



1700 G Street NW, Washington, DC 20552

July 10, 2024

# Unofficial Redline of the Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties (Regulation X) Proposed Rule

On July 10, 2024, the Consumer Financial Protection Bureau (CFPB) issued a proposed rule to amend regulations originally issued in 2013 regarding the responsibilities of mortgage servicers. Among other changes, the proposed amendments would streamline existing requirements when borrowers seek payment assistance in times of distress, add safeguards when borrowers seek help, and revise existing requirements with respect to borrower assistance. The proposed rule would also require servicers to provide certain communications in languages other than English, such as when a borrower is seeking payment assistance with their mortgage.

The CFPB is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that this proposed rule would make to Regulation X's text and commentary.

The underlying (unmarked) text in this document reflects the existing text of the relevant provisions of Regulation X and its commentary that the proposed rule would not change. The changes that the proposed rule would make to Regulation X and its commentary are marked in red.

This redline is not a substitute for reviewing Regulation X, its commentary, or the proposed rule. If any conflict exists between this redline and the text of Regulation X, its commentary, or the proposed rule, the documents published in the Federal Register are the controlling documents.

## List of Subjects

Banks, banking, Condominiums, Consumer protection, Credit unions, Housing, Mortgage insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

## Authority and Issuance

For reasons set forth in the preamble, the CFPB proposes to amend Regulation X, 12 CFR part 1024, as set forth below:

### **PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)**

**Authority:** 12 U.S.C. 2603-2605, 2607, 2609, 2617, 5512, 5532, 5581.

## Subpart C—Mortgage Servicing

### **§ 1024.31 Definitions.**

For purposes of this subpart:

*Confirmed successor in interest* means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to this subpart.

*Consumer reporting agency* has the meaning set forth in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

~~*COVID-19-related hardship* means a financial hardship due, directly or indirectly, to the national emergency for the COVID-19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)).~~

*Day* means calendar day.

*Delinquency* means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid.

*Hazard insurance* means insurance on the property securing a mortgage loan that protects the property against loss caused by fire, wind, flood, earthquake, theft, falling objects, freezing, and other similar hazards for which the owner or assignee of such loan requires insurance.

~~*Loss mitigation application* means an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option.~~

*Loss mitigation option* means an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower.

*Master servicer* means the owner of the right to perform servicing. A master servicer may perform the servicing itself or do so through a subservicer.

~~*Loss mitigation review cycle* means a continuous period of time beginning when the borrower makes a request for loss mitigation assistance, provided the request is made more than 37 days before a foreclosure sale, and ending when the loan is brought current or the procedural safeguards in § 1024.41(f)(2)(i) or (ii) are met. A loss mitigation review cycle continues while a borrower is in a temporary or trial loss mitigation period, such as a forbearance or modification trial payment plan, and the loan has not yet been brought current.~~

*Mortgage loan* means any federally related mortgage loan, as that term is defined in § 1024.2 subject to the exemptions in § 1024.5(b), but does not include open-end lines of credit (home equity plans).

*Qualified written request* means a written correspondence from the borrower to the servicer that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and either:

- (1) States the reasons the borrower believes the account is in error; or
- (2) Provides sufficient detail to the servicer regarding information relating to the servicing of the mortgage loan sought by the borrower.

*Request for loss mitigation assistance* means any oral or written communication, occurring through any usual and customary channel for mortgage servicing communications, whereby a borrower asks a servicer for mortgage relief. A request for loss mitigation assistance should be construed broadly and includes, but is not limited to, any communication whereby:

- (1) A borrower expresses an interest in pursuing a loss mitigation option;
- (2) A borrower indicates that they have experienced a hardship and asks the servicer for assistance with making payments, retaining their home, or avoiding foreclosure; or
- (3) In response to a servicer's unsolicited offer of a loss mitigation option, a borrower expresses an interest in pursuing either the loss mitigation option offered or any other loss mitigation option.

*Reverse mortgage transaction* has the meaning set forth in 12 CFR 1026.33(a).

*Service provider* means any party retained by a servicer that interacts with a borrower or provides a service to the servicer for which a borrower may incur a fee.

*Subservicer* means a servicer that does not own the right to perform servicing, but that performs servicing on behalf of the master servicer.

*Successor in interest* means a person to whom an ownership interest in a property securing a mortgage loan subject to this subpart is transferred from a borrower, provided that the transfer is:

(1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(2) A transfer to a relative resulting from the death of a borrower;

(3) A transfer where the spouse or children of the borrower become an owner of the property;

(4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or

(5) A transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

*Transferee servicer* means a servicer that obtains or will obtain the right to perform servicing pursuant to an agreement or understanding.

*Transferor servicer* means a servicer, including a table-funding mortgage broker or dealer on a first- lien dealer loan, that transfers or will transfer the right to perform servicing pursuant to an agreement or understanding.

### **§ 1024.35 Error resolution procedures.**

(a) *Notice of error.* A servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error. A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of

error for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.

(b) *Scope of error resolution.* For purposes of this section, the term “error” refers to the following categories of covered errors:

(1) Failure to accept a payment that conforms to the servicer’s written requirements for the borrower to follow in making payments.

(2) Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.

(3) Failure to credit a payment to a borrower’s mortgage loan account as of the date of receipt in violation of 12 CFR 1026.36(c)(1).

(4) Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner as required by § 1024.34(a), or to refund an escrow account balance as required by § 1024.34(b).

(5) Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

(6) Failure to provide an accurate payoff balance amount upon a borrower’s request in violation of section 12 CFR 1026.36(c)(3).

(7) Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by § 1024.39.

(8) Failure to transfer accurately and timely information relating to the servicing of a borrower’s mortgage loan account to a transferee servicer.

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or advancing the foreclosure process, in violation of § 1024.41(f) or (j).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(~~g~~f) or (j).

(11) Any other error relating to the servicing of a borrower's mortgage loan, including failure to make an accurate loss mitigation determination on a borrower's mortgage loan.

(c) *Contact information for borrowers to assert errors.* A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to assert an error. If a servicer designates a specific address for receiving notices of error, the servicer shall designate the same address for receiving information requests pursuant to § 1024.36(b). A servicer shall provide a written notice to a borrower before any change in the address used for receiving a notice of error. A servicer that designates an address for receipt of notices of error must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.

(d) *Acknowledgment of receipt.* Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving a notice of error from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the notice of error.

(e) *Response to notice of error—(1) Investigation and response requirements—(i) In general.* Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either:

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

(ii) *Different or additional error.* If during a reasonable investigation of a notice of error, a servicer concludes that errors occurred other than, or in addition to, the error or errors alleged by the borrower, the servicer shall correct all such additional errors and provide the borrower with a written notification that describes the errors the servicer identified, the action taken to correct the errors, the effective date of the correction, and contact information, including a telephone number, for further assistance.

(2) *Requesting information from borrower.* A servicer may request supporting documentation from a borrower in connection with the investigation of an asserted error, but may not:

(i) Require a borrower to provide such information as a condition of investigating an asserted error; or

(ii) Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation pursuant to paragraph (e)(1)(i)(B) of this section.



(3) *Time limits*—(i) *In general*. A servicer must comply with the requirements of paragraph (e)(1) of this section:

(A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.

(B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.

(C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.

(ii) *Extension of time limit*. For asserted errors governed by the time limit set forth in paragraph (e)(3)(i)(C) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for responding to errors asserted under paragraph (b)(6), (9), or (10) of this section.

(4) *Copies of documentation*. A servicer shall provide to the borrower, at no charge, copies of documents and information relied upon by the servicer in making its determination that no error occurred within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receiving the borrower's request for such documents. A servicer is not required to provide documents relied upon that constitute confidential, proprietary or privileged information. If a servicer withholds documents relied upon because it has determined that such documents constitute confidential, proprietary or privileged information, the servicer must notify the

borrower of its determination in writing within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receipt of the borrower's request for such documents.

(5) *Omissions in responses to requests for documentation.* In its response to a request for documentation under paragraph (e)(4) of this section, a servicer may omit location and contact information and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if:

(i) The information pertains to a potential or confirmed successor in interest who is not the requester; or

(ii) The requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester.

(f) *Alternative compliance—(1) Early correction.* A servicer is not required to comply with paragraphs (d) and (e) of this section if the servicer corrects the error or errors asserted by the borrower and notifies the borrower of that correction in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the notice of error.

(2) *Error asserted before foreclosure sale.* A servicer is not required to comply with the requirements of paragraphs (d) and (e) of this section for errors asserted under paragraph (b)(9) or (10) of this section if the servicer receives the applicable notice of an error seven or fewer days before a foreclosure sale. For any such notice of error, a servicer shall make a good faith attempt to respond to the borrower, orally or in writing, and either correct the error or state the reason the servicer has determined that no error has occurred.

(g) *Requirements not applicable—(1) In general.* A servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section if the servicer reasonably determines that any of the following apply:

(i) *Duplicative notice of error.* The asserted error is substantially the same as an error previously asserted by the borrower for which the servicer has previously complied with its obligation to respond pursuant to paragraphs (d) and (e) of this section, unless the borrower provides new and material information to support the asserted error. New and material information means information that was not reviewed by the servicer in connection with investigating a prior notice of the same error and is reasonably likely to change the servicer's prior determination about the error.

(ii) *Overbroad notice of error.* The notice of error is overbroad. A notice of error is overbroad if the servicer cannot reasonably determine from the notice of error the specific error that the borrower asserts has occurred on a borrower's account. To the extent a servicer can reasonably identify a valid assertion of an error in a notice of error that is otherwise overbroad, the servicer shall comply with the requirements of paragraphs (d), (e) and (i) of this section with respect to that asserted error.

(iii) *Untimely notice of error.* A notice of error is delivered to the servicer more than one year after:

(A) Servicing for the mortgage loan that is the subject of the asserted error was transferred from the servicer receiving the notice of error to a transferee servicer; or

(B) The mortgage loan is discharged.

(2) *Notice to borrower.* If a servicer determines that, pursuant to this paragraph (g), the servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination.

The notice to the borrower shall set forth the basis under paragraph (g)(1) of this section upon which the servicer has made such determination.

(h) *Payment requirements prohibited.* A servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to a notice of error.

(i) *Effect on servicer remedies—(1) Adverse information.* After receipt of a notice of error, a servicer may not, for 60 days, furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error.

(2) *Remedies permitted.* Except as set forth in this section with respect to an assertion of error under paragraph (b)(9) or (10) of this section, nothing in this section shall limit or restrict a lender or servicer from pursuing any remedy it has under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.

### **§ 1024.38 General servicing policies, procedures, and requirements.**

(a) *Reasonable policies and procedures.* A servicer shall maintain policies and procedures that are reasonably designed to achieve the objectives set forth in paragraph (b) of this section.

(b) *Objectives—(1) Accessing and providing timely and accurate information.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide accurate and timely disclosures to a borrower as required by this subpart or other applicable law;

(ii) Investigate, respond to, and, as appropriate, make corrections in response to complaints asserted by a borrower;

(iii) Provide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan;

(iv) Provide owners or assignees of mortgage loans with accurate and current information and documents about all mortgage loans they own;

(v) Submit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law; and

(vi) (A) Upon receiving notice of the death of a borrower or of any transfer of the property securing a mortgage loan, promptly facilitate communication with any potential or confirmed successors in interest regarding the property;

(B) Upon receiving notice of the existence of a potential successor in interest, promptly determine the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i) (including the appropriate address); and

(C) Upon the receipt of such documents, promptly make a confirmation determination and promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest.

(2) Properly evaluating requests for loss mitigation ~~applications~~ assistance. The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan;

(iii) Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower pursuant to § 1024.40;

(iv) Identify documents and information, if any, that a borrower is required to submit for the servicer to ~~complete~~make a loss mitigation ~~application and facilitate compliance with the notice required pursuant to § 1024.41(b)(2)(i)(B); and~~determination;

(v) Properly evaluate a borrower who ~~submits an application~~makes a request for a loss mitigation ~~option~~assistance for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of § 1024.41-; and

(vi) Promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower ~~in accordance with the requirements of § 1024.41(e)(4)-.~~

(3) *Facilitating oversight of, and compliance by, service providers.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide appropriate servicer personnel with access to accurate and current documents and information reflecting actions performed by service providers;

(ii) Facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer's contractual obligations and applicable law; and

(iii) Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's request for loss mitigation ~~application~~assistance and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower's mortgage loan account as described in § 1024.40, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

(4) *Facilitating transfer of information during servicing transfers.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) As a transferor servicer, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer's obligations to the owner or assignee of the mortgage loan and applicable law; and

(ii) As a transferee servicer, identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.

(iii) For the purposes of this paragraph (b)(4), transferee servicer means a servicer, including a master servicer or a subservicer, that performs or will perform servicing of a

mortgage loan and transferor servicer means a servicer, including a master servicer or a subservicer, that transfers or will transfer the servicing of a mortgage loan.

(5) *Informing borrowers of the written error resolution and information request procedures.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer informs borrowers of the procedures for submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36.

(c) *Standard requirements—(1) Record retention.* A servicer shall retain records that document actions taken with respect to a borrower's mortgage loan account, including records evidencing compliance with this part, until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.

(2) *Servicing file.* A servicer shall maintain the following documents and data on each mortgage loan account serviced by the servicer in a manner that facilitates compiling such documents and data into a servicing file within five days:

- (i) A schedule of all transactions credited or debited to the mortgage loan account, including any escrow account as defined in § 1024.17(b) and any suspense account;
- (ii) A copy of the security instrument that establishes the lien securing the mortgage loan;
- (iii) Any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account;
- (iv) To the extent applicable, a report of the data fields relating to the borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices; and



(v) Copies of any information or documents provided by the borrower to the servicer in accordance with the procedures set forth in § 1024.35 or § 1024.41.

**§ 1024.39 Early intervention requirements for certain borrowers.**

(a) *Live contact.* Except as otherwise provided in this section, a servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate, ~~and take the actions described in paragraph (c) of this section, if applicable.~~

(b) *Written notice—(1) Notice required.* Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section no later than the 45th day of the borrower's delinquency and again no later than 45 days after each payment due date so long as the borrower remains delinquent. A servicer is not required to provide the written notice, however, more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 180 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent.

(2) *Content of the written notice.* The notice required by paragraph (b)(1) of this section shall include:

(i) A statement encouraging the borrower to contact the servicer;

(ii) The telephone number to access servicer personnel assigned pursuant to § 1024.40(a) ~~and the servicer's mailing address;~~, the telephone number where the borrower can obtain a list of all loss mitigation options that may be available from the owner or assignees of the borrower's loan, the servicer's mailing address, and a Web site to access a list of all loss mitigation options that may be available from the owner or assignee of the borrower's mortgage loan;

(iii) ~~If applicable,~~The name of the owner or assignee of the borrower's mortgage loan, ~~and~~ a statement providing a brief description of ~~example~~each type of loss mitigation ~~options~~option that ~~may be~~ generally available from the ~~servicer;~~owner or assignee of the borrower's mortgage loan;

(iv) If applicable, ~~either application instructions or~~ a statement informing the borrower how to ~~obtain more information about~~make a request for loss mitigation ~~options from the servicer~~assistance; and

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

(3) Model clauses. Model ~~clauses MS-4(A), MS-4(B), and~~clause MS-4(C), in appendix MS-4 to this part may be used to comply with the requirements of this paragraph (b).

(c) *Borrowers in bankruptcy*—(1) *Partial exemption*. While any borrower on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, a servicer, with regard to that mortgage loan:

(i) Is exempt from the requirements of paragraph (a) of this section;

(ii) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or if any borrower on the mortgage loan has provided a notification pursuant

to the Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)) with respect to that mortgage loan as referenced in paragraph (d) of this section; and

(iii) If the conditions of paragraph (c)(1)(ii) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (c)(1)(iii):

(A) If a borrower is delinquent when the borrower becomes a debtor in bankruptcy, a servicer must provide the written notice required by paragraph (b) of this section not later than the 45th day after the borrower files a bankruptcy petition under title 11 of the United States Code. If the borrower is not delinquent when the borrower files a bankruptcy petition, but subsequently becomes delinquent while a debtor in bankruptcy, the servicer must provide the written notice not later than the 45th day of the borrower's delinquency. A servicer must comply with these timing requirements regardless of whether the servicer provided the written notice in the preceding 180-day period.

