

**Summary of Discussion on RegulationRoom.org:**

**2012 Truth in Lending Act (Regulation Z) Mortgage Servicing  
(Docket ID: CFPB-2012-0033)**

**AND**

**2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal  
(Docket ID: CFPB-2012-0034)**

***Background***

Regulation Room is an open government pilot project aimed at increasing the breadth and quality of public participation in the rulemaking process. It is a collaboration between the [Cornell eRulemaking Initiative](#) (CeRI), which owns, designs, and operates the site, and federal agencies, including the Consumer Financial Protection Bureau (CFPB).

From August 10 to October 9, 2012, people could use Regulation Room to learn about and discuss two new proposed rules the “2012 Truth in Lending Act (Regulation Z) Mortgage Servicing” and the “2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal.” This time frame coincided with the official comment period for the rule, which closed October 9, 2012.

On October 3, 2012, the Regulation Room team posted Draft Summaries of the discussion. All users who registered and/or commented on the rules were invited by email to review the drafts and suggest additions or changes until October 9, 2012. In that time, 635 unique visitors visited the site and 2 commenters posted 6 suggestions. The team reviewed all suggestions and then prepared the Final Summaries.

On October 9, these Final Summaries were submitted, via Regulations.gov, to CFPB as a formal public comment in the rulemaking. (For more on the legal significance of this, see the [FAQs](#).) Registered users received an email notifying them that the Final Summary had been posted on the site and submitted to CFPB.

Anyone could also submit individual comment directly to CFPB on the proposed rule by visiting [Regulations.gov](#) (link directly to the [Regulation Z](#) and [Regulation X](#) proposals) before midnight on Tuesday, October 9, 2012.

Materials from the Discussion Phase, including the Draft and Final Summaries, will remain available on Regulation Room for public review. A file of all content submitted by users will be made available to CFPB at its option. (This file will not include any personally identifiable information users did not choose to make publicly viewable on the site. See [Privacy & Conditions](#).)

### ***Who participated?***

During the 60 days the rules were open on Regulation Room, a total of 8,908 unique visitors came to the site. There were 12,665 total visits, with people spending an average of 3.04 minutes on the site. Of the issue posts, the average time on the page was longest for “For Borrowers in Trouble: Options for Avoiding Foreclosure” (3.43 minutes) and shortest “For All Borrowers: Getting Errors Fixed” (2.11 minutes). The pages featuring the two Notice of Proposed Rulemakings were viewed a total of 1,111 times with an average time on page of 2.23 minutes and the Regulatory Impact Analyses were viewed 91 times with an average time on page of 2.41.minutes. Anyone could read material on the site, but registration was required to participate in the discussion, 144 people registered during the time the rule was open.

Based on answers to a survey when a person made their first comment, 79 % of those who commented on said that they had never previously submitted a comment in a federal rulemaking. A second survey question asked people to best describe their interest in the proposed rules. Three main categories could be chosen (consumer, mortgage industry, miscellaneous).

I'm a consumer: 59 people chose this interest category. They were asked to further describe their interests, those interest categories are listed below. People could select more than one of the following categories, which is why the numbers add up to more than 59.

- 36 – who got, or refinanced, a mortgage in the past 10 years
- 22 – who had a hard time, or someone in their family, had a hard time making mortgage payments
- 23 – whose household makes less than \$100,000 per year
- 12 – who had, or someone in my family, has had a mortgage foreclosed
- 2 – who expect to be a first-time home buyer in the next few years
- 9 – other; further described as:
  - currently disabled, but expect to be working in future. We rent out the house we own, and live with family until I'm recovered. Yes, I was affected by the 2008 dip: I was laid off, along with hundreds of others
  - I had forcedplace insurance placed due to an erroneous determination by my bank about the requirement for flood insurance
  - i was in the early stage of the financial crisis and all in all ended with short sale
  - someone in my family expects to be a first time home buyer in the next few years
  - student
  - There are problems with servicers and document custodians, stealing or losing personal original documents, and unethical bookkeeping methods. I had 2 servicers at the same time for 18 months both posting different amounts to their ledgers on my account
  - went through bankruptcy, kept house

I'm in the mortgage industry (real estate agent, mortgage broker, etc.): 31 people chose this interest category. They were asked to further describe their business and customers. People could select more than one of the following categories, which is why the numbers add up to more than 31. My business is best described as:

- 10 – regulatory compliance officer
- 8 – mortgage servicer
- 7 – mortgage originator
- 2 – real estate agent
- 2 – mortgage owner
- 8 – other; further described as:
  - attorney
  - bank
  - community banker
  - credit union
  - federal credit union
  - internal auditor
  - underwriter, forensic auditor
  - whistleblower

The company I work for is best described as having customers who are:

- 17 – mostly from the local community
- 4 – mostly from a single state
- 2 – mostly from a small number of states
- 6 – from all over the country and/or other countries

Miscellaneous (research, non-profit, government, etc.): 18 people chose this interest category. They were asked to further describe their interest. People could select more than one of the following categories, which is why the numbers add up to more than 18.

- 6 – I'm a researcher
- 5 – I'm affiliated with an advocacy group
- 2 – I work for a non-profit credit-counseling organization
- 1 – I work for a state, local, or tribal government
- 6 – Other: further described as:
  - undefined
  - consumer and reporter
  - foreclosure defense strategies
  - credit attorney
  - former employee of Balboa insurance group turned whistleblower
  - lawyer

NOTE: Regulation Room does not attempt to check whether people correctly identify their interests. For this reason, whenever the summary states a commenter's interest, the description is based solely on information given by the commenter.

Of the 144 people who registered while the discussion was open, 67 people posted 236 comments. Site moderators posted a total of 109 responses. Comments by users were distributed as follows (these totals do not include moderator posts):

- For All Borrowers: Who's Servicing Your Loan? 27 comments by 15 people

- For All Borrowers: Periodic Statements: 46 comments by 13 people
- For All Borrowers: Asking For, and Getting, Information: 38 comments by 15 people
- For All Borrowers: Getting Errors Fixed: 9 comments by 5 people
- For All Borrowers: Adjustable Rate Mortgages: 10 comments by 8 people
- For Borrowers in Trouble: "Early Intervention" Help: 14 comments by 10 people
- For Borrowers in Trouble: Reliable Contact with People Who Can Help: 20 comments by 10 people
- For Borrowers in Trouble: Options for Avoiding Foreclosure: 31 comments by 14 people
- For Borrowers in Trouble: Partial Payments: 10 comments by 6 people
- For Borrowers in Trouble: "Force-Placed" Insurance: 31 comments by 12 people

Two other people who did not comment elsewhere on the site endorsed comments.

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## **FOR ALL BORROWERS: WHO'S SERVICING YOUR LOAN? FINAL SUMMARY OF DISCUSSION**

### ***Consumer confusion about servicing in general***

Discussion among several commenters (some consumers, some industry) revealed confusion about when the company originating the mortgage could/would sell a loan, and what transfer of servicing rights actually means. Some participants advocated that borrowers should deal with a company that retains and services the loans it originates if they want to avoid problems. One industry commenter pointed out that lenders are now required to inform mortgage applicants whether their loan might be sold, and urged consumers to consider more than just the interest rate in choosing a lender.

One commenter (a consumer who got or refinanced a mortgage in the past 10 years), summed up: “The problem with all of this is that the consumer doesn’t understand all of the parties involved in his or her loan and might need that information in the case of a financial crisis of some kind.” S/he urged that “the mortgagee should receive a clear, concise picture of the situation” whenever there is any change in who owns or services the loan. This information should include a plain language explanation of what “owning” and “servicing” mean, as well as the identity and contact information of the companies involved. This commenter also suggested: “Each mortgage loan should have a unique universal identifier so things can be tracked properly. I.e., when a loan is packaged and sold in a structured security, the paperwork would have the unique IDs of all loans included in the package.” Proposals for a more uniform system of identifying and tracking mortgage information were a minor theme in the comments and can be found in other posts.

There were suggestions that the number of possible servicing transfers be limited and that consumers be given a choice about who services their loan.

### ***Reaction to proposed transfer notice***

In general, reaction to CFPB’s proposed notice was positive. In addition to support from consumer commenters, one commenter who self-identified as a mortgage originator whose company’s customers come from all over the country and/or other countries, supported the notice requirement. S/he argued that it creates a “paper trail” essential for keeping track of the transition process and for giving borrowers the information they need — which in turn helps ensure the mortgage owner gets paid. Another industry commenter, CEO of a small bank, said that CFPB’s proposals “appear to be good and are what small banks have been doing for years.” However, s/he has serious concerns about new regulations increasing costs to small banks; these are described below.

Commenters did suggest several changes/additions:

1. From the mortgage originator who supported the notice generally: The 15-day time frame is an unreasonably short time for consumers to adjust. Many borrowers only think about and pay their mortgages once a month. The notice should be sent 30 to 45 days in *advance* of the transfer.

2. Related to the focus on how consumers actually make mortgage payments, the notice should give both “the website address for the new servicer for account information” and “the proper address / flow for electronic payments (e.g. recurring mortgage payments from a checking account) [because] [c]ustomers need to know how to handle and timing of changes to regularly scheduled electronic mortgage payments.” This comment was from a consumer who had gotten or refinanced a mortgage in the past 10 years.
3. From the same commenter: The notice “should also state which servicer is responsible for making payments from any escrow account for property taxes and property insurance and the effective date.” This suggestion was based on personal experience with property tax payments that “slipped through the cracks” when servicers changed.

Finally, in a comment that applies more generally to borrowers’ ability to get information about their loan, one commenter (a consumer who has had, or someone in their family has had, a mortgage foreclosed, and whose household makes less than \$100,000/yr) urged: “Lenders should be required to have people to assist you with your loan at the branch. When I arrive at the branch they should not dictate to me an 800 number that keeps me on hold.”

#### ***Transferring loan information between servicers***

Several commenters identified transfer of information between servicers as a major concern. Two consumers (one self-identifying as a household earning less than \$100,000/yr) gave examples:

“We received our notice of servicing as outlined here, however, the company doing the servicing did not have all the correct information and did not honor the temporary modification outlined by the previous servicer causing us untold hardship and stress.

Because of their delay in information and application they immediately came after us for charges and late fees that we could not have avoided. It was unfair and predatory.

In addition, our previous lender did not work fairly with us, but now that they have sold our loan they no longer have to work with us to correct the flaws in our loan, they simply wash their hands and the new lender/servicer can truthfully say it was not ‘their’ fault.”

“I had 2 servicers at the same time, and both posted my payment only with different extra fees, so totals were not exact, and one servicer was not even hired yet, this was for 18 months overlapped, and i still can’t get to the bottom of it. I have never gotten answers to my questions, and they treat the homeowners like dirt. The last servicer on record, reported to IRS, that the entire principal was paid last year, and zeroed my account balance, but the lender still is collecting, I have no idea what is going on.”

Commenters specifically identified three kinds of information that resulted in harm to borrowers when not promptly and accurately transferred between servicers:

- Property tax payments due from escrow
- Loan modifications that had been negotiated

- Status of hazard insurance, leading to improper charging for force-placed insurance

One commenter urged that the rule set a specific deadline (e.g., 15 days) by which all information associated with a borrower's account (loan origination documentation, servicing history, customer contact history, etc.) must be transferred to the new servicer. Borrowers don't initiate or control servicer transfers, so it should not be their responsibility to resubmit to the new servicer information that the original servicer had.

Another agreed that information transfer was the servicers' responsibility and urged CFPB to require that the borrower be given copies within a reasonable period of time (e.g., 30 days) of all information the new servicer gets from the previous servicer. "This should enhance transparency by making all this available to the borrower, the party most involved and most isolated in this process."

The importance of sufficiently itemized information, which was a general theme in the discussion, was raised here: failure of the old servicer to provide adequate details to the new servicer can result in, e.g., mistakes about the borrower's insurance status.

### ***Payments made during the transition***

Commenters also were concerned about payments made during a servicer transition. They agreed with the proposed 60-day grace period, although one commenter (a consumer who has had personal or family experience with foreclosure and who's household makes less than \$100,000/yr) urged CFPB to give borrowers an *unconditional* right to continue to pay the old servicer during this period: "What if there is a dispute or issue with the new servicer at the time of transfer? ... [T]he old servicer should still [accept] payments." S/h supported this suggestion with details from personal experience:

"My old servicer did an excellent job of providing monthly statements as well as online access. The new servicer refuses to provide any loan information at all to me, not even what the payment is supposed to be. During this 60 day window I have paid the old servicer twice, once for July and once for August. As long as I pay before the first of September, I am still o.k. under the current RESPA rules. I will pay my old servicer one last time since the new servicer will not let me use my online bank bill pay. After that I will have to send checks via certified mail to a company that will not give me anything for information in return. The value in my story is that despite all the rules and regulations, you can not force a company to act in good faith, unless there is a law requiring them to. So to mitigate any harm to the borrower, who is at the mercy of the servicer, CFPB should err on the side of the consumer. Think of it as a 60 window of opportunity, one where the borrower has the ability to pay the old servicer until any issues with the new servicer can be worked out. My issue is not solved. Restricting the consumer's ability to pay the old servicer has absolutely no benefit to the consumer, it only benefits the new servicer."

