

Small Servicers

~~As discussed above, through outreach with servicers and servicing industry representatives, small servicers expressed concern that compliance with the information request provisions for oral information requests would require small servicers to invest in systems and processes at substantial costs. However, many small servicers generally explained that they did not expect the Bureau's proposed early intervention requirements would impose significant burden because they were already providing early intervention for delinquent borrowers. Accordingly, the Bureau is not proposing to provide small servicers with an exemption from the proposed notice requirements under proposed § 1024.39. However, in light of the feedback provided by small entity representatives during the Small Business Panel Review process, as reflected in the Panel Report of the Small Business Panel, the Bureau solicits comment on whether the Bureau should consider alternative means of compliance with proposed § 1024.39 that would provide small servicers with additional flexibility, such as by permitting small servicers to develop a more streamlined written notice under proposed § 1024.39(b).¹⁶⁵~~

Relationship with Other Applicable Laws

~~The Bureau understands that servicers may be subject to State and Federal laws related to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692. In addition, the Bankruptcy Code's automatic stay provisions generally prohibit, among other things, actions to collect, assess, or recover a claim against a debtor that arose before the debtor filed for bankruptcy. The Bureau invites comment on whether servicers may reasonably question how they could comply with Bureau's proposal in light of these laws.~~

Section 1024.40 Continuity of Contact

Background. As discussed in part II above, the onset of the mortgage crisis revealed that many servicers did not have the infrastructure needed to handle the high volumes of delinquent mortgages, loan modification requests, and foreclosures they faced. Reports of servicers confusing delinquent borrowers with conflicting or misleading information, losing or mishandling borrower-provided documents supporting loan modifications requests, failing to respond to borrowers' inquiries about loss mitigation in a timely manner, and transferring borrowers seeking assistance with loss mitigation from department to department made it apparent that many servicers did not provide appropriately-trained staff to assist delinquent borrowers.¹⁶⁶

¹⁶⁵ See Small Business Review Panel Report at 31 (recommending that the Bureau consider flexible early intervention requirements for small servicers).

¹⁶⁶ See, e.g., *Are There Government Barriers to the Housing Market Recover?: Hearings Before the Subcomm. on Insurance, Housing, and Community Opportunity of the House Comm. on Financial Services*, No. 112-7, 112th Cong. 51 (February 16, 2011) (statement of Phyllis Caldwell, Chief, Homeownership Preservation Office, U.S. Department of the Treasury), available at <http://financialservices.house.gov/media/pdf/021611caldwell.pdf>; see also Maryland Foreclosure Task Force, Report, at 22 (January 11, 2012) (describing that consumers continue to face problems of lost documentation, expired authorizations and confusing responses to requests for loss mitigation from multiple representatives within a given servicer) (Maryland Foreclosure Task Force Report), available at http://www.mdhousing.org/website/commTaskForce/documents/Foreclosure_Task_Force_Report_2012.pdf; see also, Peter S. Goodman, *A Plan to Stem Foreclosures, Buried in a Paper Avalanche*, New York Times (June 29, 2009) (reporting on a number of borrower frustrations with the loan modification process, such as getting transferred

Regulators, both Federal and State, and the GSEs have responded by establishing staffing standards for servicers to meet when they assist delinquent borrowers. For example, in May of 2011, Treasury issued Supplemental Directive 11-04 to require qualifying servicers participating in the Making Home Affordable Program to assign potentially eligible borrowers with a member of the servicer's staff to assist such borrowers throughout their delinquency once a servicer has made a successful effort to communicate with such borrowers about resolution of their delinquency. The staff member assigned to the borrower would have primary responsibility for coordinating the servicer's actions to resolve the borrower's delinquency or default and must perform certain functions with respect to the borrower, such as providing information to the borrower about loss mitigation programs available to the borrower, explaining the requirements of the various programs, notifying a borrower of the need for additional or missing information, being knowledgeable about the borrower's mortgage loan account, and communicating the servicer's decision regarding a borrower's loan modification application.¹⁶⁷ The National Mortgage Settlement, discussed in part II.C, above, establishes similar staffing requirements for servicers to follow.¹⁶⁸ As part of the GSE Servicing Alignment Initiative, Fannie Mae and Freddie Mac also established guidelines for servicer to follow when responding to delinquent borrowers to promote consistent borrower communications throughout delinquency.¹⁶⁹ In July 2012, the State of California amended its laws to require servicers to designate personnel on their staff to assist borrowers who are potentially eligible for a federal or proprietary loan modification application.¹⁷⁰