(B) The written notice required by paragraph (b) of this section may not contain a request for payment.

(C) A servicer is not required to provide the written notice required by paragraph (b) of this section more than once during a single bankruptcy case.

(2) *Resuming compliance.* (i) Except as provided in paragraph (c)(2)(ii) of this section, a servicer that was exempt from paragraphs (a) and (b) of this section pursuant to paragraph (c)(1) of this section must resume compliance with paragraphs (a) and (b) of this section after the next payment due date that follows the earliest of the following events:

(A) The bankruptcy case is dismissed;

(B) The bankruptcy case is closed; and

(C) The borrower reaffirms personal liability for the mortgage loan.

(ii) With respect to a mortgage loan for which the borrower has discharged personal liability pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, a servicer:

(A) Is not required to resume compliance with paragraph (a) of this section; and

(B) Must resume compliance with paragraph (b) of this section if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case.

(d) *Fair Debt Collection Practices Act—partial exemption.* With regard to a mortgage loan for which any borrower has provided a notification pursuant to the Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)), a servicer subject to the FDCPA with respect to that borrower's loan:

(1) Is exempt from the requirements of paragraph (a) of this section;

(2) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or while any borrower on that mortgage loan is a debtor in bankruptcy under title 11 of the United States Code as referenced in paragraph (c) of this section; and

(3) If the conditions of paragraph (d)(2) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (d)(3):

(i) In addition to the information required pursuant to paragraph (b)(2) of this section, the written notice must include a statement that the servicer may or intends to invoke its specified remedy of foreclosure. Model clause MS-4(D) in appendix MS-4 to this part may be used to comply with this requirement.

(ii) The written notice may not contain a request for payment.

(iii) A servicer is prohibited from providing the written notice more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period

after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later.

~~(e) *Temporary COVID-19-related live contact.* Until October 1, 2022, in complying with the requirements described in paragraph (a) of this section, promptly after establishing live contact with a borrower the servicer shall take the following actions:~~

~~(1) *Borrowers not in a forbearance programs at the time of live contact.* At the time the servicer establishes live contact —(1) *Partial exemption.* While a borrower is performing pursuant to paragraph (a) of this section, if the borrower is not in the terms of a forbearance program, a servicer is exempt from the requirements of paragraphs (a) and the owner or assignee of the borrower's (b) of this section as to that mortgage loan ~~makes a forbearance program available to borrowers experiencing a COVID-19 related hardship, the servicer shall inform the borrower of the following information:~~~~

~~(i) *That forbearance programs are available*(2) *Contact and notice requirements for borrowers experiencing a COVID-19 related hardship and, unless the borrower states that they are not interested in receiving information about such programs, the servicer shall list and briefly describe to the borrower any such forbearance programs made available at that time and the actions the borrower must take to be evaluated for such forbearance programs.*~~

~~(ii) *At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.*~~

~~(2) Borrowers in forbearance programs at the time of live contact. forbearances nearing their scheduled end. If the borrower is in a forbearance program made available to borrowers experiencing a COVID-19 related hardship, during the live contact established a delinquent borrower is performing pursuant to paragraph (a) the terms of this section that occurs a forbearance, the servicer shall, at least 1030 days and, but no more than 45 days, before the scheduled end of the forbearance program or, if the scheduled end date of the forbearance program occurs between August 31, 2021 and September 10, 2021, during the first live contact made pursuant paragraph (a) of this section after August 31, 2021, the servicer shall inform the borrower of the following information:~~

~~(i) Establish or make good faith efforts to establish live contact with the borrower.~~

~~During such live contact, the servicer shall inform the borrower of the following information:~~

~~(A) The date the borrower's current forbearance program is scheduled to end; and~~

~~(ii) A list and brief description of each of the types of forbearance extension, repayment options, and other loss mitigation options made available to the borrower by the owner or assignee of the borrower's mortgage loan at the time of the live contact, and the actions the borrower must take to be evaluated for such loss mitigation options; and~~

~~(iii) At least one way that the borrower can find contact (B) The availability of loss mitigation options, if appropriate, as set forth in paragraph (a) of this section.~~

~~(ii) Shall send the borrower a written notice with the following information for homeownership counseling services, such as referencing:~~

~~(A) The date the borrower's current forbearance is scheduled to end; and~~

~~(B) The content of the written notice as set forth in paragraphs (b)(2)(i)-(v) of this section.~~

(3) Resuming compliance with early intervention requirements. When a forbearance ends for any reason, including, but not limited to, the borrower's ~~periodic statement~~ successful completion of the forbearance or the borrower's nonperformance under the terms of the forbearance, a servicer that was exempt from paragraphs (a) and (b) of this section pursuant to paragraph (e)(1) of this section must resume compliance with paragraphs (a) and (b) of this section after the next payment due date following the forbearance end date. For purposes of providing written notice under paragraph (b) after resuming compliance, the 180-day period referenced in paragraph (b) begins with the date the servicer provided the last written notice to the borrower under either paragraphs (b) or (e)(2)(ii), whichever is later.

**§ 1024.40 Continuity of contact.**

(a) *In general.* A servicer shall maintain policies and procedures that are reasonably designed to achieve the following objectives:

(1) Assign personnel to a delinquent borrower by the time the servicer provides the borrower with the written notice required by § 1024.39(b), but in any event, not later than the 45th day of the borrower's delinquency.

(2) Make available to a delinquent borrower, via telephone, personnel assigned to the borrower as described in paragraph (a)(1) of this section to respond to the borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement.

(3) If a borrower contacts the personnel assigned to the borrower as described in paragraph (a)(1) of this section and does not immediately receive a live response from such personnel, ensure that the servicer can provide a live response in a timely manner.

(b) *Functions of servicer personnel.* A servicer shall maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower as described in paragraph (a) of this section perform the following functions:

(1) Provide the borrower with accurate information about:

(i) Loss mitigation options available to the borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Any actions the borrower must take to be evaluated for such loss mitigation options, ~~including actions the borrower must take to submit a complete loss mitigation application, as defined in § 1024.41, and, if applicable, actions and whether the borrower has~~ the borrower must take ~~right~~ to appeal the ~~servicer's loss mitigation~~ determination ~~to deny a borrower's loss mitigation application for any trial or permanent loan modification program offered by~~ as well as the ~~servicer~~ amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section;

(iii) The status of the servicer's review of any request for loss mitigation ~~application~~ that assistance from the borrower ~~has submitted~~ to the servicer;

(iv) The circumstances under which the servicer may make a referral to foreclosure or advance the foreclosure process; and

(v) Applicable loss mitigation deadlines established by an owner or assignee of the borrower's mortgage loan or § 1024.41.

(2) Retrieve, in a timely manner:

(i) A complete record of the borrower's payment history; and

(ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a request for loss mitigation ~~application~~ assistance;



(3) Provide the documents and information identified in paragraph (b)(2) of this section to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable; and

(4) Provide a delinquent borrower with information about the procedures for submitting a notice of error pursuant to § 1024.35 or an information request pursuant to § 1024.36.

#### **§ 1024.41 Loss mitigation procedures.**

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in § 1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in § 1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

~~(b) *Receipt of a loss mitigation application—(1) Complete loss mitigation application.* A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.~~

~~(2) *Review of loss mitigation application submission—(i) Requirements.* If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer shall:~~

~~(A) Promptly upon receipt of a loss mitigation application, review the loss mitigation application to determine if the loss mitigation application is complete; and~~

~~(B) Notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section. The notice to the borrower shall include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.~~

~~(ii) *Time period disclosure.* The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.~~

~~(3) *Determining protections.* To the extent a (b) [RESERVED]~~

~~(c) *Loss mitigation determination* of whether protections under this section apply to a borrower is made on the basis of the number of days between when a complete loss mitigation application is received and when a foreclosure sale occurs, such determination shall be made as of the date a complete loss mitigation application is received.~~

~~(e) *Evaluation of loss mitigation applications*—(1) *Complete loss mitigation application notices*—(1) *General notice and content requirements.* Except as provided in paragraphs (c)(4)(ii) and (3) of this section, if a servicer receives a complete request for loss mitigation assistance more than 37 days before a foreclosure sale, ~~then, within 30 days of receiving the complete~~ and makes a determination to offer or deny any loss mitigation application, a assistance, the servicer shall:~~

~~(i) Evaluate the borrower for all loss mitigation options available to the borrower; and~~  
~~(ii) promptly~~ provide the borrower with a notice in writing stating ~~the servicer's that~~  
determination ~~of which loss mitigation options, if any, it will offer to the borrower on behalf of~~  
~~the owner or assignee of the mortgage.~~ The servicer shall include in this notice:

(i) The amount of time the borrower has to accept or reject an offer of a loss mitigation  
program option as provided for in paragraph (e) of this section, if applicable, ~~and;~~

(ii) A notification, if applicable, that the borrower has the right to appeal the ~~denial of any~~  
~~loan modification option~~ loss mitigation determination as well as the amount of time the borrower  
has to file such an appeal and any requirements for making an appeal, as provided for in  
paragraph (h) of this section.

~~(2) Incomplete loss mitigation application evaluation — (i) In general. Except as set forth~~  
~~in paragraphs (c)(2)(ii), (iii), (v), and (vi) of this section, a servicer shall not evade the~~  
~~requirement to evaluate a complete loss mitigation application for all loss mitigation options~~  
~~available to the borrower by offering a loss mitigation option based upon an evaluation of any~~  
~~information provided by a borrower in connection with an incomplete loss mitigation~~  
~~application.~~

~~(ii) Reasonable time. Notwithstanding paragraph (c)(2)(i) of this section, if a servicer has~~  
~~exercised reasonable diligence in obtaining documents and information to complete a loss~~  
~~mitigation application, but a loss mitigation application remains incomplete for a significant~~  
~~period of time under the circumstances without further progress by a borrower to make the loss~~  
~~mitigation application complete, a servicer may, in its discretion, evaluate an incomplete loss~~  
~~mitigation application and offer a borrower a loss mitigation option. Any such evaluation and~~

offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of paragraph (i) of this section.

~~(iii) *Short-term loss mitigation options.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program or a short-term repayment plan to a borrower based upon an evaluation of an incomplete loss mitigation application. Promptly after offering a payment forbearance program or a repayment plan under this paragraph (c)(2)(iii), unless the borrower has rejected the offer, the servicer must provide the borrower a written notice stating the specific payment terms and duration of the program or plan, that the servicer offered the program or plan based on an evaluation of an incomplete application, that other loss mitigation options may be available, and that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program or repayment plan offered pursuant to this paragraph (c)(2)(iii). A servicer may offer a short-term payment forbearance program in conjunction with a short-term repayment plan pursuant to this paragraph (c)(2)(iii).~~

~~(iv) *Facially complete application.* A loss mitigation application shall be considered facially complete when a borrower submits all the missing documents and information as stated in the notice required under paragraph (b)(2)(i)(B) of this section, when no additional information is requested in such notice, or once the servicer is required to provide the borrower a written notice pursuant to paragraph (c)(3)(i) of this section. If the servicer later discovers that~~

~~additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it first became facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of this paragraph (c). A servicer that complies with this paragraph (c)(2)(iv) will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B) of this section.~~

~~(v) *Certain COVID-19 related loss mitigation options.* (A) Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a borrower a loss mitigation option based upon evaluation of an incomplete application, provided that all of the following criteria are met:~~

~~(1) The loss mitigation option permits the borrower to delay paying covered amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates. For purposes of this paragraph (c)(2)(v)(A)(1), “covered amounts” includes, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a COVID-19 related hardship, including a payment forbearance program made pursuant to the Coronavirus Economic Stabilization Act, section 4022 (15 U.S.C. 9056); it also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing a COVID-19 related hardship. For purposes of this paragraph (c)(2)(v)(A)(1), “the term of the mortgage~~

loan” means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option.

~~(2) Any amounts that the borrower may delay paying as described in paragraph (e)(2)(v)(A)(I) of this section do not accrue interest; the servicer does not charge any fee in connection with the loss mitigation option; and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower’s acceptance of the loss mitigation option.~~

~~(3) The borrower’s acceptance of an offer made pursuant to paragraph (e)(2)(v)(A) of this section ends any pre-existing delinquency on the mortgage loan.~~

~~(B) Once the borrower accepts an offer made pursuant to paragraph (e)(2)(v)(A) of this section, the servicer is not required to comply with paragraph (b)(1) or (2) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer’s offer of the loss mitigation option described in paragraph (e)(2)(v)(A) of this section.~~

~~(vi) *Certain COVID-19-related loan modification options.* (A) Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a borrower a loan modification based upon evaluation of an incomplete application, provided that all of the following criteria are met:~~

~~(1) The loan modification extends the term of the loan by no more than 480 months from the date the loan modification is effective and, for the entire modified term, does not cause the borrower’s monthly required principal and interest payment to increase beyond the monthly principal and interest payment required prior to the loan modification.~~

~~(2) If the loan modification permits the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the loan modification matures,~~

~~or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates, those amounts do not accrue interest.~~

~~(3) The loan modification is made available to borrowers experiencing a COVID-19-related hardship.~~

~~(4) Either the borrower's acceptance of an offer pursuant to this paragraph (c)(2)(vi)(A) ends any preexisting delinquency on the mortgage loan or the loan modification offered pursuant to this paragraph (c)(2)(vi)(A) is designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements for completing a trial loan modification plan and accepting a permanent loan modification.~~

~~(5) The servicer does not charge any fee in connection with the loan modification, and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower's acceptance of the loan modification.~~

~~(B) Once the borrower accepts an offer made pursuant to paragraph (c)(2)(vi)(A) of this section, the servicer is not required to comply with paragraph (b)(1) or (2) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loan modification described in paragraph (c)(2)(vi)(A) of this section. However, if the borrower fails to perform under a trial loan modification plan offered pursuant to paragraph (c)(2)(vi)(A) of this section or requests further assistance, the servicer must immediately resume reasonable diligence efforts as required under paragraph (b)(1) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the trial loan modification plan and must provide the borrower with the notice required by paragraph (b)(2)(i)(B) of this section with regard to the most recent loss mitigation application the borrower~~

~~submitted prior to the servicer's offer of the loan modification described in paragraph (e)(2)(vi)(A) of this section, unless the servicer has already provided such notice to the borrower.~~

~~(3) Notice of complete application. (i) Except as provided in paragraph (c)(3)(ii) of this section, within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving a borrower's complete loss mitigation application, a servicer shall provide the borrower a written notice that sets forth the following information:~~

~~(A) That the loss mitigation application is complete;~~

~~(B) The date the servicer received the complete application;~~

~~(C) That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;~~

~~(D) That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:~~

~~(1) If the servicer has not made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer cannot make the first notice or filing required to commence or initiate the foreclosure process under applicable law before evaluating the borrower's complete application; or~~

~~(2) If the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer has begun the foreclosure process, and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application;~~

~~(E) That the servicer may need additional information at a later date to evaluate the application, in which case the servicer will request that information from the borrower and give the borrower a reasonable opportunity to submit it, the evaluation process may take longer, and~~



~~the foreclosure protections could end if the servicer does not receive the information as requested; and~~

~~(F) That the borrower may be entitled to additional protections under State or Federal law.~~

~~(ii) A servicer is not required to provide a notice pursuant to paragraph (c)(3)(i) of this section if:~~

~~(A) The servicer has already provided the borrower a notice under paragraph (b)(2)(i)(B) of this section informing the borrower that the application is complete and the servicer has not subsequently requested additional information or a corrected version of a previously submitted document from the borrower pursuant to paragraph (c)(2)(iv) of this section;~~

~~(B) The application was not complete or facially complete more than 37 days before a foreclosure sale; or~~

~~(C) The servicer has already provided the borrower a notice regarding the application under paragraph (c)(1)(ii) of this section.~~

~~(4) *Information not in the borrower's control*—(i) *Reasonable diligence*. If a servicer requires documents or information not in the borrower's control to determine which loss mitigation options, if any, it will offer to the borrower, the servicer must exercise reasonable diligence in obtaining such documents or information.~~

~~(ii) *Effect in case of delay*. (A) (1) Except as provided in paragraph (e)(4)(ii)(A)(2) of this section, a servicer must not deny a complete loss mitigation application solely because the servicer lacks required documents or information not in the borrower's control.~~

~~(2) If a servicer has exercised reasonable diligence (iii) The specific reason or reasons for the servicer's determination to offer or deny each such loss mitigation option;~~

(iv) The key borrower-provided inputs, if any, that served as the basis for the determination;

(v) A telephone number, mailing address, and Web site, where the borrower can access a list of the non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination;

(vi) A list of all other loss mitigation options that may remain available to the borrower, if any, including a clear statement describing the next steps the borrower must take to be reviewed for those loss mitigation options or, if applicable, a statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain;

(vii) A list of any loss mitigation options that the servicer previously offered to the borrower that remain available but that the borrower did not accept;

(viii) A telephone number where the borrower can obtain a list of all loss mitigation options that may be available from the owner or assignee of the borrower's loan, pursuant to § 1024.39(b)(2)(ii), and a Web site to access a list of all loss mitigation options that may be available from the owner or assignee of the borrower's mortgage loan, pursuant to § 1024.39(b)(2)(ii);

(ix) The name of the owner or assignee of the borrower's mortgage loan;

(x) If there is a loss mitigation offer, a statement informing the borrower whether the offered option will still be available if the borrower requests to be reviewed for other loss mitigation options prior to accepting or rejecting the offer; and

(xi) If there is a loss mitigation offer of a forbearance, a statement informing the borrower of the specific payment terms and duration of the forbearance.