Commenters strongly supported the idea of requiring the old servicer to transfer payments to the new servicer, rather than returning them to the borrower. The same commenter who argued for an unconditional 60-day window pointed out that the old and new servicer already have a contractual arrangement that should facilitate such transfers, and that returning payments only increases the risk that borrowers will incur late fees.



Another (self-identified as a mortgage originator whose company's customers are from all over the country and/or other countries) emphasized that "[t]he borrower should not be caught up in an argument between seller and buyer" of servicing rights. S/he urged CFPB to require that "the servicer acquiring servicing become responsible for all outstanding payments as of the day of transfer and all payments received by either the selling or purchasing servicer on or after that date." This would be implemented by:

1. A strict no-contact rule. "The selling servicer should be legally prohibited from contacting the borrower on a transferred loan for purposes of collecting a payment after the transfer date. This prohibition would apply to collecting on NSF [not sufficient funds] checks as well. The purchasing servicer should be obligated to reimburse the selling servicing for NSFs and perform the function of collecting NSF payments. If the borrower maintains that a payment was made to the prior servicer it is the responsibility of the purchasing servicer to collect from the selling purchaser."
2. Restrictions on processing payments. "Fines and penalties should be incurred by the selling servicer if the servicer processes a payment on a transferred loan after the transfer date. Borrowers can obviously provide the necessary information as to who cashed their payment check and when. This can easily be enforced by review/audit of payment and cash deposit records. Any unprocessed payments held at the time of transfer or received after must be forwarded to the purchasing servicer for processing.

This commenter argued, "Purchasing servicers should not be allowed to pass the buck to the prior servicer. They should be required to make good with the borrower and settle with the selling servicer however they can. The business risk of not being able to collect from the selling servicer should be taken into account as part of the purchase and sale contract."

A third commenter (also a mortgage originator) suggested if the original servicer receives a borrower's payment, it should call the borrower to remind them to send payments to the new servicer and explain the transfer process if needed.

### ***Concerns from small servicers***

A commenter who self-identified as the CEO of a small bank for 16 years with a total of 30 years in banking, fears that "[r]ules like this one could make it harder on small banks to work with customers and more expensive to make mortgage loans." His/her bank "keep[s] every loan we make." Over half the bank's loans are in home mortgages, and "[we] have not foreclosed on one in over 10 years." Although s/he generally supports CFPB's proposals, the problem, in his/her view, is that regulations tend to be complex, even to solve simple problems, and complexity raises costs. Asked by the moderator for specific suggestions, this commenter responded:

1. "The regulation should only apply to banks that sell loans and only on the loans that are sold.
2. Almost all new regulations require training for all employees, which is expensive and unnecessary. The regulation should always be simple enough that all bankers and consumers can understand it without having to pay someone to understand it.

3. All regulations now have a requirement that the regulation has to be audited at least on an annual basis and the findings reported to the board, even if the bank does not have anything to audit or report. 99% of all banks want to comply with all laws and regulations. It is either the expense involved or the misunderstanding of the reg. that causes them not to be in compliance. I am required to have three external audits done at my bank now. There is no reason this regulation cannot be short, simple, and easy to comply with. If you need help with it, call me.”

Reiterating the plea for simplicity, this commenter wrote: “I like the suggestions mentioned because we do these things anyway. It is in our best interest. I am not sure of the answer, but I know I will have to comply with all the rules, I just should not have to pay someone to explain the rules to me.”

Another commenter, self-identified as a mortgage originator whose company has customers all over the country and/or other countries, strongly disagreed, insisting that “ALL banks/lenders need to be held to the same regs regardless of size.” S/he argued that banks use depositors’ money to lend, and charge fees connected with loans; all lenders should have to conform to the SAFE act and be tested to insure that loan officers know their legal responsibilities.

## FOR ALL BORROWERS: PERIODIC STATEMENTS FINAL SUMMARY OF DISCUSSION

### *The periodic statement proposal in general*

As with the notice of servicing transfer, both consumer and industry commenters generally supported the periodic statement proposal. One commenter who self-identified as working for a mortgage originator with customers from all over the country and/or other countries argued that providing information can be part of the duty to “protect the contract” since “the better informed your client is (whatever... payments, fees, penalties, etc), the better changes of you (a business) getting paid.” A consumer commenter wrote: “The Periodic Statement is great and you can see that a lot of thought went into this process.” (This commenter did have suggestions for additional content, described below.) No commenter argued against the policy of providing information to borrowers, although there was spirited debate (reported below) about whether CFPB should permit different rules for coupon books and small servicers.

Some commenters addressed the importance of a standardized form. One (who self-identified as a regulatory compliance officer for a company whose customers are mostly from a single state) noted that on his/her own mortgage, “[m]y current lender puts the information on the statement but it is so disorganized that I can’t tell what went to interest, escrow, PMI, etc.” (This commenter addressed the cost issue and is quoted further below).

There was discussion about the level of detail that should be provided:

1. Escrow account information. Commenters disagreed about whether more details should be provided. One (self-identified as having worked for the mortgage servicing industry in the past) insisted that the statement should detail “what insurance information is on file for the property, the expiration date, and the premium[, ...] a tax breakdown, PMI [private mortgage insurance], and another fees, along with an escrow.” However, another (self-identified as working for a servicer whose customers are mostly from the local community) noted that a complete escrow breakdown is provided annually and questioned whether consumers were helped by having this information on a monthly basis. Pointing out that [w]hen there is an escrow for multiple types of payments – insurance, taxes, etc. – [current] regulation requires “aggregate accounting that saves consumers money by using a cash flow method,” s/he thought it “might be more informative to show escrow monies received and paid out in the period.”
2. Transaction activity. One commenter (a consumer who had personal or family experience with a mortgage being foreclosed) insisted that the statement should itemize payments in a form that allows the borrower to verify the validity of the charge. S/he suggested the format now used on credit card statements, which includes a billing reference and contact information for each charge. This commenter’s concern arises from personal experience: “After my house was sold [identified as a short sale in another comment] I requested a Detailed Transaction...[and learned that] my account was left open for 6 months after the closing and the bank continued to bill my account for “Property Inspection Assessed” and “Property Inspection Paid.” After the commenter challenged these continued charges for drive-by inspections, s/he eventually

received a check for the disputed amount. Just as with credit card transactions, the borrower should get enough information to double check the amount and legitimacy of the service s/he is being charged for, and the vendor should be required to cooperate in verifying the charge.

The concern about getting itemized details (especially of fees and charges for third-party services) was a recurrent theme. It also appeared in the discussion of, e.g., Asking for, and Getting, Information.

### ***When, where and how the statement should be delivered***

Commenters who addressed the issue of timing strongly favored monthly statements.

As for how far before the payment due date the statement should be sent, one industry commenter agreed with the importance of providing up-to-date information to the borrower before the next payment, but pointed out that crediting an account is tough “when payments are inconsistent.” S/he concluded that there is “no one answer that conforms to all needs...[W]hat is most important is creating an incentive that encourages most people to act.”

On the issue of joint borrowers, a commenter self-identified as having had personal or family experience with foreclosure and a household income of less than \$100,000/yr agreed that a single statement to joint borrowers was generally fine. “However, if either of them changes the address to a p.o. box, or one separate from the home/property, there ought to be a provision that one monthly statement goes to the residence, unless both parties have a new separate address. Also, even if one person is only a quit claim party, or has signed as the dower, they are just as entitled to some sort of statement if something changes. It’s really important.”

Two commenters affiliated with a company whose customers come from all over the country and/or other countries and one commenter affiliated with an advocacy organization emphasized the value of an option to receive the periodic statement in electronic format – but also emphasized that this should happen only if the borrower requests. Other commenters, in the context of discussing coupon books, made the point that not all borrowers are comfortable with technology.

### ***The coupon book exception***

There was a spirited discussion around this possible exception. Generally, commenters who had experienced problems with servicers distrusted coupon books and opposed an exception, while some industry commenters had experiences with borrowers who liked coupon books.

One consumer commenter advocated an outright ban on coupon books based on the following experience:

“For 30 months I used a coupon book to pay my mortgage with BoA. Consequently, I could not see how my payments were allocated and how the principal was affected. My new servicer, by contrast, sends a monthly statement that details payment allocation and principal balance as of previous statement. To compare allocations between old & new servicer, I requested a payment history (10 months after the loan transferred) from the old servicer. Lo and behold, I discovered that BoA, did not account for \$3700+

of my payment amounts over the 30-month period. Since February 2012 I have been trying to get an explanation. All I have gotten to date from bank representatives is: 'Forget about the printed record; trust us, payments were allocated correctly.' Prior to my requesting a payment history, I made payments religiously, in good faith, believing that the lender was so. Now I think differently because almost \$4000 of the payments I made is unaccounted for and I do not know how to hold the institution accountable."

(This commenter has filed a complaint with CFPB but still has no satisfaction.) Another consumer (whose experience is described below in the section on Bankruptcy) agreed about the risks of coupon books, arguing that they "are an outdated tool for the mortgage servicing industry" and that it is important for consumers "to see real numbers every month."

However, a commenter who is a regulatory compliance officer for a company whose customers are mostly from the local community, argued that some borrowers "like having a physical book" and noted that not everyone is tech savvy. Another commenter (mortgage originator whose company's customers come from across the country and/or other countries) agreed that although a coupon book is "an old method," it "works" for some borrowers and their needs should be addressed. S/he suggested that coupon book customers should receive quarterly statements, arguing that this should not be a burden because companies produce quarterly reports already.

In response to observations that some borrowers prefer coupon books, one of the consumer commenters proposed that CFPB should leave the choice be up to the consumer, not the servicer: Rather than allowing servicers to use coupon books and requiring consumers to request dynamic information, periodic statements should be required but a borrower could request a coupon book.

### ***Cost and the small servicer exception***

Costs and a possible exception for small servicers were vigorously discussed. In general, commenters who worked for companies whose customers are primarily from the local community were very concerned about cost; consumers who had experienced problems with servicers and commenters who worked for companies whose customers come from all over the country and/or other countries, argued for uniform rules and opposed any exception based on size.

One commenter (federal credit union with customers mostly from local community) said that all the information on the model form is already provided to borrowers by his/her company. The concern is about new formatting requirements: "For most small to mid-size lenders the actual statements are outsourced to a third party due to the cost of creating something in house. Therefore the ability to change the format of a statement is not only limited but very expensive. In a time of ever shrinking margins (Yes, even a credit union needs to earn money) this is a cost that just cannot be easily absorbed." The moderator responding by asking whether format standardizing "could lower costs over time since the third parties who handle statements would use essentially the same form for all lenders?" The commenter responded: "Having spent so long dealing with vendors I do not anticipate a cost savings. If anything, I can see a 'compliance surcharge' being added."

A very important element of the proposal for this commenter was that the new regulations clearly state that using the model form would be a safe harbor against litigation: “[S]ome other regs specifically state if a FI [financial institution] uses that format they are protected from liability. The CFPB should do the same.”

Another commenter (a regulatory compliance officer for a servicer whose customers come primarily from a single state) shared this concern about “how much it costs to contract with a central processor.” This commenter reacted favorably to the idea of a standardized form based on experience with the mortgage statement s/he received personally (see above), but at the same time warned: “This would be another software change that would require more of an expense to financial institutions. The cost of these changes has to be made up in income, which would ultimately come as a charge to the consumer.” S/he concluded: “A small institution with 1-30 employees doesn’t have the resources available to make large systems changes.”

Commenters affiliated with larger servicers dismissed cost concerns. One argued: “If the current servicers can’t handle the financial burden, then maybe they need to sell their servicing portfolios to companies who ARE equipped to handle it. There are plenty of companies who can step up.” This commenter also believed the cost implications of reformatting were overstated: the system change necessary to create and send out a monthly periodic statement consisted of templates that could be produced cheaply by nearly any office program, such as Microsoft Office or the freeware OpenOffice suit. A commenter who is a member of an advocacy group concurred that small businesses have ample access to “inexpensive software programs.”

Commenters also disagreed about the risks of exempting small servicers. In response to one commenter’s question “Why would we allow someone not to tell me how much money I owe just because they’re a smaller company?” the commenter who is a regulatory compliance officer for a company whose clients are primarily from the same state wrote: “I don’t know if you have ever had an account with a smaller financial institution that knows your name when you walk in the door. ... My point is that in a small institution you will be able to speak with a person, either on the phone or face to face. They will always be reachable and in most cases you will be able to talk directly to the person who originated your loan. You would not get transferred 3 times and given the run-around that a large institution tends to do. ... Small banks and credit unions were not the dishonest ones who tried to pull the wool over consumers’ eyes in the first place.” S/he warned: “Requirements like these can regulate smaller banks and credit unions right out of business. Then your only option would be to use a Wells Fargo-type bank for your mortgage loan. Small, rural institutions know their customer base and always make themselves available.”