Similar to the early intervention servicing standards discussed previously, however, there are currently no minimum uniform national standards that apply across the mortgage servicing industry. Proposed § 1024.40, discussed in detail below, would establish minimum staffing requirements that would apply to all mortgage servicers. The proposal is built around three obligations. First, servicers would be required to assign personnel to delinquent borrowers. Second, the servicers would be required to provide delinquent borrowers with live, telephonic responses to inquiries and, as applicable, assist the borrower with loss mitigation options. Third, servicers must establish policies and procedures reasonably designed to ensure that servicer personnel available to the borrower can perform an enumerated list of functions where applicable.

40(a)(1) In General

Proposed § 1024.40(a)(1) provides that no later than five days after a servicer has notified or made a good faith effort to notify a borrower to the extent required by § 1024.39(a), the servicer must assign personnel to respond to the borrower's inquiries, and as applicable, assist

from call center to call center and, having to repeatedly resubmit loan modification applications because the servicer could not locate them in its system).

¹⁶⁷ Making Home Affordable, Supplemental Directive 11-04 (May 18, 2011), available at https://hmpadmin.com/portal/programs/docs/hamp_servicer/sd1104.pdf.

¹⁶⁸ National Mortgage Settlement, at A-21-23.

¹⁶⁹ See Freddie Mac, Servicing Alignment Initiative: Borrower Contact and Delinquency Management Practices (May 16, 2011), available at http://www.freddie.com/singlefamily/news/2011/0516_servicing.html; see also Fannie Mae, Servicing Alignment Initiative—Overview for Fannie Mae Servicers (April 28, 2011), available at <https://www.efanniemae.com/sf/servicing/pdf/saioverview.pdf>.

¹⁷⁰ See Cal SB-900, available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0851-0900/sb_900_bill_20120711_chaptered.html.

the borrower with loss mitigation options. If a borrower has been assigned personnel as required by § 1024.40(a)(1) and the assignment has not ended when servicing for the borrower's mortgage loan has transferred to a transferee servicer, subject to § 1024.40(c)(1)-(4), the transferee servicer must assign personnel to respond to the borrower's inquiries, and as applicable, assist the borrower with loss mitigation options, within reasonable time of the transfer of servicing for the borrower's mortgage loan.

Proposed comment 40(a)-1 explains that for purposes of responding to borrower inquiries and assisting the borrower with loss mitigation options as required pursuant to § 1024.40, the term "borrower" includes a person the borrower has authorized to act on behalf of the borrower (a borrower's agent), which may include, for example, a housing counselor or attorney. Servicers may undertake reasonable procedures to determine if such person has authority from the borrower to act on the borrower's behalf. Proposed comment 40(a)-2 clarifies that for purposes of § 1024.40(a)(1), a reasonable time for a transferee servicer to assign personnel to a borrower is by the end of the 30-day period of the transfer of servicing for the borrower's mortgage loan.

Proposed comment 40(a)-3.i. explains that a servicer has discretion to determine the manner by which continuity of contact is implemented. For purposes of § 1024.40(a)(1), a servicer may assign a single person or a team of personnel to respond to a borrower. Proposed comment 40(a)-3.ii. explains that § 1024.40(a)(1) requires servicers to assign personnel to borrowers whom servicers are required to notify pursuant to § 1024.39(a). If a borrower whom a servicer is not required to notify pursuant to § 1024.39(a) contacts the servicer to explain that he or she expects to make be late in making a particular payment, the servicer, at its election, may assign personnel to the borrower. Proposed comment 40(a)-4 explains that § 1024.40(a)(1) does not permit or require a servicer to take any action inconsistent with applicable bankruptcy law or a court order in a bankruptcy case.

