance with § 101(c) of the Electronic Signatures in Global and National Commerce Act.[32]

B. Monthly Statement Exemptionss – Coupon Books, Reverse Mortgage Loans, and Open-End Credit

The Dodd-Frank Act does not require periodic statements for fixed-rate loans if the servicer provides coupon books. The CFPB is considering an exception if the borrower becomes delinquent.[33] We do not believe that an exception from the Act's coupon book exemption is appropriate. Servicers have a statutory right to use coupon books for fixed-rate loans, regardless of the default status of an individual loan.

The Act does not grant the CFPB authority to minimize or eliminate the congressionally enacted coupon book exemption. As contemplated by the Act, the coupon book exemption applies to servicers who provide mortgagors with a coupon book containing various disclosures, regardless of the status of an individual mortgagor's loan. The Act does not contain any qualifying language indicating that Congress intended the exemption to apply only to fully-performing loans.

In addition, the CFPB's contemplated exception to the coupon book right is not necessary. Once a borrower becomes delinquent, all servicers, including those who use coupon books, begin a series of delinquency and loss mitigation notices. These notices inform the delinquent borrower of the real-time status of the loan. Through the use of a coupon book and targeted delinquency notices, delinquent borrowers receive virtually all of the information that would be provided by monthly statements. The Settlement Agreements do not require monthly statements for fixed-rate loans if the borrower receives a coupon book.[34]

The CFPB states that it "is considering exempting reverse mortgages from the periodic statement requirement" and explained that "[r]everse mortgages are unique and better off addressed separately at an appropriate time."[35] We agree with the CFPB that a periodic statement similar to Springside should not be required for reverse mortgage loans.

We presume that the Springside prototype would apply only to closed-end loans, because it does not include information required to be disclosed on periodic statements for open-end credit, including the outstanding account balance at the beginning of the billing cycle and the periodic rate and annual percentage rate applied to each range of balances. A different disclosure approach is necessary and appropriate for open-end credit versus

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[32] Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, § 101(c), 114 Stat. 464-466 (2000) (codified at 15 U.S.C. § 7001(c)).
[33] SBREFA Outline p. 7.
[34] Settlement Agreements, Appendix A ¶ I.B.5.
[35] SBREFA Outline p. 7.

closed-end loans. If the CFPB decides to require revised HELOC statements, we suggest that it start by reviewing statements in use today.

C. Springside Content – Page One

The undersigned organizations would like to highlight detailed concerns with the sample periodic statements that have been tested to date:

- Springside includes a prepayment penalty amount in "Account Information." Servicers should be permitted to include this in a different section or on a subsequent page.

- Providing a dollar amount for a prepayment penalty on all loans is problematic due to current system limitations and the complexity of many prepayment calculations. Moreover, the Settlement Agreements do not require disclosure of prepayment penalties on monthly statements.[36] It is important to note that in many cases the technology systems that calculate pay-off amounts house prepayment information, but do not interact with the system that produces monthly statements. Additionally, in some situations the prepayment calculations are so complex (with various conditions) they must be calculated and verified manually. Performing manual calculations and verifications is possible upon a pay-off request because they occur so infrequently, but would be problematic if applied retroactively to all existing loans on a monthly basis. As a reasonable alternative, we recommend that servicers be permitted to advise consumers that they have a prepayment penalty, when applicable, but allow servicers to indicate on the monthly statement that consumers can call customer service (at a specified phone number) to obtain the exact amount.

- Springside includes the maturity date, even though the Dodd-Frank Act does not require the maturity date in periodic statements. The Settlement Agreements likewise do not require the maturity date on monthly statements.[37] We note an operational issue on some modified loans. Some loans are modified to defer missed payments until after the original maturity date, but continue to base the loan amortization on the original maturity date to comply with securities agreements. Servicing systems for these loans continue to need to capture the original maturity date to properly amortize the loans. Many servicing systems do not have a means to calculate and retain a second maturity date or to calculate a second date in an automated fashion for monthly statements. It is important to know, however, that servicers disclose the modified maturity date to consumers before the loan is modified, so consumers do have this information, and can get it again by calling the servicer. However, the servicer must calculate this maturity date manually or outside of the servicing system. In this situation, if the CFPB does require a maturity date in a periodic statement, it should be the original maturity date. Costly systems changes should not be required for these types of

[36] Settlement Agreements Appendix A, ¶ I.B.5.
[37] Settlement Agreements Appendix A, ¶ I.B.5.

modified maturity dates – it would create an inappropriate disincentive to provide this type of modification.

Alternatively, the CFPB may consider omitting a disclosure of the maturity date altogether. The Dodd-Frank Act does not require it, consumers already have it, almost no loans exist until maturity, and it is information that customers rarely request.

