Consumer Financial Protection Bureau

Official Staff Commentary on Regulation X

12 CFR 1024, supplement I; as amended effective July 15, 2025

Consumer Financial Protection Bureau's Official Staff Commentary on Regulation X

12 CFR 1024, supplement I; as amended effective July 15, 2025

6–1442

INTRODUCTION

1. *Official status.* This commentary is the primary vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation X. Good faith compliance with this commentary affords protection from liability under section 19(b) of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2617(b).

2. *Requests for official interpretations.* A request for an official interpretation shall be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. A request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents. Except in unusual circumstances, such official interpretations will not be issued separately but will be incorporated in the official commentary to this part, which will be amended periodically. No official interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

3. *Unofficial oral interpretations.* Unofficial oral interpretations may be provided at the discretion of Bureau staff. Written requests for such interpretations should be sent to the address set forth for official interpretations. Unofficial oral interpretations provide no protection under section 19(b) of RESPA. Ordinarily, staff will not issue unofficial oral interpretations on matters adequately covered by this part or the official Bureau interpretations.

4. *Rules of construction.*

(a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as ''including, but not limited to,'' ''among other things,'' ''for example,'' or ''such as.''

(b) Throughout the commentary, reference to ''this section'' or ''this paragraph'' means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that the comment interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to section 1024.37(c)(1) are further divided by subparagraph, such as comment 37(c)(1)(i)-1. In other cases, comments have more general application and are designated, for example, as comment 40(a)-1. This introduction may be cited as comments I-1 through I-5.

6–1442.5

SUBPART A—GENERAL PROVISIONS

SECTION 1024.5—Coverage of RESPA

5(c) Relation to State laws

Paragraph 5(c)(1)

1. State laws that are inconsistent with the requirements of RESPA or Regulation X may be preempted by RESPA or Regulation X. State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.

6–1443

SUBPART B—MORTGAGE SETTLEMENT AND ESCROW ACCOUNTS

[Reserved]

6–1443.5

SECTION 1024.17—Escrow Accounts

17(k) Timely Payments

17(k)(5) Timely Payment of Hazard Insurance

17(k)(5)(ii) Inability to Disburse Funds

17(k)(5)(ii)(A) When Inability Exists

1. *Examples of reasonable basis to believe that a policy has been cancelled or not renewed.* The following are examples of where a servicer has a reasonable basis to believe that a borrower's hazard insurance policy has been canceled or not renewed for reasons other than the nonpayment of premium charges:

i. A borrower notifies a servicer that the borrower has cancelled the hazard insurance coverage, and the servicer has not received notification of other hazard insurance coverage.

ii. A servicer receives a notification of cancellation or non-renewal from the borrower's insurance company before payment is due on the borrower's hazard insurance.

iii. A servicer does not receive a payment notice by the expiration date of the borrower's hazard insurance policy.

17(k)(5)(ii)(C) Recoupment for Advances

1. *Month-to-month advances.* A servicer that advances the premium payment to be disbursed from an escrow account may advance the payment on a month-to-month basis, if permitted by State or other applicable law and accepted by the borrower's hazard insurance company.

6–1444

SUBPART C—MORTGAGE SERVICING

SECTION 1024.30—Scope

30(b) Exemptions

1. *Exemption for Farm Credit System institutions.* Pursuant to 12 CFR 617.7000, certain servicers may be considered ''qualified lenders'' only with respect to loans discounted or pledged pursuant to 12 U.S.C. 2015(b)(1). To the extent a servicer, as defined in RESPA, services a mortgage loan that has not been discounted or pledged pursuant to 12 U.S.C. 2015(b)(1), and is not subject to the requirements set forth in 12 CFR 617, the servicer may be required to comply with the requirements of sections 1024.38 through 41 with respect to that mortgage loan.

Paragraph 30(c)(2)

1. *Principal residence.* If a property ceases to be a borrower's principal residence, the procedures set forth in sections 1024.39 through 1024.41 do not apply to a mortgage loan secured by that property. Determination of principal residence status will depend on the specific facts and circumstances regarding the property and applicable State law. For example, a vacant property may still be a borrower's principal residence.

30(d) Successors in Interest

1. *Treatment of confirmed successors in interest.* Under section 1024.30(d), a confirmed successor in interest must be considered a borrower for purposes of this subpart and section 1024.17, regardless of whether the successor in interest assumes the mortgage loan obligation under State law. For example, if a servicer receives a loss mitigation application from a confirmed successor in interest, the servicer must review and evaluate the application and notify the confirmed successor in interest in accordance with the procedures set forth in section 1024.41 if the property is the confirmed successor in interest's principal residence and the procedures set forth in sec-

tion 1024.41 are otherwise applicable. Treatment of a confirmed successor in interest as a borrower for purposes of this subpart and section 1024.17 does not affect whether the confirmed successor in interest is subject to the contractual obligations of the mortgage loan agreement, which is determined by applicable State law. Communications in compliance with this part to a confirmed successor in interest as defined in section 1024.31 do not violate section 805(b) of the Fair Debt Collection Practices Act (FDCPA) because consumer for purposes of FDCPA section 805 includes any person who meets the definition in this part of confirmed successor in interest.