(2) Denial due to missing documents or information not in the borrower's control—(i) If a servicer receives a request for loss mitigation assistance more than 37 days before a foreclosure sale, except as provided in paragraph (c)(2)(ii) of this section, a servicer must not deny a request for loss mitigation assistance solely because the servicer lacks required documents or information not in the borrower's control.

(ii) If the servicer has regularly taken steps to obtain required documents or information from a party other than the borrower or the servicer, but the servicer has been unable to obtain such documents or information for a significant period of time following the 30-day period identified in paragraph (c)(1) of this section, at least 90 days and the servicer, in accordance with applicable requirements established by the owner or assignee of the borrower's mortgage loan, is unable to determine which loss mitigation options, if any, it will offer the borrower without such documents or information, the servicer may deny the application request for loss mitigation assistance and provide the borrower with a written notice in accordance with paragraph § 1024.41(c)(4)(ii) of this section. When providing the written notice in accordance with paragraph (c)(1)(ii) of this section, the servicer must also provide the borrower with a copy of the written notice required by paragraph (c)(4)(ii)(B) of this section. 2)(iii).

(B) If a(iii) The servicer is unable to make a determination within the 30-day period identified in paragraph (c)(1) of this section as to which loss mitigation options, if any, it will offer to the borrower because the servicer lacks required documents or information from a party other than the borrower or the servicer, the servicer must, within such 30-day period or promptly thereafter, shall provide the borrower a written notice, informing the borrower:

(1) That the servicer has not received documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage;

(2) Of the specific documents or information that the servicer lacks;

(3) That the servicer has requested such documents or information; and

(4) That, if the servicer receives the documents or information within 14 days of providing the written notice to the borrower, the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

~~(C) If a servicer must provide a notice required by paragraph (c)(4)(ii)(B) of this section, the servicer must not provide the borrower a written notice pursuant to paragraph (c)(1)(ii) of this section until the servicer receives the required documents or information referenced in paragraph (c)(4)(ii)(B)(2) of this section, except as provided in paragraph (c)(4)(ii)(A)(2) of this section. Upon receiving such required documents or information, the servicer must promptly provide the borrower with the written notice pursuant to paragraph (c)(1)(ii) of this section.~~

~~(d) Denial of loan modification options. If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria.~~

(5) Of the information required by paragraphs (c)(1)(vi) through (xi) of this section.

(3) Unsolicited loss mitigation offers. If a servicer makes an unsolicited offer of a loss mitigation option to a borrower based solely on information in the servicer's possession, the servicer shall provide the borrower with a notice in writing stating that determination. The servicer shall include in this notice:

(i) The amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section; and

(ii) The information required by paragraphs (c)(1)(vi) and (ix).

(d) [RESERVED]

(e) *Borrower response*—(1) *In general.* Subject to paragraphs (e)(2)(ii) and (iii) of this section, if a ~~complete~~request for loss mitigation ~~application~~assistance is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a ~~complete~~request for loss mitigation ~~application~~assistance is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(2) *Rejection*—(i) *In general.* Except as set forth in paragraphs (e)(2)(ii) and (iii) of this section, a servicer may deem a borrower that has not accepted an offer of a loss mitigation option within the deadline established pursuant to paragraph (e)(1) of this section to have rejected the offer of a loss mitigation option.

(ii) *Trial Loan Modification Plan.* A borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be

owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.

(iii) *Interaction with appeal process.* If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower's deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1)(ii) or (3) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.

(f) *Prohibition on foreclosure referral—(1) Pre-foreclosure review period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i) A borrower's mortgage loan obligation is more than 120 days delinquent;
- (ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or
- (iii) The servicer is joining the foreclosure action of a superior or subordinate lienholder.

~~(2) *Application received before foreclosure referral.* If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:~~

~~(i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;~~

- ~~(ii) The borrower rejects all loss mitigation options offered by the servicer; or~~
- ~~(iii) The borrower fails to perform under an agreement on a loss mitigation option.~~

~~(3) Temporary Special COVID-19 Loss Mitigation Procedural Safeguards—(i) In general. To give a borrower a meaningful opportunity to pursue loss mitigation options, a servicer must ensure that one of the Foreclosure process procedural safeguards described in paragraph (f)(3)(ii) of this section has been during a loss mitigation review cycle. A loss mitigation review cycle begins when a borrower makes a request for loss mitigation assistance more than 37 days before a foreclosure sale. Once a loss mitigation review cycle begins, the servicer must ensure that one of the following procedural safeguards is met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process because of a delinquency under paragraph (f)(1)(i), or if applicable, before advancing the foreclosure process:~~

~~(A) The borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020; and~~

~~(B) The statute of limitations applicable to the foreclosure action being taken in the laws of the State where the property securing the mortgage loan is located expires on or after January 1, 2022.~~

~~(ii) Procedural safeguards. A procedural safeguard is met if:~~

~~(A) Complete—(i) No remaining loss mitigation options. The servicer has reviewed the borrower for loss mitigation application evaluated. The borrower submitted a complete loss mitigation application, remained delinquent at all times since submitting the application, and paragraph (f)(2) of this section permitted the servicer to make the first notice or filing required for foreclosure;~~

~~(B) *Abandoned property.* The property securing the mortgage loan is abandoned according to the laws of the State or municipality where the property is located when the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; or~~

~~(C) *Unresponsive borrower.* The servicer did not receive any communications from the borrower for at least 90 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and all of the following conditions are met:~~

~~(1) The servicer made good faith efforts to establish live contact with the borrower after each payment due date, as required by § 1024.39(a), during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process;~~

~~(2) The servicer sent the written notice required by § 1024.39(b) at least 10 days and and no more than 45 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process;~~

~~(3) The servicer sent available loss mitigation options remain, the servicer has sent the borrower all notices required by paragraph (c) of this section, as if applicable, during and the 90-day period before borrower has not requested any appeal within the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; and~~

~~(4) The borrower's forbearance program time period or, if applicable, ended at least 30 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process. all of the borrower's appeals have been denied; or~~



~~(iii) *Sunset date.* This paragraph (f)(3) does not apply if a servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process on or after January 1, 2022.~~

~~(g) *Prohibition on foreclosure sale.* If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:~~

~~(1) The servicer has sent the borrower a notice pursuant to paragraph (e)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;~~

~~(2) The borrower rejects all loss mitigation options offered by the servicer; or~~

~~(3) The borrower fails to perform under an agreement on a loss mitigation option.~~

~~(ii) *Unresponsive borrower.* The servicer has regularly taken steps to identify and obtain any information and documents necessary from the borrower to determine which loss mitigation options, if any, it will offer to the borrower, and, if the servicer has made a loss mitigation determination, has regularly taken steps to reach the borrower regarding that determination, but the borrower has not communicated with the servicer for at least 90 days.~~

~~(3) *Fee protections.* During a loss mitigation review cycle, no fees beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract shall accrue on the borrower's account.~~

~~(g) [RESERVED]~~

(h) *Appeal process*—(1) *Appeal process required for ~~loan modification denials~~*. ~~If a servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale or during the period set forth in paragraph (f) of this section,~~loss mitigation determinations. A servicer shall permit a borrower to appeal the servicer's determination ~~to deny a borrower's~~ regarding any loss mitigation ~~application for any trial or permanent loan modification program~~option available to the borrower.

(2) *Deadlines*. A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides ~~the offer of~~ a loss mitigation ~~option~~determination to the borrower pursuant to paragraph (c)(1)(ii) ~~of this section~~. An appeal that meets the procedural requirements of section 1024.35 and is submitted within 14 days after the servicer provides a loss mitigation determination to the borrower pursuant to paragraph (c) of this section shall be treated as both an appeal and an error assertion for purposes of paragraph (h) of this section.

(3) *Independent evaluation*. An appeal shall be reviewed by different personnel than those responsible for ~~evaluating~~making the ~~borrower's complete~~ loss mitigation ~~application~~determination that is the subject of the appeal.

(4) *Appeal determination*. Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. If a borrower has asserted an error under § 1024.35(b)(11) that meets the procedural requirements of § 1024.35 and is submitted within 14 days after the servicer provides a loss mitigation determination to the borrower pursuant to paragraph (c) of this section, a servicer may not make this appeal determination until it has either corrected the error or conducted a

reasonable investigation and determined that no error occurred, as required in § 1024.35. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

(i) *Duplicative requests.* A servicer must comply with the requirements of this section for a borrower's request for loss mitigation ~~application, unless the servicer has previously complied with the requirements of this section for a complete assistance during the same~~ loss mitigation ~~application submitted by the borrower~~ review cycle, unless the procedural safeguards in paragraph (f)(2)(i) and the borrower has(ii) have been ~~delinquent at all times since submitting the prior complete application met.~~

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

(k) *Servicing transfers—(1) In general—(i) Timing of compliance.* Except as provided in paragraphs (k)(~~2) through 3~~) and (4) of this section, if a transferee servicer acquires the servicing of a mortgage loan for which a request for loss mitigation ~~application assistance~~ is pending as of the transfer date, the transferee servicer must comply with the requirements of this section for that ~~loss mitigation application request~~ within the timeframes that were applicable to the transferor servicer based on the date the transferor servicer received the request for loss mitigation ~~application assistance~~. All rights and protections under ~~paragraphs (c) through (h) of~~

this section to which a borrower was entitled before a transfer continue to apply notwithstanding the transfer.

(ii) *Transfer date defined.* For purposes of this paragraph (k), the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).

~~(2) *Acknowledgment notices* — (i) *Transferee servicer timeframes.* If a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the notice required by paragraph (b)(2)(i)(B) of this section has not expired as of the transfer date and the transferor servicer has not provided such notice, the transferee servicer must provide the notice within 10 days (excluding legal public holidays, Saturdays, and Sundays) of the transfer date.~~

~~(ii) *Prohibitions.* A transferee servicer that must provide the notice required by paragraph (b)(2)(i)(B) of this section under this paragraph (k)(2):~~

~~(A) Shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section, notwithstanding paragraph (f)(1) of this section. For purposes of paragraph (f)(2) of this section, a borrower who submits a complete loss mitigation application on or before the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section shall be treated as having done so during the pre-foreclosure review period set forth in paragraph (f)(1) of this section.~~

~~(B) Shall comply with paragraphs (c), (d), and (g) of this section if the borrower submits a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section.~~

~~(3) Complete loss mitigation applications(2) [RESERVED]~~

~~(3) Requests for loss mitigation assistance pending at transfer.~~ If a transferee servicer acquires the servicing of a mortgage loan for which a ~~complete request for~~ loss mitigation ~~application assistance~~ is pending as of the transfer date, the transferee servicer must comply with the applicable requirements of ~~paragraphs (e)(1) and (4) of this section within 30 days of,~~ ~~including~~ the ~~transfer date procedural safeguards referenced in paragraph (f)(2).~~

(4) ~~Applications Determinations~~ subject to appeal process. If a transferee servicer acquires the servicing of a mortgage loan for which an appeal of a transferor servicer's determination pursuant to paragraph (h) of this section has not been resolved by the transferor servicer as of the transfer date or is timely filed after the transfer date, the transferee servicer must make a determination on the appeal if it is able to do so or, if it is unable to do so, must treat the appeal as a pending ~~complete request for~~ loss mitigation ~~application assistance~~.

(i) *Determining appeal.* If a transferee servicer is required under this paragraph (k)(4) to make a determination on an appeal, the transferee servicer must complete the determination and provide the notice required by paragraph (h)(4) of this section within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later.

(ii) *Servicer unable to determine appeal.* A transferee servicer that is required to treat a borrower's appeal as a pending ~~complete request for~~ loss mitigation ~~application assistance~~ under this paragraph (k)(4) must comply with the requirements of this section for such ~~application,~~ ~~including evaluating the borrower for all loss mitigation options available to the borrower from the transferee servicer. For purposes of paragraph (e) or (k)(3) of this section, as applicable, such a pending complete loss mitigation application shall be considered complete as of the date the appeal was received by the transferor servicer or the transferee servicer, whichever occurs first.~~

~~For purposes of paragraphs (e) through (h) of this section, the transferee servicer must treat such a pending complete loss mitigation application as facially complete under paragraph (e)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer request.~~

(5) *Pending loss mitigation offers.* A transfer does not affect a borrower's ability to accept or reject a loss mitigation option offered under ~~paragraph (e) or (h) of~~ this section. If a transferee servicer acquires the servicing of a mortgage loan for which the borrower's time period under paragraph (e) or (h) of this section for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

#### **APPENDIX MS-4 TO PART 1024—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE**

~~MS-4(A)—STATEMENT ENCOURAGING THE BORROWER TO CONTACT THE SERVICER AND ADDITIONAL INFORMATION ABOUT LOSS MITIGATION OPTIONS (§ 1024.39(b)(2)(i), (ii) AND (iv))~~  
~~Call us today to learn more about your options and instructions for how to apply. [The longer you wait, or the further you fall behind on your payments, the harder it will be to find a solution.]~~  
~~[Servicer Name]~~  
~~[Servicer Address]~~  
~~[Servicer Telephone Number]~~  
~~[For more information, visit [Servicer Web site] [and][or] [Email Address]].~~

~~MS-4(B)—AVAILABLE LOSS MITIGATION OPTIONS (§ 1024.39(B)(2)(III))~~

~~[If you need help, the following options may be possible (most are subject to lender approval):]~~

- ~~• [Refinance your loan with us or another lender;]~~
- ~~• [Modify your loan terms with us;]~~
- ~~• [Payment forbearance temporarily gives you more time to pay your monthly payment;] [or]~~
- ~~• [If you are not able to continue paying your mortgage, your best option may be to find more affordable housing. As an alternative to foreclosure, you may be able to sell your home and use the proceeds to pay off your current loan.]~~

~~MS-4(A)—[RESERVED]~~

~~MS-4(B)—[RESERVED]~~

MS-4(C)—HOUSING COUNSELORS (§ 1024.39(B)(2)(V))

For help exploring your options, the Federal government provides contact information for housing counselors, which you can access by contacting [the Consumer Financial Protection Bureau at [Bureau Housing Counselor List Web site]] [the Department of Housing and Urban Development at [HUD Housing Counselor List Web site]] or by calling [HUD Housing Counselor List Telephone Number].