Other commenters assessed the risk differently. As with the coupon book issue, consumers who have had bad experiences with servicers opposed the exemption. One expressed concern that “[u]ltimately, entities for which the exception was not intended [will] find a way to exploit it.” Another argued that “since there is no fiduciary duty between the borrower and the servicer, the quality of service to the borrower is ‘voluntary’ at best. ... [U]nless a fiduciary duty is imposed there will always be bad behavior

... to the detriment of the borrower. Small servicers may (or may not) have a better relationship with the borrowers, but it is not by obligation.”

One commenter (self-identified as affiliated with an advocacy group), who also opposed a blanket exemption, proposed that small servicers “should be allowed to solicit their clients for waivers or alternatives to save money.”

Two commenters affiliated with large servicers emphasized the importance of equal treatment of all servicers. One of these, plus a third whose company’s customers come from all over the country and/or from foreign countries, rejected the idea that size is a good proxy for quality of service.

Unlike the others, this third commenter was more sympathetic to “the financial difficulties small servicers may face.” However, in his/her view, “there are options, e.g., subservicing, which can lower cost, improve service and comply with the proposed regulations.” This commenter explained the experience of his/her company:

“We work with financial institutions that service from 10 loans to 10,000 and the largest give as good and sometimes better service than the smallest. Most certainly the largest generally have more products to offer. I believe that most sophisticated financial institutions understand that the total potential relationship a borrower can bring is substantially greater than the value of the servicing strip. These relationships often develop and evolve over a period of time. If the financial institution does not meet the borrower’s service level expectations the borrower is more likely to go somewhere else for the other relationships including their next mortgage. Retaining mortgage customers is a critical component of managing the relationship.

“Depending on the assumptions as to size of loan, frequency of refinancing or purchasing, future economic position of the borrower, etc. we believe the value of the relationship today is worth 4-5x the value of the servicing strip. Earning this value is a very strong motivator that should result in great service. Not everyone believes in the value of the relationship, but I do not think belief is highly correlated with size. I am with a company that services mortgage loans. We have never sold servicing. One reason is simply that the value offered is generally around 20% of the value of the relationship. Another even more important reason is that we believe that you cannot both focus on the value of relationships and sell servicing. Buying and selling are transactions. Relationships are long term investments. None of the institutions we work with have ever sold servicing.”

Expressing the belief that “What the CFPB does will be very important to borrowers and service providers,” this commenter argued for a more restrictive version of the exemption: “Has the institution ever sold servicing? If it has it cannot qualify for exemption regardless of its size. I know of many small institutions that sell servicing. I have never seen a seller of servicing large or small that had a quality of service provided by a purchaser of the servicing as a requirement for sale. It has almost always been determined by the amount the purchaser would pay.”

Finally, one commenter (a banker whose clients are primarily from the local community) argued that the 1,000 loan cutoff is too low. “We are a SMALL community bank. Assets of about \$225 million. [But] we

service more than 1,000 loans” and so would not qualify as a small servicer. S/he did not suggest a specific alternative standard.

### ***Intersection with bankruptcy rules***

One consumer commenter responded at length to CFPB’s request for information about how the new proposals would intersect with Bankruptcy rules. S/he relied on personal experience to urge that CFPB ensure that borrowers who are in, or have completed, bankruptcy proceedings, be explicitly included in the class that is entitled to receive periodic statements:

“My partner developed cancer without medical insurance. This catastrophic event eventually led me into bankruptcy. My partner died 3 weeks before I received the Chapter 7 discharge. Three weeks AFTER the discharge, I signed permanent HAMP modification documents that lowered the payment on my house. Even though it is well over \$100,000 underwater, it is still my home and I want to keep it. My servicer honored the permanent agreement and I paid my mortgage every month for over a year with no issues.

“My servicer provided online access as well as monthly statements. The monthly statements have a disclaimer at the bottom that read: “Aurora Bank is a debt collector. Aurora Bank is attempting to collect a debt and any information obtained will be used for that purpose. However, if you are in bankruptcy or received a bankruptcy discharge of the debt, this communication is not an attempt to collect the debt against you personally, but is notice of a possible enforcement of the lien against the collateral property.” This statement protects the servicer against any automatic stay violations, it’s standard throughout the industry. I was lucky to receive a HAMP mod and was one of the success stories about HAMP.

“But suddenly Aurora closed, and the servicing rights went to a non-bank company [identified in another comment as Nationstar]. This is after over a year of success. The new servicer [has refused to provide statements, saying]: ‘It is our policy to deny online access to accounts and will not provide mortgage statements to anyone who has had a bankruptcy and did not reaffirm the loan ... Why did I not reaffirm? No bankruptcy judge would reaffirm a mortgage that was \$100,000 underwater at the time. The judges go out of their way to not approve reaffirmation agreements because it is not in the best interest of the debtor.’” In response to the moderator’s question about whether the new servicer was relying on the bankruptcy law itself, on a company policy, or on some combination, the commenter quoted the servicer’s written response to his/her complaint: ‘Please be advised that our records indicate that your account has gone through a bankruptcy that has been discharged. Please know that because of the discharge bankruptcy we will no longer send billing statements unless we receive an affirmation agreement. If you have any questions please contact our bankruptcy department.’” The commenter interprets this as “us[ing] the statements as leverage to obtain a reaffirmation.” The “complete and utter blackout of information on [the] loan” has prevented him/her from getting statements, web access to account information, and even information on interest paid for income tax purposes.

S/he urges CFPB to modify its proposal to address this problem: “[A] simple disclaimer is all the servicer needs for bankruptcy cases, and if the homeowner is asking, how could it possibly be a violation? The



rules you propose still do not protect bankruptcy cases because the servicer is not required to include a disclaimer so the bankrupt homeowner can keep getting statements. Same with online accounts.” S/he suggests that the final rule require that “the servicer shall make a good faith effort to help homeowners with bankruptcies stay in their homes by offering statements with the standard disclosure phrase. By accepting the terms of the online agreement and the monthly statement, the homeowner would agree that it is not a violation of the automatic stay.” “This is a simply fix for the CFPB without stepping on any BK [bankruptcy] rules.” S/he also argues that 11 USC § 524(j) authorizes communications like the periodic statement.

In response to a question from the moderator, the commenter agreed that some borrowers who have gone through bankruptcy and are walking away from the mortgage may not want to get statements. Therefore, the suggestion is framed so that borrowers should be entitled to request and receive statements and online access to account information.

This commenter added a subsequent update that, after submitting a formal complaint through CFPB, the servicer agreed to allow online access, but still refused to provide periodic statements “to preserve certain debt collection rights.” Also, the online access is very limited, compared to what his/her original servicer provided: “the online information is very rudimentary, not detailed enough to show year-to-date details. The statement area is blocked. This means the HAMP incentive accrual and disbursement is not shown and can not be tracked. Are they planning on keeping the HAMP incentives?” The servicer said it is continuing to investigate the case, but the commenter is frustrated that it is “spend[ing] time and resources negatively towards the homeowners rather than positively” and that s/he has no control over having to deal with this servicer.

### ***Greater levels of standardization***

Developing at greater length the idea (expressed by a commenter in the servicer transfer discussion) of a universal mortgage identifier, one commenter (a consumer who had personal or family experience with a mortgage being foreclosed) argued for use of a standard number consisting of the “4 letter original lender code followed by a dash then loan number.” This number would appear on the closing documents and “cannot be altered for the life of the loan.” Such an identifier would enable creation of a nationwide database that contained chain of title, liens, taxes, etc. (This commenter was highly critical of MERS [Mortgage Electronic Registration Systems]) The identifier would appear on the periodic statement and other documents. It could be used by bank investigators as well as borrowers to keep track of important loan documents and to discover and remedy mistaken and fraudulent charges.

## FOR ALL BORROWERS: ASKING FOR, AND GETTING, INFORMATION FINAL SUMMARY OF DISCUSSION

### *Oral information requests*

Commenters, particularly consumer commenters, were very negative about the proposal to require servicers to respond to oral requests for information – a somewhat surprising response unless starting assumptions about servicer motivation are taken into account. Almost everyone who commented on this proposal had a bad personal experience trying to get information from their servicer. Some of these stories appear in the Periodic Statement and Who is Servicing Your Loan? summary; here are others:

“I have tried ‘over the phone’ a lot. I have heard they have the original note at a time when they were not supposed to have it. I have heard ‘we don’t have the not’ when they were supposed to have it. Very simple questions such as the amount of reinstatement fees have gone unanswered over the phone. In hindsight I wish I would have recorded some of the phone conversations... It took my servicer about 70 days to send a printout with my [reinstatement] fees (not even half the fees were listed). The printout itemized the fees as: ‘ 625 “allowable fees” and \$ 750 “mediation fees” (we refused to mediate). Well if I was the servicer I would do anything to *not* give out such crappy itemization, too.” (Consumer who had personal or family experience having hard time making mortgage payments; household with income under \$100,000/yr)

“[P]rior to my foreclosure, calling the title co. [I was told] only four original loan pages could be retrieved to my loan. Both the local and corporate offices couldn’t find documents to my loan. It wasn’t until after foreclosure did I learn to contact the [D]epartment of [I]nsurance to file a complaint. It was then did I receive some specific loan documents requested. I later thought to ask how pages related to the loan application are transferred between the broker, loan originator, and title. I called title and was told that the only pages kept on file are per the lenders instructions and that they do not keep copies of loan applications on file. This was unfortunate to hear since that was not my question and title had already previously sent me copies of those pages.

The example may not be directly related to servicers but it was meant to demonstrate how a simple inquiring question could raise new questions as to whether the oral experience was a miscommunication or a deceptive practice. Unfortunately, I do not recommend this.” (Consumer with personal or family experience with foreclosure)

Commenters with bad experiences emphasized that, at least for companies who service but do not own the loan, there are no incentives to provide correct and detailed information to the borrower. One explained: “The servicer has a contract and a fiduciary duty to the *investor*. The borrower is an account the servicer manages on the behalf of the *investor*. So ‘customer service’ really is a misnomer, they do not view us as customers. They view us as accounts. ... [T]hey really do not care about anything except the revenue the account (you) provide... [T]he system is designed to bring more revenue to the servicer if the borrower is late or in default... So getting the servicer to provide information about the investor is like pulling teeth. The servicers guard this information because they do not want the borrower to tell the investor what is going on.”

From this perspective, allowing servicers to answer information requests over the phone is likely to increase miscommunication or encourage deceptive practices. Several commenters warned that consumers would be harmed by having nothing in writing to substantiate what they were told. As one wrote: “To rely on oral communication would be disastrous for homeowners. If I had not had everything in writing, I would not have the ability to take them to court.” Another (who self-identified as being involved in “foreclosure defense strategies”) agreed: “Oral testimony means zip. Zilch, nothing in the context of servicer abuse. Less than zero.”

In sum, these commenters viewed information requests in the context of borrowers’ attempting to uncover servicer ineptness or misbehavior, and so saw encouraging oral communication as ultimately weakening consumers’ position. Coming from their experiences, they tend to view CFPB’s proposals as not really empowering consumers, and as overly concerned with costs and burdens to servicers.

Consumers were not the only ones concerned about disputability of oral communications. A commenter who works for a federal credit union whose customers are mostly from the local community, said: “I am against having oral and written requests being treated equally. Written requests have, by their nature, a more formal stature and create a paper trail. An oral request will create a ‘he said, she said’ conflict.”

Some specific suggestions emerged, either to shore up oral communication practices, or as better alternatives:

1. Written confirmation. Two commenters (one a consumer who got or refinanced a mortgage in the past 10 years; one who works for a non-profit credit counseling organization) urged CFPB to require that servicers to confirm oral responses in writing, or at least to explicitly give borrowers the option of receiving such a confirmation. Also, the written follow-up when the servicer can’t answer the question immediately should restate the borrower’s request, not simply confirm that a request was made.
2. Online chat or posting forum. One commenter (self-identified as having worked for a servicer whose customers come from all over the country and/or from other countries) pointed out that “[m]any servicers, such as Bank of America, already have customer service available via chat through their website as well. Chat could be an option for customers who are weary of speaking to a representative over the phone and would like a record of the conversation.” Another (self-identified working in the mortgage industry as a forensic auditor for a company with customers from all over the country and/or other countries) suggested that the servicer’s website contain a “special link the borrower can [use] to request additional information or personal contact from the institution. The institution can use this individual posting board to communicate with the borrower, log comments and actions regarding borrower’s inquiry. This posting board or communication log should be fully accessible by the borrower with complete transparency.”
3. Online access. The solution most strongly urged by commenters was that consumers be given online access to relevant loan documents and account information. Considerable frustration was expressed that technology isn’t being used to solve the problem of quick and accurate access to borrowers “own” information when servicers kept these records in electronic form anyway.