2. *Assumption of the mortgage loan obligation.* A servicer may not require a confirmed successor in interest to assume the mortgage loan obligation under State law to be considered a borrower for purposes of section 1024.17 and this subpart. If a successor in interest assumes a mortgage loan obligation under State law or is otherwise liable on the mortgage loan obligation, the protections that the successor in interest enjoys under this part are not limited to the protections that apply under section 1024.30(d) to a confirmed successor in interest.

3. *Treatment of transferor borrowers.* Even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of this subpart with respect to the transferor borrower.

6–1444.1

SECTION 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 section 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, even if the borrower ultimately does not qualify for such option.

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 sections 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 section 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 section 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.

6–1444.2

SECTION 1024.32—General Disclosure Requirements

32(c) Confirmed Successors in Interest

32(c)(1) Optional Notice with Acknowledgment Form

1. A servicer may identify in the acknowledgment form examples of the types of notices and communications identified in section 1024.32(c)(1)(iii), such as periodic statements and mortgage servicing transfer notices. Any examples provided should be the types of notices or communications that would be available to a confirmed successor in interest if the confirmed successor in interest executed the acknowledgment and returned it to the servicer.

32(c)(2) Effect of Failure to Execute Acknowledgment

1. *No time limit to return acknowledgment.* A confirmed successor in interest may provide an executed acknowledgment that complies

with section 1024.32(c)(1)(iv) to the servicer at any time after confirmation.

2. *Effect of revocation of acknowledgment.* If a confirmed successor in interest who is not liable on the mortgage loan obligation executes and then later revokes an acknowledgment pursuant to section 1024.32(c)(1)(iv), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by section 1024.17, section 1024.33, section 1024.34, section 1024.37, or section 1024.39 or to comply with the live contact requirements in section 1024.39(a) with respect to the confirmed successor in interest from the date the revocation is received until the confirmed successor in interest either assumes the mortgage loan obligation under State law or executes a new acknowledgment that complies with section 1024.32(c)(1)(iv) and provides it to the servicer.

32(c)(4) Multiple Notices Unnecessary

1. *Specific written disclosure.* A servicer may rely on section 1024.32(c)(4) if the servicer provides a specific written disclosure required by section 1024.17, section 1024.33, section 1024.34, section 1024.37, or section 1024.39(b) to another borrower. For example, a servicer is not required to provide a force-placed insurance notice required under section 1024.37 to a confirmed successor in interest if the servicer is providing the same force-placed insurance notice to a transferor borrower or to another confirmed successor in interest.

6–1444.3

SECTION 1024.33—Mortgage Servicing Transfers

33(a) Servicing Disclosure Statement

1. *Terminology.* Although the servicing disclosure statement must be clear and conspicuous pursuant to section 1024.32(a), section 1024.33(a) does not set forth any specific rules for the format of the statement, and the specific language of the servicing disclosure statement in appendix MS-1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.

2. *Delivery to co-applicants.* If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

3. *Lender servicing.* If the lender, mortgage broker who anticipates using table funding, or dealer in a first lien dealer loan knows at the time of making the disclosure whether it will service the mortgage loan for which the applicant has applied, the disclosure must, as applicable, state that such entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan, or that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, a disclosure that states that the servicing of the loan may be assigned, sold, or transferred while the loan is outstanding complies with section 1024.33(a).

33(b) Notices of Transfer of Loan Servicing

Paragraph 33(b)(3)

1. *Delivery.* A servicer mailing the notice of transfer must deliver the notice to the mailing address (or addresses) listed by the borrower in the mortgage loan documents, unless the borrower has notified the servicer of a new address (or addresses) pursuant to the servicer's requirements for receiving a notice of a change of address.

33(c) Borrower Payments during Transfer of Servicing

33(c)(1) Payments Not Considered Late

1. *Late fees prohibited.* The prohibition in section 1024.33(c)(1) on treating a payment as late for any purpose would prohibit a late fee from being imposed on the borrower with respect to any payment on the mortgage loan. *See* RESPA section 6(d) (12 U.S.C. 2605(d)).

2. *Compliance with section 1024.39.* A transferee servicer's compliance with section 1024.39 during the 60-day period beginning on the effective date of a servicing transfer does not constitute treating a payment as late for purposes of section 1024.33(c)(1).

6–1444.4

SECTION 1024.34—Timely Escrow Payments and Treatment of Escrow Balances

Paragraph 34(b)(1)

1. *Netting of funds.* Section 1024.34(b)(1) does not prohibit a servicer from netting any remaining funds in an escrow account against the outstanding balance of the borrower's mortgage loan.

Paragraph 34(b)(2)

1. *Refund always permissible.* A servicer is not required to credit funds in an escrow account to an escrow account for a new mortgage loan and may, in all circumstances, comply with the requirements of section 1024.34(b) by refunding the funds in the escrow account to the borrower pursuant to section 1024.34(b)(1).

2. *Borrower agreement.* A borrower may agree either orally or in writing to a servicer's crediting of any remaining balance in an escrow account to a new escrow account for a new mortgage loan pursuant to section 1024.34(b)(2).

6–1444.5

SECTION 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 section 1024.35(a), an information request under section 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 section 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 section 1024.35(d), (e) and (i) with respect to a borrower's assertion of an error that is not defined as an error in section 1024.35(b). For example, the following are not errors for purposes of section 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 section 1024.35.