MS-4(D)—WRITTEN EARLY INTERVENTION NOTICE FOR SERVICERS SUBJECT TO FDCPA  
(§ 1024.39(D)(2)(III))

This is a legally required notice. We are sending this notice to you because you are behind on your mortgage payment. We want to notify you of possible ways to avoid losing your

home. We have a right to invoke foreclosure based on the terms of your mortgage contract. Please read this letter carefully.

## **Supplement I to Part 1024—Official Bureau Interpretations**

### **Subpart C—Mortgage Servicing**

#### *§ 1024.31—Definitions*

##### *Delinquency.*

1. *Length of delinquency.* A borrower's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and, if applicable, escrow becomes due and unpaid, and lasts until such time as no periodic payment is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

2. *Application of funds.* If a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent borrower advances the date the borrower's delinquency began. For example, assume a borrower's mortgage loan obligation provides that a periodic payment sufficient to cover principal, interest, and escrow is due on the first of each month. The borrower fails to make a payment on January 1 or on any day in January, and on January 31 the borrower is 30 days delinquent. On February 3, the borrower makes a periodic payment. The servicer applies the payment it received on February 3 to the outstanding January payment. On February 4, the borrower is three days delinquent.

3. *Payment tolerance.* For any given billing cycle for which a borrower's payment is less than the periodic payment due, if a servicer chooses not to treat a borrower as delinquent for purposes of any section of this subpart, that borrower is not delinquent as defined in § 1024.31.



4. *Creditor's contract rights.* This subpart does not prevent a creditor from exercising a right provided by a mortgage loan contract to accelerate payment for a breach of that contract. Failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency.

*Loss mitigation ~~application.~~*

~~1. *Borrower's representative.* A loss mitigation application is deemed to be submitted by a borrower if the loss mitigation application is submitted by an agent of the borrower. Servicers may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf.~~

*Loss mitigation option.*

1. *Types of loss mitigation options.* Loss mitigation options include temporary and long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation programs sponsored by a locality, a State, or the Federal government.

2. *Available through the servicer.* A loss mitigation option available through the servicer refers to an option for which a borrower may ~~apply~~request to be evaluated, even if the borrower ultimately does not qualify for such option.

*Request for loss mitigation assistance.*

1. *Borrower's representative.* A request for loss mitigation assistance is deemed to be submitted by a borrower if the request is submitted by an agent of the borrower. Servicers may

undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf.

*Qualified written request.*

1. A qualified written request is a written notice a borrower provides to request a servicer either correct an error relating to the servicing of a mortgage loan or to request information relating to the servicing of the mortgage loan. A qualified written request is not required to include both types of requests. For example, a qualified written request may request information relating to the servicing of a mortgage loan but not assert that an error relating to the servicing of a loan has occurred.

2. A qualified written request is just one form that a written notice of error or information request may take. Thus, the error resolution and information request requirements in §§ 1024.35 and 1024.36 apply as set forth in those sections irrespective of whether the servicer receives a qualified written request.

*Service provider.*

1. Service providers may include attorneys retained to represent a servicer or an owner or assignee of a mortgage loan in a foreclosure proceeding, as well as other professionals retained to provide appraisals or inspections of properties.

*Successor in interest.*

1. *Joint tenants and tenants by the entirety.* If a borrower who has an ownership interest as a joint tenant or tenant by the entirety in a property securing a mortgage loan subject to this subpart dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in § 1024.31.

2. *Beneficiaries of inter vivos trusts.* In the event of a transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, the beneficiaries of the *inter vivos* trust rather than the *inter vivos* trust itself are considered to be the successors in interest for purposes of § 1024.31. For example, assume Borrower A transfers her home into such an *inter vivos* trust for the benefit of her spouse and herself. As of the transfer date, Borrower A and her spouse would be considered successors in interest and, upon confirmation, would be borrowers for purposes of certain provisions of Regulation X. If the lender has not released Borrower A from the loan obligation, Borrower A would also remain a borrower more generally for purposes of Regulation X.

§ 1024.35—*Error Resolution Procedures*

35(a) *Notice of error.*

1. *Borrower's representative.* A notice of error is submitted by a borrower if the notice of error is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the notice of error as having been submitted by the borrower.

2. *Information request.* A servicer should not rely solely on the borrower's description of a submission to determine whether the submission constitutes a notice of error under § 1024.35(a), an information request under § 1024.36(a), or both. For example, a borrower may submit a letter that claims to be a "Notice of Error" that indicates that the borrower wants to receive the information set forth in an annual escrow account statement and asserts an error for

the servicer's failure to provide the borrower an annual escrow statement. Such a letter may constitute an information request under § 1024.36(a) that triggers an obligation by the servicer to provide an annual escrow statement. A servicer should not rely on the borrower's characterization of the letter as a "Notice of Error," but must evaluate whether the letter fulfills the substantive requirements of a notice of error, information request, or both.

*35(b) Scope of error resolution.*

1. *Noncovered errors.* A servicer is not required to comply with § 1024.35(d), (e) and (i) with respect to a borrower's assertion of an error that is not defined as an error in § 1024.35(b).

For example, the following are not errors for purposes of § 1024.35:

- i. An error relating to the origination of a mortgage loan;
- ii. An error relating to the underwriting of a mortgage loan;
- iii. An error relating to a subsequent sale or securitization of a mortgage loan;
- iv. An error relating to a determination to sell, assign, or transfer the servicing of a mortgage loan. However, an error relating to the failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer is an error for purposes of § 1024.35.

2. *Unreasonable basis.* For purposes of § 1024.35(b)(5), a servicer lacks a reasonable basis to impose fees that are not bona fide, such as:

- i. A late fee for a payment that was not late;
- ii. A charge imposed by a service provider for a service that was not actually rendered;
- iii. A default property management fee for borrowers that are not in a delinquency status that would justify the charge; or
- iv. A charge for force-placed insurance in a circumstance not permitted by § 1024.37.

*35(c) Contact information for borrowers to assert errors.*

1. *Exclusive address not required.* A servicer is not required to designate a specific address that a borrower must use to assert an error. If a servicer does not designate a specific address that a borrower must use to assert an error, a servicer must respond to a notice of error received by any office of the servicer.

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in the following contexts:

- i. The written notice designating the specific address, required pursuant to § 1024.35(c) and § 1024.36(b).
- ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.
- iii. Any Web site the servicer maintains in connection with the servicing of the loan.
- iv. Any notice required pursuant to §§ 1024.39 or .41 that includes contact information for assistance.

3. *Multiple offices.* A servicer may designate multiple office addresses for receiving notices of errors. However, a servicer is required to comply with the requirements of § 1024.35 with respect to a notice of error received at any such designated address regardless of whether that specific address was provided to a specific borrower asserting an error. For example, a servicer may designate an address to receive notices of error for borrowers located in California and a separate address to receive notices of errors for borrowers located in Texas. If a borrower located in California asserts an error through the address used by the servicer for borrowers

located in Texas, the servicer is still considered to have received a notice of error and must comply with the requirements of § 1024.35.

4. *Internet intake of notices of error.* A servicer may, but need not, establish a process for receiving notices of error through email, Web site form, or other online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving notices of error by mail. The process or processes established by the servicer for receiving notices of error through an online intake method shall be the exclusive online intake process or processes for receiving notices of error. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving such notices of error.

*35(e) Response to notice of error.*

*35(e)(1) Investigation and response requirements.*

*Paragraph 35(e)(1)(i).*

1. *Notices alleging multiple errors; separate responses permitted.* A servicer may respond to a notice of error that alleges multiple errors through either a single response or separate responses that address each asserted error.

*Paragraph 35(e)(1)(ii).*

1. *Different or additional errors; separate responses permitted.* A servicer may provide the response required by § 1024.35(e)(1)(ii) for different or additional errors identified by the servicer in the same notice that responds to errors asserted by the borrower pursuant to § 1024.35(e)(1)(i) or in a separate response that addresses the different or additional errors identified by the servicer.

*35(e)(3) Time limits.*

*35(e)(3)(i) In general.*

*Paragraph 35(e)(3)(i)(B).*

1. *Foreclosure sale timing.* If a servicer cannot comply with its obligations pursuant to § 1024.35(e) by the earlier of a foreclosure sale or 30 days after receipt of the notice of error, a servicer may cancel or postpone a foreclosure sale, in which case the servicer would meet the time limit in § 1024.35(e)(3)(i)(B) by complying with the requirements of § 1024.35(e) before the earlier of 30 days after receipt of the notice of error (excluding legal public holidays, Saturdays, and Sundays) or the date of the rescheduled foreclosure sale.

*35(e)(3)(ii) Extension of time limit.*

1. *Notices alleging multiple errors; extension of time.* A servicer may treat a notice of error that alleges multiple errors as separate notices of error and may extend the time period for responding to each asserted error for which an extension is permissible under § 1024.35(e)(3)(ii).

*35(e)(4) Copies of documentation.*

1. *Types of documents to be provided.* A servicer is required to provide only those documents actually relied upon by the servicer to determine that no error occurred. Such documents may include documents reflecting information entered in a servicer's collection system. For example, in response to an asserted error regarding payment allocation, a servicer may provide a printed screen-capture showing amounts credited to principal, interest, escrow, or other charges in the servicer's system for the borrower's mortgage loan account.

*35(g) Requirements not applicable.*

*35(g)(1) In general.*

*Paragraph 35(g)(1)(i).*

1. *New and material information.* A dispute between a borrower and a servicer with respect to whether information was previously reviewed by a servicer or with respect to whether a servicer properly determined that information reviewed was not material to its determination of the existence of an error, does not itself constitute new and material information.

*Paragraph 35(g)(1)(ii).*

1. *Examples of overbroad notices of error.* The following are examples of notices of error that are overbroad:

i. Assertions of errors regarding substantially all aspects of a mortgage loan, including errors relating to all aspects of mortgage origination, mortgage servicing, and foreclosure, as well as errors relating to the crediting of substantially every borrower payment and escrow account transaction;

ii. Assertions of errors in the form of a judicial action complaint, subpoena, or discovery request that purports to require servicers to respond to each numbered paragraph; and

iii. Assertions of errors in a form that is not reasonably understandable or is included with voluminous tangential discussion or requests for information, such that a servicer cannot reasonably identify from the notice of error any error for which § 1024.35 requires a response.

*35(h) Payment requirements prohibited.*

1. *Borrower obligation to make payments.* Section 1024.35(h) prohibits a servicer from requiring a borrower to make a payment that may be owed on a borrower's account as a prerequisite to investigating or responding to a notice of error submitted by a borrower, but does not alter or otherwise affect a borrower's obligation to make payments owed pursuant to the terms of a mortgage loan. For example, if a borrower makes a monthly payment in February for a mortgage loan, but asserts an error relating to the servicer's acceptance of the February



payment, § 1024.35(h) does not alter a borrower's obligation to make a monthly payment that the borrower owes for March. A servicer, however, may not require that a borrower make the March payment as a condition for complying with its obligations under § 1024.35 with respect to the notice of error on the February payment.

*Section 1024.38—General servicing policies, procedures, and requirements.*

*38(a) Reasonable policies and procedures.*

1. *Policies and procedures.* A servicer may determine the specific policies and procedures it will adopt and the methods by which it will implement those policies and procedures so long as they are reasonably designed to achieve the objectives set forth in § 1024.38(b). A servicer has flexibility to determine such policies and procedures and methods in light of the size, nature, and scope of the servicer's operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality, including the default risk, of the mortgage loans serviced, and the servicer's history of consumer complaints.

2. *Procedures used.* The term "procedures" refers to the actual practices followed by a servicer for achieving the objectives set forth in § 1024.38(b).

*38(b) Objectives.*

*38(b)(1) Accessing and providing timely and accurate information.*

*Paragraph 38(b)(1)(ii).*

1. *Errors committed by service providers.* A servicer's policies and procedures must be reasonably designed to provide for promptly obtaining information from service providers to facilitate achieving the objective of correcting errors resulting from actions of service providers, including obligations arising pursuant to § 1024.35.

*Paragraph 38(b)(1)(iv).*

1. *Accurate and current information for owners or assignees of mortgage loans relating to ~~loan modifications~~loss mitigation.* The relevant current information to owners or assignees of mortgage loans includes, among other things, information about a servicer's evaluation of borrowers for loss mitigation options and a servicer's agreements with borrowers on loss mitigation options, including loan modifications. Such information includes, for example, information regarding the date, terms, and features of ~~loan modifications~~loss mitigation options, the components of any capitalized arrears, the amount of any servicer advances, and any assumptions regarding the value of a property used in evaluating any loss mitigation options.

*Paragraph 38(b)(1)(vi).*

1. *Identification of potential successors in interest.* A servicer may be notified of the existence of a potential successor in interest in a variety of ways. For example, a person could indicate that there has been a transfer of ownership or of an ownership interest in the property or that a borrower has been divorced, legally separated, or died, or a person other than a borrower could ~~submit~~make a ~~request for~~loss mitigation ~~application~~assistance. A servicer must maintain policies and procedures reasonably designed to ensure that the servicer can retain this information and promptly facilitate communication with potential successors in interest when a servicer is notified of their existence. A servicer is not required to conduct a search for potential successors in interest if the servicer has not received actual notice of their existence.

2. *Documents reasonably required.* The documents a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property must be reasonable in light of the laws of the relevant jurisdiction, the specific situation of the potential successor in interest, and the documents already in the servicer's possession. The required

documents may, where appropriate, include, for example, a death certificate, an executed will, or a court order. The required documents may also include documents that the servicer reasonably believes are necessary to prevent fraud or other criminal activity (for example, if a servicer has reason to believe that documents presented are forged).

3. *Examples of reasonable requirements.* Because the relevant law governing each situation may vary from State to State, the following examples are illustrative only. The examples illustrate what documents it would generally be reasonable for a servicer to require to confirm a potential successor in interest's identity and ownership interest in the property under the specific circumstances described.

i. *Tenancy by the entirety or joint tenancy.* Assume that a servicer knows that the potential successor in interest and the transferor borrower owned the property as tenants by the entirety or joint tenants and that the transferor borrower has died. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has sole interest in the property but requires only that there be a prior recorded deed listing both the potential successor in interest and the transferor borrower as tenants by the entirety (e.g., married grantees) or joint tenants. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the recorded instrument, if the servicer does not already have it, and the death certificate of the transferor borrower. Because in this situation a probate proceeding is not required under the applicable law of the relevant jurisdiction, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

ii. *Affidavits of heirship.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest upon the death of the transferor borrower through intestate succession and offers an affidavit of heirship as confirmation. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has an interest in the property but requires only an appropriate affidavit of heirship. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the affidavit of heirship and the death certificate of the transferor borrower. Because a probate proceeding is not required under the applicable law of the relevant jurisdiction to recognize the transfer of title, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

iii. *Divorce or legal separation.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a spouse who is a borrower as a result of a property agreement incident to a divorce proceeding. Assume further that the applicable law of the relevant jurisdiction does not require a deed conveying the interest in the property but accepts a final divorce decree and accompanying separation agreement executed by both spouses to evidence transfer of title. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the final divorce decree and an executed separation agreement. Because the applicable law of the relevant jurisdiction does not require a deed, it generally would not be reasonable for the servicer to require a deed.

iv. *Living spouses or parents.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a

living spouse or parent who is a borrower by quitclaim deed or act of donation. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the quitclaim deed or act of donation. It generally would not be reasonable, however, for the servicer to require additional documents.