There was a dispute about how readily servicers could provide such access given current business practices. The commenter who self-identified as a forensic auditor insisted that providing borrowers' access to account information that the servicer already maintained would be "relatively cost free" for the institution." The commenter who suggested online chat identified technical obstacles to giving consumers direct access to the servicers' client portal, but pointed out that servicers could "build the code & databases to allow borrowers to access this information via their consumer websites."

But, the commenter who works for a federal credit union serving the local community warned about differences in servicer technology: "As someone who has been in the industry for well over a quarter I can give some insight here. For a small to midsize lender the mortgages will often be stored on a system that is not connected in real time to your core processing system. This would prevent someone from being able to view their mortgage on their home banking page. It's not meant to be secretive but it is just a fact that different computer systems often do not communicate with each other."

### ***Proposed turnaround time for responding***

The technology issue also pervaded discussion of proposed time limits for responding to information requests: commenters insisted that the existence of electronic records should make possible much faster response times than proposed.

The commenter who proposed online chat and who self-identifies as having extensive experience with servicer technical systems, wrote: "What many people don't realize is that *all* customer service representatives (even those for 3rd party vendors such as Assurant & QBE First) have *at least* read-only access to all borrower information. In the case of a system like FIS/LPS, if a customer calls in asking for a complete history of their loan, it would take a a customer service rep a maximum of 1 minute (assuming the loan is very old and the rep is very new) for a representative to screenshot the SER\_ screen subsets (Services Performed), including SERN (C/S Notes), the HAZ\_ screen subsets (Hazard Insurance), ORI\_ (Loan Origination), or FOR\_(Foreclosure), etc. For example, if you call in asking for Foreclosure information, they can fax/email you a screenshot of the FOR1 and FOR3 screens along with a quick breakdown of what information to look for."

This commenter believes the proposed time periods ignore the state of technology in the industry, and points to the ability of banks and credit card companies rapidly to process debits and credits and provide customers with up-to-date account status and transaction information. "Why, then, when it comes to mortgages does it suddenly take a week, a month, or longer to provide [comparable] information?" Another commenter agreed: "As a previous servicer of accounts, the timeframes in which the servicer has to respond are *very* generous, almost too generous; really this information is not that hard to provide especially if it is given verbally; written notices to the consumer would take longer."

Some commenters recounted experiences that led them to conclude that servicers would take advantage of all opportunities to delay responding. These are included in the next section.

### ***The exception for "overbroad or unduly burdensome" requests***

The proposal that servicers could refuse to respond to requests as overbroad or unduly burdensome drew a lot of critical comment from commenters whose experiences with information requests led them to believe that servicers would abuse regulatory exceptions to deny legitimate requests:

“I asked who did the drive-by inspections of my home, that my account was being billed for, *after* my home sold. The bank informed me this information was proprietary. [Eventually the commenter received a check for the contested amount but with no explanation.] When I asked JPMC why they mailed me a check dated ... for the amount of.... and the check cover page even had a bar code and a check a number, Chase responded with: ‘Chase does not have a record of the letter you are referring to in regards to refund of fees’ ”(consumer with personal or family experience with foreclosure)

“The servicer already uses the ‘overly broad’ argument. While some of my QWR questions were answered more than once, other very relevant questions where not. Why is the request for the name of the trust overly broad? Why is it overly broad to ask for a copy of the loan with endorsements? Why is it overly broad to ask for the itemization of nearly \$ 5000 in reinstatement fees that accrued in 11 days? My servicer refuses to answer these questions, saying they are overly broad. I think these questions were very precise. It took my servicer 62 business days to deny answering these questions.” (consumer with personal or family experience having a hard time making mortgage payment, in a household making less than \$100,000/yr)

“Prior to my foreclosure, a third party (under RESPA) was hired to send out a QWR; it consisted of six pages sent certified on 4-19-2009 requesting documents to which I never would have known I had any rights to. The servicer replied on 08-10-2009... enclosing the Adjustable Rate Note and Mortgage but the remaining request were internal business records and did not need to be furnished under RESPA 12 USC section 2506 (e)(1)(A). ... The servicer in the same response letter stated that they had nothing to do with the loans origination and that they were not affiliated with the original lender. The servicer included a contact address and phone number to where the loan originator could be reached. When [I tried] to contact the original lender, the phone was disconnected and a letter was returned labeled rejected.

“What I found out later at the Security Exchange Commission website was the bankruptcy purchase agreement between the loan servicer and my bankrupt loan originator. It described my servicer purchased the loan originators servicing rights, business assets, and the actual building to the contact address they provided to me in letter. ... Notice the four months it took for the servicer to respond. I did not receive an account history until after foreclosure, and after filing a complaint with Department of Corporations. I don’t see how a servicer who purchases servicing rights, the building, and assets can inform a consumer to contact a defunct originator in which they know is no longer present. The joke was on me and the servicer had to be aware of it. ...

My last letter from the servicer wrote back. ‘Pursuant to 12 USC 2605 sec(e), the information that may be obtained on a loan under a QWR is specifically limited to information relating to the servicing of such loan... includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by

the borrower.’ I challenged the ‘other information sought by the borrower’ trying to gain access to original documents in relation to my loan. My servicer says they do not intend to waive their rights to other various documents sought by the borrower. So, access to original loan approval documents are impossible to access since the loan originator is no longer in business.” (consumer with personal or family experience with foreclosure)

Again, the fundamental debate is about initial assumptions. As one commenter explained, “The [CFPB’s] assumption is that the servicer is honest so the rules are proposed this way.” But for commenters who have had bad experiences trying to get information, the initial assumption is (in the words of the same commenter) that “servicers can and will use any weapon that the CPFH hands them.” Commenters were concerned that allowing for generally-worded exceptions interpreted by the servicer will undermine consumers’ right to information. One commenter, self-identified as a “credit attorney,” concluded: “Terms like ‘unreasonable volume of documents’ or ‘unduly burdensome’ or ‘unreasonable costs’ without specific definitions will foster a virtual loop hole for servicers so avoid responding to consumer requests for information by simply making a subjective decision that the consumer’s request is ‘unreasonable’ ‘overburdensome’ etc. Once again it leaves the consumer without any real teeth to get results.”

Another commenter worried that “the proposed clause for information it can’t get from its records in the ‘ordinary course of business’ with ‘reasonable efforts’ is downright inviting fraud. They need the original promissory note with endorsements or allonge to assign it when the loan is transferred. When they obtain it, it should not be very hard to make a copy, right? Since the ordinary course of their business has become robo-signing, it makes it even easier to deny the request of a copy of the endorsed note.” S/he also warned that the ‘not directly related to the account’ ... exclusion would give them [the] right to hide fees from their affiliates. That could make the game of inflated maintenance fees in foreclosure, force placed insurance, unearned kickback fees, attorney’s fees a whole new chance. If a servicer charges these fees, they should know what they are for and have no problem of disclosing.”

The technology issue was important here as well. Commenters argued that since servicers keep records electronically, retrieving the borrowers’ account information and loan documents should not be burdensome. “Most information that consumers ask for or need are just a few keystrokes away for the servicer, but they make it difficult if not impossible for consumers to access that information.” Several commenters complained that their requests for information yielded very general responses – either totals without itemization, or general assurances that charges and payments processing were correct. Commenters had to make further requests for details, and even these were sometimes ignored or refused on grounds of burdensomeness, etc. even though, they believed, the information must be available in the servicer’s system.

The commenter who self-identified as working on “foreclosure defense strategies” pointed out: “I believe the intent of the consumer is to retrieve all internal comments (servicer, bank, GSE, Trust Documents and any other miscellaneous information as any other clear and transparent Discovery would uncover; electronic or written). All of this information belongs to the consumer.” Another commenter asked “Why are your leaving it up to the servicer to determine if the information being

requested in 'unreasonable' and urged that CFPB create a list of kinds of information and documents to which borrowers have a right: "It is time to make a list and determine what is 'reasonable' information and what is not, with specific questions, or this is useless." (This same commenter also advocated for more details on the Periodic Statement, which s/he believes could make many information requests unnecessary.)

### ***When does a request become untimely?***

Three commenters expressed particular concern about relieving servicers from responding to information requests more than one year after servicing rights had been transferred or the loan paid off.

The same commenter who proposed using chat rooms was concerned about how this limit would harm borrowers when servicing rights had been sold: "If the CFPB gives the servicers a pass on not giving information more than a year after a servicing transfer, it is *imperative* that the rules for a full information servicing transfer are solid and enforced. ... Loss of information between 2 banks [through] no fault [of] the borrower should never be allowed, and it happens all too often in the current environment."

The commenter who is credit attorney agreed that "the limitation of 1 year after loan was transferred or paid off is too short of a period of time." S/he explained why and suggested an alternative: "Currently, many consumers are not made aware of the error until they seek to buy a new home oftentimes many years later. The credit reporting of the mortgage loan is often done so with errors such as a reported "foreclosure" or "paid for less than full balance" or "settled" when that may not be the case. It may be several years before the consumer is made aware of the error. Many regulated industries require entities to maintain records for 7 years. Why not allow the consumer 7 years to request information? This would be consistent with the time period for credit reporting of most inaccurate credit items."

A consumer commenter (with personal or family experience with foreclosure) agreed, saying that, given history in this area, requiring servicer responsiveness for more than 1 year is just "common sense."

### ***Question for CFPB about intersection with Fair Credit Practices Act***

One commenter raised questions about whether a servicer could use its status as a "debt collector" to resist information requests: "After the borrower from frustration gives up and enters into default, the servicer just calls themselves a debt collector. Has the CFPB considered these rules in connection to the Fair Debt Collection Practices Act since the servicer is now calling itself a debt collector? ... The Fair Debt Collection Practices Act does seem to provide added protection for borrowers. But I'm concerned when the servicer becomes a debt collector. At the time I wasn't in default my servicer already classed itself as a debt collector. As shown in this video. <http://www.youtube.com/watch?v=4UIbjkkv7iE> What is the need for a servicer to class itself as a debt collector? I see added conflicts just by allowing the servicer to create another entity when the foreclosure sale date hasn't even occurred? By becoming a debt collector doesn't this allow the servicer to decide which and at what time the laws are applicable to them?"

## **FOR ALL BORROWERS: GETTING ERRORS FIXED FINAL SUMMARY OF DISCUSSION**

### ***Need for proposal; other “covered errors”***

Two commenters talked about experiences that would fall within the proposed list of covered errors; a third recounted problems that led him/her to suggest an additional covered error.

One commenter (consumer who got, or refinanced, a mortgage in the past 10 years) had problems with proper payment crediting after a servicing transfer.

“I recently [refinanced] a mortgage through a small firm in Charlotte, NC. They informed me that my mortgage would be sold. During the waiting period, I had to make payments to them and the payments were recorded correctly without any problem. Approximately 30 days ago, I received a letter from Citi that they bought my mortgage. The balance stated was wrong as I had made extra principle payments. I then received a statement from them and the history of the account was totally blank other than one payment. I have called Citi and talked with Supervisors in their Tuscon office. I was informed that it was my problem and I should have not made the payments to the Charlotte Company. It is my understanding from the Citi letter that any payment made before 9/1/12, the payment was to go to the Charlotte Company. Looking at my mortgage balance on the Citi website, Citi is showing a mortgage balance of close to \$10,000 more than what is owed. I have even faxed them the history from the Charlotte Company for them to check and review the problem. Nothing has been done. No phone calls, no email, no acknowledgement by Citi of the reported problem. In today’s world where banks can post transactions daily, provide ACH transfers, allow high frequency trading, why is it so hard for someone at Citi to pick up the phone and resolve this issue. The system is broken....”

The second (also a consumer who got or refinanced a mortgage in the past 10 years) recounted an escrow problem: “Bank of America let my homeowners’ insurance lapse — despite collecting the money, and my forwarding 3 notices that the insurance would be, and then was being cancelled for non-payment. After it was cancelled, B of A said that I would have to pay to reinstate, and they would eventually reimburse me.” This commenter argues that there should be a penalty imposed for this error. (S/he also argues that lenders should be prohibited from requiring an escrow cushion, a practice that amounts in his/her view to “an interest free loan to the servicer for the life of the loan.”)

The third commenter (consumer who had a personal or family experience with foreclosure) detailed a dispute with a servicer over calculations in a complicated adjustable rate mortgage formula. S/he reported that the “customer service representatives are quite clearly trained to argue with the consumer” and “are not forthcoming with the fact that Green Tree will only act on disputes when they are submitted in writing, to a fax number that is not published on its website or its mortgage statements.” S/he concluded that their practice was “to deflect and obfuscate any attempt by their customers to obtain response to a concern, and to act by the letter of the law and not its spirit.” Therefore, this commenter supported the proposed rules. In addition, s/he “would be happy to see another error added to better address interest rate disputes.” “My experience is that a mortgage servicer will seek to interpret an ARM’s language to its greatest benefit. One way this is done, in my experience, is to incorrectly calculate an interest rate at a change date.”