2. *Unreasonable basis.* For purposes of section 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 section 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 section 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 section 1024.35(c) and section 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 sections 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 section 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 section 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 section 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 section 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 can not comply with its obligations pursuant to section 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 section 1024.35(e)(3)(i)(B) by complying with the requirements of section 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 section 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 section 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 Feb-

ruary for a mortgage loan, but asserts an error relating to the servicer's acceptance of the February payment, section 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 section 1024.35 with respect to the notice of error on the February payment.

6–1444.6

SECTION 1024.36—Requests for Information

36(a) Information Request

1. *Borrower's representative.* An information request is submitted by a borrower if the information request 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 request for information as having been submitted by the borrower.

2. *Owner or assignee of a mortgage loan.*

i. When a loan is not held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies with section 1024.36(d) by responding to a request for information regarding the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. A servicer is not the owner or assignee for purposes of section 1024.36(d) if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation. The Government National Mortgage Association is not the owner or assignee for purposes of such requests for information solely as a result of its role as the guarantor of the security in which the loan serves as the collateral.

ii. When the loan is held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies with section 1024.36(d) by responding to a borrower's request for information regarding the owner, assignee, or trust of the mortgage loan with the following information, as applicable:

A. For any request for information where the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is not the owner of the loan or the trustee of the securitization trust in which the loan is held: The name of the trust, and the name, address, and appropriate contact information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee. The servicer complies with section 1024.36(d) by identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

B. If the request for information did not expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: The name and contact information for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, as applicable, without also providing the name of the trust.

C. If the request for information did expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: The name of the trust, and the name, address, and appropriate contact information for the trustee, as in comment 36(a)-2.ii.A above.

36(b) Contact information for Borrowers to Request Information

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

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

i. The written notice designating the specific address, required pursuant to section 1024.35(c) and section 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 sections 1024.39 or .41 that includes contact information for assistance.

3. *Multiple offices.* A servicer may designate multiple office addresses for receiving information requests. However, a servicer is required to comply with the requirements of section 1024.36 with respect to an information request received at any such address regardless of whether that specific address was provided to a specific borrower requesting information. For example, a servicer may designate an address to receive information requests for borrowers located in California and a separate address to receive information requests for borrowers located in Texas. If a borrower located in California requests information through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received an information request and must comply with the requirements of section 1024.36.

4. *Internet intake of information requests.* A servicer may, but need not, establish a process for receiving information requests 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 information requests by mail. The process or processes established by the servicer for receiving information requests through an online intake method shall be the exclusive online intake process or processes for receiving information requests. 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 information requests.

36(d) Response to Information Request

36(d)(1) Investigation and Response Requirements

Paragraph 36(d)(1)(ii)

1. *Information not available.* Information is not available if:

i. The information is not in the servicer's control or possession, or

ii. The information cannot be retrieved in the ordinary course of business through reasonable efforts.

2. *Examples.* The following examples illustrate when information is available (or not available) to a servicer under section 1024.36(d)(1)(ii):

i. A borrower requests a copy of a telephonic communication with a servicer. The servicer's personnel have access in the ordinary course of business to audio recording files with organized recordings or transcripts of borrower telephone calls and can identify the communication referred to by the borrower through reasonable business efforts. The information requested by the borrower is available to the servicer.

ii. A borrower requests information stored on electronic back-up media. Information on electronic back-up media is not accessible by the servicer's personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore

the information from the electronic back-up media. The information requested by the borrower is not available to the servicer.

iii. A borrower requests information stored at an offsite document storage facility. A servicer has a right to access documents at the offsite document storage facility and servicer personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the borrower is available to the servicer assuming that the information can be found within the offsite documents with reasonable efforts.

36(f) Requirements Not Applicable

36(f)(1) In General

Paragraph 36(f)(1)(i)

1. A borrower's request for a type of information that can change over time is not substantially the same as a previous information request for the same type of information if the subsequent request covers a different time period than the prior request.

Paragraph 36(f)(1)(ii)

1. *Confidential, proprietary or privileged information.* A request for confidential, proprietary or privileged information of a servicer is not an information request for which the servicer is required to comply with the requirements of section 1024.36(c) and (d). Confidential, proprietary or privileged information may include information requests relating to, for example:

i. Information regarding management or profitability of a servicer, including information provided to investors in the servicer.

ii. Compensation, bonuses, or personnel actions relating to servicer personnel, including personnel responsible for servicing a borrower's mortgage loan account;

iii. Records of examination reports, compliance audits, borrower complaints, and internal investigations or external investigations; or

iv. Information protected by the attorney-client privilege.

Paragraph 36(f)(1)(iii)

1. *Examples of irrelevant information.* The following are examples of irrelevant information:

i. Information that relates to the servicing of mortgage loans other than a borrower's mortgage loan, including information reported to the owner of a mortgage loan regarding individual or aggregate collections for mortgage loans owned by that entity;

ii. The servicer's training program for servicing personnel;

iii. The servicer's servicing program guide; or

iv. Investor instructions or requirements for servicers regarding criteria for negotiating or approving any program with a borrower, including any loss mitigation option.