- One prototype lists the "Remaining Loan Balance," while two others list the "Outstanding Principal." We believe either term should be permitted, as well as any similar terms that communicate the same information such as "Principal Balance," "Loan Balance," and "Unpaid Principal." Permitting these various terms avoids disproportionate implementation costs with servicing disclosure that, unlike origination disclosures, do not require a wholesale redesign. Likewise, Springside B-1[38] uses the term "Current Payment Due," while the other prototypes use the term "Explanation of Amount Due." We believe that either term, or another similar term that communicates the same meaning, should be permissible. Acceptable similar terms should include "Amount due on April 1, 2012," "Amount Due," and "Payment Due."
- Disclosures under "Account Information" should be permitted to include the account number. We also recommend that, instead of "Until October 2012," the disclosure be permitted to identify the payment change date, an important date to the consumer.

- We recommend that the statement for fixed-rate loans not require a disclosure of the date the rate can change. Similarly, for loans without a prepayment penalty, the statements should not require a disclosure about a prepayment penalty. Omitting these unnecessary disclosures saves space on the form for relevant information and avoids confusion. Even if the disclosure lists a prepayment penalty as zero dollars, some consumers would call to ask what the disclosure means. This confusion seems unnecessary.

- Under "Current Payment Due" or "Explanation of Amount Due" in two of the prototypes, the escrow payment is labeled for taxes and insurance. The same label, for taxes and insurance, is used under "Past Payments Breakdown." We recommend that the label be "Escrow" as in Springside B-3 because escrows may not include both of those items, and may include other items (*e.g.*, mortgage insurance, utility bond assessments, homeowner association dues, etc.) Servicers should be permitted to include additional information concerning the items that are included in their escrows, such as by a list, by asterisk, or by checkboxes. Servicers should be permitted to state that the consumer is responsible for paying non-escrowed property costs.

[38] This reference is to the prototype in Attachment B-1 to the SBREFA Outline.

- The Settlement Agreements require monthly statements to include the current escrow balance.[39] This should be permissible, but not required.

- Given that the Bureau's prototypes do not address every possible loan product or condition, and given that the CFPB does not have time to test every loan product or servicing permutation, we recommend that the CFPB allow servicers to continue to use existing periodic statements for various loans products and scenarios (rather than release additional alternative formats), such as:
    - Hybrid ARM loans;
    - Payment-option loans, which are no longer originated, but are still serviced;
    - Loans where the servicer holds insurance proceeds pending repair of a damaged property;
    - Loans with optional products, such as credit insurance; and
    - Modified loans, loans with deferred interest, principal, etc.; loans during various states of modification or loss mitigation, and loans to borrowers in bankruptcy.

- The "Transaction Activity" box shows certain items, but it is unclear whether other items should be disclosed. For example, if there are disbursements from an escrow account, returned checks, or account adjustments, they might not fit in the space shown on Springside. If the CFPB intends for other types of activity to be disclosed in this space, it needs to specify the applicable information. If the CFPB intends to include a variety of items, it should permit the servicer to vary the form size or print it on multiple pages, at the servicer's discretion.

- The "Transaction Activity" box on the first Springfield prototype, and Springsides B-2 and B-3, states that it covers activity from February 20 through March 19. (This date range was removed from the first prototype when it was converted to Springside B-1.) The statement date is March 20. Servicers do not necessarily prepare periodic statements on a fixed date each month; they sometimes prepare and send statements upon receipt of a payment. The Settlement Agreements therefore require "monthly billing *or other* account statements[.]"[40] For this reason, servicers should be permitted to include the most recent payment date as the statement date, and the "Transaction Activity" box label should not require a range of dates. This eases preparation of the disclosure, while also ensuring that consumers obtain required account activity information in the "Transaction Activity" box.

- The CFPB is considering proposing that periodic statements be required within four days after the grace period ends.[41] The existing practice by which a payment triggers a statement should continue to be permissible because it updates consumers as soon as possible after a payment. If statements were required the

[39] Settlement Agreements Appendix A, ¶ I.B.5.e.
[40] Settlement Agreements Appendix A, ¶ I.B.5.
[41] SBREFA Outline p. 7.

fourth day after the grace period but the borrower paid the fifth day, the borrower would receive a statement with no transaction information, and would wait a month before seeing a statement with the payment.

If the borrower misses payments, the disclosures should be consistent with the Settlement Agreements.[42] They do not require periodic statements for consumers in bankruptcy or that have been referred for foreclosure.[43] This avoids meaningless disclosures.

- The second paragraph in the "Important Messages" box on Springside B-1 and B-2 contains a marketing statement. We infer that this is not required, but is permitted. We suggest that servicers be able to include different information here, such as bankruptcy disclaimers, or phishing or other alerts, or no information at all. Servicers should also be permitted to include such optional information on a subsequent page or in a different location.