***“Reasonable investigation”?***

One commenter (self-identified as a “credit attorney”) expressed concern about lack of a definition for “reasonable investigation”: “Consumers are already challenged in their efforts to get the credit reporting agencies to resolve errors on their credit report. One of the main reasons for this is the failure of the Fair Credit Reporting Act to define ‘reasonable investigation.’ I would hate to see the same problem repeated in the rule making for mortgage servicers. I believe it would be beneficial for the new rules to provide a minimum definition of ‘reasonable investigation’ so there is no room for ambiguity or conflicting expectations.”

***Different rule for small servicers?***

One commenter (self-identified as having worked for the mortgage servicing industry in the past for a company whose customers come from across the country and/or from other countries) opposed different rules for servicers based on size: “It is not a borrower’s responsibility to judge the size of the company servicing them.” S/he was also concerned that a small servicer exception “will be used as a loophole for the larger banks to create subsidiaries and exploit these, much like they do with taxes. If a company in any industry can’t handle the costs of that industry, then they have no business being in that industry. If there ends up not being enough servicers to service the loans, then that’s something the investors need to look at. From my perspective, you’re trying to fix the effects rather than the cause.

## FOR ALL BORROWERS: ADJUSTABLE RATE MORTGAGES FINAL SUMMARY OF DISCUSSION

### *The underlying problem*

As in the Options for Avoiding Foreclosure discussion, a theme in comments here was that, while disclosure is important and generally supported by commenters, there are underlying problems that the proposed rule doesn't address. One commenter, self-identified as a consumer who was laid off and was currently disabled, who got or refinanced a mortgage in the past 10 years, and who "currently rents out the house they own while living with family," urged CFPB also to ensure that consumers conduct a "reality check" before committing to an ARM:

"I suspect that many people who take out an ARM do not fully consider the risk of future rate increases. Especially with the currently low rates (and potential for higher long-term inflation), ideally a prospective customer should perform a 'stress-test' on their own financial situation, and ask realistically could they afford the loan if rates climb in the long term, and specifically how they would accomplish this. An alert is nice, but the options are far greater before the agreement is signed.

"Therefore, my recommendation would be to put equal—or greater—emphasis on clear communication and discussions of options before the loans are signed, with a focus on worst-case increases. e.g. 'If rates do climb substantially, and your ARM rate goes to its highest allowed level of \_\_X%\_\_, your monthly payment would be \_\_\$xx,xxx\_\_. In that scenario of higher rates (and likely higher inflation), what would you have to do to ensure you can still make payments?' Even if the prospective customer doesn't provide an answer to the loan officer, that might trigger some very useful discussions among spouses, co-signers, etc. ...

"Another way to make prospective customers more aware of the risks would be to ask 'Assuming your loan payments do increase steadily if rates rise, at what level (of monthly payment dollars) would you need to either sell the house, allow foreclosure, or request modification of terms?' (i.e. how much of an increase could you really afford.) Requiring a prospective borrower do the math might be a useful reality check – even if the person fudges the numbers, at least the issue will have been implanted in their head."

Another commenter (consumer who got or refinanced a mortgage in the past 10 years) similarly focused on alerting borrowers earlier to the real risks:

"When our family went through this, the people representing the lender told us: 'don't worry about ARM's, you can always refinance later.' Of course, once the collapse hit, refinancing became not an option for many. The wording should specifically say something like: 'WARNING: you may not be able to refinance later, so you should expect to have to make the higher rate payments later.' "

A third, who made the comment about "streamlining" the notice forms, and who "strongly support[ed] the concept of advanced notice on the 'price shock,'" concurred: "presenting the critical information upfront, in a standard form single page 10-12 point font that emphasizes the reality of the financial

agreement they are being presented with” is what would have the “real practical force and effect.” S/he urged that it should contain information such as “[Y]our mortgage will increase if you pay only x.”

### ***Specific suggestions about the proposed model notice***

One commenter (consumer who got, or refinanced, a mortgage in the past 10 years and who has had, or someone in their family has had, a hard time making mortgage payments) commented that it was “about time something is done to reign in these servicers;” the proposed regulations are “a good start.”

In terms of specifics:

One commenter (consumer who got or refinanced a mortgage in the past 10 years, had personal or family experience with foreclosure, in a household making less than \$100,000/yr), said he hoped the sample form is “a working draft” and that CFPB should “[k]eep working towards streamlin[ing].” S/he would like to see a “matrix/table form that presents the information that the consumer cares about most” – in his/her view, as arranged by “priority”:

1. Table 1: “how much” the rate would increase, “how soon” the rate would take effect, the present balance of the loan, and “1-2 scenarios for principle balance after next successful payment.”
2. Table 2: the “rate benchmark,” “past/present/projected rates,” and “cost differential for the monthly payment based on the current vs. projected rate”
3. Third priority: “All the background and explanations.”

Another commenter (consumer who got, or refinanced a mortgage in the past 10 years and has had personal or family experience with foreclosure) thought the form was “a great start,” but suggested:

1. Bold “the items that propose the Alternatives i.e. refinance modification etc. ... because they are important options.”
2. Referring consumers to additional resources, specifically, reminders “that there are various websites, such as bankrate.com that can give them information about prevailing rates” and “putting a representative picture of a posted LIBOR rate from wsj [Wall Street Journal].”

### ***Timing of notice***

A commenter who works for a credit union whose customers are mostly from the local community warned: “It would be impossible to give a 60 day notice on a rate change, when the index you use is supposed to be 45 days prior to the change date, as written in the original note signed by the borrower.”

The commenter who made the suggestions about amending the notice to bold the “Alternatives” text and include resources on prevailing rates was concerned whether notice 2-4 months in advance of the adjustment was really enough time for a borrower to sell their home. S/he queried whether it was possible to give a total of 6 months before the increase takes affect if the borrower is trying to sell.

## **FOR BORROWERS IN TROUBLE: “EARLY INTERVENTION” HELP FINAL SUMMARY OF DISCUSSION**

### ***Need for proposal; possibly, earlier trigger for requiring servicer attention***

One commenter (consumer who got or refinanced a mortgage in the past 10 years) told of her experience:

We were able to salvage our loan six years ago, but unanswered phone calls, lack of replies to mailing and requests for assistance plunged us deeper and deeper into debt. ... At the beginning of our struggle all we wanted was to convert our option ARM loan to a 30 year fixed at a lower interest. Our calls were ignored for months and we were transferred to one person after another, each time we had to begin again with our explanation and information! When at last we had to get another loan to avoid the continuing financial slide, Countrywide sends us e-mails telling us what a good customer we were and offering us a 30 year fixed rate. Too little...too late.

Another (self-identified as “consumer who was in the early stage of the financial crisis and all in all ended with short sale”) recounted his/her experience, implying that borrowers should not have to miss a payment in order to initiate discussions about loan modifications: “What do you do when all you wanted was a loan modification and Chase would not discuss/negotiate with us until we were behind in our payments, and the attorney we hired to help us told us we had to stop making payment before they could do anything?” (This same frustration appeared in stories told in discussion of other CFPB proposals.)

### ***Recurring themes***

Two themes that can be found in other summaries appeared in this discussion of this proposal. The first is enforcement. One consumer commenter (who has had personal or family experience having a hard time making mortgage payments) wrote: “You can advise all you want, but without enforcement, nothing will occur. My bank is completely nonaccountable. They advertise that they are though.” The second is using technology better to solve or avoid problems. Comments on this theme are described in the next section.

### ***Mechanics of required notice and concerns of small servicers***

As commenters discussed the details of the proposed notice, tensions emerged between those advocating additional outreach requirements and small servicers concerned about cost and allocation of responsibility. As one commenter working for a servicer whose customers are mostly from the local community put it, “These rules will be tough on a small lending firm. The consumer needs to take responsibility for his actions.”

1. Phone calls: One commenter (self-identified as having worked for the mortgage servicing industry in the past for a company whose customers come from across the country and/or from other countries) queried how the proposed 3-try standard would apply if “on the first call, the lender finds out the phone is disconnected or they have a wrong number.” S/he suggested that CFPB consider mirroring the Fair Debt Collection Act approach).

Another commenter (mortgage originator whose company's customers are from all over the country and/or other countries) pointed out that existing automated call technology makes it possible to call a number "every day, 10 times a day if you want...until you make a connection." This commenter strongly agreed with the importance of making personal contact: "8 out of 10 [times] I was able to find the underlying issue the client is having; was able to express my motivation to help them resolve the issue; [and] was able to rebuild the confidence and relationship with that client."

## 2. Email and Texting:

The same commenter who suggested the Fair Debt Collection Act approach urged that emails and text messages be used in addition to (but should not replace) phone calls. S/he suggested that "a great customer service option" would be allowing the borrower to opt in to text messaging: e.g., "Your mortgage payment is now due. Payment must be received by (insert last day of grace period) to avoid any late fees or collection efforts. If you are unable to make your payment, please contact (servicer's name) at (servicer's phone #) for alternative options."

This commenter also proposed: "[I]f the loan servicer has an email address available, after the 3 phone calls, they should be required to try 3 emails."

This suggestion got a very negative response from one industry commenter (regulatory compliance officer whose company's customers are mostly from a single state):

"Let's be realistic here, the borrower needs to take some responsibility since they should know they are delinquent on their loan. I think three phone calls on three separate days is more than a good faith effort. If the consumer fails to notify the bank that they changed their phone number, it once again points to the negligence of the consumer. These rules are so restrictive that new systems and staff training has to be implemented. This is going to drive up the costs and fees associated with getting a mortgage in the first place.

One phone call or contact of some sort should be more than enough effort on the lender's side. The consumer knows they are delinquent and needs to take some responsibility for their actions."

Another commenter (consumer whose household makes less than \$100,000/yr) added:

"Maybe the answer is to have the consumer set up their account with an email alert. Most of the larger servicers offer internet access to your account, so set up the alert. If this is left to the servicer to send emails, I can just see the next round. Say a couple gets divorced, the servicer only has the wife's email address, she is not happy doesn't inform husband who is living in the house. Husband sues servicer for no contact via email. We all need to take a deep breath and realize that the consumer has to take some responsibility here. If you know your house payment is due and the 1st and you don't pay it – you're late! And don't forget not everyone has a computer or cares to get one, what to do about them, at least sending a notice in writing is keeping the postal service somewhat alive."

The commenter who originally made the suggestion responded that the cost of email is very low and that “loan servicing software already produces delinquency reports” which could trigger a template email.

A consumer commenter (got or refinanced a mortgage in past 10 year; personal or family experience having a hard time making payments; household makes less than \$100,000 yr) reacted to the interchange: “Although some of these regulations are burdensome, email notification and communication is paramount in this age. My servicer does not allow me to communicate via email which makes record keeping difficult for me – unilateral for them since the conversations are recorded.”

Part of the more general theme of using technology better to reduce problems in mortgage servicing, this commenter continued:

“My comment about email is a more a general one, that it should be a required form of communication due to the prolific use of email at this time. Not sure of the cost but I imagine that most correspondence is boiler plate. Sending an email is less expensive than postal mail. I think our laws lag in this area due to the alleged strain it would put on customer service departments. In my opinion most organizations have divested in this area and consumers experience huge gaps in this area.”

3. Other loans. The commenter who urged the use of email and texting also suggested that “if a borrower has a HELOC, 2nd mortgage, or is listed as a co-borrower any other property, they should all be considered together at the time of the initial call. These accounts should all be linked so that a borrower facing default on 3 loans for the same property is not overwhelmed, confused, etc.”

4. Ensuring coordination around LMO status: This same commenter urged that “servicing systems need to be updated (or c/s [customer service] reps trained) to ensure that once a borrower accepts a loss mitigation option, these notification options are properly updated. For example, there’s no need to keep calling someone to say their payment is late if they’ve already begun the forbearance process, the loan term change should update the contact dates, etc.”

The small-servicer commenter who had disagreed about additional outreach requirements did agree with this suggestion.

### ***Follow-up written notice***

One consumer commenter (got or refinanced a mortgage in past 10 year; personal or family experience having a hard time making payments; household makes less than \$100,000/yr) reiterated warnings that appear elsewhere in the larger discussion about the importance of a written record: “Phone calls are great but in my experience, the caller does not document accounts thoroughly if at all. All correspondence regarding past due mortgages should be in writing via email or letter. It should be dated and time stamped and posted to view by both parties on the customer’s account. Everything would be there in black and white.”

The commenter who urged use of email and text messaging felt that the proposed model notices “are as clear as they can be” (although s/he expressed skepticism that about borrowers’ understanding them

and emphasized that “the biggest thing is to ensure [borrowers] know who they can contact and make sure the c/s reps are fully trained on proper options and disclosures.”) This commenter continued: “I would definitely recommend that a written notice of confirmation is sent to the borrower for any changes made to their account as well. While it may not fully assist them, and they may choose to ignore the letters, it will help an attorney in discovering useful foreclosure defense information if it gets to that point.” S/he reiterated that the technology for generating individualized letters from templates is “built into loan servicing software suites.”

