

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

~~1. *Number of examples.* The regulation does not mandate 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 may require the borrower to end their ownership in order 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 loss mitigation programs, the servicer may provide a generic description of each 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 this requirement 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 § 1024.39(b)(2)(iv). 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 for 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 § 1024.39(b)(1) with a loss mitigation application form.~~

~~Paragraph 39(b)(2)(v).~~

~~1. *Foreclosure statement.* The servicer may explain that a foreclosure may proceed in different ways depending on the circumstances, such as the location of the borrower’s property that secures the loan, whether the borrower is covered by the Servicemembers Civil Relief Act (50 U.S.C. App. 501 *et seq.*), and the requirements of the owner or assignee of the borrower’s loan.~~

~~2. *Estimated foreclosure timelines.* The servicer may qualify its estimate with a statement that different timelines may vary depending on the circumstances, such as those listed in comment 39(b)(2)(v) 1. The servicer may provide its estimate as a range of days.~~

*Section 1024.40—Continuity of Contact*

*40(a)(1) In general.*

1. 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.

2. 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.

*3. Implementation of continuity of contact.*

i. 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.

ii. Section 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.

4. Section 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.

*40(a)(2) Access to assigned personnel.*

1. For purposes of § 1024.40(a)(2), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to respond.

*40(b) Functions of servicer personnel.*

*40(b)(1) Reasonable policies and procedures.*

*Paragraph 40(b)(1)(iv).*

1. 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.

*40(b)(2) Safe harbor.*

1. For purposes of § 1024.40(b)(2), a servicer may exhibit a pattern or practice:

i. With respect to a single borrower, if servicer personnel assigned to the borrower pursuant to § 1024.40(a) 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.

ii. With respect to a large number of borrowers, if servicer personnel assigned to the borrowers pursuant to § 1024.40(a) 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.

*40(c) Duration of continuity of contact.*

*Paragraph 40(c)(3).*

1. 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.

*Paragraph (40)(c)(5).*

1. 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 borrower 30 days ago.

*40(d) Conditions beyond a servicer's control.*

1. The term "conditions beyond a servicer's control" include natural disasters, wars, riots or other major upheaval, delays or failures caused by persons other than the servicer, disruptions in telephone service, computer system malfunctions, and labor disputes, such as strikes.

~~*Section 1024.41 Loss mitigation options.*~~

~~*41(a) Scope*~~

~~1. *Loss mitigation not required.* Nothing in section 1024.41 imposes a duty on a servicer to offer loss mitigation options to borrowers in the ordinary course of business or to provide any borrower with a right to a loss mitigation option. Nothing in section 1024.41 should be construed to permit a borrower to enforce the terms of any agreement between a servicer and any owner, assignee, guarantor, or insurer of a mortgage loan, including any agreement with respect to the evaluation for, or provision of, any loss mitigation option.~~

~~2. *Ordinary course of business.* A servicer that does not engage in a practice of offering loss mitigation to borrowers in the ordinary course of business is not covered by this section 1024.41. A servicer offers loss mitigation options in the ordinary course of business if the servicer either (1) has a duty to an owner or assignee of a mortgage loan to engage in loss mitigation to improve the recovery to the owner or assignee of the mortgage loan, or (2) engages in a practice of evaluating borrowers for loss mitigation options. A servicer that (1) does not have policies or procedures for evaluating borrowers for loss mitigation options, or (2) engages only in temporary or pilot programs designed to evaluate the impact of implementing loss mitigation options is not considered to offer loss mitigation options in the ordinary course of business. For example, the following practices should not be considered offering loss mitigation in the ordinary course of business:~~

~~a. A servicer waives adverse consequences to individual borrowers for missed payments, such as by providing a waiver of late fees.~~

~~b. A servicer participates in a targeted pilot program for which only a relatively small percentage of mortgage loans serviced by the servicer are potentially eligible.~~

~~3. *Eligibility requirements.* A servicer that engages in evaluations of borrowers for loss mitigation options for some mortgage loans it services offers loss mitigation in the ordinary course of business even though the servicer's loss mitigation programs are not available to other borrowers, including borrowers subject to different investor or guarantor requirements. Any such servicer that receives a complete loss mitigation application is required to comply with its obligations pursuant to section 1024.41(e) and (d). Such compliance may include informing the borrower that the borrower is not eligible for loss mitigation options, including loan modifications, as a result of investor requirements, as set forth in sections 1024.41(e) and (d).~~

~~*41(b) Loss mitigation application.*~~