The Bureau intends § 1024.40 to work with proposed § 1024.39 (Early Intervention for Requirement for Certain Borrowers) and, as discussed below, with proposed § 1024.41 (Loss Mitigation Procedures). Proposed § 1024.40(a)(1) builds on proposed § 1024.39(a). As discussed previously, the Bureau believes that the borrowers that servicers are required to provide oral notice to pursuant to § 1024.39(a) are at high risk of becoming delinquent. As discussed above, common reported frustrations of delinquent borrowers include having to deal with servicers who would transfer them from department to department, getting confusing responses to loss mitigation requests from multiple representatives within a given servicer, and having to resubmit documents that they have previously submitted. By requiring servicers to assign the responsibility to assist delinquent borrowers to specific individuals, the Bureau believes that proposed § 1024.40(a)(1) would bring a more streamlined approach to how servicers communicate with delinquent borrowers. The streamlined approach would be responsive to the most common problems delinquent borrowers have reportedly faced in recent years.

Proposed § 1024.40(a)(1) allows for five days to pass before a servicer makes the assignment. A servicer may find itself faced with a high number of borrowers who are late with respect to making their mortgage payments. The Bureau believes it is appropriate to provide a servicer with some time to make the personnel assignment. Additionally, there could be situations where the servicer complies with the oral notification requirement with respect to a borrower, even though the servicer is not required to do so. For example, a borrower could miss

his or her payment due on February 1. On February 29, the end of the month, payment has not been received. The servicer may choose to orally notify the borrower pursuant to proposed § 1024.39(a) on February 29. But so long as the borrower makes his payment by March 1, then pursuant to § 1024.39(a), the borrower would not be a borrower that the servicer is required to notify or make good faith efforts to notify pursuant to proposed § 1024.39(a). Hence the Bureau believes it is appropriate to provide servicers five days to make the personnel assignment. The Bureau invites comment on whether a longer time frame is appropriate.

Proposed comment 40(a)-1, discussed above, reflects that some delinquent borrowers may authorize third parties to assist them as they pursue alternatives to foreclosure. Accordingly, the Bureau seeks to clarify that a servicer's obligation in proposed § 1024.40 extends to persons authorized to act on behalf of the borrower.

Proposed comment 40(a)-2, discussed above, reflects the Bureau's belief that a transferee servicer may require some time after the transfer of servicing to identify delinquent borrowers who had personnel assigned to them by the transferor servicer. The Bureau believes that 30 days is a reasonable amount of time for a transferee servicer to assign personnel to a borrower whose mortgage loan has been transferred to the servicer through a servicing transfer. The Bureau invites comments on whether a longer time frame is appropriate.

Proposed comment 40(a)-3.i. discussed above, is consistent with the Bureau's recognition that a one-size-fits-all approach to regulating the mortgage servicing industry may not be optimal,¹⁷¹ and thus servicers should be given flexibility to implement proposed § 1024.40. It also reflects the recommendation of the Small Business Review Panel that the Bureau should provide sufficient discretion such that current, successful practices with respect to assisting delinquent borrowers could continue to exist.¹⁷² Proposed comment 40(a)-3.ii explains that if a borrower whom a servicer is not required to notify pursuant to § 1024.39(a) contacts the servicer to explain that he or she expects to be late in making a particular payment, the servicer, at its election, may assign personnel to the borrower. As discussed above in the Bureau's discussion of proposed comment 39(a)-5, many borrowers are delinquent for short periods of time and may be able to self-cure. The Bureau believes that servicers would incur significant cost if they were required to assign personnel to every borrower who contacts the servicer about a possible late payment. The Bureau further believes that the cost of assigning personnel to all such borrowers would be unduly burdensome to the servicer, while yielding little benefit to some of these borrowers. If the borrower who contacts the servicer about a possible late payment still has not made the payment within 30 days of the payment due date, then § 1024.39(a) would require the servicer to make oral contact with the borrower. As discussed previously, no later than five days after a servicer has notified or made a good faith effort to notify a borrower to the extent required by § 1024.39(a), the servicer must assign personnel to respond to the borrower. For these reasons, the Bureau believes it is appropriate to give servicers discretion when deciding whether or not to assign personnel to a borrower whom a servicer is not required to notify pursuant to § 1024.39(a).