## **FOR BORROWERS IN TROUBLE: RELIABLE CONTACT WITH PEOPLE WHO CAN HELP FINAL SUMMARY OF DISCUSSION**

### ***Stories of consumer frustration***

Most of the comment on this proposal was from consumers recounting their frustrating personal experiences:

“Hearing someone tell you over the phone that they can’t find a document that you delivered over and over again is about the most frustrating and alienating and helpless shady experience I had while trying to short sale my home. My continual & repeated efforts where futile and inefficient.” (Consumer with personal or family experience with foreclosure in a household making less than \$100,000/yr)

“If someone were available consistently and knew what to do and how to help, it would relieve stress, mental anguish and perhaps solve the problem before needing other intervention... I can’t tell you, but have documented the almost daily calls that require me to repeat the same information then am told that someone else from another department will be in touch because the caller is not the right office... Continuity of contact is a good start.” (Consumer who themselves, or someone in their family, had a hard time making mortgage payments; household making less than \$100,000/yr)

“I’ve been working with my mortgage loan servicer for 9 months now trying to get a modification. I’ve had 4 different customer relationship managers and have always gotten voice mail every time I called. Occasionally I would get a call back but usually not. And why do they not accept documents electronically? I have faxed and “fed-exed” my documents numerous times and each time they claim they did not receive them, even though I have fax confirmations and tracked the Fed-ex package to make sure it was delivered. I am completely frustrated with the whole process.” (Consumer who themselves, or someone in their family, had a hard time making mortgage payments; household making less than \$100,000/yr)

“I have had over 8 different contact people with my mortgage company in the past 9 months. And these were just the people I dealt with after my application was escalated to the president’s office. The only answer I would get was that my modification was still in review. The last conversation with them was 8/31/12 when they said it was still under review. I just received a letter from my mortgage company stating that my loan was sent to a servicing company and that I would have to deal with them directly with my modification. 9 months of stall tactics and waiting for a response. I gave them all the information they needed but they didn’t act on it. Now I will have to begin the whole procedure all over again with another company. That is if they don’t just foreclose on me.” (Consumer who themselves, or someone in their family, had a hard time making mortgage payments; household making less than \$100,000/yr)

Sometimes, commenters’ experience revealed how customer service problems can become hopelessly intertwined with questions about substantive availability of a loan modification option:



"I have been trying to get my payments lowered and keep sending and resending paperwork now I have been informed that there is nothing that can be done. My partner had to borrow against her 401K plan in order to get our mortgage caught up; now we have been informed that our payment will be increased from 2016.26 to 2510...." When the moderator asked whether it was "problems with the customer service not receiving your paperwork that led to the decision to not lower your payment" the commenter responded: "The problem with paperwork was that they never told us what we were supposed to sign and they made us send everything in at least 4 times. Then when we got it all sent in they informed us that they did not hold the mortgage but it was held by another holding company. Then they said that they were allowed to have the mortgage set at approximately 31% of our income and they are supposedly lower than that so there was nothing they could or would do. They kept giving us a run around and playing telephone tag. But they would not call back when you called them. It just seems that since we make about \$90,000 a year we are just stuck with the payments since we want to keep the house." (Consumer who themselves, or someone in their family, had a hard time making mortgage payments; household making less than \$100,000/yr)

"[M]y husband and I ... had multiple circumstances causing financial issues, we request a loan mod. and the lender and attorney we hired said the lender will not even begin to negotiate with us until we were behind on our mortgage, something we were not. Long story short, ... I am 1 year out of short sale and started the whole this in 2007 and due to all the non-contact and screwups we just finalized it Sept, 2011. .... I have stacks of documents showing they lost my paperwork; some comments are: they cannot find it; then, it's been given to collections, which there was no reason for that; then every other time they would misplace "lose" my documents, then switch people and they lose it. I have the conversations where the realtor and the rep at the bank tell each other they lost my stuff; also the documentation and notes from the attorney [where] they marked down ...times that there is a hold up due to misplaced papers..." (Consumer who self-identified as "was in the early stage of a financial crisis and all in all ended with short sale")

In other instances, it appears that inability to communicate with knowledgeable personnel and problems with lost documents aggravated a situation where the borrower simply didn't qualify for a modification that improved his/her situation:

"We also cannot get the mortgage co. to assist us in any way. We were late in the past due to a significant medical event. The bank nearly foreclosed, then modified, raising our payment. We are now underwater. And the payment is so large, we can barely pay our other creditors. We can't move, because we can't pay the deficiency balance on the house in our state of MD. All we are told by the bank is there is nothing available to help us. My spouse, who had the medical issue, is working himself to death to meet the obligation. It's a horrible situation, at 6.25% interest!" (Consumer who themselves, or someone in their family, had a hard time making mortgage payments.

In addition to stories of frustration, commenters did make some specific suggestions.

### ***Online document submission and tracking***

Two consumer commenters and one commenter who works for nonprofit credit counseling organization urged CFPB to require servicers to provide borrowers with a checklist of documents that are required to apply for the servicer's loss mitigation options, and to create an electronic interface where borrowers can upload documents and track due dates, documents received, and documents outstanding.

One consumer emphasized the value of enabling the borrower "to see the same documents that the servicer can see" and explained: "Hearing someone tell you over the phones that they can't find a document that you delivered over and over again is about the most frustrating and alienating and helpless shady experience I had while trying to short sale me home. My continual and repeated efforts were futile and inefficient." The other explained: "Right now I am at the mercy of the customer relations manager. It's a 'he said-she said' battle because I have sent documents, but they say they didn't get them. Even though I have fax confirmations and fed-ex tracking numbers that show delivery, I can't prove what documents were delivered."

The credit counseling commenter pointed out that a system currently exists "by which housing counselors can upload documents electronically to many of the major servicers" and that "GMAC Mortgage has just started allowing homeowners to upload their own docs. See the website: <http://www.homeownerconnects.org>"

### ***Streamlining the process for communication between servicer and consumer***

Another commenter affiliated with credit counseling advocacy group emphasized that not only does the assigned single point of contact "need[] to be cross-trained to provide real and accurate answers," but also communication to the consumer from other sources has to be controlled:

"[O]ften times even though a SPOC [single point of contact] exists, other account reps from various departments at the same servicer (or affiliated attorney) continue to contact or send letters to the client which confuses them as to which documents have been received, what needs to be provided, and what the status is. For example, a client was approved for a trial mod but after signing and returning her documents, she received a notice from another department stating that she needed to provide documents for an approval. Then when she called that department the account manager said they didn't receive the documents that she had signed and overnighted to them, and had no notes regarding the approval. At that time I told her to contact her SPOC (which had changed again) and verify that everything had been received and approved... it had. It was an internal error which caused more stress on the client, and I have witnessed it happening many times to many clients."

This commenter suggested that servicers be required to make the SPOC the single channel for all communications with clients (and the housing counselors helping them).

### ***Contact with underwriters***

This same commenter also emphasized the importance of the SPOC having "direct contact with underwriters (in order to eliminate rejections based on correctable errors or missing information)." S/he went further to suggest: "It would be ideal if housing counselors were able to have direct

communication with underwriters and eliminate the third person in between which would also be more cost effective due to a reduction in communication problems, time, and the amount of re-dos because of inaccurate rejection issues.”

When the moderator asked about whether direct access to underwriters might overwhelm the servicers and further delay modification requests, this commenter responded:

“I am concerned about underwriters being overwhelmed by calls from clients and understand how difficult it is to constantly be interrupted while trying to review detailed information. However, the reps also interrupt the underwriters to find out information for clients and counselors so it wastes time adding a 3rd person to the mix when the information at hand is critical to the decision making process. I don’t think the average turn around time for evaluation decisions is accurate. Because of the barrier in communication, many clients are being denied due to forgetting to fill something in or check a box when the underwriter could simply call and say, “can you check the box and fax it back in to me, or can you explain... or send me xyz document?” so they are able to accurately complete the evaluation. Instead, clients must re-apply from the beginning which wastes time that could be spent on new client applications, and prolongs the foreclosure process. My suggestion would be for clients to have a SPOC for both inbound and outbound communication, and for the housing counselors to have direct contact with underwriters with the understanding that housing counselors will be contacted for any needed information or decisions *before* client files are closed in order to avoid declines based upon missing information, misunderstandings, or the reasons stated previously.”

The moderator pressed the commenter, asking whether “lenders [would] be concerned that, by flagging open items, an underwriter might compromise the independence of the review process, even if inadvertently? How would the underwriter be comfortable, for example, that a borrower isn’t checking a box to get approval when, in fact, the original application was more accurate? As an alternative, would it make sense for housing counselors to review materials for accuracy and completeness (i.e., check the box, if appropriate) before submission?” The commenter drew on his/her experience in responding:

I understand the lender/servicer’s fears that the integrity or independence of a review may be compromised by the coaching of clients by their underwriters; however, ... I doubt it would be an issue as the underwriters are working for the servicers, not the clients; so underwriters would have no incentive to coach clients. What I was implying was for underwriters to follow up and ask questions or confirm obvious small mistakes that are made before simply denying a modification. Yes, in a perfect world housing counselors would catch all errors, but aside from the fact that we are also human and miss things from time to time ourselves, and that every servicer has slightly different requirements; often times clients submit paperwork before seeking the aid of a housing counselor so we are coming in during the middle of the process. Examples of avoidable denials based upon obvious errors which could have been corrected: A client was denied due to an obvious miscalculation in the expense column of her RMA; another client was denied because although she wrote a detailed explanation of her hardship, she did not check the hardship box.”

## **FOR BORROWERS IN TROUBLE: OPTIONS FOR AVOIDING FORECLOSURE FINAL SUMMARY OF DISCUSSION**

### ***Calls for regulating the terms on which LMOs are offered***

As in the Adjustable Rate Mortgage discussion, a theme in comments here was that, while disclosure is important and generally supported by commenters, there are underlying problems that the proposed rule doesn't address.

Many commenters complained about what they considered substantively unreasonable or discriminatory behavior in making loan modification decisions. As one consumer commenter put it: "What is being proposed is that we continue to allow the 'fox in the hen house' making their own decisions on who gets a modification or gets foreclosed." (It was not always clear whether the complained-of behavior was actually authorized by the owner of the mortgage. This problem is covered in the next section.)

One commenter (consumer with personal or family experience with foreclosure) recounted his/her experience:

"From 2001-2009 I made all my payments on time. In early 2009 I asked for a 3 month deferment on the payments while awaiting my disability to go through and payments to begin. I was then told I qualified for a "loan modification" and that it would reduce my payments and interest rate and make them more affordable. I was advised not to send any payments during the modification. The bank would not accept them. They would let me know when to start making payments again. ... In 2009 and 2010 I was put on temporary payment programs. I made all the payments on time. For six months they were elevated payments and [I] made all the elevated payments on time. Then back to the modification process and no payments accepted again by the bank. In June the modification process was closed because I could not furnish a letter from SS [Social Security] on how long I would be on disability. That's like asking someone how long do you plan on being employed at your job. There is no timeline I told them. Social Security's answer with regards to this is "indefinite." I am on it till I get well, which doesn't look anytime soon. I sent them a Dr. note outlining a time frame as much as possible. That's all I can get to do so. I am now over \$45,000 in debt over a three-month deferment and am in imminent threat of losing my home."

Another consumer (personal or family experience with foreclosure, whose household income is less than \$100,000/yr) recounted his/her experience:

"I bought my home in 2005 and took out a fixed rate loan. I put \$100,000 down and in 2005 it was worth \$267,000.00. Now it is worth \$144,000.00. [The commenter had started his/her own business, a title company, the year before buying.] In 2007, when the market tanked, we were able to stay afloat for 3 years. During this time period, we were on the equity acceleration program and were making 2 payments a month. We were attempting to get the loan paid off as quickly as possible. In 2009, I closed my company due to a lack of business. I was lucky to get a job a month after I closed the company and started making payments again. I was only behind on my mortgage 2 months. I tried to work with Chase later in 2010 to see if I could get the 2 months added to the back of the loan and was told that I could

not afford the home. I told the rep that I was and had been making the payment. I am losing my home this year simply because the servicers of the loan would not work with me. I am not asking for a complaint to be filed because I have come to terms with what has happened to me and the fact that I am losing the home. What I want you to do is put regulations in place that will make these lenders work with homeowners.”

A third commenter (consumer whose household makes less than \$100,000/yr) argued that offering loan modification only when there is negative equity has become “the new industry practice.” This commenter appeared to be arguing both (1) that there is inconsistent treatment of LMO applications with similar loan-to-value ratios, and (2) that it is unreasonable and a lack of good faith for lenders to limit the availability of LMOs to troubled borrowers in a negative equity situation.