- Springside B-3 has a box called "Delinquency Notice" while Springside B-2 does not, even though the B-2 loan is delinquent. There is no "Delinquency Notice" on B-1, which is not a delinquent loan. Adding and removing boxes on an automated disclosures based on the event of default presents a multitude of systems challenges. Dynamic disclosures are more challenging to produce than static disclosures. We strongly suggest that extensive disclosures about default be able to be included in other locations, such as on another page. The same information will be communicated, but the burden of implementing the disclosure would be very substantially reduced.

- Servicing systems do not support "free form text," such as: "*fully paid on time*" or "*fully* paid on 2/3/2012" as presented in B-3 under the "Delinquency Notice." Automated systems generally categorize amounts, but do not allow for customized text or dates of this nature on a per borrower basis. Moreover, since this type of free form text is not already captured in the servicing system, it would be unavailable to provide on existing loans. Today the same information is relayed without having customized explanatory text. One example:

[42] *See generally*, Settlement Agreements Appendix A ¶ I.B.
[43] Settlement Agreements Appendix A ¶ I.B.5

Prior Installment(s) Due:	
Prior Amount Due:	570.00
Unpaid Late Fee:	28.50
Unpaid Other Fees:	0
Total	1,168.50
(including next payment amount due)	

We strongly urge the Bureau to allow servicers flexibility in how they present information, such as payments received (or not received). By allowing flexibility, the same information will be communicated, but the burden of implementing the disclosure with customized dates and language would be substantially reduced.

The Settlement Agreements require servicers to disclose, in the case of a bankruptcy or foreclosure referral, that consumers may receive a payment history since the consumer was last less than 60 days past due "upon written request."[44] The affected servicers began implementing the Settlement Agreements some months ago. Additionally, servicers commonly provide transaction histories online. Springside B-3 appears to require an historical look-back on the monthly statement in all cases (*e.g.* without a borrower's request). The periodic statement should not exceed the Settlement Agreements because it would be a waste of resources to revise what is being implemented, in the midst of the implementation process. In addition, servicers should have the ability to simply provide the "last full paid installment date," for example, rather than to recant each month that a payment remains due and unpaid (*e.g.* another example of the problem of free form text that imposes substantial regulatory burden with little or no consumer benefit).

- The "Transaction Activity" box on Springside B-3 describes the reason the loan had a late fee. This is unnecessary because the statement clearly discloses the date a late fee would apply to the April payment, both at the top and at the bottom of the form. This is another example of the problem of "free form text."

- The amount due is shown on page one in two places, which is unnecessary. The "Amount Due" box at the bottom may be part of a tear-off coupon. If so, it should not require a disclosure of the total amount due if that is different than the regular payment due. The total amount due would be disclosed on the part of the form that the consumer retains, which is the information consumers need. A disclosure of the total amount due is more difficult to populate than a disclosure of the regular payment. This is one area where regulatory burden can be avoided while borrowers still receive, and retain, the information they need.

- Some states require certain disclosures. We recommend that the CFPB take them into consideration when designing the periodic statement to ensure the disclosures

[44] Settlement Agreements Appendix A ¶ I.B.6.a.

work well together. In our view, state-required disclosures should either be includable on the periodic statement, or the CFPB should preempt them.

- We suggest that servicers be able to print the periodic statement in larger fonts. CFPB should establish a minimum font size, but permit flexibility above the minimum.

- Springside B-1, under "Past Payments Breakdown," contains a line for partial payments, with a dollar amount of zero. We suggest that this entry not be required when it is inapplicable. Many systems do not carry a separate transaction code for partial payments that would allow this information to be extracted in an automated fashion from the servicing system into *an itemized listing* on a monthly statement (however, total amount in suspense is available). Of course, the borrower could contact the servicer to obtain this information. Also, by listing a partial payment, borrowers may receive the false impression that remitting less than the total payment is acceptable. For these reasons, we suggest that this entry not be required.

- Springside B-3 contains a partial payments disclosure under "Important Messages." Servicers should be permitted to reword this, as applicable. It is partially inconsistent with the Settlement Agreements, which permit servicers to apply partial payments to a suspense account "as required by the terms of the loan documents."[45]

D. Springside Content – Page Two

- Page two of the prototypes discloses important information that rarely changes, with some exceptions. Servicers already disclose this static information. We suggest the existing static disclosures be permitted to remain in place unless the CFPB identifies a problem in need of a cure. The page two disclosures under "Payment Options," "Online Services," "Payment Information," "Automated Account Information," "Consumer Complaints and Inquiries," "Important Springside Contact Information," and "Homeowners Insurance / Property Tax Information," are all static disclosures. For these items, we believe the disclosures in place today are sufficient, and we do not believe there is any reason to revise them.