Proposed comment 40(a)(1)-4 explains that § 1024.40(a) does not permit or require a servicer to take any action inconsistent with applicable bankruptcy law or a court order in a

¹⁷¹ See part II, above.

¹⁷² Small Business Review Panel Report, at 31.

bankruptcy case. During outreach, the Bureau learned that once a borrower files for bankruptcy, servicers typically transfer the borrower's file to a separate unit of personnel (*i.e.*, personnel who are not part of the servicer's loss mitigation unit), or to outside bankruptcy counsel to comply with bankruptcy law. The Bureau believes a clarification should be provided with respect to the relationship between proposed § 1024.40 and bankruptcy law. The Bureau, however, invites comment on whether servicers should be required to continue providing borrowers with access to personnel assigned to the borrowers to address borrower inquiries and loss mitigation options after borrowers have filed for bankruptcy.

Legal authority. The Bureau proposes to exercise its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(a)(1) to Regulation X. For reasons previously discussed, the Bureau believes that proposed § 1024.40(a)(1) would bring a more streamlined approach to how servicers communicate with delinquent borrowers. The streamlined approach would be responsive to the most common problems delinquent borrowers have reportedly faced in recent years. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purpose of RESPA. Accordingly, the Bureau proposes to exercise its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(a)(1) to Regulation X. The Bureau further has authority under to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(a)(2) Access to Assigned Personnel

Proposed § 1024.40(a)(2) would require a servicer to make access to the assigned personnel available via telephone. If a borrower contacts the servicer and does not receive a live response from the assigned personnel, the borrower must be able to record his or her contact information. The servicer must respond to the borrower within a reasonable time. Proposed comment 40(a)(2)-1 provides that for purposes of § 1024.40(a)(2), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to respond.

The Bureau previously discussed the importance of interactive conversations with delinquent borrowers in the discussion of proposed § 1024.39(a). For similar reasons, the Bureau is requiring servicers to provide telephone access where the borrower can receive live responses. The Bureau understands that some servicers may have the capacity to engage with borrowers in person. But the Bureau believes that in-person interactions are not practicable for the majority of mortgage servicers. Accordingly, the Bureau is proposing to require live, telephonic access instead. The Bureau, however, recognizes that it is possible that when a borrower calls the servicer, the borrower may not always reach a live person. Additionally, the Bureau does not believe it is necessary to require servicers to make access to a live person available 24 hours a day, seven days a week. Accordingly, the Bureau is proposing to provide servicers with a reasonable time to respond to a borrower if the borrower does not receive a live response. As discussed above, proposed comment 40(a)(2)-1 provides that for purposes of § 1024.40(a)(2), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to respond. The Bureau invites comments on whether the Bureau should provide for a longer response time.

Legal authority. The Bureau proposes to exercise its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(a)(2) to Regulation X. The Bureau has previously discussed its

belief in the importance of interactive conversations with delinquent borrowers. At the same time, the Bureau recognizes that it is not always possible that when a borrower calls the servicer, the borrower reaches a live person. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purpose of RESPA. Accordingly, the Bureau proposes to exercise its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(a)(2) to Regulation X. The Bureau further has authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(b) Functions of Servicer Personnel

40(b)(1) In General

Proposed § 1024.40(b)(1) would require servicers to establish policies and procedures reasonably designed to ensure that the servicer personnel it makes available to the borrower pursuant to § 1024.40(a) perform an enumerated list of functions where applicable:

(i) Provide the borrower with accurate information about:

(A) Loss mitigation options offered by the servicer and available to the borrower, based on information in the servicer's possession;

(B) Actions the borrower must take to be evaluated for such options, including actions the borrower must take to submit a complete loss mitigation application, as defined in § 1024.41, and if applicable, actions the borrower must take to appeal the servicer's denial of a borrower's loss mitigation application;

(C) The status of any loss mitigation application that the borrower has submitted to the servicer;

(D) The circumstances under which the servicer may make a referral to foreclosure; and

(E) Any loss mitigation deadlines established by the servicer that the borrower must meet.

