



Consumer Financial Protection Bureau (CFPB) Rules – NOE/RFI; Noncompliance Issues



Michigan Foreclosure Prevention Project
John Rao

©National Consumer Law Center 2014

Notices of Error and Requests for Information

- New regime January 10, 2014: separate qualifications and procedures for:
 - “notice of error” under Reg. X § 1024.35
 - “request for information” under Reg. X § 1024.36
- Written inquiry can be a NOE or RFI even if not a QWR
- No fees for either a NOE or RFI
 - § 1024.35(h) – error resolution
 - § 1024.36(g) – information requests



Notice of Error

12 C.F.R. § 1024.35

Failure to accept a conforming payment

Failure to apply a payment correctly

Failure to timely credit a payment

Failure to make timely escrow disbursements

Imposing an unreasonable fee

Failure to provide a payoff statement

Failure to provide accurate loss mitigation information

Failure to do a servicing transfer correctly

Filing a foreclosure without giving the correct notices re. loss mitigation

Moving for foreclosure judgment or sale without following the loss mitigation protocols

Any other error relating to the servicing of a borrower's mortgage loan

What Isn't Subject to a Notice of Error

12 C.F.R. § 1024.35(g) & Official Bureau Interpretation § 1024.35(b)-1

Origination of loan

Underwriting of loan

Securitization or transfer of ownership of loan

Duplicative requests

Overbroad requests

NOEs more than one year after loan discharged or no longer servicer

Servicer must notify borrower in writing within 5 business days after making determination not to comply

What If Servicer Says No Error?

- Within 15 business days of receiving borrower's request, servicer must provide at no charge the documents and information it relied upon in making a determination that no error occurred.
- May include documents showing information entered in servicer's collection system (such as a copy of screen shot of servicer's system).
- Servicer is not required to provide documents that contain confidential, proprietary, or privileged information, but must still provide notice within 15 days

Notice of Error & Loss Mitigation

- Loss mitigation is related to servicing of loan
- Provisions for Notices of Error on
 - Initiating foreclosure improperly
 - Proceeding to sale improperly
 - Failing to provide accurate loss mitigation info.
- But no explicit Notice of Error for failure to adequately evaluate for loss mitigation
 - Appeal process in § 1024.41(h) should provide effective review
 - Catch-all was added “to encompass the myriad and diverse types of errors that borrowers may encounter....”
 - Loss mitigation evaluation not excluded

Using RESPA Error Resolution

- Potential loss mitigation covered errors:
 - failing to provide accurate information regarding loss mitigation options and foreclosure
 - failing to transfer accurate and timely information about borrower's mortgage account to a transferee servicer, including loss mitigation information
 - making the first notice or filing for any foreclosure process in violation of § 1024.41(f) or (j) - *NOE must be received more than 7 days before a scheduled foreclosure sale*
 - moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(g) or (j) - *NOE must be received more than 7 days before a scheduled foreclosure sale*

Request for Information

- Servicer is required to respond to any written request for information “with respect to the borrower’s mortgage loan”
- Unlike QWR, a RFI is not limited to information “related to the servicing” of the loan

Request for Information

- RFI may seek:
 - information about a loan modification application
 - “servicing file,” which includes:
 - schedule of all account transactions
 - copy of security instrument that establishes lien
 - any notes created by servicer personnel reflecting communications with the borrower
 - no *per se* rule against seeking loan origination docs

Home Loans
Customer Service Department, CA6-919-02-41
PO Box 5170
Simi Valley, CA 93062-5170

Notice Date: March 13, 2014

Property Address:

IMPORTANT INFORMATION ABOUT YOUR SERVICING FILE REQUEST

We recently received your request for a Servicing File.

We were unable to process your request as:

Your request for a Servicing File was not received through the central mailing address for Notice of Error and Request for Information inquiry.

We have not received a third party authorization signed and dated by the customer to release the requested information.