Paragraph 36(f)(1)(iv)

1. *Examples of overbroad or unduly burdensome requests for information.* The following are examples of requests for information that are overbroad or unduly burdensome:

i. Requests for information that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, including, for example, requests for all mortgage loan file documents, recorded mortgage instruments, servicing information and documents, and sale or securitization information and documents;

ii. Requests for information that are not reasonably understandable or are included with voluminous tangential discussion or assertions of errors;

iii. Requests for information that purport to require servicers to provide information in specific formats, such as in a transcript, letter form in a columnar format, or spreadsheet, when such information is not ordinarily stored in such format; and

iv. Requests for information that are not reasonably likely to assist a borrower with the borrower's account, including, for example, a request for copies of the front and

back of all physical payment instruments (such as checks, drafts, or wire transfer confirmations) that show payments made by the borrower to the servicer and payments made by a servicer to an owner or assignee of a mortgage loan.

36(i) Potential Successors in Interest

1. *Requests that indicate that the person may be a successor in interest.* Section 1024.36(i) requires a servicer to respond to certain written requests received from a person that indicate the person may be a successor in interest. Examples of written requests that indicate that the person may be a successor in interest include, without limitation, a written statement from a person other than a borrower indicating that there has been a transfer of ownership or of an ownership interest in the property to the person or that a borrower has been divorced, legally separated, or died, or a written loss mitigation application received from a person other than a borrower.

2. *Time limits.* A servicer must respond to a request under section 1024.36(i) not later than the time limits set forth in section 1024.36(d)(2). Servicers subject to section 1024.38(b)(1)(vi)(B) must also maintain policies and procedures reasonably designed to ensure that, upon receiving notice of the existence of a potential successor in interest, the servicer can 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 section 1024.36(i) (including the appropriate address). Depending on the facts and circumstances of the request, responding promptly may require a servicer to respond more quickly than the time limits established in section 1024.36(d)(2).

3. *Potential successor in interest's representative.* An information request pursuant to section 1024.36(i) is submitted by a potential successor in interest if the information request is submitted by an agent of the potential successor in interest. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a potential successor in interest has authority from the potential successor in interest to act on the potential successor in interest's behalf, for example, by requiring that a person that claims to be an agent of the potential successor in interest provide documentation from the potential successor in interest stating that the purported agent is acting on the potential successor in interest's behalf. Upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the potential successor in interest.

6–1444.7

SECTION 1024.37—Force-Placed Insurance

37(a) Definition of Force-Placed Insurance

37(a)(2) Types of Insurance Not Considered Force-Placed Insurance

Paragraph 37(a)(2)(iii)

1. *Servicer's discretion.* Hazard insurance paid by a servicer at its discretion refers to circumstances in which a servicer pays a borrower's hazard insurance even though the servicer is not required by section 1024.17(k)(1), (2), or (5) to do so.

37(b) Basis for Charging Force-Placed Insurance

1. *Reasonable basis to believe.* Section 1024.37(b) prohibits a servicer from assessing on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the loan contract's requirement to maintain hazard insurance. Information about a borrower's hazard insurance received by a servicer from the borrower, the borrower's insurance provider, or the borrower's insurance agent, may provide a servicer with a reasonable basis to believe that the borrower has either complied

with or failed to comply with the loan contract's requirement to maintain hazard insurance. If a servicer receives no such information, the servicer may satisfy the reasonable basis to believe standard if the servicer acts with reasonable diligence to ascertain a borrower's hazard insurance status and does not receive from the borrower, or otherwise have evidence of insurance coverage as provided in section 1024.37(c)(1)(iii). A servicer that complies with the notification requirements set forth in section 1024.37(c)(1)(i) and (ii) has acted with reasonable diligence.

37(c) Requirements before Charging Borrower for Force-Placed Insurance

37(c)(1) In General

Paragraph 37(c)(1)(i)

1. *Assessing premium charge or fee.* Subject to the requirements of section 1024.37(c)(1)(i) through (iii), if not prohibited by State or other applicable law, a servicer may charge a borrower for force-placed insurance the servicer purchased, retroactive to the first day of any period of time in which the borrower did not have hazard insurance in place.

Paragraph 37(c)(1)(iii)

1. *Extension of time.* Applicable law, such as State law or the terms and conditions of a borrower's insurance policy, may provide for an extension of time to pay the premium on a borrower's hazard insurance after the due date. If a premium payment is made within such time, and the insurance company accepts the payment with no lapse in insurance coverage, then the borrower's hazard insurance is deemed to have had hazard insurance coverage continuously for purposes of section 1024.37(c)(1)(iii).

2. *Evidence demonstrating insurance.* As evidence of continuous hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation. A servicer may reject evidence of hazard insurance coverage submitted by the borrower if neither the borrower's insurance provider nor insurance agent provides confirmation of the insurance information submitted by the borrower, or if the terms and conditions of the borrower's hazard insurance policy do not comply with the borrower's loan contract requirements.

Paragraph 37(c)(2)(v)

1. *Identifying type of hazard insurance.* If the terms of a mortgage loan contract requires a borrower to purchase both a homeowners' insurance policy and a separate hazard insurance policy to insure against loss resulting from hazards not covered under the borrower's homeowners' insurance policy, a servicer must disclose whether it is the borrower's homeowners' insurance policy or the separate hazard insurance policy for which it lacks evidence of coverage to comply with section 1024.37(c)(2)(v).