4. *Additional documentation required for confirmation determination.* Section 1024.38(b)(1)(vi)(C) requires a servicer to maintain policies and procedures reasonably designed to ensure that, upon receipt of the documents identified by the servicer, the servicer promptly notifies a potential successor in interest that, as applicable, the servicer has confirmed the potential successor in interest's status, has determined that additional documents are required, or has determined that the potential successor in interest is not a successor in interest. If a servicer reasonably determines that it cannot make a determination of the potential successor in interest's status based on the documentation provided, it must specify what additional documentation is required. For example, if there is pending litigation involving the potential successor in interest and other claimants regarding who has title to the property at issue, a servicer may specify that documentation of a court determination or other resolution of the litigation is required.

5. *Prompt confirmation and loss mitigation.* A servicer's policies and procedures must be reasonably designed to ensure that the servicer can promptly notify the potential successor in interest that the servicer has confirmed the potential successor in interest's status. Notification is not prompt for purposes of this requirement if it unreasonably interferes with a successor in interest's ability to ~~apply for~~ make a request loss mitigation ~~options according to the procedures provided in § 1024.41~~ assistance.

*38(b)(2) Properly evaluating requests for loss mitigation assistance.*

*38(b)(2) Properly evaluating loss mitigation applications.*

*Paragraph 38(b)(2)(ii).*

1. *Means of identifying all available loss mitigation options.* Servicers must develop policies and procedures that are reasonably designed to enable servicer personnel to identify all loss mitigation options available for mortgage loans currently serviced by the mortgage servicer. For example, a servicer's policies and procedures must be reasonably designed to address how a servicer specifically identifies, with respect to each owner or assignee, all of the loss mitigation options that the servicer may consider when evaluating any borrower for a loss mitigation option and the criteria that should be applied by a servicer when evaluating a borrower for such options. In addition, a servicer's policies and procedures must be reasonably designed to address how the servicer will apply any specific thresholds for eligibility for a particular loss mitigation option established by an owner or assignee of a mortgage loan (*e.g.*, if the owner or assignee requires that a servicer only make a particular loss mitigation option available to a certain percentage of the loans that the servicer services for that owner or assignee, then the servicer's policies and procedures must be reasonably designed to determine in advance how the servicer will apply that threshold to those mortgage loans). A servicer's policies and procedures must also be reasonably designed to ensure that such information is readily accessible to the servicer personnel involved with loss mitigation, including personnel made available to the borrower as described in § 1024.40.

*Paragraph 38(b)(2)(v).*

1. *Owner or assignee requirements.* A servicer must have policies and procedures reasonably designed to evaluate a borrower for a loss mitigation option consistent with any owner or assignee requirements, even where the requirements of § 1024.41 may be inapplicable. For example, an owner or assignee may require that a servicer implement certain procedures to

review a loss mitigation application submitted by a borrower less than 37 days before a foreclosure sale. Further, an owner or assignee may require that a servicer implement certain procedures to re-evaluate a borrower who has demonstrated a material change in the borrower's financial circumstances for a loss mitigation option after the servicer's initial evaluation. A servicer must have policies and procedures reasonably designed to implement these requirements even if such loss mitigation evaluations may not be required pursuant to § 1024.41.

*38(b)(3) Facilitating oversight of, and compliance by, service providers.*

*Paragraph 38(b)(3)(iii).*

1. *Sharing information with service provider personnel handling foreclosure proceedings.* A servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application and promptly instruct foreclosure counsel to take any step required by § 1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale.

*38(b)(4) Facilitating transfer of information during servicing transfers.*

*Paragraph 38(b)(4)(i).*

1. *Electronic document transfers.* A transferor servicer's policies and procedures may provide for transferring documents and information electronically, provided that the transfer is conducted in a manner that is reasonably designed to ensure the accuracy of the information and documents transferred and that enables a transferee servicer to comply with its obligations to the owner or assignee of the loan and with applicable law. For example, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and

promptly boarded by a transferee servicer's electronic systems and that all necessary documents and information are available to, and can be appropriately identified by, a transferee servicer.

2. *Loss mitigation documents.* A transferor servicer's policies and procedures must be reasonably designed to ensure that the transfer includes any information reflecting the current status of discussions with a borrower regarding loss mitigation options, any agreements entered into with a borrower on a loss mitigation option, and any analysis by a servicer with respect to potential recovery from a non-performing mortgage loan, as appropriate.

*Paragraph 38(b)(4)(ii).*

1. *Missing loss mitigation documents and information.* A transferee servicer must have policies and procedures reasonably designed to ensure, in connection with a servicing transfer, that the transferee servicer receives information regarding any loss mitigation discussions with a borrower, including any copies of loss mitigation agreements. Further, the transferee servicer's policies and procedures must address obtaining any such missing information or documents from a transferor servicer before attempting to obtain such information from a borrower. For example, assume a servicer receives documents or information from a transferor servicer indicating that a borrower has made payments consistent with a trial or permanent loan modification but has not received information about the existence of a trial or permanent loan modification agreement. The servicer must have policies and procedures reasonably designed to identify whether any such loan modification agreement exists with the transferor servicer and to obtain any such agreement from the transferor servicer.

*38(b)(5) Informing borrowers of written error resolution and information request procedures.*

1. *Manner of informing borrowers.* A servicer may comply with the requirement to maintain policies and procedures reasonably designed to inform borrowers of the procedures for



submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36 by informing borrowers, through a notice (mailed or delivered electronically) or a Web site. For example, a servicer may comply with § 1024.38(b)(5) by including in the periodic statement required pursuant to § 12 CFR 1026.41 a brief statement informing borrowers that borrowers have certain rights under Federal law related to resolving errors and requesting information about their account, and that they may learn more about their rights by contacting the servicer, and a statement directing borrowers to a Web site that provides a description of the procedures set forth in §§ 1024.35 and 1024.36. Alternatively, a servicer may also comply with § 1024.38(b)(5) by including a description of the procedures set forth in §§ 1024.35 and 1024.36 in the written notice required by ~~§§§~~ 1024.35(c) and ~~§~~-1024.36(b).

2. *Oral complaints and requests.* A servicer's policies and procedures must be reasonably designed to provide information to borrowers who are not satisfied with the resolution of a complaint or request for information submitted orally about the procedures for submitting written notices of error set forth in § 1024.35 and for submitting written requests for information set forth in § 1024.36.

3. *Notices of error incorrectly sent to addresses associated with submission of requests for loss mitigation applications assistance or the continuity of contact.* A servicer's policies and procedures must be reasonably designed to ensure that if a borrower incorrectly submits an assertion of an error to any address given to the borrower in connection with ~~submission of a request for~~ loss mitigation ~~application or assistance~~, the continuity of contact pursuant to § 1024.40, or a loss mitigation determination, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in § 1024.35, including the correct address. Alternatively, the servicer could redirect such notices to the correct address.

38(c) *Standard requirements.*

38(c)(1) *Record retention.*

1. *Methods of retaining records.* Retaining records that document actions taken with respect to a borrower's mortgage loan account, including records evidencing compliance with this part, does not necessarily mean actual paper copies of documents. The records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the servicer can easily access the records (including a contractual right to access records possessed by another entity). For example, a servicer may use a computer program to create and retain records of the date a borrower makes a request for loss mitigation assistance, so long as the servicer ensures it can easily access those records.

38(c)(2) *Servicing file.*

1. *Timing.* A servicer complies with § 1024.38(c)(2) if it maintains information in a manner that facilitates compliance with § 1024.38(c)(2) beginning on or after January 10, 2014. A servicer is not required to comply with § 1024.38(c)(2) with respect to information created prior to January 10, 2014. For example, if a mortgage loan was originated on January 1, 2013, a servicer is not required by § 1024.38(c)(2) to maintain information regarding transactions credited or debited to that mortgage loan account in any particular manner for payments made prior to January 10, 2014. However, for payments made on or after January 10, 2014, a servicer must maintain such information in a manner that facilitates compiling such information into a servicing file within five days.

2. *Borrower requests for servicing file.* Section 1024.38(c)(2) does not confer upon any borrower an independent right to access information contained in the servicing file. Upon receipt of a borrower's request for a servicing file, a servicer shall provide the borrower with a copy of

the information contained in the servicing file for the borrower's mortgage loan, subject to the procedures and limitations set forth in § 1024.36.

*Paragraph 38(c)(2)(iv).*

1. *Report of data fields.* A report of the data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices means a report listing the relevant data fields by name, populated with any specific data relating to the borrower's mortgage loan account. Examples of data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices include fields used to identify the terms of the borrower's mortgage loan, fields used to identify the occurrence of automated or manual collection calls, fields reflecting the evaluation of a borrower for a loss mitigation option, fields used to identify the owner or assignee of a mortgage loan, and any credit reporting history.

*§ 1024.39—Early Intervention Requirements for Certain Borrowers*

*39(a) Live Contact.*

1. *Delinquency.* Section 1024.39 requires a servicer to establish or attempt to establish live contact no later than the 36th day of a borrower's delinquency. This provision is illustrated as follows:

i. Assume a mortgage loan obligation with a monthly billing cycle and monthly payments of \$2,000 representing principal, interest, and escrow due on the first of each month.

A. The borrower fails to make a payment of \$2,000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—i.e., on or before February 6.

B. The borrower makes no payments during the period January 1 through April 1, although payments of \$2,000 each on January 1, February 1, and March 1 are due. Assuming it is not a leap year; the borrower is 90 days delinquent as of April 1. The servicer may time its attempts to establish live contact such that a single attempt will meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5 and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of § 1024.39(a) for the March 1 missed payment.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of § 1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of § 1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly. *See* § 1024.33(c)(1) and comment 33(c)(1)-2.

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. *Establishing live contact.* Live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency. Live contact with a borrower includes speaking on the telephone or conducting an in-person meeting with the borrower but not leaving a recorded phone message. A servicer may rely on live contact established at the borrower's initiative to satisfy the live contact requirement in § 1024.39(a). Servicers may also combine contacts made pursuant to § 1024.39(a) with contacts made with borrowers for other reasons, for instance, by telling borrowers on collection calls that loss mitigation options may be available.

3. *Good faith efforts.* Good faith efforts to establish live contact consist of reasonable steps, under the circumstances, to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer. The length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to § 1024.39(a), are relevant circumstances to consider. For example, whereas "good faith efforts" to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, "good faith efforts" to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication. ~~However, if a borrower is in a situation such that the additional live contact information is required under § 1024.39(e) or if a servicer relies on the temporary special COVID-19 loss mitigation procedural safeguards provision in § 1024.41(f)(3)(ii)(C)(1), providing no more than a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication would not be a reasonable step, under the~~

~~circumstances, to make good faith efforts to establish live contact.~~ Comment 39(a)-6 discusses the relationship between live contact and the loss mitigation procedures set forth in § 1024.41.

4. *Promptly inform if appropriate.*

i. *Servicer's determination.* ~~Except as provided in § 1024.39(e),~~ It is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a ~~material adverse change in the borrower's financial circumstances that is likely to cause the borrower to experience a long term delinquency~~hardship for which a loss mitigation ~~options~~option may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. *Promptly inform.* If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact.

~~Except as provided in § 1024.39(e),~~ A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in § 1024.39(a) to inform a borrower about loss mitigation options by providing the

written notice required by § 1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

5. *Borrower's representative.* Section 1024.39 does not prohibit a servicer from satisfying its requirements by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower to provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

6. *Relationship between live contact and loss mitigation procedures.* If the servicer has established and is maintaining ~~ongoing regular~~ contact with the borrower ~~under the loss mitigation procedures under § 1024.41, including during the borrower's completion of a loss mitigation application or the servicer's evaluation of the borrower's complete loss mitigation application, or if the servicer has sent the borrower a notice pursuant to § 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options~~ review cycle under § 1024.41, the servicer complies with § 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. ~~When the borrower is in a forbearance program made available to borrowers experiencing a COVID-19 related hardship such that the additional live contact information is required under § 1024.39(e)(2) or if a servicer relies on the temporary special COVID-19 loss mitigation procedural safeguards provision in § 1024.41(f)(3)(ii)(C)(1), the servicer is not maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41 in a way that would comply with § 1024.39(a) if the servicer has~~

~~only sent the notices required by § 1024.41(b)(2)(i)(B) and (c)(2)(iii) and has had no further ongoing contact with the borrower concerning the borrower's loss mitigation application.~~ A

servicer must resume compliance with the requirements of § 1024.39(a) for a borrower who becomes delinquent again after curing a prior delinquency.

*39(b) Written notice.*

*39(b)(1) Notice required.*

1. *Delinquency.* For guidance on the circumstances under which a borrower is delinquent for purposes of § 1024.39, see comment 39(a)-1. For example, if a payment due date is January 1 and the payment remains unpaid during the 45-day period after January 1, the servicer must provide the written notice within 45 days after January 1—*i.e.*, by February 15. However, if a borrower satisfies a late payment in full before the end of the 45-day period, the servicer need not provide the written notice. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not provide the written notice by February 15.

2. *Frequency of the written notice.* A servicer need not provide the written notice under § 1024.39(b) more than once during a 180-day period beginning on the date on which the written notice is provided. A servicer must provide the written notice under § 1024.39(b) at least once every 180 days to a borrower who is 45 days or more delinquent. This provision is illustrated as follows: Assume a borrower becomes delinquent on March 1, the amount due is not fully paid during the 45 days after March 1, and the servicer provides the written notice on the 45th day after March 1, which is April 15. Assume the borrower also fails to make the payment due on April 1 and the amount due is not fully paid during the 45 days after April 1. The servicer need not provide the written notice again until after the 180-day period beginning on April 15—*i.e.*,



no sooner than on October 12—and then only if the borrower is at that time 45 days or more delinquent.

i. If the borrower is 45 days or more delinquent on October 12, the date that is 180 days after the prior provision of the written notice, the servicer is required to provide the written notice again on October 12.

ii. If the borrower is less than 45 days delinquent on October 12, the servicer must again provide the written notice 45 days after the payment due date for which the borrower remains delinquent. For example, if the borrower becomes delinquent on October 1, and the amount due is not fully paid during the 45 days after October 1, the servicer will need to provide the written notice again no later than 45 days after October 1—*i.e.*, by November 15.

3. *Borrower's representative.* Comment 39(a)-5 explains how a servicer may satisfy the requirements under § 1024.39 with a person authorized by the borrower to communicate with the servicer on the borrower's behalf.

4. *Relationship to § 1024.39(a).* The written notice required under § 1024.39(b)(1) must be provided even if the servicer provided information about loss mitigation and foreclosure previously during an oral communication with the borrower under § 1024.39(a).

5. *Servicing transfers.* A transferee servicer is required to comply with the requirements of § 1024.39(b) regardless of whether the transferor servicer provided a written notice to the borrower in the preceding 180-day period. However, a transferee servicer is not required to provide a written notice under § 1024.39(b) if the transferor servicer provided the written notice under § 1024.39(b) within 45 days of the transfer date. For example, assume a borrower has monthly payments, with a payment due on March 1. The transferor servicer provides the notice required by § 1024.39(b) on April 10. The loan is transferred on April 12. Assuming the

borrower remains delinquent, the transferee servicer is not required to provide another written notice until 45 days after May 1, the first post-transfer payment due date—*i.e.*, by June 15.

*39(b)(2) Content of the written notice.*

1. *Minimum requirements.* Section 1024.39(b)(2) contains minimum content requirements for the written notice. A servicer may provide additional information that the servicer determines would be helpful or which may be required by applicable law or the owner or assignee of the mortgage loan.

2. *Format.* Any color, number of pages, size and quality of paper, size and type of print, and method of reproduction may be used, provided each of the statements required by § 1024.39(b)(2) satisfies the clear and conspicuous standard in § 1024.32(a)(1).