- The "Service Fee Schedule" should not be required. Importantly, it implies that there are no other servicing or default fees, which is misleading. Also importantly, it does not appear to address an existing problem. Servicers disclose these fees and obtain consumer consent before charging them, so we are not sure what purpose would be served by including them on a periodic statement. Consumers do not affirmatively consent to a fee for a returned check before a check is returned, but consumers are aware that returned checks result in fees.

[45] Settlement Agreements, Appendix A ¶ I.B.3.b.

The "Service Fee Schedule" includes amortization schedules and account histories, which are often available online for free. Consumers rarely request these otherwise.

Preparing the "Service Fee Schedule" would be burdensome because it would impose high upfront implementation costs, and because it would require ongoing monitoring and updating. We suggest that the CFPB weigh the fact that consumers are aware of servicing fees before incurring them, against the regulatory burden of requiring this schedule. Consumers can always ask what a fee is.

- The Dodd-Frank Act requires the statement to include a phone number and electronic mail address where the borrower can obtain account information. The prototypes include the servicer's website, rather than email address. This is important because email may not be secure enough for information as sensitive as mortgage account information.

- Where to send qualified written requests should be clear. The prototypes include several addresses on page two, and Springside B-1 has another mailing address on page one, but none is identified for qualified written requests. As discussed above, the QWR process can only work if servicers are aware when they receive a QWR. This would not be feasible unless servicers can manage their collection in specified locations.

- Specific payment instructions are necessary. Servicers should be permitted to: identify the correct payee for checks; indicate, near the payee identification, where to mail the payment; and remind consumers to include the account number on a check, not to mail cash, not to staple the check and coupon, to include the coupon, and not to include correspondence with the payment. The instructions should be able to tell consumers how to pay electronically, such as online or by phone. The instructions need to specify that the address for overnight deliveries cannot accept payments in person, as applicable. The payment instructions should be revisable as payment technology changes, without the need for a rulemaking.

- A tear-off coupon or a coupon on a separate piece of paper should be able to include the regular payment amount, the amount of the late fee and the date it would be assessed, the account number, and the consumer's name and address.

- Servicers should be able to include a place for consumers to note any change of address.

- Servicers should be permitted to include a warning that the outstanding principal may not be the same as the payoff amount, and how to request payoff information.

- There should not be any restrictions on sending other information with the statement, such as annual privacy notices or marketing materials.

- Bar codes or other machine-readable information should be permitted on the front and back of the statement, and on subsequent pages, at the servicer's discretion. It should be amendable without the need for a rulemaking as technology changes.

E. Contact Information for Counseling Programs

Page two includes contact information for three counseling programs in the state where the property is located (or where the statement is mailed) and a state housing agency in that state. This does not appear to consider the costs and benefits of this type of disclosure.

We are concerned that this disclosure would require every servicer to track the availability of counselors by geography, a significant undertaking. HUD already lists counselors on its website and by accessing its toll free phone number, by geographic location, so we do not believe that it is necessary for each servicer to list them as well. Moreover, a listing of three counseling agencies from among hundreds may imply that the servicer endorses these agencies, creating potential liability many servicers do not want to incur. UDAAP liability, for example, is a realistic possibility. The counselors that HUD recommends on its website are HUD-approved, thereby ensuring that consumers in need of counseling services receive those services from a qualified counselor. This should be sufficient. By providing the HUD website and toll free number for counselors the information would not become stale.

The Dodd-Frank Act requires the CFPB's regulations to pass a cost-benefit analysis. This is evidence that Congress placed a high priority on avoiding unnecessary costs. Requiring servicers to track the availability of counseling programs nationwide and update periodic statements each time the information changes would never survive that test. This is, in part, because the cost could be significant, and, in part, because the information is readily available on HUD's website and elsewhere for free.

For these reasons, we recommend that the CFPB require that the periodic statement advise consumers that they can find housing counselors at www.hud.gov, or by calling HUD's toll-free number (800) 569-4287.

F. Title XIV Effective Dates

If the CFPB does not have a final regulation implementing § 1420 of the Dodd-Frank Act by January 21, 2013, § 1420 becomes effective without one. Any final regulation would become effective within a year after it becomes final. While the periodic statements in place today largely contain the disclosures that § 1420 requires, there are areas of uncertainty. For example, we are uncertain whether the CFPB will require revised periodic statements to match the layout and exact language of Springside, and we are not

certain whether the CFPB will require disclosure of maturity dates amended by loan modifications.

Therefore, we urge the CFPB to preserve maximum flexibility to servicers to meet the minimum elements of disclosure and disclosure format, without mandating major programming changes. We would also urge the Bureau to finalize a regulation before January 21, 2013 that provides the industry with the certainty it needs combined with sufficient time to implement the requirements.