(ii) Access:

(A) A complete record of the borrower's payment history in the servicer's possession;

(B) All documents the borrower has submitted to the servicer in connection with the borrower's application for a loss mitigation option offered by the servicer; and

(C) If applicable, documents the borrower has submitted to prior servicers in connection with the borrower's application for loss mitigation options offered by those servicers, to the extent that those documents are in the servicer's possession;

(iii) Provide the documents in § 1024.40(b)(2)(ii)(B)-(C) to persons authorized to evaluate a borrower for loss mitigation options offered by the servicer if the servicer personnel assigned to the borrower is not authorized to evaluate a borrower for loss mitigation options; and

(iv) Within a reasonable time after a borrower request, as applicable, provide the information to the borrower or inform the borrower of the telephone number and address the servicer has established for borrowers to assert an error pursuant to § 1024.35 or make an information request pursuant to § 1024.36. Proposed comment 40(b)(1)(iv) clarifies that for

purposes of § 1024.40(b)(1)(iv), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to provide the information the borrower has requested or inform the borrower of the telephone number and address the servicer has established for borrowers to assert an error pursuant to § 1024.35 or make an information request pursuant to § 1024.36. The Bureau invites comment on whether the Bureau should permit servicer a longer time frame to respond.

Proposed § 1024.40(b)(1) reflects the Bureau's belief that having staff available to help delinquent borrowers is necessary, but not sufficient, to ensure that when a borrower at a high risk of default reaches out to a servicer for assistance, the borrower is connected to personnel who can address the borrower's inquiries or loss mitigation requests adequately. The Bureau believes proposed § 1024.40(b)(1) would require servicers to provide appropriately-trained staff to assist delinquent borrowers. Further, as discussed previously, § 1024.40 is intended to work together with proposed § 1024.41 as well as proposed § 1024.39. For example, under proposed § 1024.41, a servicer is required to notify a borrower if the borrower has submitted an incomplete loss mitigation application. Section § 1024.40(b)(1) addresses this duty by requiring the personnel assigned to the borrower to inform a borrower about the steps the borrower must take to complete his or her loss mitigation application.

Another example of how proposed § 1024.40(b)(1) would work with proposed § 1024.41 is that the assigned personnel must provide a borrower with accurate information about any loss mitigation deadlines established by the servicer in accordance with § 1024.41. Proposed § 1024.41 also requires servicers to evaluate borrowers for loss mitigation options if loss mitigation options is offered in the ordinary course of a servicer's business. Section 1024.40(b)(1)(iii), discussed above, would require assigned personnel to provide borrower-submitted documents in support of loss mitigation to other persons authorized to make loss mitigation evaluations. As discussed above, the Bureau believes it is appropriate to provide servicers with discretion on how they assist delinquent borrowers. The Bureau understands that for some servicers, especially servicers that have a small mortgage servicing portfolio of mortgage loans they originated, the personnel such servicers assign to work with delinquent borrowers typically have authority to evaluate borrowers' loss mitigation applications. But other servicers, especially large servicers or those whose servicing portfolios are made of loans owed by mortgage investors, the process of evaluating borrowers for loss mitigation involves multiple parties. For these servicers, the personnel they assign to a delinquent borrower to provide live, telephonic responses to the borrower's inquiries may not have the authority to evaluate the borrower's loss mitigation application. Pursuant to proposed § 1024.40(b)(1)(iii), the servicer would nonetheless have to ensure that the assigned personnel can provide borrower-submitted documentation to other persons with such authority.

As previously discussed, the Bureau recognizes that mortgage investors and other regulators have responded with requiring servicers to adopt staffing standards. The Bureau proposes the list of functions with an eye to harmonize the various staffing standards that exist. The Bureau believes proposed § 1024.40(b)(1) would complement existing standards. The Bureau also invites comments on whether the Bureau should add additional functions to its proposed list of functions.