3. *Delivery.* A servicer may satisfy the requirement to provide the written notice by combining other notices that satisfy the content requirements of § 1024.39(b)(2) into a single mailing, provided each of the statements required by § 1024.39(b)(2) satisfies the clear and conspicuous standard in § 1024.32(a)(1).

*Paragraph 39(b)(2)(iii).*

1. ~~*Number of examples.* Section 1024.39(b)(2)(iii) does not require that a specific number of examples be disclosed, but borrowers are likely to benefit from examples of options that would permit them to retain ownership of their home and examples of options that may require borrowers to end their ownership to avoid foreclosure. The servicer may include a generic list~~  
*Types of loss mitigation options that it offers to borrowers are generally available. The servicer must list each type of loss mitigation option that is generally available from the owner or assignee of the borrower's loan.* The servicer may include a statement that not all borrowers will qualify for the listed options.

~~2. Brief description. An example of a~~ A type of loss mitigation option may be described in one or more sentences. If ~~a servicer~~ the owner or assignee of the borrower's mortgage loan offers a type of loss mitigation option comprising several loss mitigation programs, the servicer may provide a generic description of the option without providing detailed descriptions of each program. For example, if the ~~servicer~~ owner or assignee of the borrower's mortgage loan offers several loan modification programs, the servicer may provide a generic description of "loan modification."

*Paragraph 39(b)(2)(iv).*

1. *Explanation of how the borrower may obtain more information about* how to make a request for loss mitigation ~~options~~ assistance. A servicer may comply with § 1024.39(b)(2)(iv) by directing the borrower to contact the servicer for more detailed information on how to ~~apply~~ make a request for loss mitigation ~~options~~ assistance. For example, a general statement such as, "contact us for instructions on how to ~~apply~~ request assistance" would satisfy the requirement to inform the borrower how to obtain more information about how to make a request for loss mitigation ~~options~~ assistance. However, to expedite the borrower's timely ~~application~~ request for ~~any~~ loss mitigation ~~options~~ assistance, servicers may provide more detailed instructions, such as by listing representative documents, if any, the borrower should make available to the servicer (such as tax filings or income statements), and an estimate of how quickly the servicer expects to evaluate ~~a completed application~~ the request for loss mitigation assistance and make a decision on loss mitigation options. ~~Servicers may also supplement the written notice required by § 1024.39(b)(1) with a loss mitigation application form.~~

*39(c) Borrowers in bankruptcy.*

1. *Borrower's representative.* If the borrower is represented by a person authorized by the borrower to communicate with the servicer on the borrower's behalf, the servicer may provide the written notice required by § 1024.39(b), as modified by § 1024.39(c)(1)(iii), to the borrower's representative. *See* comment 39(a)-5. In general, bankruptcy counsel is the borrower's representative. A servicer's procedures for determining whether counsel is the borrower's representative are generally considered reasonable if they are limited to, for example, confirming that the attorney's name is listed on the borrower's bankruptcy petition or other court filing.

2. *Adapting requirements in bankruptcy.* Section 1024.39(c) does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. If necessary to comply with such law or court order, a servicer may adapt the requirements of § 1024.39 as appropriate.

*39(c)(1) Borrowers in bankruptcy—Partial exemption.*

1. *Commencing a case.* Section 1024.39(c)(1) applies once a petition is filed under title 11 of the United States Code, commencing a case in which the borrower is a debtor in bankruptcy.

*Paragraph 39(c)(1)(ii).*

1. *Availability of loss mitigation options.* In part, § 1024.39(c)(1)(ii) exempts a servicer from the requirements of § 1024.39(b) if no loss mitigation option is available. A loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

2. *Fair Debt Collections Practices Act. i. Exemption.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower in bankruptcy and any borrower on the mortgage loan has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease further communications, with regard to that mortgage loan, § 1024.39(c)(1)(ii) exempts a servicer from providing the written notice required by § 1024.39(b).

ii. *Example.* For example, assume that two spouses jointly own a home and are both primarily liable on the mortgage loan. Further assume that the servicer is subject to the FDCPA with respect to that mortgage loan. One spouse is a debtor in bankruptcy under title 11 of the United States Code subject to § 1024.39(c). The other spouse provided the servicer a notification pursuant to FDCPA section 805(c). Section 1024.39(c)(1)(ii) exempts the servicer from providing the written notice required by § 1024.39(b) with respect to that mortgage loan.

*Paragraph 39(c)(1)(iii).*

1. *Joint obligors.* When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to § 1024.39, if any of the borrowers is a debtor in bankruptcy, a servicer may provide the written notice required by § 1024.39(b), as modified by § 1024.39(c)(1)(iii), to any borrower.

*39(c)(2) Resuming compliance.*

1. *Bankruptcy case revived.* If the borrower's bankruptcy case is revived, for example if the court reinstates a previously dismissed case or reopens the case, § 1024.39(c)(1) once again applies. However, § 1024.39(c)(1)(iii)(C) provides that a servicer is not required to provide the written notice more than once during a single bankruptcy case. For example, assume a

borrower's bankruptcy case commences on June 1, the servicer provides the written notice on July 10 in compliance with § 1024.39(b) as modified by § 1024.39(c)(1)(iii), and the bankruptcy case is dismissed on August 1. If the court subsequently reopens or reinstates the borrower's bankruptcy case and the servicer does not provide a second written notice for that bankruptcy case, the servicer has complied with § 1024.39(b) and (c)(1)(iii).

*39(d) Fair Debt Collection Practices Act—partial exemption.*

1. *Availability of loss mitigation options.* In part, § 1024.39(d)(2) exempts a servicer from providing the written notice required by § 1024.39(b) if no loss mitigation option is available. A loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

2. *Early intervention communications under the FDCPA.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower, a servicer does not violate FDCPA section 805(c) by providing the written notice required by § 1024.39(b) as modified by § 1024.39(d)(3) after a borrower has provided a notification pursuant to FDCPA section 805(c) with respect to that borrower's loan. Nor does a servicer violate FDCPA section 805(c) by providing loss mitigation information or assistance in response to a borrower-initiated communication after the borrower has invoked the cease communication right under FDCPA section 805(c). A servicer subject to the FDCPA must continue to comply with all other applicable provisions of the FDCPA, including restrictions on communications and prohibitions on harassment or abuse, false or misleading representations, and unfair practices as contained in FDCPA sections 805 through 808 (15 U.S.C. 1692c through 1692f).

Paragraph 39(d)(2).

1. *Borrowers in bankruptcy.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower and the borrower has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease communications, with regard to that mortgage loan, § 1024.39(d)(2) exempts a servicer from providing the written notice required by § 1024.39(d) while any borrower on the mortgage loan is also a debtor in bankruptcy under title 11 of the United States Code. For an example, see comment 39(c)(1)(ii)-2.ii.

§ 1024.41—*Loss mitigation procedures*

~~41(b) Receipt~~ *Evaluation of loss mitigation applications.*

~~41(c)(1) General notice and content requirements.~~

~~1. Investor requirements. Except as pursuant to § 1024.41(c)(3), if a loss mitigation application.~~

~~1. Successor option is offered or denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in interest. i. If a servicer receives a loss mitigation application from a potential successor in interest before confirming the notice provided to the borrower must identify the requirement that person's identity and ownership interest in the property, the servicer may, but need not, review and evaluate the is the basis of the determination. A statement that the offer or denial of a loss mitigation application in accordance with the procedures set forth in § 1024.41. If a servicer complies with the requirements of § 1024.41 for a complete loss mitigation application submitted by a potential successor in interest before confirming that person's identity and ownership interest in the property, § 1024.41(i)'s limitation on duplicative requests applies to that person, provided the servicer's~~

~~evaluation of loss mitigation options available to the person would not have resulted in a different determination due to the person's confirmation as a successor in interest if it had been conducted after the servicer confirmed the person's status as a successor in interest.~~

~~ii. If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming that person's identity and ownership interest in the property, the servicer must preserve the loss mitigation application and all documents submitted in connection with the application, and, upon such confirmation, the servicer must review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41 if the property is the confirmed successor in interest's principal residence and the procedures set forth in § 1024.41 are otherwise applicable. For purposes of § 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after they were submitted and confirmation is 45 days or more before a foreclosure sale, the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to § 1024.41(b)(2).~~

#### ~~*41(b)(1) Complete Loss Mitigation Application*~~

~~1. *In general.* A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options. In the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan, the~~



~~borrower is ineligible for that option. A servicer may not stop collecting documents and information for any loss mitigation option is based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by any requirements established by the owner or assignee. A servicer must continue to exercise reasonable diligence to obtain documents and information from the borrower that the servicer requires to evaluate the borrower as to all other loss mitigation options available to the borrower.~~

~~For example:~~

~~i. Assume a particular loss mitigation option is only available for borrowers whose mortgage loans were originated before a specific date. Once a servicer receives documents or information confirming that a mortgage loan was originated after that date, the servicer may stop collecting documents or information from the borrower that the servicer would use to evaluate the borrower for that loss mitigation option, but the servicer must continue its efforts to obtain documents and information from the borrower that the servicer requires to evaluate the borrower for all other available loss mitigation options.~~

~~ii. Assume applicable requirements established by the owner or assignee of the mortgage loan provide that a borrower is ineligible for home retention loss mitigation options if the borrower states a preference for a short sale and provides evidence of another applicable hardship, such as military Permanent Change of Station orders or an employment transfer more than 50 miles away. If the borrower indicates a preference for a short sale or, more generally, not to retain the property, the servicer may not stop collecting documents and information from the borrower pertaining to available home retention options solely because the borrower has indicated such a preference, but the servicer may stop collecting such documents and information~~

~~once the servicer receives information confirming that the borrower has on an applicable hardship under requirements established by the owner or assignee, such as military Permanent Change of Station orders or employment transfer.~~

~~2. *When an inquiry or prequalification request becomes an application.* A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation option and provides information the servicer would evaluate in connection with a loss mitigation application, the borrower's inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any "prequalification" for a loss mitigation option. For example, if a borrower requests that a servicer determine if the borrower is "prequalified" for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application.~~

~~3. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place and no loss mitigation application has been submitted:~~

~~i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower's eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.~~

~~ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation application.~~

~~4. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. A servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence for purposes of § 1024.41(b)(1) includes investor requirement, without limitation, the following actions:~~

~~i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application; specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient.~~

~~2. Reasons listed. A servicer is required to disclose the actual reason or reasons for the ~~ii.~~ Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and~~

~~iii. A servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application and provides the borrower the written notice pursuant to § 1024.41(e)(2)(iii). If the borrower remains in compliance with the short-term payment forbearance program or short-term repayment plan, and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts until near the end of the payment forbearance program or repayment plan. However, if the borrower fails to comply with the program or plan or requests further assistance,~~

~~the servicer must immediately resume reasonable diligence efforts. Near the end of a short-term payment forbearance program offered based on an evaluation of an incomplete loss mitigation application pursuant to § 1024.41(c)(2)(iii), and prior to the end of the forbearance period, if the borrower remains delinquent, a servicer must contact the borrower to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation.~~

~~iv. If the borrower is in a short-term payment forbearance program made available to borrowers experiencing a COVID-19 related hardship, including a payment forbearance program made pursuant to the Coronavirus Economic Stability Act, section 4022 (15 U.S.C. 9056), that was offered to the borrower based on evaluation of an incomplete application, and the borrower remains delinquent, a servicer must contact the borrower no later than 30 days before the scheduled end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance period.~~

~~*5. Information not in the borrower's control.* A loss mitigation application is complete when a borrower provides all information required from the borrower notwithstanding that additional information may be required by a servicer that is not in the control of a borrower. For example, if a servicer requires a consumer report for a loss mitigation evaluation, a loss mitigation application is considered complete if a borrower has submitted all information required from the borrower without regard to whether a servicer has obtained a consumer report that a servicer has requested from a consumer reporting agency.~~

~~*41(b)(2) Review of loss mitigation application submission.*~~

*41(b)(2)(i) Requirements.*

~~1. *Foreclosure sale not scheduled.* For purposes of § 1024.41(b)(2)(i), if no foreclosure sale has been scheduled as of the date a servicer receives a loss mitigation application, the servicer must treat the application as having been received 45 days or more before any foreclosure sale.~~

*Paragraph 41(b)(2)(i)(B).*

~~1. *Later discovery of additional information required to evaluate application.* Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in § 1024.41(b)(1). See § 1024.41(e)(2)(iv) addressing facially complete applications.~~

*41(b)(2)(ii) Time period disclosure.*

~~1. *Thirty days is generally reasonable.* In general and subject to the restrictions described in comments 41(b)(2)(ii) 2 and 3, a servicer complies with the requirement to include a reasonable date in the written notice required under § 1024.41(b)(2)(i)(B) by including a date that is 30 days after the date the servicer provides the written notice.~~

~~2. *No later than the next milestone.* For purposes of § 1024.41(b)(2)(ii), subject to the restriction described in comment 41(b)(2)(ii) 3, the reasonable date must be no later than the earliest of:~~

~~i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;~~

~~ii. The date that is the 120th day of the borrower's delinquency;~~

~~iii. The date that is 90 days before a foreclosure sale;~~

~~iv. The date that is 38 days before a foreclosure sale.~~

~~3. *Seven-day minimum.* A reasonable date for purposes of § 1024.41(b)(2)(ii) must never be less than seven days from the date on which the servicer provides the written notice pursuant to § 1024.41(b)(2)(i)(B).~~

~~*41(b)(3) Determining Protections.*~~

~~1. *Foreclosure sale not scheduled.* If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application is considered to have been received more than 90 days before any foreclosure sale.~~

~~2. *Foreclosure sale re-scheduled.* The protections under § 1024.41 that have been determined to apply to a borrower pursuant to § 1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled or rescheduled.~~

~~*41(c) Evaluation of loss mitigation applications.*~~

~~*41(c)(1) Complete loss mitigation application.*~~

~~1. *Definition of "evaluation."* The conduct of a servicer's evaluation with respect to any loss mitigation option is in the sole discretion of a servicer. A servicer meets the requirements of § 1024.41(c)(1)(i) if the servicer makes a determination regarding the borrower's eligibility for a loss mitigation program. Consistent with § 1024.41(a), because nothing in section 1024.41 should be construed to permit a borrower to enforce the terms of any agreement between a~~

~~servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or provision of, any loss mitigation option, § 1024.41(e)(1) does not require that an evaluation meet any standard other than the discretion of the servicer.~~

2determination.

3. *Loss mitigation options available to a borrower.* The loss mitigation options available to a borrower are those options offered by an owner or assignee of the borrower's mortgage loan. Loss mitigation options administered by a servicer for an owner or assignee of a mortgage loan other than the owner or assignee of the borrower's mortgage loan are not available to the borrower solely because such options are administered by the servicer. For example:

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. Loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

34. *Offer of a non-home retention option.* A servicer's offer of a non-home retention option may be conditional upon receipt of further information not in the borrower's possession

and necessary to establish the parameters of a servicer's offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

45. *Other notices.* A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B, 12 CFR part 1002, or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to § 1024.41(c)(1), unless otherwise prohibited by applicable law.