VII. Interest Rate Adjustment Notices

The undersigned organizations express deep concern with the SBREFA Outline plan to require new ARM rate adjustment estimates and notices that exceed the provisions in Dodd-Frank and Regulation Z.

A. Regulation Z and Look-Back Periods

The CFPB indicated in its SBREFA Outline that it may revise Regulation Z to require the delivery of ARM rate-change notices two to four months in advance of the date the new payment is due. The Federal Reserve Board issued a similar proposal in 2009,[46] which was never adopted. This approach is incompatible with the "look-back" period established by ARM notes on which many loans are based.

Today, Regulation Z requires ARM rate-change notices to be sent 25 to 120 calendar days before a payment at a new level is due, or annually if there is a rate change, but no payment change.[47] Ultimately, when the servicer can send a true and accurate ARM rate-change notice depends on the language in the note.

Describing some typical ARM terminology may be helpful. All of the following are established in the note.

- Rate-Change Date – the first date the adjusted rate applies to outstanding principal.

- Payment-Change Date – the first payment date (e.g. due date) that the newly-adjusted rate applies to a payment. Mortgage loans are typically paid in arrears, meaning the Rate-Change Date precedes the Payment Change Date, typically by a month.

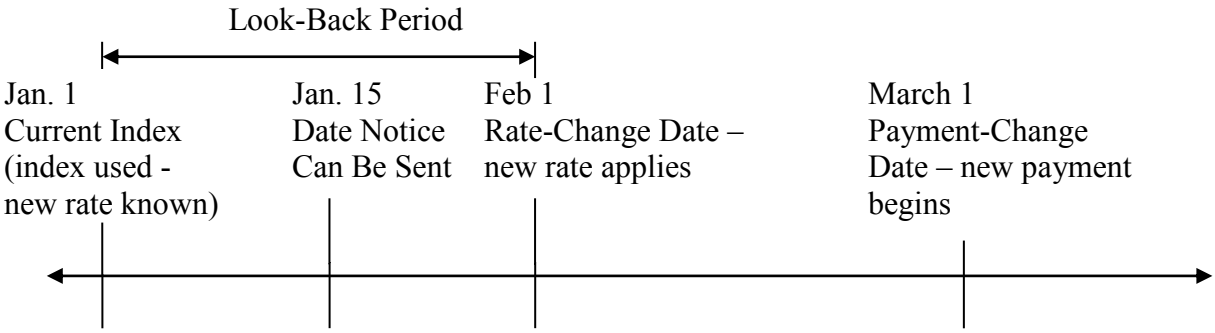
- Current Index – the value of the ARM index at the specified measurement date. The note establishes the index, the margin, and the date the index is measured. For example, an ARM loan may specify that the index is six-month LIBOR, the margin is three percentage points, and that the index used for an adjustment is the six-month LIBOR rate published 30 days before the Rate-Change Date. In this

[46] 74 Fed. Reg. 43232 (August 25, 2009).
[47] 12 C.F.R. § 1026.20(c).

example, the level of six-month-LIBOR that is published 30 days before the Rate-Change Date is the "Current Index" and the servicer adds three percentage points to the Current Index to determine the adjusted rate.

- Look-Back Period – the period between the Current Index date and the Rate-Change Date.

Rate-Change Illustration



In this illustration, a rate-change notice can be sent 44 calendar days before the due date of the payment at the new level:
16 days (Jan 15-Feb 1) + 28 days (Feb) = 44 days

Some existing ARM contracts have Look-Back Periods of 30 days or less and thus can only offer a 45-day or shorter notice.[48] FHA and VA notes have 30-day Look-Back Periods.[49] Fannie Mae has some LIBOR-based ARMs with short look-back periods, for which a rate-change notice two months in advance of a payment change date would need to be estimated.[50] We highly recommend that the CFPB communicate with Fannie Mae and Freddie Mac on this matter. Some notes in existence provide an even shorter or zero Look-Back Period and thus can only provide a 30- or 25-day advance notice.

Adjusting Regulation Z to require earlier disclosures would require the servicer to test the index and establish the loan balance (which determines payment amount) at an earlier date than provided by the note. Neither the CFPB nor servicers can deviate from the note.

Servicers also require time to obtain the index. Servicers rely on releases of indices by others. Such publications can be delayed, *e.g*. the H-15 is often published on the second of the month. Many are published in the *Wall Street Journal,* in which typographical errors, while rare, have occurred. Servicers need to verify the index using a first and

[48] *See* Exhibit 2, a page from a note with a 15-day lookpack period.
[49] *See* Exhibit 3, a page from an FHA note with a 30-day lookpack period.
[50] *See* Exhibit 4, a Fannie Mae note with a current index set the first business day of the month preceding the rate change date, meaning the look-back period varies by the length of the calendar month.

second look. Once the servicer determines the Current Index value, the servicer must load the indices to calculate the new rate and payment, run the calculations, and print and mail the notices. There are a variety of indices in use, so a servicer must establish several Current Index values. Servicers need 15 days for this entire process. The notice, therefore, cannot be sent on the Current Index date, and is generally sent approximately 15 days thereafter.