The customer signature on the authorization letter we received was illegible or unclear.

All Servicing File requests must be received in writing at the appropriate Bank of America, N.A. mailing address provided on the monthly mortgage statement. Please forward your written request for a Servicing File, with written third party authorization (as applicable), to the following address:

Bank of America, N.A.
Notice of Error and Request for Information P.O. Box 942019 Simi Valley, CA 93094-2019

Please note that the Servicing File will only contain loan information starting on January 1, 2014.

QUESTIONS?

We appreciate the opportunity to serve your home loan needs. If you have any questions, please call Customer Service at (800) 659-6607, Monday-Friday 7a.m. to 7p.m. Local Time.

This communication is from Bank of America, N.A., the servicer of your home loan.

Limitations on RFI

12 C.F.R. § 1024.36(f)

- Duplicative
 - Not duplicative if for different time period, if information could change
- Confidential or proprietary
 - Servicer employee compensation or personnel actions
 - Examination reports or audits
- Irrelevant
 - Info on other borrowers
 - Servicer training manuals
 - Investor instructions (!)
- Overbroad or unduly burdensome
- Untimely (more than one year after loan discharged or servicer no longer servicing loan)
- Servicer must notify borrower in writing within 5 business days after deciding not to comply

Who Can Send a NOE or RFI?

- Borrower
- Borrower's Attorney
- Borrower's "Agent"
 - CFPB Commentary: Servicer may require proof of authority from agent and may not treat letter as notice of error or information request until documentation received



THIRD PARTY AUTHORIZATION

I/We authorize Seterus, Inc. its successors and/or assigns, Seterus, Inc. to release any and all information regarding my loan to the designated third parties listed below. Such information may include, but is not limited to, the amount due on my loan, payment and credit history, loan payoff(s) and any credit transactions. In addition, I/we authorize Seterus, Inc. to (check all that apply):

- checkbox Negotiate with the designated third parties listed below any and all payment plans, forbearance agreements, modifications or other loss mitigation solutions.
checkbox Accept any directions or authorizations from the designated third parties listed below as valid directions or authorizations from me regarding any escrow deficiencies and agreements to impound for escrow. (An escrow account is required for most loss mitigation options.)

I/We agree to release and hold Seterus, Inc., its employees, officers and agents harmless from any claims based upon the above authorization. This authorization is valid until 5 business days after Seterus, Inc. receives a revocation of this authorization in writing.

Loan Number: Property Address:

You may authorize more than one third party.

AUTHORIZED AGENTS

Table with 2 columns: Third Party Name, Phone Number. Two rows for agent information.

Primary Borrower Printed Name:
Primary Borrower Signature: Date:
Co-Borrower Printed Name:
Co-Borrower Signature: Date:

NOTARY ACKNOWLEDGMENT FOR THIRD PARTY AUTHORIZATION

State of
County of
On before me, personally appeared

(Insert name and title of the notary)
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Signature (Seal)

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AS WE SOMETIMES ACT AS A DEBT COLLECTOR. WE ARE 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 THIS DEBT, THIS LETTER IS NOT AN ATTEMPT TO COLLECT THE DEBT, BUT NOTICE OF POSSIBLE ENFORCEMENT OF OUR LIEN AGAINST THE COLLATERAL OR FOR INFORMATIONAL PURPOSES ONLY. IF YOU RECEIVE OR HAVE RECEIVED A DISCHARGE OF THIS DEBT THAT IS NOT REAFFIRMED IN A BANKRUPTCY PROCEEDING, YOU WILL NOT BE PERSONALLY RESPONSIBLE FOR THE DEBT. HOWEVER, THE LIEN AGAINST THE PROPERTY SECURING THIS DEBT MAY REMAIN ON THE PROPERTY UNTIL THE AMOUNT OWING ON THE LOAN IS PAID. COLORADO: SEE WWW.COLORADOGATTORNEYSGENERAL.ORG/CA FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT. Seterus, Inc. maintains a local office at 333 Union Boulevard, Suite 250, Lakewood, CO 80226. The office's phone number is 888-738-5576. NEW YORK CITY: 1414669, 1414669-1414669. FUNDING: This collection service is licensed by the Collection Services of the Department of Consumer Affairs, State of New York.