A fourth commenter (consumer who got or refinanced a mortgage in the past 10 years) argued for substantive LMO regulation and also raised the enforcement concern that appeared in discussion of various parts of CFPB’s proposals:

“This ... does not take into account the fraud perpetrated by many lenders. While they manipulated LIBOR rates and charged outrageous interest, lying to homebuyers about the loans and ignoring phone calls and pleas for workouts until it was too late to fix the problem. The lenders were required to write modifications by our government, however it was not legally enforceable so they played games with borrowers by dragging out the modification process until the borrower missed a payment or became dismally discouraged or lost a job. Many of these lenders are still playing games with the homebuyers and not working with them, but foreclosing with impunity. I think that lenders should be forced to include principle write-downs as part of their ‘workout’ to prevent foreclosure.”

Another consumer commenter (got or refinanced a mortgage in the last 10 years and personally had, or had family who had, a hard time making mortgage payments) complained about lost paperwork (“[Servicers] need to be held to mortgage modification offers. If they lose paperwork, it needs to be on them, *not* the homeowner”) and argued: “The main problem with HAMP and the other programs is that they are voluntary on the part of the servicers and banks. These programs need to be mandatory. The taxpayers bailed out the banks. Now the banks need to bailout the taxpaying homeowners.”

An industry commenter (regulatory compliance officer at mortgage servicer/originator whose customers come from all over the country and/or other countries) responded, emphasizing the complexity of the mortgage crisis, but agreeing on the importance of enforcement:

“The servicers aren’t non-profit organizations. They were hit with an influx of loans that were defaulting for various reasons from job loss, bankruptcies, medical emergencies, etc. But recall that some people used their homes as ATM machines and that was another part of the problem. There is definitely enough blame to go around. But going forward, adding ‘expectations’ and regulations doesn’t really add up to a solution. Fair and reasonable enforcement needs to be part of the solution.”

### ***Servicer misbehavior in resolving LMO applications***

A commenter affiliated with an advocacy group raised the problem of conflicting interests of servicers and mortgage owners. (His/her comment also raises the issue of different treatment of similarly situated borrowers):

“I am on the phone with servicers large and small every day. While foreclosure education is always needed, I think a more pressing issue is regulation of servicers who misrepresent their own investors and who deceive borrowers for their own financial gain. In several of our firms’ cases, major servicers have claimed they could not offer a loan modification to our clients’ because there was an ‘investor restriction.’ This would be valid if it were true, as investors are not required to consent to a modification. However, oftentimes this is just an excuse the servicers use to keep a client in default and to keep raking in fees that benefit themselves (investors usually receive principal and interest, while servicers receive all the late fees, and other fees associated with servicing an account).

“There are few cases when there is a legitimate investor restriction. Anytime a servicer cites one, I ask for the name of the investor and the name and series of the trust the mortgage was probably pooled into. Then, if the trust is public I look it up on the SEC website <http://www.sec.gov>. Then I open the Pooling and Servicing agreement section which pertains to modifications. In 95% of cases the agreement between the investor and the servicer gives the servicer the ability to recapitalize loans, reduce interest and/or reduce principal as they see fit. Oftentimes the servicer is already modifying other loans within the portfolio in the same trust. We prove this by pulling up investor reports banks issue to their investors regarding each trust.

“When confronted with written proof that there is in fact no investor restriction, or that the restriction has been waived, servicers will often retract their claim that there is a restriction. But then they often come up with another illegitimate excuse such as a modification denial due to NPV (when it’s actually positive), or that the client needs to have their second mortgage subordinated (in cases where they don’t). ... If the investors found out that their servicers were tanking their portfolio by not agreeing to profitable modifications (as opposed to foreclosure) they would be outraged...

“So yes, having servicers educate homeowners to their options is a great idea. But even when they are educated they will still lose their homes if the servicers are not further regulated. Unfortunately many homeowners were deceived by many profit-driven companies at origination (originator, broker, appraiser, sometimes all together in “one stop shops”), and now they are being deceived on the back end when they need some real assistance to save them from losing their home. If the CFPB wants to do something about this, penalties against deceptive servicers would be a start.”

This commenter urged that the “Not providing accurate information” covered error by defined specifically to include these kinds of deceptive practices.

### ***Importance of disclosing all terms***

One commenter (consumer who got or refinanced a mortgage in the past 10 years and has had personal or family experience with foreclosure, in a household making less than \$100,000/yr) emphasized the importance of requiring accurate disclosure of all important elements in LMO decision:

They notified me of LMOs but then hid the fact they applied extra risk percentage of 2.5%, meaning the NPV calculated by my using the HAMP site did not match the NPV value they came up with, since Wells Fargo was adding unbeknown to consumers 2.5% risk to the prime. Telling them all the LMOs means nothing if they do not have full disclosures on the numbers used in the NPV model their calculations, and their determinations. They should not be able to disqualify anyone from a LMO unless they fully disclose all the calculations used to determine that disqualification.

### ***Need for enforcement***

In addition to the comments described above, some commenters were emphatic about the need for more vigorous enforcement.

When asked by the moderator about CFPB's proposal, one of the consumers who recounted losing his/her home responded: "I do think it would have helped if these rules had been in place" but emphasized the importance of enforcement: "We can create rules all we want along with fines... but I don't see that money fines are going to make a difference... They will just pay the fine and move along. They need to serve jail time."

This same commenter recounted a different kind of personal experience:

"I have been a negotiator that assists homeowners with their homes for the last 2.5 years and was working with homeowners and the banks before the [National Mortgage] settlement as well as after the settlement, and I can tell you that *nothing* has changed. The lenders do not call back, they are always loosing documents. And you cannot get a response in 30 days even if your life depended upon it, but again, *nothing* is being done. I am sure the mortgage settlement has done some good for many homeowners, but for many it has not. But yet, you don't hear about the lenders/servicers receiving any fines or even jail time. They need to be prosecuted in court just like everyone else or else they will continue the same behavior. Make some rules that make sense and hold them accountable.

"You are on the right track with what has been done, but we are far from there. We will never get there if the servicers and lenders are not prosecuted for violating the laws."

Another commenter, self-identified as a researcher, was more critical:

"Right now your proposed rules for Avoiding Foreclosure presume every foreclosure is lawful, which is absurd. Unlike the national foreclosure fraud settlement, your proposals do not address wrongful foreclosures. However, even though the national foreclosure fraud suit alleges deceptive practices in wrongful foreclosures, the administration of the settlement will not stop them. Your proposed rules ... need to add a provision to stop an unlawful foreclosure in progress and you need to enforce the national foreclosure fraud settlement because the state attorneys general have no intention of doing so. ... Error Correction only corrects errors, not deceptive practices. A substantive response from the CFPB would have addressed Page 27 of the multi-state lawsuit and advised when homeowners will be able to call their state attorney general or the CFPB to stop a deceptive foreclosure in progress."

### ***Other comments***

Two commenters debated larger solutions to the mortgage crisis including fundamentally changing the availability of government mortgage subsidies and the structure of the home mortgage tax deduction. This debate was sufficiently outside the scope of CFPB's proposal that it is not summarized further. Similarly, one commenter called for development of a centralized web-based system of information and resources.



## **FOR BORROWERS IN TROUBLE: PARTIAL PAYMENTS FINAL SUMMARY OF DISCUSSION**

### ***What should happen with partial payments***

Four commenters urged CFPB to require that servicers accept partial payments and apply them to the loan balance even before they add up to a full payment.

One, a consumer who also worked for a servicer, recounted her own experience:

“I had an instance where we had some medical things happen and I knew I was going to be late on a payment and called the servicer prior to the payment being due and was told there was nothing they could talk to me about and recommended I let the loan go past due! I had the funds to make 2/3's of the payment but unless it was a full payment they wouldn't accept it. I was horrified by this and the service I received.”

The commenter contrasted this with the practice of his/her previous employer who serviced loans and accepted late payments. This employer's goal was to get the loan current and avoid foreclosure. The late fee (\$25 if the loan was 10 days past due) was the last thing collected and could be waived if a plan to get the loan current was made with the client. Their practice was to make a payment reminder and call to the client after the account became 10 days past due. The servicer's representative would discuss the situation with the client and propose options to get the account back on track (the commenter noted in his/her experience that a majority of consumers want to find a solution and just need help). If a plan was agreed upon, the servicer followed up with a letter to the client and necessary documents were signed, even if the loan was 30 days past due. Based on this experience, the commenter wrote: “I understand that at a certain point when a loan is past due if the lender is continuing the foreclosure process ... they cannot accept payments; however I do not understand why they can't accept partial payments and apply them to the loan. By not accepting the payment unfortunately what happens is people pay something else that has to be paid.” S/he argued that it is wrong for servicers to refuse to accept partial payments and advise borrowers not to make them; moreover, since foreclosure is expensive for the lender, it would often be less expensive for the servicer to take the payment and work with the borrower.

Another commenter (a consumer with personal or family experience with foreclosure, in a household making less than \$100,000/yr) recounted the experience of being “told I hadn't made a payment even when I had, and that it 'didn't count' even tho there were 2 months of suspense fund payments present.” This commenter argues that servicers don't accept partial payments on government backed loans (like FHA) because it maximizes mortgage-insurance claims: they are more interested in getting an insurance claim for a mortgage than avoiding default, because the claim is worth more than the foreclosed property due to market value changes. S/he urges that lenders who do not accept and immediately credit partial payments “should forfeit their right to make a claim on a govt backed mortgage.”

The third commenter (consumer who expects to be a first-time home buyer in the next few years and whose household makes less than \$100,000/yr) wondered, after studying the sample periodic

statement, why the lender can't apply as much of the partial payment as is needed to bring a late payment up-to-date. S/he suggested that, when a borrower makes a partial payment that is less than one full installment, lenders should be required to credit the payment to the amount the borrower owes. At the least, the partial payment should be held in a suspense account that "pays interest on the funds equal to the interest on the loan." Otherwise consumers have no incentive to make a partial payment. Also, returning a partial payment encourages the borrower to use the money for something else (especially if the borrower is "in a financial bind.") "To hold funds in the suspense account until the full amount is collected and fees are paid still hurts the borrower who is at least trying to catch up. Even paying interest and then the remainder to principal on a partial payment helps the borrower catch up." If partial payments are accepted, the borrower at least gets some credit for attempting to fulfill his or her obligation. The commenter believed the increased recordkeeping created by this change for servicers would be minimal, certainly not any more difficult than keeping track of the partial payments in a suspense account. Hitting a theme that ran through the discussion as a whole, s/he suggested that software technology could make the allocations "automatically or nearly so."

A fourth commenter (consumer with personal or family experience with foreclosure) agreed that "partial payments can be part of the solution and maybe even the determining factor in bringing the borrowers loan current by allowing additional time."

#### ***Disclosure to borrowers***

Commenters agreed that the policy on and impact of partial payments should be disclosed. One commenter, who had worked for an insurance company whose clients came from all over the country and/or other countries, approved of the way the [sample periodic statement](#) treated special disclosures about suspense accounts, but emphasized that the rule should require that the same information be provided to borrowers whenever and however they contact their servicer – whether online, over the phone, or in person.

#### ***Treatment of late fees***

A small lender commenter (self-identified as mortgage servicer/originator/owner whose company's customers are mostly from the local community) provided a sharply contrasting view. Specifically addressing late fees, this commenter more generally urged CFPB to take a principled approach that respects the contractual nature of mortgages:

"Should the late charge be included as part of what is considered a full monthly payment? The answer to this question needs to be guided by the long history of contract law in America. If the customer makes his payment after the grace period has expired, then the customer is contractually obligated to pay the late charge. So the answer is yes, the customer must pay the late charge before the monthly payment is to be considered fully paid. The CFPB should not be issuing a rule which over-rides a legal contractual obligation of the borrower to the lender. Excluding the late charge is arbitrary and not based on any solid legal foundation. It just feels good. The rule could just as well exclude the principal portion of the payment and include only the past due interest. Why not? Excluding the principal portion is no more arbitrary than excluding the late charge.

“Please make rules which are based on the legal contractual obligation between the borrower and the lender, not based upon a feel good approach that views lenders and loan servicers as evil and borrowers as angels that are never in the wrong and have no responsibilities to live up to.”

## FOR BORROWERS IN TROUBLE: “FORCE-PLACED” INSURANCE FINAL SUMMARY OF DISCUSSION

### *Support for restricting use and cost*

One commenter (who commented extensively on this topic and self-identified as a former employee of Balboa Insurance Group turned whistleblower) emphasized additional harms that forced-placed insurance could cause borrowers, including substantially increasing the monthly payment to cover what is now a negative escrow balance. A negative escrow balance in turn can keep the borrower from qualifying for a loan modification. According to this commenter, “force-placed insurance is why so few borrowers have qualified for the HAMP & FHA loan modification programs.”

S/he also argued that FPI should be considered a service rather than a product: “The 2 largest Insurance Trackers in the US are Assurant & QBE First/Praetorian (fka Balboa Insurance Group). . . [T]hey are also the Force-Placed Insurers. . . [V]oluntary companies like State Farm, USAA & Allstate don’t provide the Force-Placed Insurance ‘product’ to anybody. . . The Insurance Tracker is providing the service of placing insurance on a loan. They are simply choosing to only place their in-house proprietary insurance.” This commenter advocated that CFPB limit insurance trackers to charging a service fee “for price-shopping insurance” (suggested maximum \$35). Considering the current system a conflict of interest, s/he argued that lenders and insurance trackers should be prohibited from selecting their own insurance (or that of an affiliate) and required to select the cheapest insurance available.