It appears the CFPB's approach would have servicers send an estimate in certain cases.[51] This is unreasonable, ineffective, and confusing when a true and accurate ARM change notice would come 15-30 days later. The approach in the SBREFA Outline would create considerable consumer dissatisfaction given the volume of conflicting notices they will receive. It could cause borrowers to act on inaccurate information, and would likely increase demands on servicers to apply the estimated rate if more favorable than the contractual rate.

In a meeting with trade associations on May 15, 2012, CFPB asked if the 2-4 month rule could be applied prospectively to newly originated loans. A prospective application can be done legally, but has substantial costs, complications and impediments, and any possible benefits have not been substantiated.

First, this would be a very massive undertaking. Instituting a two-four month advance rate-change notice would require many notes to be changed. In 2009, when the Federal Reserve asked the industry to estimate the cost, two large servicers estimated that the upfront cost would be about $1 million per institution *if applied prospectively only*. The cost involves making systems changes to capture the new information and calculations, changing the notes, changing existing disclosures, making sure all business partners and staff are trained, and increasing due diligence and quality control, especially on brokered or correspondent loans.

Second, servicers would be dependent on FHA, VA and the GSEs to change their notes because lenders and servicers are not permitted to adjust these notes on their own. These agencies would need time to make official changes to the notes they use, and release revised documents and guidance. Thereafter, lenders, servicers, service bureaus, technology vendors, form vendors, attorneys, and other affected entities would need at least 12 months to implement the requirements, given the competing demands on internal and technology systems and staff.

Third, it is imperative that loans with rates that adjust monthly or more frequently (which is common in HELOCs) not require rate-change notices two-four months in advance of an adjustment, either prospectively or retroactively. Borrowers would be bombarded with estimated notices, once per month at least, which would be extremely confusing to the borrower as to not only the rate, but also to the payment amount owed. Some borrowers would inevitably pay the wrong amount in error, which would be a disservice.

[51] *See* SBREFA Outline footnote 15, p. 10-11.

Fourth, notes with earlier Current Index dates (*i.e.*, longer Look-Back Periods) may be subject to less favorable secondary market pricing. Although we believe this pricing difference would be negligible in most cases, we cannot predict the true implications.

Fifth, the presumed benefit to the borrower of such a change is a notice approximately 15-30 days earlier than the one received today. Servicers are not likely to provide notices much earlier than two months because the borrower is at risk of forgetting the rate and payment change. The significant cost to the industry, therefore, appears to outweigh a slightly earlier disclosure.

Finally, rate and payment modifications made to loans in an effort to resolve delinquencies should be excluded from these notice requirements because it may not be possible to provide a two-four month advance notice before a modification is executed. We also presume that payment changes made due to annual escrow analyses will be expressly excluded from the rate-change notices, to avoid confusion. This is consistent with the 2009 Federal Reserve proposal. RESPA requires servicers to annually analyze the escrow account and determine the amount by which the monthly escrow payment amount needs to increase or decrease, and to notify borrowers of the changes.

As a result of these considerations, we respectfully ask that the CFPB not pursue this idea.

B. Six-Month Advance Rate-Change Notice on Non-Hybrid ARMs

The Dodd-Frank Act requires creditors or servicers to provide borrowers with a notice regarding the initial interest rate adjustment of a hybrid ARM at the end of the introductory period either (a) between six to seven months before that reset or (b) at consummation of the mortgage if the first reset occurs during the first 6 months after consummation. CFPB's SBREFA Outline indicates that the agency may expand this requirement to all ARMs, including 1/1, 3/3 and 5/5 ARMs. CFPB confirmed that such notices would be a one-time event and would not be required for later rate adjustments. In all cases, such notices would require the servicer to estimate the rate based on an index plus margin inconsistently with the note, and redisclose later. We urge CFPB not to expand the requirement beyond hybrid ARMs.

Unfortunately, the statute 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, the cost of producing these new disclosures on all ARMs would be significant in terms of systems changes, mailing costs, printing, training, and so on. 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 urge the CFPB not to expand the six-month advance notice requirement beyond hybrid ARMs.