37(d) Reminder Notice

37(d)(1) In General

1. When a servicer is required to deliver or place in the mail the written notice pursuant to section 1024.37(d)(1), the content of the reminder notice will be different depending on the insurance information the servicer has received from the borrower. For example:

i. Assume that, on June 1, the servicer places in the mail the written notice required by section 1024.37(c)(1)(i) to Borrower A. The servicer does not receive any insurance information from Borrower A. The servicer must deliver to Borrower A or place in the mail a reminder notice, with the information required by section 1024.37(d)(2)(i), at least 30 days after June 1 and at least 15 days before the servicer charges Borrower A for force-placed insurance.

ii. Assume the same example, except that Borrower A provides the servicer with insurance information on June 18, but the servicer cannot verify that Borrower A has

hazard insurance in place continuously based on the information Borrower A provided (e.g., the servicer cannot verify that Borrower A had coverage between June 10 and June 15). The servicer must either deliver to Borrower A or place in the mail a reminder notice, with the information required by in section 1024.37(d)(2)(ii), at least 30 days after June 1 and at least 15 days before charging Borrower A for force-placed insurance it obtains for the period between June 10 and June 15.

37(d)(2) Content of Reminder Notice

37(d)(2)(i) Servicer Receiving No Insurance Information

Paragraph 37(d)(2)(i)(D)

1. *Reasonable estimate of the cost of force-placed insurance.* Differences between the amount of the estimated cost disclosed under section 1024.37(d)(2)(i)(D) and the actual cost later assessed to the borrower are permissible, so long as the estimated cost is based on the information reasonably available to the servicer at the time the disclosure is provided. For example, a mortgage investor's requirements may provide that the amount of coverage for force-placed insurance depends on the borrower's delinquency status (the number of days the borrower's mortgage payment is past due). The amount of coverage affects the cost of force-placed insurance. A servicer that provides an estimate of the cost of force-placed insurance based on the borrower's delinquency status at the time the disclosure is made complies with section 1024.37(d)(2)(i)(D).

37(d)(5) Updating Notice with Borrower Information

1. *Reasonable time.* If the written notice required by section 1024.37(c)(1)(ii) was put into production a reasonable time prior to the servicer delivering or placing the notice in the mail, the servicer is not required to update the notice with new insurance information received. For purposes of section 1024.37(d)(5), a reasonable time is no more than five days (excluding legal holidays, Saturdays, and Sundays).

37(e) Renewal or Replacing Force-Placed Insurance

37(e)(1) In General

1. For purposes of section 1024.37(e)(1), as evidence that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a borrower to provide a form of written confirmation as described in comment 37(c)(1)(iii)-2, and may reject evidence of coverage submitted by the borrower for the reasons described in comment 37(c)(1)(iii)-2.

37(e)(1)(iii) Charging before End of Notice Period

1. *Example.* Section 1024.37(e)(1)(iii) permits a servicer to assess on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance promptly after the servicer receives evidence demonstrating that the borrower lacked hazard insurance coverage in compliance with the loan contract's requirements to maintain hazard insurance for any period of time following the expiration of the existing force-placed insurance. To illustrate, assume that on January 2, the servicer sends the notice required by section 1024.37(e)(1)(i). At 12:01 a.m. on January 12, the existing force-placed insurance the servicer had purchased on the borrower's property expires and the servicer replaces the expired force-placed insurance policy with a new policy. On February 5, the servicer receives evidence demonstrating the borrower has hazard insurance effective since 12:01 a.m. on January 31. The servicer may charge the borrower for force-placed insurance covering the period from 12:01 a.m. January 12 to 12:01 a.m. January 31, as early as February 5.

Paragraph 37(e)(2)(vii)

1. *Reasonable estimate of the cost of force-placed insurance.* The reasonable estimate requirement set forth in section

1024.37(e)(2)(vii) is the same reasonable estimate requirement set forth in section 1024.37(d)(2)(i)(D). *See* comment 37(d)(2)(i)(D)-1 regarding the reasonable estimate.

37(g) Cancellation of Force-Placed Insurance

Paragraph 37(g)(2)

1. *Period of overlapping insurance coverage.* Section 1024.37(g)(2) requires a servicer to refund to a borrower all force-placed insurance premium charges and related fees paid by the borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period. A period of overlapping insurance coverage means the period of time during which the force-placed insurance purchased by a servicer and the hazard insurance purchased by a borrower were in effect at the same time.

6–1444.8

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 section 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 section 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 section 1024.35.

Paragraph 38(b)(1)(iv)

1. *Accurate and current information for owners or assignees of mortgage loans relating to loan modifications.* 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, 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 a loss mitigation application. 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 loss mitigation options according to the procedures provided in section 1024.41.

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 section 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 section 1024.41 may be inapplicable. For example, an owner or assignee may require that a servicer implement certain proce-

dures 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 reevaluate 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 section 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 section 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 nonperforming 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 sub-

mitting written notices of error set forth in section 1024.35 and written information requests set forth in section 1024.36 by informing borrowers, through a notice (mailed or delivered electronically) or a Web site. For example, a servicer may comply with section 1024.38(b)(5) by including in the periodic statement required pursuant to section 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 sections 1024.35 and 1024.36. Alternatively, a servicer may also comply with section 1024.38(b)(5) by including a description of the procedures set forth in sections 1024.35 and 1024.36 in the written notice required by section 1024.35(c) and section 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 section 1024.35 and for submitting written requests for information set forth in section 1024.36.