Some commenters who supported CFPB’s basic proposal recounted bad experiences with force-placed insurance. One commenter (consumer who got or refinanced a mortgage in past 10 years) wrote: “My lender erroneously determined that I was in a flood area and despite my protests (and documentation) that I was not in a flood area went out and bought flood insurance at very high rates. When they finally evaluated my documentation they agreed to cancel the policy since I was not in a flood area but did not want to refund the cost of insurance for the time the insurance had been in place. It took many hours, calls, and escalations, and preliminary discussions with attorneys to get the cost of the unnecessary insurance refunded.” This commenter favored imposing a penalty on servicers for wrongful force-placed insurance on top of the refund requirement. S/he also supported limiting force-placed charges to no more than 10% higher than the lesser of “competitively priced policies” or “the rate the homeowner had been paying.”

Another commenter (self-identified as a researcher affiliated with an advocacy group) argued: “This should not be an issue if the homeowner had escrow for insurance. The Servicer should pay the original insurer. Notice should be sent to the homeowner that the policy was paid on every anniversary with the name of the insurance company.” S/he explained: “We have submitted 5 complaints to the New York State Banking Dept. of homeowners who received forced placed insurance that was 5 times more than the policy on record.”

Support also came from a commenter (consumer who got or refinanced a mortgage in the past 10 years) who urged that homeowners’ insurance should have a guarantee of reissue at the same premium, which the servicer should have to use. “This simple and straightforward change would remove the potential for servicers and insurers to game the system.”

One commenter (a consumer whose household makes less than \$100,000/yr) said that s/he agreed with some comments and disagreed with others but warned that if lenders were prevented from using force placed insurance, loans would become more costly. This commenter believed that the current rule is that the lender can place only enough insurance to cover the payoff amount.

### ***Small lenders on the proposal***

The small servicer perspective was revealed in an interchange between a commenter who self-identified as a mortgage servicer/originator/ owner whose company's customers are mostly from the local community, the commenter who identified him/herself as a former insurance company employee and whistleblower, and the moderator.

The small lender argued that CFPB's proposal "places an undue burden on the mortgage servicer ..., particularly with small balance loans where the servicer only needs to protect its interest in the property, not the full value of the property." S/he urged a requirement that consumers be informed whenever they are being transferred from the servicer to a third party—whether this is happening in a phone conversation or online— as part of making more transparent the relationship between service, insurance tracker and force-placed insurance.

"I am a mortgage originator and loan servicer. I hold all the loans I make. I have a customer who has stopped making payments on his account. He is 6 months past due on his loan and has refused to make contact with us. He is in foreclosure. I escrow for his taxes and his insurance. He has a large shortage in his escrow account. His homeowner's renewal is due on October 23, 2012. The renewal premium is \$1,398.00.

"The proposed rule would require that I pay his insurance premium from his escrow account even though he does not have enough money in his escrow account to cover the premium. I can write forced placed insurance to cover my interest in his property for \$460. Yes, the insurance is inadequate for his needs, but it is perfectly adequate for my needs.

"Here are the steps I have taken to deal fairly and completely with this customer.

"1. I have informed him by mail that

(a) I will no longer be escrowing for his homeowner's insurance.

(b) His policy will be renewing on October 23, 2012.

(c) He needs to contact his agent to make an arrangement for payment on the policy.

(d) as long as he keeps the policy in force, we will not issue forced placed fire insurance.

(e) if he allows his insurance to cancel we will write a forced placed policy providing coverage to protect my interest in the property at a cost of \$460.00.

(f) if forced placed insurance is required, he will be responsible for paying this cost.

(g) the forced placed policy is for my benefit only and is insufficient for his needs.

"2. I have redone his escrow analysis and reduced his monthly tax escrow payment.

“The steps I have taken seem perfectly fair and reasonable. This proposed rule implies that even if the borrower has stopped paying the loan, I as the mortgage holder and loan servicer have a responsibility to protect the borrower, no matter how much money it will cost me. In today’s world it could take years to finally take back a property. This rule would require me to pay the borrower’s policy premium for 2, 3 or even 4 years, even though I could protect my interest in his property for 1/3 the cost.”

Questioned by the other commenter, the small lender explained that the forced placed policy in the example “is a Lloyds of London policy written through SWBC. The cost is \$1.50 per \$100 of coverage plus 3% tax. We are absolutely not self-insuring. Also, there is absolutely no add-on costs. I charge the customer exactly what SWBC charges me.”

The moderator asked: “Is [it] usually the case [that forced placed insurance will be cheaper], or does [this happen] when a substantial part of the mortgage has been paid down? If [the latter], in your experience, roughly how much of the mortgage needs to be paid for the force-placed insurance to be cheaper than the homeowner’s policy? Also, do you think there would be a difference if the lender and servicer were two separate businesses (rather than, like in your case, having the owner and servicer be the same)?”

The small lender responded:

“1. There are a lot of variables which determine the cost of the HO Ins policy. Credit history and property location are probably the two most important. \$100,000 of forced placed insurance would cost, through my provider, \$1,545.00. A HO Ins policy through a traditional carrier with dwelling coverage of \$200,000.00 could cost, based upon my experiences, between \$600 and \$2,000. But I deal with smaller balance loans of 10K to 30K, where the cost of the forced placed policy is almost always less than the HO Ins premium. So, there is no simple formula that we can use to say that when the mortgage is paid down by X percent, forced insurance will be less expensive than traditional coverage.

“2. Although I would happily accept an exception for mortgagees who service their own loans (which I am), I think the rule should be based on a solid principal. As the rule stands now, someone — either the servicer or the note owner — is being required to pay out more money than it has to in order to protect its interest in the property. Just because the servicer is different from the note owner really should not make a difference. Someone is being forced to potentially lose more money than necessary.”

The moderator then asked: “CFPB’s alternative proposal would allow a servicer to use force-placed insurance, but only if it would cost the servicer less than continuing the homeowner’s policy. Would this address your concerns, and do you see any drawbacks to this?”

The small lender responded: “The CFPB’s alternative proposal is certainly more appealing than the existing proposed rule. In my situation, the forced placed policy will most likely cost less than the HO Ins policy. So, I can accept it for sure, but I don’t think it is based on a sound principal. As a drawback to the alternative rule, I do see some litigation issues. If I choose forced insurance over the defaulted borrower’s HO Ins policy, and there is a loss, some heavy litigation could result. But overall, I absolutely prefer the alternative proposal.”

S/he also addressed the problem of a borrower canceling the policy and receiving a refund of the money paid by the lender: “The commentary suggests that the mortgage servicer pay the HO Ins premium monthly to avoid having the customer cancel the policy and run off with the funds. I strongly believe that this is an untenable situation for the loan servicer, which now has 12X the amount of work to do.”

The small lender urged CFPB to recognize that “If a customer is in default and has not made payment for many months (often times years), the home owner is being unduly enriched and the mortgage servicer is being harmed by having to [maintain the existing policy and] payout much more than it otherwise would have to to protect its interest in the property.” S/he suggested that “[t]he real question is the definition of default. 1 or 2 months behind is clearly not enough. But if a consumer hasn’t made a payment for 6 months, the servicer should be free to inform the customer that it no longer will escrow for HO Ins. The consumer can then look for their own insurance. If they get it, great. If not, then the lender can place forced insurance.”

S/he concluded: “I know that the public is angry and wants to make Wells Fargo and Bank of America pay for everything, as retribution for the mortgage meltdown. But small mortgage holders like myself are being forced to pay for the sins of others. The rule is unfair to me and is simply wrong, based upon how our American system of economics functions. I strongly recommend that the CFPB rethink its rule and implement a new rule which requires the mortgage servicer to inform the borrower of the situation and give the borrower the opportunity to take responsibility for himself, as I have outlined above.”

#### ***Borrowers without insurance escrow accounts***

A second interchange, between another commenter self-identified as working for a lender whose customers are primarily from the local community and the commenter who formerly worked for Balboa Insurance, focused on the question whether servicers should have to advance money even in absence of an escrow account.

This small lender explained:

“I work at a federal credit union. We currently send out three warning letters (over a 90 day period) prior to force placing insurance. The letters are progressively stern starting with the friendly reminder to finally informing the borrower what the cost will be. The letters have our name and return address on the envelope and do not look like junk mail. [This responded to an earlier comment urging that the envelope should state “that it is from the Loan Servicers [and] that it is important information regarding their mortgage”] You would be surprised how many people ignore them until they receive the fourth letter which details the amount added to their loan to cover the CPI [collateral protection insurance]. Only then do they call us.

“As a lender I make no money from CPI and, more often than not, have to charge off the cost when the debt goes bad. But, the alternative of not having the property insured is too great a risk.

“If there is no escrow for insurance the idea of the lender having to pay the primary homeowner insurance is unworkable. First I will have to determine if they use an agent or directly pay the company.

Then, I will need to review the coverage (do I really want to pay the rider that covers the jewelry and their jet ski?) It is unworkable.”

This statement was challenged by the former insurance company employee commenter: “I’m not seeing the difficulty in providing the same service to Non-Escrow customers. Don’t you keep a database of who is agent or company billed for your Escrow customers? The systems are clearly in place by your own admission. You’re just adding more volume, so hire a few more people.” To which the small lender responded:

“First, where do I get the funds to pay these people? We operate on a razor thin margin. If I hired “a few more people” for every regulation I would lose money and no longer be in business. A credit union is a not for profit enterprise but it cannot lose money and remain in business.

Second, while a data base is in place for escrow accounts no such system exists for non-escrow accounts ... Who do I pay? The insurance company directly or an agent? Once insurance is force placed things go downhill very quickly and the chance of my getting paid back is slim to none. Even if I could find out who to pay I am not going to misuse the credit union’s funds to pay for additional riders on a homeowner’s policy.”

Related to the general point of what force-placed insurance ought to cover, several comments urged that servicers be required to purchase only the minimum necessary insurance. For example, one consumer commenter argued: “Get the insurance payment as low as possible by eliminating all optional coverage and only insure the structure for the bank at the lowest price possible.”

### ***Information on insurance status***

Continuing the theme (which appeared in many places in the discussion) about better use of technology to solve or avoid problems, one commenter urged that borrowers should be able to update their current insurance information online. This same commenter (who had been employed by Balboa) also warned that borrowers who call their servicer to discuss insurance are often transferred, without their knowledge, to someone working for the Insurance Tracker. S/he urged a requirement that consumers be informed that they are being transferred to a third party, as part of making the relationship between servicer, insurance tracker, and force-placed insurance more transparent.

### ***Analogous issues with REO insurance***

Although the CFPB has not addressed Real Estate Owned (REO) Insurance in its proposal, two comments also argued the need to regulate unnecessarily high, above market level REO fees that some borrowers currently pay. One (a consumer who had personal or family experience with a foreclosure, in a household earning less than \$100,000/yr) recounted his experience:

“[W]hen I was forced into REO [real estate owned] due to default, and on medical disability, the monthly insurance cost was three times the annual cost of my then existing annual Allstate policy cost, which had also had additional riders, including liability umbrellas for my auto and additional personal medical for visitors, comprehensive platinum content coverage. [I]t belies common sense that they be allowed to



fleece and abuse already indigent homeowners, like that. Charging 3 times what my full policy costs in a year, in a single month, and not even covering the whole contents of the house.”

This commenter argued that lenders placing insurance “should have to use and provide traditional carrier insurance through market channels at prevailing fair market insurance rates for the property.” The other commenter (former insurance company employee turned whistleblower) vehemently agreed that REO insurance also presents a problem. Considering the current system a conflict of interest, s/he argued that trackers should be prohibited from: (1) selecting their own insurance (or that of an affiliate); and (2) acting as both servicer and insurer in the event of a claim.

### ***Private mortgage insurance***

There seems to be confusion among some consumers about the relationships and differences between the hazard insurance that may become force placed insurance, REO insurance (see previous section) and private mortgage insurance. One commenter (consumer who had personal or family experience with foreclosure) reported the following problem with private mortgage insurance:

“My intentions upon taking out the loan and putting down 20% was to avoid having to pay a PMI. I had no knowledge that a LPMI policy was in place on my loan. USC Title 12 Chapter 49 Homeowners protection sec 4905 states the required disclosure of an LPMI prior to closing the loan as it could cause a higher interest rate. But the statutory damages under sec 4907 set a maximum of \$2,000 in damages. The costs of the action and attorney fees don’t promote any lawful deterrence. The servicer wrote after my own discovery that no premiums were add to the loan. How would a consumer be able to verify this?”

Another commenter (consumer who had personal or family experience with foreclosure) was also concerned about this issue, and argued that borrowers should be able to shop for the best deal on PMI insurance rather than being forced to accept the policy chosen by the lender.