C. Loss Mitigation "Options" May Not be Available

We are concerned with the statutory requirement that servicers identify "alternatives" to a rate change, specifically "renegotiations of loan terms (*e.g*. modifications), payment forbearances, and pre-foreclosure sales."[52] The CFPB suggests listing deeds-in-lieu of foreclosure as an additional alternative.[53] This would give borrowers the false impression these loss mitigation options are available to choose from, even when they are not. Borrowers obtain loss mitigation solutions only when permitted by investors, and when borrowers demonstrate the requisite financial hardship or lack of financial capacity to repay. In some cases, certain loss mitigation options are not available (*e.g*. FHA does not permit a short sale unless the borrower has defaulted). Many state bond programs do not permit loan modifications, so providing modification information would mislead borrowers about those programs.

Even with the conditional language in the prototypes, listing these "options" would give borrowers the false impression they do not have to honor their contacts and pay at the new rate. The result will be unnecessary delinquencies, unfulfilled expectations, and dissatisfaction with the servicer.

Listing loss mitigation "options" seems especially out of place when rates are declining. We respectfully suggest that the Bureau test consumer understanding of a rate-change notice that lists loss mitigation "options" in a declining rate environment, and determine what actions the consumer would or would not try to take. We are concerned that the consumer would not always make the best selection. We also suggest that the CFPB test consumer understanding of the availability of loss mitigation "options" generally in a notice.

We urge CFPB to use its discretionary authority to remove the requirement that servicers list modifications, forbearances, short sales, and deeds-in-lieu as alternatives to the rate change.

[52] SBREFA Outline p. 11.
[53] SBREFA Outline Attachments C-1 through C-3.

D. Additional Information in Rate-Change Notices

The CFPB may require additional information in the notice that is not statutorily mandated, including the amount and expiration date of any prepayment penalty, interest rate and payment change limits, and amortization information with regard to negative amortization loans. It is unclear what "amortization information with regard to negative amortization loans" means, and thus we request clarity.

We also reiterate the difficulties of producing payoff statement information, such as prepayment penalty amounts, for all ARM borrowers, given that in some cases this information must be manually calculated given conditional requirements and the complexity of the calculation. A generic statement indicating that the loan has a prepayment penalty, and that the borrower can call the servicer at a specified phone number, would provide sufficient guidance and information to the borrower.

It is also important to exclude from a 6-month advance notice requirement ARM loans with rates that can adjust monthly or in a shorter period, such as HELOCs, because the notice offers no benefit of advance warning.

Finally, we point out that the prototype in Attachment C-3 would require the disclosure of customized information that is extremely difficult for the servicer to produce (*e.g.* the estimated rate without the cap and difference between that amount and the estimated rate subject to the cap). This information would be of limited or no value to consumers.

Unfortunately, by expanding the scope of the law, the problems with the statute would be exacerbated. We urge the CFPB not to expand the 6-month advance notice requirement beyond hybrid ARMs, and not to expand the components of the notice beyond those required by statute.

Further, we urge CFPB to use its discretionary authority to remove the requirement that servicers list modifications, forbearances, short sales and deeds-in-lieu as alternatives to the rate change. Instead, the notice should counsel borrowers to contact their servicer if they believe they will have difficulty making the new payment. Likewise, prepayment penalty information should not be mandated on the notice, but rather the statement should counsel borrowers to call the servicer for that information. Borrowers have regular access to customer service representatives who can provide information when the borrower wants it, rather than pushing out information known to be inaccurate or misleading and that the borrower has not requested.

As a final matter, we also ask that the CFPB use its discretionary authority not to require that servicers list the address, telephone number, and internet address of the state housing finance authority, as these agencies may not be able to provide assistance to the borrower. As with the periodic statement, the servicers should be permitted to state only that consumers can find housing counselors at www.hud.gov, or by calling HUD's toll-free number (800) 569-4287.

VIII. Information Management Systems

The SBREFA Outline states that the CFPB may use its RESPA authority to create new requirements regarding management of borrower documents and information.

> Reasonable policies and procedures for managing borrower documents and information would facilitate development of systems and operational processes for tracking and storing borrower documents and information with respect to borrower communications, error resolution, information requests, loss mitigation (including, without limitation, loan modification actions), foreclosure, and other servicer operations. Further, such reasonable policies and procedures would assure that servicers have access to records noting key actions taken with respect to borrower communications, error resolution, information requests, loss mitigation (including, without limitation, loan modification actions), foreclosure, borrower bankruptcy actions, and other relevant actions with respect to a borrower's account.[54]

We note that such requirements are in place or are being created by the Settlement Agreements.[55] We suggest an outcome-based approach that identifies the intended goal without prescribing a very detailed set of steps or procedures. This is necessary to ensure that all business sizes and models can meet the consumer objective without undue financial hardship and without conflicting with the Settlement Agreements and Fannie Mae and Freddie Mac's extensive documentation requirements. The multitude of requirements in this area is a potential source of conflict. At a minimum, the CFPB should take into consideration the existing layers of requirements to avoid rules.
We also note that the document management procedures for small servicers differ from that of large servicers. Any rules would need to accommodate these differences. We suggest that, for this issue, the CFPB look at the so-called 501(b) information security guidance the banking agencies promulgated under Gramm-Leach-Bliley Act.[56] Drafters of that guidance faced a similar need to establish recordkeeping standards that accommodate large and small institutions alike. Requiring a specific standard could require small institutions to incur prohibitive costs to establish an unnecessary protection. Rather than establish a uniform set of standards, the 501(b) standards have each institution identify its individual risks, then address them, taking into consideration the complexity and scope of its unique business.