3. *Notices of error incorrectly sent to addresses associated with submission of loss mitigation applications 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 loss mitigation application or the continuity of contact pursuant to section 1024.40, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in section 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 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).

38(c)(2) Servicing File

1. *Timing.* A servicer complies with section 1024.38(c)(2) if it maintains information in a manner that facilitates compliance with section 1024.38(c)(2) beginning on or after January 10, 2014. A servicer is not required to comply with section 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 section 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 section 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.

6–1444.9

SECTION 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 section 1024.39(a) for two missed payments. To illustrate, the servicer complies with section 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 section 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of section 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 section 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 section 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 section 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 section 1024.39(a). Servicers may also combine contacts made pursuant to section 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 section 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. Comment 39(a)-6 discusses the relationship between live contact and the loss mitigation procedures set forth in section 1024.41.

4. *Promptly inform if appropriate.*

i. *Servicer's determination.* 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 for which loss mitigation options 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. 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 section 1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by section 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 contact with the borrower under the loss mitigation procedures under section 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 section 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options, the servicer complies with section 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. A servicer must resume compliance with the requirements of section 1024.39(a) for a bor-

rower 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 section 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 section 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 section 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 section 1024.39 with a person authorized by the borrower to communicate with the servicer on the borrower's behalf.

4. *Relationship to section 1024.39(a).* The written notice required under section 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 section 1024.39(a).

5. *Servicing transfers.* A transferee servicer is required to comply with the requirements of section 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 section 1024.39(b) if the transferor servicer provided the written notice under section 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 section 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 section 1024.39(b)(2) satisfies the clear and conspicuous standard in section 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 section 1024.39(b)(2) into a single mailing, provided each of the statements required by section 1024.39(b)(2) satisfies the clear and conspicuous standard in section 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 of loss mitigation options that it offers to borrowers. The servicer may include a statement that not all borrowers will qualify for the listed options.

2. *Brief description.* An example of a loss mitigation option may be described in one or more sentences. If a servicer offers a 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 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 loss mitigation options.* A servicer may comply with section 1024.39(b)(2)(iv) by directing the borrower to contact the servicer for more detailed information on how to apply for loss mitigation options. For example, a general statement such as, ''contact us for instructions on how to apply'' would satisfy the requirement to inform the borrower how to obtain more information about loss mitigation options. However, to expedite the borrower's timely application for any loss mitigation options, servicers may provide more detailed instructions, such as by listing representative documents 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 and make a decision on loss mitigation options. Servicers may also supplement the written notice required by section 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 section 1024.39(b), as modified by section 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 section 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, section 1024.39(c)(1)(ii) exempts a servicer from the requirements of section 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 Collection 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, section 1024.39(c)(1)(ii) exempts a servicer from providing the written notice required by section 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 section 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 section 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 section 1024.39, if any of the borrowers is a debtor in bankruptcy, a servicer may provide the written notice required by section 1024.39(b), as modified by section 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, section 1024.39(c)(1) once again applies. However, section 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 section 1024.39(b) as modified by section 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 section 1024.39(b) and (c)(1)(iii).

39(d) Fair Debt Collection Practices Act—Partial Exemption

1. *Availability of loss mitigation options.* In part, section 1024.39(d)(2) exempts a servicer from providing the written notice required by section 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 communi-

cations with a borrower, a servicer does not violate FDCPA section 805(c) by providing the written notice required by section 1024.39(b) as modified by section 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, section 1024.39(d)(2) exempts a servicer from providing the written notice required by section 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.

6–1444.92

SECTION 1024.40—Continuity of Contact

40(a) In General

1. *Delinquent borrower.* A borrower is not considered delinquent if the borrower has refinanced the mortgage loan, paid off the mortgage loan, brought the mortgage loan current by paying all amounts owed in arrears, or if title to the borrower's property has been transferred to a new owner through, for example, a deed-in-lieu of foreclosure, a sale of the borrower's property, including, as applicable, a short sale, or a foreclosure sale. For purposes of responding to a borrower's inquiries and assisting a borrower with loss mitigation options, the term ''borrower'' includes a person authorized by the borrower to act 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 that a person who 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.

2. *Assignment of personnel.* A servicer has discretion to determine whether to assign a single person or a team of personnel to respond to a delinquent borrower. The personnel a servicer assigns to the borrower as described in section 1024.40(a)(1) may be single-purpose or multi-purpose personnel. Single-purpose personnel are personnel whose primary responsibility is to respond to a delinquent borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options. Multi-purpose personnel can be personnel that do not have a primary responsibility at all, or personnel for whom responding to a delinquent borrower's inquiries, and as applicable, assisting the borrower with available loss mitigation options is not the personnel's primary responsibility. If the delinquent borrower files for bankruptcy, a servicer may assign personnel with specialized knowledge in bankruptcy law to assist the borrower.

3. *Delinquency. See* section 1024.31 for the definition of delinquency applicable to subpart C of Regulation X.