Where to Send a NOE or RFI?

- If servicer has an "exclusive address," it must:
- provide written notice designating the exclusive address
- use same address for notices of error and requests for information
- provide the exclusive address on: any website servicer maintains for servicing of the loan; any required periodic statement or coupon book; any notices required by early intervention or loss mitigation rules

Reg. X, 12 C.F.R. § 1024.35(c) and 1024.36(b)



Time for Servicer Response

5 business days

- Acknowledge QWR, NOE, or RFI, *or*
- Take requested action

30 business days

- Correct borrower's account, *or*
- After conducting a **reasonable** investigation, provide borrower written explanation as to why servicer believes account is correct, *or*
- Provide borrower with requested information or explanation why information is unavailable

Exceptions to 30-Day Response Period

7 business days

- for NOE asserting failure to provide accurate payoff statement

Prior to foreclosure sale

- for NOE based on 120-day pre-foreclosure waiting period or dual-track requirements, if NOE received more than 7 days before a scheduled foreclosure sale

10 business days

- for RFI seeking identity of owner of mortgage

Extension of 30-Day Response Period

15 day extension

- if servicer notifies borrower of extension and reason for delay before end of initial 30-day period.

No extension for

- timely notice of error based on 120-day pre-foreclosure waiting period or dual-track requirements or
- request for information seeking identity of mortgage owner

During the Response Period

- No adverse credit reporting of payment that is subject of notice of error, for 60 days after receipt of notice. 12 U.S.C. § 2605(e)(3)
- No foreclosure if notice of error received on 120-day pre-foreclosure waiting period or dual track provisions more than 7 days before foreclosure sale. 12 C.F.R. § 1024.35(i)
- Otherwise, servicer may pursue collection remedies, including foreclosure

Asking the Servicer to Identify the Mortgage Loan Owner

	TILA (1641(f)(2))	RESPA (Reg. X §1024.36(d)(2))
Time	Presumptively “reasonable”	10 business days
Fees	Not discussed	Banned
Remedy	\$4K plus actuals, but servicer liability?	Actual, unless pattern and practice and then \$2K
Statute of limitations	1 year	3 years

Useful commentary in the RESPA Official Interpretations, § 1024.36(a)-2

Force-Placed Insurance

- Final rule requires servicer to pay the borrower’s existing insurance policy, if there is an escrow account, except if servicer has reasonable basis to believe:
 - that the borrower’s insurance is being canceled for reasons other than nonpayment, or
 - the property is vacant.
- FPI charges must be for services actually performed and have reasonable relationship to cost of providing the service

Loss Mitigation Rules

Rules effective Jan. 10, 2014 dealing with foreclosure avoidance:

- Early Intervention - Reg. X § 1024.39
- Continuity of Contact - Reg. X § 1024.40
- Loss Mitigation - Reg. X § 1024.41

21

Jan. 10, 2014 Effective Date

- Does not apply to applications received before effective date
- Applies to applications received after effective date even if borrower evaluated for loss mitigation before effective date
- 120 day ban on foreclosure referrals applies to mortgage loans that:
 - become delinquent on or after effective date, **and**
 - are delinquent on effective date but for which foreclosure has not been initiated

Receipt of Application 45 Days or More Before Sale

Servicer must:

- Conduct review to determine whether application is complete
- Within 5 business days of receiving application, provide written notice to borrower that:
 - acknowledges application is complete, or
 - describes documents and information needed to complete the application, and
 - provides “reasonable date” by which borrower should submit missing documents and information

May. 01. 2014 08:01 PM

PAGE. 1/ 3

Document Status

Please review the list of forms and documents below and send the ones that apply to your specific situation so we can start reviewing your request. To avoid delays or cancellation of your request, please complete and return them by August 19, 2014.