Proposed § 1024.40(b)(1)(iv) reflects the Bureau's belief that even if servicers implement policies and procedures that would address staffing failures in mortgage servicing practices, borrowers may seek information that is temporarily unavailable to the servicer. For example, a

borrower's most current payment information may not be immediately available because it takes time for the payment to post to the borrower's account. Another example is that documents a borrower has submitted to the servicer in connection with the borrower's loss mitigation application may not be immediately available because it takes the servicer time to process them. Additionally, proposed § 1024.40(b)(1)(iv) indicates the Bureau's belief that the assigned personnel may receive borrower requests that are more appropriately addressed through proposed §§ 1024.35 (Error Resolution Procedures) or 1024.36 (Requests for Information). The Bureau proposes to provide servicers with the discretion to make that determination. But the Bureau notes that even when a borrower request is addressed through proposed §§ 1024.35 or 1024.36, the personnel the servicer assigned to the borrower pursuant to proposed § 1024.40(a) would remain available to the borrower until an event described in § 1024.40(c), discussed below, occurs.

Legal authority. The Bureau proposes to exercise its authority under section (k)(1)(E) of RESPA to add new § 1024.40(b)(1) to Regulation X. As discussed above, proposed § 1024.40(b)(1) reflects the Bureau's belief that having staff available to help delinquent borrowers is necessary, but not sufficient, to ensure that when a borrower at a high risk of default reaches out to a servicer for assistance, the borrower is connected to personnel who can address the borrower's inquiries or loss mitigation requests adequately. The Bureau believes proposed § 1024.40(b)(1) would require servicers to provide appropriately-trained staff to assist delinquent borrowers. The Bureau further has authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(b)(2) Safe Harbor

Proposed § 1024.40(b)(2) provides that a servicer's policies and procedures satisfy the requirements in § 1024.40(b)(1) if servicer personnel do not engage in a pattern or practice of failing to perform the functions set forth in § 1024.40(b)(1) where applicable. Proposed comment 40(b)(2)-1.i. provides that for purposes of § 1024.40(b)(2), a servicer exhibits a pattern or practice of failing to perform such functions, with respect to a single borrower, if servicer personnel assigned to the borrower fail to perform any of the functions listed in § 1024.40(b)(1) where applicable on multiple occasions, such as, for example, repeatedly providing the borrower with inaccurate information about the status of the loss mitigation application the borrower has submitted. Proposed comment 40(b)(2)-1.ii. explains that a servicer exhibits a pattern or practice of failing to perform such functions, with respect to a large number of borrowers, if servicer personnel assigned to the borrowers fail to perform any of the functions listed in § 1024.40(b)(1) where applicable in similar ways, such as, for example, providing a large number of borrowers with inaccurate information about the status of the loss mitigation applications the borrowers have submitted.

As discussed above, proposed § 1024.40(b)(1) would establish a new servicer obligation that requires servicers to establish policies and procedures reasonably designed to ensure that the servicer personnel it makes available to a borrower pursuant to § 1024.40(a) perform an enumerated list of functions where applicable. The Bureau recognizes that servicers, after complying with the servicer obligation (*i.e.*, established policies and procedures that are reasonably designed to ensure the personnel they make available borrowers perform the

functions listed under proposed § 1024.40(b)(1) , the personnel may occasionally make a mistake and fail to perform an enumerated function. Proposed § 1024.40(b)(2) reflects the Bureau’s belief that the occasional mistake is not necessarily indicative of servicers not complying with the servicing obligation in proposed § 1024.40(b)(1).

Legal authority. The Bureau relies on its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(b)(2) to Regulation X. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. As discussed above, the Bureau recognizes that even if a servicer has established policies and procedures that are reasonably designed to ensure that the servicer personnel it makes available to borrowers perform the functions listed under proposed § 1024.40(b)(1), such personnel may occasionally make a mistake. The Bureau believes that an occasional mistake is not necessarily indicative of a servicer’s failure to comply with proposed § 1024.40(b)(1). The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(c) Duration of Continuity of Contact

Proposed § 1024.40(c) provides that a servicer shall ensure that the personnel it assigns and makes available to a borrower pursuant to § 1024.40(a) remains assigned and available to the borrower until any of the following occurs: (1) The borrower refinances the mortgage loan; (2) the borrower pays off the mortgage loan; (3) a reasonable time has passed since (i) the borrower has brought the mortgage loan current by paying all amounts owed in arrears; or (ii) the borrower and the servicer have entered into a permanent loss mitigation agreement in which the borrower keeps the property securing the mortgage loan; (4) 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; or (5) if applicable, a reasonable time has passed since servicing for the borrower’s mortgage loan was transferred to a transferee servicer.