6–1444.94

SECTION 1024.41—Loss Mitigation Procedures

41(b) Receipt of a Loss Mitigation Application

1. *Successors in interest.*

i. If a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but need not, review and evaluate the loss mitigation application in accordance with the procedures set forth in section 1024.41. If a servicer complies with the requirements of section 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, section 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 section 1024.41 if the property is the confirmed successor in interest's principal residence and the procedures set forth in section 1024.41 are otherwise applicable. For purposes of section 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 section 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 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 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 section 1024.41(b)(1) includes, 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;

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 section 1024.41(c)(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 section 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.

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 section 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 section 1024.41(b)(1). *See* section 1024.41(c)(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 section 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 section 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 section 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 section 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 section 1024.41 that have been

determined to apply to a borrower pursuant to section 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 section 1024.41(c)(1)(i) if the servicer makes a determination regarding the borrower's eligibility for a loss mitigation program. Consistent with section 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, section 1024.41(c)(1) does not require that an evaluation meet any standard other than the discretion of the servicer.

2. *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.

3. *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.

4. *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 section 1024.41(c)(1), unless otherwise prohibited by applicable law.

41(c)(2) Incomplete Loss Mitigation Application Evaluation

41(c)(2)(i) In General

1. *Offer of a loss mitigation option without an evaluation of a loss mitigation application.* Nothing in section 1024.41(c)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing in section 1024.41(c)(2)(i) prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitiga-

tion 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 section 1024.41(c)(2)(i), and a servicer is not required to comply with section 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 section 1024.41, a servicer may be required separately, in accordance with policies and procedures maintained pursuant to section 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 section 1024.41.

41(c)(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(c)(2)(iii) Short-Term Loss Mitigation Options

1. *Short-term payment forbearance program.* The exemption in section 1024.41(c)(2)(iii) applies to, among other things, short-term payment forbearance programs. For purposes of section 1024.41(c)(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 section 1024.41(c)(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 section 1024.41 with respect to the incomplete loss mitigation application, including the requirement in section 1024.41(b)(2) to review the application to determine if it is complete, the requirement in section 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 section 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 section 1024.41 if the borrower completes a loss mitigation application.

4. *Short-term repayment plan.* The exemption

in section 1024.41(c)(2)(iii) applies to, among other things, short-term repayment plans. For purposes of section 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 section 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 section 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 section 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 section 1024.17(b) will end during a borrower's short-term repayment plan, the written notice complies with section 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 section 1024.41(c)(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 section 1024.41(c)(2)(iii).

41(c)(2)(iv) Facially Complete Application

1. *Reasonable opportunity.* Section 1024.41(c)(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 section 1024.41(c)(2)(iv), the application shall be considered incomplete.

41(c)(3) Notice of Complete Application

Paragraph 41(c)(3)(i)

1. *Completion date.* A servicer complies with section 1024.41(c)(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 section 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 section 1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with section 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 nonjudicial 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 section 1024.41(c)(3)(ii), section 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 section 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 section 1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with section 1024.41(c)(3)(i), unless an exception applies under section 1024.41(c)(3)(ii). *See* comment 41(c)(3)(i)-1.

41(c)(4) Information Not in the Borrower's Control

41(c)(4)(i) Diligence Requirements

1. *During the first 30 days following receipt of a complete loss mitigation application.* Section 1024.41(c)(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 section 1024.41(c)(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 section 1024.41(c)(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(c)(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, section 1024.41(c)(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, section 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)(1) Pre-Foreclosure Review Period

1. *First notice or filing required by applicable law.* The first notice or filing required by applicable law refers to any document required to be filed with a court, entered into a land record, or provided to a borrower as a requirement for proceeding with a judicial or non-judicial foreclosure process. Such notices or filings include, for example, a foreclosure complaint, a notice of default, a notice of election and demand, or any other notice that is required by applicable law in order to pursue acceleration of a mortgage loan obligation or sale of a property securing a mortgage loan obligation.

41(g) Prohibition on Foreclosure Sale

1. *Dispositive motion.* The prohibition on a servicer moving for judgment or order of sale includes 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 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 section 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 section 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 section 1024.41.

3. *Interaction with foreclosure counsel.* The prohibitions in section 1024.41(g) against moving for judgment or order of sale or conducting a sale may require a servicer to act through foreclosure counsel retained by the servicer in a foreclosure proceeding. If a servicer has received a complete loss mitigation application, the servicer must instruct

counsel promptly not to 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 in section 1024.41(g)(1) through (3) is met. A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation.

4. *Loss mitigation applications submitted 37 days or less before foreclosure sale.* Although a servicer is not required to comply with the requirements in section 1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to section 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 a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale.

5. *Conducting a sale prohibited.* Section 1024.41(g) prohibits a servicer from conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings. Where a foreclosure sale is scheduled, and none of the conditions under section 1024.41(g)(1) through (3) are applicable, conduct of the sale violates section 1024.41(g).

Paragraph 41(g)(3)

1. *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.

2. *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. 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.

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 evaluation of the borrower's complete loss mitigation application.