We've enclosed a copy of the form(s) you need to complete. If you need another copy of any of the required forms, you can also download it from chase.com/MyHome by selecting the quick link to download/print the forms.

You can also send any form(s) and document(s) that show additional income you would like us to consider. If there was a difference in your income between last year's and this year's tax return, please include an explanation of this. If you've already sent us a form or document listed below, it may have been incomplete.

Required Forms

Required Document	Received	Status	Next Steps
Request for Mortgage Assistance form	Request for Mortgage Assistance form	Pending our Review.	There is nothing needed from you at this time for this document.
IRS Form 4506T-EZ (Short Form Request for Individual Tax Return Transcript)	IRS Form 4506T-EZ (Short Form Request for Individual Tax Return Transcript)	Pending our Review.	There is nothing needed from you at this time for this document.
Dodd-Frank Certification form	Not received		

Financial/Income Documents

Required Document	Received	Status	Next Steps
Two most recent personal checking, savings, money market, certificate of deposit (C/D), annuity, 501(k), mutual fund, stock and bond statements; send all statement pages, even if a page is blank.	Bank statements		
Copies of two most recent pay stubs showing year-to-date earnings	IRS Form W-2 (Wage and Tax Statement)		
Copy of most recent quarterly or year-to-date Profit and Loss statement, signed and dated, showing revenue, expenses, company name and period of time covered	Not received		

Death or Divorce Documents

Required Document	Received	Status	Next Steps
Legal documents showing amount, frequency, and duration of child support, alimony or separation maintenance income if you would like us to consider it as qualifying income (You aren't required to disclose child support, alimony or separation maintenance income, unless you want us to consider it as qualifying income)	Not received		
Copy of recorded Quitclaim Deed or Warranty Deed transferring ownership of the property that secures the loan	Not received		
Divorce decree or separation agreement, current credit report showing divorce, separation or non-occupying borrower or Quitclaim Deed	Not received		
Copy of the death certificate or obituary or newspaper article reporting the death	Not received		

Other Documents

Required Document	Received	Status	Next Steps
Proof of occupancy (copy of a recent utility bill in your name at the property address)	Not received		
Copy of flood insurance policy declaration page	Proof of homeowners, flood or other insurance policy	Pending our Review.	There is nothing needed from you at this time for this document.
Copy of the Property Tax Statement	Not received		
Insurance claim, Federal Emergency Management Agency grant or Small Business Administration loan or documentation that the borrower or employer property is located in a federally declared disaster area	Not received		

“Reasonable Date” to Complete?

- A “reasonable date” should preserve the “maximum borrower rights,” except when it would be impracticable (e.g., requesting docs in less than 7 days), based on the following milestones:
 - date when documents already submitted will be stale
 - date that is 120th day of delinquency
 - date that is 90 days before a foreclosure sale
 - date that is 38 days before a foreclosure sale

Loan Modification Denial

- If loan modification denial based on a requirement set by loan owner or assignee, notice must identify owner or assignee and specific requirement that was basis for denial
- If loan modification denial based on net present value test, notice must state this reason and include the inputs used for the calculation
- Denial notice must also describe borrower's right to appeal, the deadline to appeal, and any requirements for making an appeal, if applicable

Concern # 1: You requested us to provide you information with regards to the denial of modification on the loan.

Response: The terms of any possible modification are determined by many factors, including Ocwen's servicing guidelines, the status of the loan and the financial information provided by the borrowers. Please note that the modification will be denied if the loan does not qualify based on either one or all of the above factors.