We note also that Title XIV 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 Title XIV rules by an imminent deadline, we suggest the CFPB finish its required Title XIV rulemakings before taking on an optional rulemaking.

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[54] SBREFA Outline pp. 21-22.
[55] Information management requirements in the Settlement Agreements are too numerous to cite.
[56] 66 Fed. Reg. 8633 (Feb. 1, 2001), as amended at: 69 Fed. Reg. 77616 (Dec. 28, 2004); 70 Fed. Reg. 15751, 15753 (Mar. 29, 2005); and 71 Fed. Reg. 5780 (Feb. 3, 2006).

IX. Early Intervention for Troubled or Delinquent Borrowers

The CFPB generally outlines its plan to require servicers to contact delinquent borrowers no later than the 45th day of delinquency to provide general information about the loss mitigation programs available and to explain the foreclosure process and possible foreclosure timelines. At first, we were concerned with a requirement that servicers provide information to borrowers about the foreclosure process because it would require the offering of legal advice, require customized letters to borrowers by state, and create potential liability if actual foreclosure timelines differed. We were pleased to learn at the May meeting that the CFPB is seeking to require only general loss mitigation information and general timelines for when foreclosure may be commenced. Other state-specific statutory timelines for defendants' responses, hearings, judgments, foreclosure sales, conveyance of title, and redemption periods were not contemplated. Moreover, it appears that the CFPB is considering providing a sample brochure for servicers to use for this 45-day notice. We recommend that the *content* of such brochure be allowed to be reproduced in other formats (such as in the body of a letter) and combined with other notices rather than require the mailing of a pre-printed CFPB brochure. We also urge that servicers be permitted to generally state when acceleration and referral to foreclosure would occur without having to create contract-specific letters.

We support an exemption for small lenders from the written notice requirement if they make other good faith efforts to contact a borrower (we assume by phone) within the 45-day timeline. We respectfully ask that this small servicer alternative not be limited to loans in portfolio.

We note that default rules and procedures have been in a stage of redesign for years. Treasury, HUD, FHFA, and the GSEs, not to mention the states, have been quite active in this area. We recommend that CFPB not attempt further redesign in isolation, but involve other agencies. We suggest that the difficult Title XIV deadlines are of more immediate concern.

X. Continuity of Contact

The CFPB is considering a continuity of contact concept. Although the details of the continuity of CFPB's approach are not provided, it appears the CFPB is considering a more flexible approach than that required in the Settlement Agreements and federal banking agencies' April 2011 servicing Consent Orders. We support a more flexible arrangement to allow for improvements as necessary (without a regulation amendment), more expertise as a borrower moves through various loss mitigation options if the servicer desires, accommodations for servicer size, and recognition of staffing realities (hours, vacations, departures, sick-leave).

The SBREFA Outline also discusses the need for employees to have ready access to records of previous communications. Without clarification, many servicers have interpreted this as necessitating recordings of all conversations. Even if applied on a prospective basis, such a requirement would be taxing on any servicer that does not

currently record all calls. Servicers would need the capacity to catalog and retrieve the information. This burden would be especially difficult for smaller servicers. We urge the CFPB to indicate that this provision would not require recording calls, but would require that the single points of contact (as they will be defined) have access to notes on the servicing system with regard to communications. In addition, we respectfully request that the CFPB recognize that some records may be stored outside of the servicer's servicing system, especially as it relates to purchases from defunct institutions or subservicing of loans. While the information is available, it may take time to retrieve it and thus servicer employees may not have "ready" or quick access to it.

This is another area where we urge the CFPB to set general parameters within which servicers can elect the technology systems they use to comply. We suggest that CFPB defer this part of its approach until after the Title XIV deadlines are met.

XI. Conclusion

We appreciate the CFPB's openness is presenting the SBREFA Outline. We believe our recommendations can be implemented in a manner that ensures that consumers receive the appropriate protections, while at the same time being cost-effective for servicers. We welcome the opportunity to meet in person as the process moves forward and we urge the CFPB to use our respective organizations as resources for additional information or clarity. We look forward to continuing to provide feedback as the CFPB moves forward with its rulemaking.

Sincerely,

American Financial Services Association
Consumer Mortgage Coalition
Mortgage Bankers Association
Residential Servicing Coalition