~~41(e)(2) Incomplete loss mitigation application evaluation.~~

~~41(e)(2)(i) In general.~~

~~1. Offer of a loss mitigation option without an evaluation of a loss mitigation application.~~  
~~Nothing in § 1024.41(e)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing in § 1024.41(e)(2)(i) prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with such loss mitigation application. For example, if a servicer offers trial loan modification programs to all borrowers who become 150 days delinquent without an application or consideration of any information provided by a borrower in connection with a loss mitigation application, the servicer's offer of any such program does not violate § 1024.41(e)(2)(i), and a~~



~~servicer is not required to comply with § 1024.41 with respect to any such program, because the offer of the loss mitigation option is not based on an evaluation of a loss mitigation application.~~

~~2. *Servicer discretion.* Although a review of a borrower's incomplete loss mitigation application is within a servicer's discretion, and is not required by § 1024.41, a servicer may be required separately, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(2)(v), to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to loss mitigation applications otherwise considered incomplete pursuant to § 1024.41.~~

~~41(e)(2)(ii) *Reasonable time.*~~

~~1. *Significant period of time.* A significant period of time under the circumstances may include consideration of the timing of the foreclosure process. For example, if a borrower is less than 50 days before a foreclosure sale, an application remaining incomplete for 15 days may be a more significant period of time under the circumstances than if the borrower is still less than 120 days delinquent on a mortgage loan obligation.~~

~~41(e)(2)(iii) *Short term loss mitigation options.*~~

~~1. *Short term payment forbearance program.* The exemption in § 1024.41(e)(2)(iii) applies to, among other things, short term payment forbearance programs. For purposes of § 1024.41(e)(2)(iii), a payment forbearance program is a loss mitigation option pursuant to which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short term payment forbearance program for purposes of § 1024.41(e)(2)(iii) allows the forbearance of payments due over periods of no more than six months. Such a~~

program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

~~2. *Short term loss mitigation options and incomplete applications.* Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application. The servicer must still comply with the other requirements of § 1024.41 with respect to the incomplete loss mitigation application, including the requirement in § 1024.41(b)(2) to review the application to determine if it is complete, the requirement in § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (see comment 41(b)(1)-4.iii), and the requirement in § 1024.41(b)(2)(i)(B) to provide the borrower with written notice that the servicer acknowledges the receipt of the application and has determined that the application is incomplete.~~

~~3. *Short term loss mitigation options and complete applications.* Even if a servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all applicable requirements in § 1024.41 if the borrower completes a loss mitigation application.~~

~~4. *Short term repayment plan.* The exemption in § 1024.41(c)(2)(iii) applies to, among other things, short-term repayment plans. For purposes of § 1024.41(c)(2)(iii), a repayment plan is a loss mitigation option with terms under which a borrower would repay all past due payments over a specified period of time to bring the mortgage loan account current. A short-term repayment plan for purposes of § 1024.41(c)(2)(iii) allows for the repayment of no more than three months of past due payments and allows a borrower to repay the arrearage over a period lasting no more than six months.~~

~~5. *Specific payment terms and duration.* i. *General requirement.* Section 1024.41(c)(2)(iii) requires a servicer to provide the borrower a written notice stating, among other things, the specific payment terms and duration of a short term payment forbearance program or a short term repayment plan offered based on an evaluation of an incomplete application. Generally, a servicer complies with these requirements if the written notice states the amount of each payment due during the program or plan, the date by which the borrower must make each payment, and whether the mortgage loan will be current at the end of the program or plan if the borrower complies with the program or plan.~~

~~ii. *Disclosure of payment amounts that may change.* At the time a servicer provides the written notice pursuant to § 1024.41(c)(2)(iii), if the servicer lacks information necessary to determine the amount of a specific payment due during the program or plan (for example, because the borrower's interest rate will change to an unknown rate based on an index or because an escrow account computation year as defined in § 1024.17(b) will end and the borrower's escrow payment might change), the servicer complies with the requirement to disclose the specific payment terms and duration of a short term payment forbearance program or short term repayment plan if the disclosures are based on the best information reasonably available to the servicer at the time the notice is provided and the written notice identifies which payment amounts may change, states that such payment amounts are estimates, and states the general reason that such payment amounts might change. For example, if an escrow account computation year as defined in § 1024.17(b) will end during a borrower's short term repayment plan, the written notice complies with § 1024.41(c)(2)(iii) if it identifies the payment amounts that may change, states that those payment amounts are estimates, and states that the affected payments might change because the borrower's escrow payment might change.~~

~~6. *Timing of notice.* Generally, a servicer acts promptly to provide the written notice required by § 1024.41(e)(2)(iii) if the servicer provides such written notice no later than five days (excluding legal public holidays, Saturdays, and Sundays) after offering the borrower a short-term payment forbearance program or short-term repayment plan. A servicer may provide the written notice at the same time the servicer offers the borrower the program or plan. A written offer that contains all the required elements of the written notice also satisfies § 1024.41(e)(2)(iii).~~

~~41(e)(2)(iv) *Facially complete application.*~~

~~1. *Reasonable opportunity.* Section 1024.41(e)(2)(iv) requires a servicer to treat a facially complete application as complete for the purposes of paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the application. A reasonable opportunity requires the servicer to notify the borrower of what additional information or corrected documents are required, and to afford the borrower sufficient time to gather the information and documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.~~

~~2. *Borrower fails to complete the application.* If the borrower fails to complete the application within the timeframe provided under § 1024.41(e)(2)(iv), the application shall be considered incomplete.~~

~~41(e)(3) *Notice of complete application.*~~

~~Paragraph 41(e)(3)(i).~~

~~1. *Completion date.* A servicer complies with § 1024.41(e)(3)(i)(B) by disclosing on the notice the most recent date the servicer received the complete loss mitigation application. For example, assume that a borrower first submits a complete loss mitigation application on March 1.~~

~~The servicer must disclose March 1 as the date the servicer received the application under § 1024.41(c)(3)(i)(B). Assume the servicer discovers on March 10 that it requires additional information or corrected documents to complete the application and promptly requests such additional information or documents from the borrower pursuant to § 1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with § 1024.41(c)(3)(i) and disclose March 21 as the date the servicer received the complete application. See comment 41(c)(3)(i)-3.~~

~~2. *First notice or filing.* Section 1024.41(c)(3)(i)(D)(1) and (2) sets forth different requirements depending on whether the servicer has made the first notice or filing under applicable law for any judicial or non-judicial foreclosure process at the time the borrower submits a complete loss mitigation application. See comment 41(f)-1 for a description of whether a document is considered the first notice or filing under applicable law.~~

~~3. *Additional notices.* Except as provided in § 1024.41(c)(3)(ii), § 1024.41(c)(3)(i) requires a servicer to provide a written notice every time a loss mitigation application becomes complete. For example, assume that a borrower first submits a complete loss mitigation application on March 1, and the servicer provides the notice under § 1024.41(c)(3)(i). Assume the servicer discovers on March 10 that it requires additional information or corrected documents regarding a source of income that the borrower previously identified. The servicer must promptly request such additional information or documents from the borrower pursuant to § 1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with § 1024.41(c)(3)(i), unless an exception applies under § 1024.41(c)(3)(ii). See comment 41(c)(3)(i)-1.~~

~~41(c)(4) *Information not in the borrower's control.*~~

*41(e)(4)(i) Diligence requirements.*

*1. During the first 30 days following receipt of a complete loss mitigation application.*

~~Section 1024.41(e)(4)(i) requires a servicer to act with reasonable diligence to obtain documents or information not in the borrower's control, which includes information in the servicer's control, that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower. At a minimum and without limitation, a servicer must request such documents or information from the appropriate party:~~

- ~~i. Promptly upon determining that the servicer requires the documents or information to determine which loss mitigation options, if any, the servicer will offer the borrower; and~~
- ~~ii. By a date that will enable the servicer to complete the evaluation within 30 days of receiving the complete loss mitigation application, as set forth in § 1024.41(e)(1), to the extent practicable.~~

*2. More than 30 days following receipt of a complete loss mitigation application.* ~~If a servicer has not, within 30 days of receiving a complete loss mitigation application, received the required documents or information from a party other than the borrower or the servicer, the servicer acts with reasonable diligence pursuant to § 1024.41(e)(4)(i) by heightening efforts to obtain the documents or information promptly, to minimize delay in making a determination of which loss mitigation options, if any, it will offer to the borrower. Such heightened efforts include, for example, promptly verifying that it has contacted the appropriate party and determining whether it should obtain the required documents or information from a different party.~~

*41(e)(4)(ii) Effect in case of delay.*

*1. Third party delay.* ~~Notwithstanding delay in receiving required documents or information from any party other than the borrower or the servicer, § 1024.41(e)(1)(i) requires a~~

~~servicer to complete all possible steps in the process of evaluating a complete loss mitigation application within 30 days of receiving the complete loss mitigation application. Such steps may include requirements imposed on the servicer by third parties, such as mortgage insurance companies, guarantors, owners, or assignees. For example, if a servicer can determine a borrower's eligibility for all available loss mitigation options based on an evaluation of the borrower's complete loss mitigation application subject only to approval from the mortgage insurance company, § 1024.41(c)(1)(i) requires the servicer to do so within 30 days of receiving the complete loss mitigation application notwithstanding the need to obtain such approval before offering the borrower any loss mitigation options.~~

~~*2. Offers not prohibited.* Section 1024.41(c)(4)(ii)(A)(2) permits a servicer to deny a complete loss mitigation application (in accordance with applicable investor requirements) if, after exercising reasonable diligence to obtain the required documents or information from a party other than the borrower or the servicer, the servicer has been unable to obtain such documents or information for a significant period of time and the servicer cannot complete its determination without the required documents or information. Section 1024.41(c)(4)(ii)(A)(2) does not require a servicer to deny a complete loss mitigation application and permits a servicer to offer a borrower a loss mitigation option, even if the servicer does not obtain the requested documents or information.~~

~~*41(d) Denial of loan modification options.*~~

~~*1. Investor requirements.* If a trial or permanent loan modification option is denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in the notice provided to the borrower must identify the owner or assignee of the mortgage loan and the requirement that is the basis of the denial. A statement that the denial of a loan modification~~

~~option is based on an investor requirement, without additional information specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient. However, where an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a waterfall) and a borrower has qualified for a particular loan modification option in the ranking established by the owner or assignee, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a ranking and that an offer of a loan modification option necessarily results in a denial for any other loan modification options below the option for which the borrower is eligible in the ranking.~~

~~2. *Net present value calculation.* If a trial or permanent loan modification is denied because of a net present value calculation, the specific reasons in the notice provided to the borrower must include the inputs used in the net present value calculation.~~

~~3. *Determination not to offer a loan modification option constitutes a denial.* A servicer's determination not to offer a borrower a loan modification available to the borrower constitutes a denial of the borrower for that loan modification option, notwithstanding whether a servicer offers a borrower a different loan modification option or other loss mitigation option.~~

~~4. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the denial. If a servicer's systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated and rejected as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a~~



~~borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.~~

*41(f) Prohibition on foreclosure referral.*

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined on the basis of foreclosure procedure under the applicable State law.

i. Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

~~*41(f)(3) Temporary Special COVID-19 Loss Mitigation Procedural Safeguards*~~

~~1. *Record retention.* As required by § 1024.38(e)(1), a servicer shall maintain records that document actions taken with respect to a borrower's mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer. If the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process before January 1, 2022, these records must include evidence demonstrating compliance with § 1024.41(f)(3), including, if applicable, evidence that the servicer satisfied one of the 2) *Foreclosure process procedural safeguards* described in § 1024.41(3)(ii). For example, if the procedural safeguards are met due to an unresponsive borrower determination as described in § 1024.41(f)(3)(ii)(C), the servicer must maintain records demonstrating that the servicer did not receive communications from the borrower *during* the relevant time period and that all four elements of § 1024.41(f)(3)(ii)(C) were met. For example, records demonstrating that the servicer did not receive any communications from the borrower during any relevant time period may include, for example: (1) Call logs, servicing notes, and other systems of record cataloguing communications showing the absence of written or oral communication from the borrower during the relevant period; and (2) a schedule of all transactions credited or debited to the mortgage loan account, including any escrow account as defined in § 1024.17(b) and any suspense account, as required by § 1024.38(e)(2)(i). The method of retaining these records must comply with comment 31(e)(1)-1. *41(f)(3)(ii)(C) Unresponsive Borrower*~~

~~a 1. *Communication.* For purposes of § 1024.41(f)(3)(ii)(C), a servicer has not received a communication from the borrower if the servicer has not received any written or electronic communication from the borrower about the mortgage loan obligation, has not received a telephone call from the borrower about the mortgage loan obligation, has not successfully~~

~~established live contact with the borrower about the mortgage loan obligation, and has not received a payment on the mortgage loan obligation. A servicer has received a communication from the borrower if, for example, the borrower discusses *loss mitigation* options with the servicer, even if the borrower does not submit a loss mitigation application or agree to a loss mitigation option offered by the servicer review cycle.~~

~~2. *Borrower's representative*. A servicer has received a communication from the borrower if the communication is from an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the communication as having been submitted by the borrower.~~

~~41(g) *Prohibition on foreclosure sale*.~~

1. *Dispositive motion*. The prohibition on a servicer advancing the foreclosure process includes moving for judgment or order of sale ~~includes~~by, for example, making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. A servicer ~~that has made any such motion before receiving a complete loss mitigation application~~ has not moved for a foreclosure judgment or order of sale and is not advancing the foreclosure process if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order ~~prior to completing the procedures required by § 1024.41,~~

notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.

~~2. Proceeding with the foreclosure process. Nothing in § 1024.41(g) prevents a servicer from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements established by applicable law, when the first notice or filing for a foreclosure proceeding occurred before a servicer receives a complete loss mitigation application so long as any such steps in the foreclosure process do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of § 1024.41.~~

~~3.2. Interaction with foreclosure counsel.~~ The prohibitions in § 1024.41(~~g~~)(2) against ~~advancing the foreclosure process (including moving for judgment or order of sale or conducting a salesale)~~ may require a servicer to act through foreclosure counsel retained by the servicer in a foreclosure proceeding. If a servicer has received a ~~complete~~request for loss mitigation ~~application~~assistance, the servicer must instruct counsel promptly not to advance the foreclosure process or make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, unless one of the ~~conditions~~procedural safeguards in § 1024.41(~~g~~)(1) ~~through~~ (~~3f~~)(2) is met, if applicable. A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation.

~~4.3. Requests for loss mitigation~~ application~~s~~assistance submitted 37 days or less before foreclosure sale. Although a servicer is not required to comply with the requirements in § 1024.41 with respect to a borrower's request for loss mitigation application~~s~~assistance

submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(2)(v) to properly evaluate a borrower who ~~submits an application~~makes a request for a loss mitigation ~~option for all loss mitigation options available to the borrower~~assistance pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to a review of a request for loss mitigation ~~application~~assistance submitted by a borrower 37 days or less before a foreclosure sale.

~~5. Conducting a sale~~4. Advancing the foreclosure process prohibited. Section 1024.41(~~g~~f)(2) prohibits a servicer from advancing the foreclosure process if a borrower submits a request for loss mitigation assistance more than 37 days before a foreclosure sale unless one of the procedural safeguards in § 1024.41(f)(2) is met. For example, advancing the foreclosure process includes conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings. Where ~~a foreclosure sale § 1024.41(f)(2) is scheduled, and applicable but~~ none of the ~~conditions~~procedural safeguards under § 1024.41(~~g~~f)(1) through (3) ~~are applicable, conduct of the~~f(2) have been met, scheduling a sale date or conducting a sale violates § 1024.41(~~g~~f)(2).

~~Paragraph 41(g)(3).~~

~~15.~~15. *Short sale listing period.* An agreement for a short sale transaction, or other similar loss mitigation option, typically includes marketing or listing periods during which a servicer will allow a borrower to market a short sale transaction. A borrower is deemed to be performing under an agreement on a short sale, or other similar loss mitigation option, during the term of a marketing or listing period.

26. Short sale agreement. If a borrower has not obtained an approved short sale transaction at the end of any marketing or listing period, a servicer may ~~determine that a borrower has failed to perform under an agreement on a loss mitigation option.~~ deny the short sale option. An approved short sale transaction is a short sale transaction that has been approved by all relevant parties, including the servicer, other affected lienholders, or insurers, if applicable, and the servicer has received proof of funds or financing, unless circumstances otherwise indicate that an approved short sale transaction is not likely to occur.