Proposed comment 40(c)(3)-1 provides that for purposes of § 1024.40(c)(3), a reasonable time has passed when the borrower has made on-time mortgage payments for three consecutive months. The Bureau notes the ability of a borrower to make on-time mortgage payments for three consecutive months has gained wide acceptance as an appropriate indicator of whether a previously-delinquent borrower could succeed in keeping his or her mortgage loan current. For example, under Treasury’s HAMP program, a borrower is put in a trial modification period lasting three months. The borrower must have made all trial period payments to qualify for a permanent loan modification.¹⁷³ The Bureau seeks comment on whether criteria other than a borrower making on-time mortgage payments for three consecutive months should be used to determine what is a “reasonable time” for purposes of § 1024.40(c)(3). Proposed comment 40(c)(5)-1 provides that for purposes of § 1024.40(c)(5), a reasonable time has passed when servicing for the borrower’s mortgage loan was transferred to a transferee servicer 30 days ago.

¹⁷³ Making Home Affordable Program Handbook, v3.4, at 89 (December 15, 2011); *see also* Fannie Mae Single Family Servicing Guide, Ch. 6, § 602 (2012).

As discussed above in the discussion of proposed comment 40(a)-2, the Bureau believes that the transferee servicer may require up to 30 days from the date of transfer of servicing to identify borrowers who had personnel assigned to them by the transferor servicer. Accordingly, the Bureau believes that it is appropriate to require the transferor servicer to continue providing such borrower with continuity of contact for 30 days following the transfer of servicing. The Bureau, however, seeks comment on whether a longer time period is reasonable.

Legal authority. As discussed above, the Bureau is proposing to establish minimum staffing requirements with respect to how servicers assist delinquent borrowers. The Bureau believes that servicers should be required to provide delinquent borrowers with access to assigned personnel until events occur that indicate assistance is no longer needed or practicable. The events listed in proposed § 1024.40(c)(1)-(4) reflects the Bureau's belief of when assistance is no longer needed. The events listed in proposed § 1024.40(c)(5) indicates when assistance is no longer practicable. As discussed above, section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. The Bureau proposes to add new § 1024.40(c) to Regulation X pursuant to its authority under section 6(k)(1)(E) of RESPA. The Bureau further has authority under to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA. The Bureau has additional authority under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(d) Conditions Beyond a Servicer's Control

Proposed § 1024.40(d) provides that a servicer has not violated § 1024.40 if the servicer's failure to comply with this section is caused by conditions beyond a servicer's control.

Proposed comment 40(d)-1 explains that "conditions beyond a servicer's control" include natural disasters, wars, riots or other major upheaval, delays or failures caused by third parties, such as a borrower's delay or failure to submit any requested information, disruptions in telephone service, computer system malfunctions, and labor disputes, such as strikes. Proposed § 1024.40(d) reflects the Bureau's belief that even if servicers implement processes that would address staffing failures that had a significant adverse impact on borrowers seeking alternatives to foreclosure, circumstances beyond a servicer's control may occasionally occur that could adversely affect a servicer's ability to provide adequate and appropriate staff to assist delinquent borrowers.

Legal authority. The Bureau proposes to use its authority under RESPA section 6(k)(1)(E) to add new § 1024.40(d) to Regulation X. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. As discussed above, proposed § 1024.40(d) reflects the Bureau's belief that even if servicers implement processes that would address staffing failures that had a significant adverse impact on borrowers seeking alternatives to foreclosure, circumstances beyond a servicer's control may occasionally occur that could adversely affect a servicer's ability to provide adequate and appropriate staff to assist delinquent borrowers. The Bureau additionally relies on its authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out the purposes of REPSA, and under section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the purposes of RESPA.