Our records indicate that your request to modify the loan under the Home Affordable Modification Program (HAMP) has been denied as unfortunately, the Owner of your loan did not approve the loan modification request. However, the modification was denied, as under guidelines established by the owner of your loan, please be advised that we are unable to provide you with the calculations, as they are for internal purposes.

Further, the loan was reviewed for modification. However, this modification was also denied, as the owner of the loan did not approve the modification of the loan.

The reason for the denial has also been mentioned in the Denial Letter that was sent on March 17, 2014.

For any further questions or concerns regarding the loan, you may contact our Customer Care Center at (800) 746-2936.

Borrower's Response

- If complete application received 90 days or more before a foreclosure sale,
 - servicer may require that borrower accept or reject an offer no earlier than 14 days after offer made
- If a complete application received less than 90 days but more than 37 days before a foreclosure sale:
 - servicer may require that borrower accept or reject offer no earlier than 7 days after offer made
- If a borrower requests an appeal, deadline for accepting option is extended until 14 days after servicer provides the appeal determination notice



Loss Mitigation Review Rights

Days Application Received Before Foreclosure Sale	≥ 90	≥ 45	≥ 38
Acknowledgment of Application	Yes, must acknowledge within 5 business days and provide deadline for supplying additional documents		No
Time to Evaluate	30 days		
Time to Appeal	14 days	No appeal rights	
Time to Accept Loan Mod Offer	14 days	7 days	



Loss Mitigation Appeal Rights

- Appeal rights apply only to decisions:
 - involving eligibility for loan modifications
 - made on complete (or facially complete) applications submitted 90 days or more before a scheduled foreclosure sale or during the 120-day pre-foreclosure review period
- Borrower must request an appeal within 14 days after servicer provides initial notice of determination
- Review must be by “different personnel than those responsible for evaluating” application
- Servicer must decide appeal and provide notice of determination to borrower within 30 days of appeal request

31

Dual-Tracking Protections Before Foreclosure Referral

- Servicers must not make first notice or filing required for foreclosure process until mortgage loan is more than 120 days delinquent
- If borrower submits complete application during 120-day period or before first notice or filing, a servicer can't make first notice or filing until evaluation complete
- State foreclosure timelines pre-empted to the extent they allow an earlier commencement of foreclosure
- Protection does not apply if foreclosure based on borrower's violation of a due on sale clause or if servicer is joining foreclosure action by a subordinate lienholder


What is First Notice or Filing?

- Where judicial foreclosure: the earliest document required to be filed with court
- Where non-judicial foreclosure: the earliest document required to be recorded or published
- Where no court filing or document required to recorded or published: the earliest document that sets or schedules a foreclosure sale date

Dual-Tracking Protections After Foreclosure Referral

- If borrower submits complete application after first notice or filing but more than 37 days before foreclosure sale, servicer may proceed with foreclosure process, but shall not:
 - move for foreclosure judgment or order of sale, or conduct sale, until decision given or borrower rejects offer or fails to perform
 - make a dispositive motion, such as motion for default judgment, judgment on pleadings, or summary judgment, which may directly result in a foreclosure judgment or order of sale
- If such a motion has been made before receiving a complete application, servicer must take reasonable steps to avoid a ruling or issuance of an order

Transfer Requirements

- New servicer must obtain loss mitigation documents and information submitted by borrower to former servicer and comply with § 1024.41
 - If borrower's complete application is being evaluated when mortgage is transferred, new servicer should "continue the evaluation to the extent practicable"
 - Documents in a complete application are received for purposes of timelines as of date they were received by former servicer, not new servicer
- 

Other Transfer Requirements

- Covered error for notice of error includes:
 - Failing to transfer accurately and timely information relating to servicing of a borrower's mortgage loan account to a transferee servicer
 - Transfer policies and procedures consistent with § 1024.38(b)(4) (no right of action)
 - Transferor must timely and accurately transmit information
 - Transferee must be able to identify missing information
 - Compliance Bulletin 2014-01 (Aug. 19, 2014)
- 