7. Successors in interest—i. If a servicer receives a request for loss mitigation assistance from a potential successor in interest before confirming that person’s identity and ownership interest in the property, the servicer may, but need not, comply with the foreclosure process procedural safeguards in § 1024.41(f)(2) with respect to that person. If a servicer complies with the requirements of § 1024.41(f)(2) before confirming a person’s successor in interest status, § 1024.41(i)’s limitation on duplicative requests applies to that person, provided the servicer’s evaluation of loss mitigation options available to the person would not have resulted in a different determination due to the person’s confirmation as a successor in interest if it had been conducted after the servicer confirmed the person’s status as a successor in interest.

ii. If a servicer receives a request for loss mitigation assistance from a potential successor in interest and elects not to comply with the foreclosure process procedural safeguards in § 1024.41(f)(2) with respect to that person before confirming that person’s identity and ownership interest in the property, the servicer must comply with those foreclosure process procedural safeguards with respect to that person as soon as that person becomes a confirmed successor in interest and must treat the request for loss mitigation assistance as if it had been received on the date that the servicer confirmed the successor in interest’s status.

41(f)(2)(ii) Unresponsive borrower.

1. Communication. For purposes of § 1024.41(f)(2)(ii), a servicer has not received a communication from the borrower if the servicer has not received any written or electronic communication from the borrower about the mortgage loan obligation, has not received a telephone call from the borrower about the mortgage loan obligation, and has not received a payment on the mortgage loan obligation.

2. Borrower's representative. A servicer has received a communication from the borrower if the communication is from an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the communication as having been submitted by the borrower.

3. Regular contact. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation review, throughout the loss mitigation review cycle the servicer must regularly communicate the status of the loss mitigation review to the borrower, which includes requesting documentation and information that the servicer requires from the borrower and communicating available loss mitigation options.

41(h) Appeal process.

Paragraph 41(h)(3).

1. *Supervisory personnel.* The appeal may be evaluated by supervisory personnel that are responsible for oversight of the personnel that conducted the initial evaluation, as long as the supervisory personnel were not directly involved in the ~~initial-loss mitigation~~ evaluation that is the subject of the borrower's complete loss mitigation application appeal.

~~41(i) Duplicative requests.~~

~~1. *Applicability of loss mitigation protections.* Under § 1024.41(i), a servicer must comply with § 1024.41 with respect to a loss mitigation application unless the servicer has previously done so for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application. Thus, for example, if the borrower has previously submitted a complete loss mitigation application and the servicer complied fully with § 1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, the servicer again must comply with § 1024.41 for any subsequent loss mitigation application submitted by the borrower. When a servicer is required to comply with the requirements of § 1024.41 for such a subsequent loss mitigation application, the servicer must comply with all applicable requirements of § 1024.41. For example, in such a case, the servicer's provision of the notice of determination of which loss mitigation options, if any, it will offer to the borrower under § 1024.41(e)(1)(ii) regarding the borrower's prior complete loss mitigation application does not affect the servicer's obligations to provide a new notice of complete application under § 1024.41(e)(3)(i) regarding the borrower's subsequent complete loss mitigation application.~~

~~2. *Servicing transfers.* Section 1024.41(i) provides that a servicer need not comply with § 1024.41 for a subsequent loss mitigation application from a borrower where certain conditions are met. A transferee servicer and a transferor servicer, however, are not the same servicer.~~



~~Accordingly, a transferee servicer is required to comply with the applicable requirements of § 1024.41 upon receipt of a loss mitigation application from a borrower whose servicing the transferee servicer has obtained through a servicing transfer, even if the borrower previously received an evaluation of a complete loss mitigation application from the transferor servicer.~~

*41(k) Servicing transfers.*

1. Pending request for loss mitigation application assistance. For purposes of § 1024.41(k), a request for loss mitigation application assistance is pending if it was subject to § 1024.41 ~~and had not been fully resolved before the transfer date.~~ For example, the borrower is still in a loss mitigation ~~application would not be considered pending if a review cycle, or the transferor servicer had denied a borrower for all options and the borrower's time for making an appeal, if any, had expired prior to the transfer date, such that the transferor servicer had no continuing obligations under request for loss mitigation pursuant to § 1024.41 with respect to the application. A pending application is considered a pending complete application if it was complete~~(c)(2)(ii) but the 14 days referenced in § 1024.41(c)(2)(iii) has not elapsed as of the transfer date ~~under the transferor servicer's criteria for evaluating loss mitigation applications.~~

*41(k)(1) In general.*

*41(k)(1)(i) Timing of compliance.*

1. *Obtaining loss mitigation documents and information.* i. In connection with a transfer, a transferor servicer must timely transfer, and a transferee servicer must obtain from the transferor servicer, documents and information submitted by a borrower in connection with a request for loss mitigation application assistance, consistent with policies and procedures adopted pursuant to § 1024.38(b)(4). A transferee servicer must comply with the applicable requirements of § 1024.41 with respect to a request for loss mitigation application assistance received as a

result of a transfer, even if the transferor servicer was not required to comply with § 1024.41 with respect to that ~~application (for example, because § 1024.41(i) precluded applicability of § 1024.41 with respect to the transferor servicer). If an application was not subject to § 1024.41 prior to a transfer, then for purposes of § 1024.41(b) and (c), a transferee servicer is considered to have received the loss mitigation application on the transfer date. Any such application is subject to the timeframes for compliance set forth in § 1024.41(k) request.~~

ii. A transferee servicer must, in accordance with § 1024.41 ~~(b)(1), exercise reasonable diligence~~ (2)(ii), regularly take steps to complete a identify and obtain any information and documents necessary from the borrower to determine which loss mitigation ~~application, including a facially complete application, received as a result of a transfer. options, if any, it will offer to the borrower.~~ In the transfer context, ~~reasonable diligence includes ensuring a transferee servicer must ensure~~ that a borrower is informed of any changes to the ~~application~~ loss mitigation determination process, such as a change in the address to which the borrower should submit documents and information ~~to complete the application,~~ as well as ensuring that the borrower is informed about which documents and information are ~~necessary to complete the application needed by the transferee servicer to determine which loss mitigation options, if any, it will offer to the borrower.~~

iii. A borrower may provide documents and information ~~necessary to complete an application~~ to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, such documents and information.

2. *Determination of rights and protections.* For purposes of § 1024.41 ~~(e) through (h),~~<sup>2</sup> a transferee servicer must consider documents and information that constitute a ~~complete~~ request

for loss mitigation application assistance for the transferee servicer to have been received as of the date such documents and information were received by the transferor servicer, even if such documents and information were received by the transferor servicer after the transfer date. *See* comment 41(k)(1)(i)-1.iii. ~~An application that was facially complete under § 1024.41(e)(2)(iv) with respect to the transferor servicer remains facially complete under § 1024.41(e)(2)(iv) with respect to the transferee servicer as of the date it was facially complete with respect to the transferor servicer. If an application was complete with respect to the transferor servicer, but is not complete with respect to the transferee servicer, the transferee servicer must treat the application as facially complete under § 1024.41(e)(2)(iv) as of the date the application was complete with respect to the transferor servicer.~~

3. *Duplicative notices not required.* A transferee servicer is not required to provide notices under § 1024.41 with respect to a particular loss mitigation application assistance request that the transferor servicer provided prior to the transfer. ~~For example, if the transferor servicer provided the notice required by § 1024.41(b)(2)(i)(B) prior to the transfer, the transferee servicer is not required to provide the notice again for that application.~~

*41(k)(1)(ii) Transfer date defined.*

1. *Transfer date.* Section 1024.41(k)(1)(ii) provides that the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv). The transfer date is the same date as that on which the transfer of the servicing responsibilities from the transferor servicer to the transferee servicer occurs. The transfer date is not necessarily the same date as either the effective date of the transfer of servicing as disclosed on the notice of transfer

of loan servicing pursuant to § 1024.33(b)(4)(i) or the sale date identified in a servicing transfer agreement.

~~41(k)(2) Acknowledgment notices.~~

~~41(k)(2)(ii) Prohibitions.~~

~~1. Examples of prohibitions. Section 1024.41(k)(2)(ii)(A) and (B) adjusts the timeframes for certain borrower rights and foreclosure protections where § 1024.41(k)(2)(i) applies. These provisions are illustrated as follows: Assume a transferor servicer receives a borrower's initial loss mitigation application on October 1, and the loan is transferred five days (excluding legal public holidays, Saturdays, or Sundays) later, on October 8. Assume that Columbus Day, a legal public holiday, occurs on October 14, and the transferee servicer provides the notice required by § 1024.41(b)(2)(i)(B) 10 days (excluding legal public holidays, Saturdays, or Sundays) after the transfer date, on October 23. Assume the transferee servicer discloses a 30-day reasonable date, November 22, under § 1024.41(b)(2)(ii).~~

~~i. If the transferor servicer receives the borrower's initial loss mitigation application when the borrower's mortgage loan is 101 days delinquent, the borrower's mortgage loan would be 123 days delinquent on October 23, the date the transferee servicer provides the notice required by § 1024.41(b)(2)(i)(B). Pursuant to § 1024.41(k)(2)(ii)(A), the transferee servicer cannot make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after November 22, the reasonable date disclosed under § 1024.41(b)(2)(ii), and then only if the borrower has not submitted a complete application by that date.~~

~~ii. If the transferor servicer receives the borrower's initial loss mitigation application 55 days before the foreclosure sale, the date that the transferee servicer provides the notice required by § 1024.41(b)(2)(i)(B), October 23, is 33 days before the foreclosure sale. Pursuant to~~

~~§ 1024.41(k)(2)(ii)(B), the transferee servicer must comply with § 1024.41(e), (d), and (g) if the borrower submits a complete loss mitigation application on or before November 22, the reasonable date disclosed under § 1024.41(b)(2)(ii).~~

~~*2. Applicability of loss mitigation provisions.* Section 1024.41(k)(2)(ii)(A) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii), notwithstanding § 1024.41(f)(1). Section 1024.41(k)(2)(ii)(B) requires a servicer to comply with § 1024.41(e), (d), and (g) if a borrower submits a complete loss mitigation application on or before the reasonable date disclosed in the notice required by § 1024.41(b)(2)(i)(B), even if the servicer would otherwise not be required to comply with § 1024.41(e), (d), and (g) because the application is submitted 37 days or fewer before a foreclosure sale. Section 1024.41(k)(2)(ii) provides additional protections for borrowers but does not remove any protections. Servicers remain subject to the requirements of § 1024.41 as applicable and so, for example, must comply with § 1024.41(h) if the servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale. Similarly, a servicer is prohibited from making the first notice or filing before the borrower's mortgage loan obligation is more than 120 days delinquent, even if that is after the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii).~~

~~*3. Reasonable date when no milestones remain.* Generally, a servicer does not provide the notice required under § 1024.41(b)(2)(i)(B) after the date that is 38 days before a foreclosure sale, so at least one milestone specified in comment 41(b)(ii)–1 always remains applicable. When § 1024.41(k)(2)(i) applies, however, the transferee servicer may sometimes provide the notice after the date that is 38 days before a foreclosure sale. When this occurs, the transferee servicer~~

~~must determine the reasonable date when none of the four specified milestones remain. The other requirements of § 1024.41(b)(2)(ii) continue to apply. In this circumstance, a reasonable date may occur less than 30 days, but not less than seven days, after the date the transferee servicer provides the written notice pursuant to § 1024.41(b)(2)(i)(B).~~

~~*41(k)(3) Complete loss mitigation applications pending at transfer.*~~

~~*1. Additional information or corrections to a previously submitted document.* If a transferee servicer acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date and the transferee servicer determines that additional information or a correction to a previously submitted document is required based upon its criteria for evaluating loss mitigation applications, the application is considered facially complete under § 1024.41(c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer. Once the transferee servicer receives the information or corrections necessary to complete the application, § 1024.41(c)(3) requires the transferee servicer to provide a notice of complete application.~~

~~*2. Applications first complete upon transfer.* If the borrower's loss mitigation application was incomplete based on the transferor servicer's criteria prior to transfer but is complete based upon the transferee servicer's criteria, the application is considered a pending loss mitigation application complete as of the transfer date for purposes of § 1024.41(k)(3). Consequently, the transferee servicer must comply with the applicable requirements of § 1024.41(c)(1) and (4) within 30 days of the transfer date. For purposes of § 1024.41(c) through (h), the application is complete as of the date the transferor servicer received the documents and information constituting the complete application. See comment 41(k)(1)(i) 2. In such circumstances, § 1024.41(c)(3) requires the transferee servicer to provide a notice of complete application that~~

~~discloses the date the transferor servicer received the documents and information constituting the complete application.~~

~~41(k)(4) Applications~~Determinations subject to appeal process.

1. *Obtaining appeal.* A borrower may submit an appeal of a transferor servicer's determination pursuant to § 1024.41(h) to the transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such appeals.

2. *Servicer unable to determine appeal.* A transferee servicer may be unable to make a determination on an appeal when, for example, the transferor servicer denied a borrower for a ~~loan modification~~loss mitigation option that the transferee servicer does not offer or when the transferee servicer receives the mortgage loan through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer lacks sufficient information to review the appeal. In that circumstance, the transferee servicer is required to treat the appeal as a pending ~~complete application~~request for loss mitigation assistance, and it must permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer, even if it does not offer the loss mitigation options offered by the transferor servicer, in addition to the loss mitigation options, if any, that the transferee servicer determines to offer the borrower based on its own ~~evaluation~~review of ~~the borrower's complete a~~ borrower who makes a request for loss mitigation ~~application~~assistance. For example, assume a transferor servicer denied a borrower for all loan modification options but offered the borrower a short sale option, and assume that the borrower's appeal of the loan modification denial was pending as of the transfer date. If the transferee servicer is unable to determine the borrower's appeal, the

transferee servicer must ~~evaluate~~review the ~~borrower~~borrower's request for ~~all available~~ loss mitigation ~~options~~assistance in accordance with § 1024.41 ~~(e) and (k)(3)~~. At the conclusion of such ~~evaluation~~review, the transferee servicer must permit the borrower to accept the short sale option offered by the transferor servicer, even if the transferee servicer does not offer the short sale option, in addition to any loss mitigation options the transferee servicer determines to offer the borrower based upon its own ~~evaluation~~review.

*41(k)(5) Pending loss mitigation offers.*

1. *Obtaining evidence of borrower acceptance.* A borrower may provide an acceptance or rejection of a pending loss mitigation offer to a transferor servicer after the transfer date.

Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such acceptances and rejections, and the transferee servicer must provide the borrower with any timely accepted loss mitigation option, even if the borrower submitted the acceptance to the transferor servicer.

*Appendix MS to Part 1024—Mortgage Servicing Model Forms and Clauses*

~~\* \* \* \* \*~~

*Appendix MS-4—Model Clauses for the Written Early Intervention Notice*

1. ~~*Model MS-4(A).* These model clauses illustrate how a servicer may provide its contact information, how a servicer may request that the borrower contact the servicer, and how the servicer may inform the borrower how to obtain additional information about loss mitigation options, as required by § 1024.39(b)(2)(i), (ii), and (iv).~~ [RESERVED]



~~2. Model MS-4(B). These model clauses illustrate how the servicer may inform the borrower of loss mitigation options that may be available, as required by § 1024.39(b)(2)(iii), if applicable. A servicer may include clauses describing particular loss mitigation options to the extent such options are available. Model MS-4(B) does not contain sample clauses for all loss mitigation options that may be available. The language in the model clauses contained in square brackets is optional; a servicer may comply with the disclosure requirements of § 1024.39(b)(2)(iii) by using language substantially similar to the language in the model clauses, providing additional detail about the options, or by adding or substituting applicable loss mitigation options for options not represented in these model clauses, provided the information disclosed is accurate and clear and conspicuous.~~

2. [RESERVED]

3. Model MS-4(C). These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by § 1024.39(b)(2)(v). A servicer may, at its option, provide the Web site and telephone number for either the Bureau's or the Department of Housing and Urban Development's housing counselors list, as provided by paragraphs § 1024.39(b)(2)(v).