41(i) Duplicative Requests

1. *Applicability of loss mitigation protections.* Under section 1024.41(i), a servicer must comply with section 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 section 1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, the servicer again must comply with section 1024.41 for any subsequent loss mitigation application submitted by the borrower. When a servicer is required to comply with the requirements of section 1024.41 for such a subsequent loss mitigation application, the servicer must comply with all applicable requirements of section 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 section 1024.41(c)(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 section 1024.41(c)(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 section 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 section 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 loss mitigation application.* For purposes of section 1024.41(k), a loss mitigation application is pending if it was subject to section 1024.41 and had not been fully resolved before the transfer date. For example, a loss mitigation application would not be considered pending if a 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 section 1024.41 with respect to the application. A pending application is considered a pending complete application if it was complete 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 loss mitigation application, consistent with policies and procedures adopted pursuant to section 1024.38(b)(4). A transferee servicer must comply with the applicable requirements of section 1024.41 with respect to a loss mitigation application received as a result of a transfer, even if the transferor servicer was not required to comply with section 1024.41 with respect to that application (for example, because section 1024.41(i) precluded applicability of section 1024.41 with respect to the transferor servicer). If an application was not subject to section 1024.41 prior to a transfer, then for purposes of section 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 section 1024.41(k).

ii. A transferee servicer must, in accordance with section 1024.41(b)(1), exercise reasonable diligence to complete a loss mitigation application, including a facially complete application, received as a result of a transfer. In the transfer context, reasonable diligence includes ensuring that a borrower is informed of any changes to the application 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.

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 section 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 section 1024.41(c) through (h), a transferee servicer must consider documents and information that constitute a complete loss mitigation application 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 section 1024.41(c)(2)(iv) with respect to the transferor servicer remains facially complete under section 1024.41(c)(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 section 1024.41(c)(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 section 1024.41 with respect to a particular loss mitigation application that the transferor servicer provided prior to the transfer. For example, if the transferor servicer provided the notice required by section 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 section 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 section 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 section 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 section 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 section 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 section 1024.41(b)(2)(i)(B). Pursuant to section 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 section 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 section 1024.41(b)(2)(i)(B), October 23, is 33 days before the foreclosure sale. Pursuant to section 1024.41(k)(2)(ii)(B), the transferee servicer must comply with section 1024.41(c), (d),

and (g) if the borrower submits a complete loss mitigation application on or before November 22, the reasonable date disclosed under section 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 section 1024.41(b)(2)(ii), notwithstanding section 1024.41(f)(1). Section 1024.41(k)(2)(ii)(B) requires a servicer to comply with section 1024.41(c), (d), and (g) if a borrower submits a complete loss mitigation application on or before the reasonable date disclosed in the notice required by section 1024.41(b)(2)(i)(B), even if the servicer would otherwise not be required to comply with section 1024.41(c), (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 section 1024.41 as applicable and so, for example, must comply with section 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 section 1024.41(b)(2)(ii).

3. *Reasonable date when no milestones remain.* Generally, a servicer does not provide the notice required under section 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 section 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 section 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 section 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 section 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, section 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 section 1024.41(k)(3). Consequently, the transferee servicer must comply with the applicable requirements of section 1024.41(c)(1) and (4) within 30 days of the transfer date. For purposes of section 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, section 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 Subject to Appeal Process

1. *Obtaining appeal.* A borrower may submit an appeal of a transferor servicer's determination pursuant to section 1024.41(h) to the transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to section 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 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, 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 of the borrower's complete loss mitigation application. 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 the borrower for all available loss mitigation options in accordance with section 1024.41(c) and (k)(3). At the conclusion of such evaluation, 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.

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 section 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.

6–1444.96

APPENDIX MS—Mortgage Servicing Model Forms and Clauses

1. *In general.* This appendix contains model forms and clauses for mortgage servicing disclosures required by sections 1024.33, 37, and 39. Each of the model forms is designated for uses in a particular set of circumstances as indicated by the title of that model form or clause. Although use of the model forms and clauses is not required, servicers using them appropriately will be in compliance with disclosure requirements of sections 1024.33, 37, and 39. To use the forms appropriately, information required by regulation must be set forth in the disclosures.

2. *Permissible changes.* Servicers may make certain changes to the format or content of the forms and clauses and may delete any disclosures that are inapplicable without losing the protection from liability so long as those changes do not affect the substance, clarity, or meaningful sequence of the forms and clauses. Servicers making revisions to that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Use of ''borrower'' and ''servicer'' instead of pronouns.

ii. Substitution of the words ''lender'' and ''servicer'' for each other.
iii. Addition of graphics or icons, such as the servicer's corporate logo.
iv. Modifications to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, this could include:

A. Use of ''the mortgage loan'' or ''this mortgage loan'' instead of ''your mortgage loan'' and ''the monthly payments'' instead of ''your monthly payments.''
B. Use of ''Payments due on or after [Date] may be sent to'' instead of ''Send all payments due on or after [Date] to'' in notices of transfer.
C. Use of ''We will charge the loan account'' instead of ''You must pay us'' in notices relating to force-placed insurance.

6–1444.963

APPENDIX MS-3-Model Force-Placed Insurance Notice Forms

1. Where the model forms MS-3(A), MS-3(B), MS-3(C), and MS-3(D) use the term ''hazard insurance,'' the servicer may substitute ''hazard insurance'' with ''homeowners' insurance'' or ''property insurance.''

6–1444.964

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 section 1024.39(b)(2)(i), (ii), and (iv).

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 section 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 section 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.

3. *Model MS-4(C).* These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by section 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 section 1024.39(b)(2)(v).