

~~1. For purposes of § 1024.40(e)(3), a reasonable time has passed when the borrower has made on-time mortgage payments for three consecutive months.~~

~~Paragraph (40)(e)(5).~~

~~1. For purposes of § 1024.40(e)(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(c) 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(c) and (d).

*41(b) Loss mitigation application.*

*41(b)(2) Incomplete loss mitigation application.*

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

1. *Obtain additional documents and information before submitted information becomes stale.* A servicer should undertake reasonable diligence to obtain information to constitute a complete loss mitigation application by the earlier of (i) the deadline established by the servicer pursuant to section 1024.41(f) or (ii) the earliest time any documents or information submitted by the borrower will no longer be considered current or valid for evaluation for a loss mitigation option pursuant to applicable loss mitigation program guidelines. For example, if a servicer's guidelines require that income information must be no older than 90 days, the servicer should undertake reasonable diligence to obtain information that constitutes a complete loss mitigation application earlier than the date when the income information would be considered stale where such deadline is earlier than the deadline established by the servicer pursuant to section 1024.41(f).

*41(c) Review of loss mitigation applications.*

*Paragraph 41(c)(1).*

1. *Evaluation for all loss mitigation options offered.* A servicer should evaluate a borrower for all loss mitigation options for which a borrower may qualify based upon eligibility criteria applicable to each loss mitigation option, as established by the servicer, guarantor, owner, or assignee of a mortgage loan. A servicer is not required to evaluate a borrower for a loss mitigation option for which the borrower does not meet threshold eligibility criteria, including any pilot program, temporary program, or loss mitigation program that is limited to a certain percentage or number of participants.

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

*Paragraph 41(d)(1).*

1. *Investor requirements.* If a trial or permanent loan modification 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 should identify the owner or assignee of the mortgage loan and the requirement that is the basis of the denial.

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 should include the monthly gross income and property value used in the net present value calculation.

*41(e) Borrower response and performance.*

*Paragraph 41(e)(4).*

1. *Acceptance pending appeal.* A borrower may accept an offer of a different loan modification or other loss mitigation option pending appeal of a denial of any loan modification program for which a borrower was denied.

*41(f) Deadline for loss mitigation applications.*

1. *No scheduled foreclosure sale.* If a foreclosure sale has not been scheduled, or where a foreclosure sale may occur less than 90 days after the foreclosure sale is scheduled, a servicer

should set a deadline that is no earlier than 90 days before the day a servicer reasonably anticipates that a foreclosure sale may occur.

2. *Servicing transfers.* If servicing for a mortgage loan is transferred, the transferee servicer is subject to the requirements of section 1024.41 unless the effective date of the servicing transfer occurs after the deadline that the transferee servicer establishes pursuant to section 1024.41(f).

*41(g) Prohibition on foreclosure sale.*

*Paragraph 41(g)(4).*

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.* A borrower is deemed to be performing under an agreement on a loss mitigation option if a short sale transaction 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.

*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.

*41(j) Other liens.*

*Paragraph 41(j)(1)(i).*

1. *Reasonable diligence to identify other servicers.* A servicer should undertake reasonable diligence to determine if a property is encumbered by liens as a result of other senior or subordinate mortgage loans serviced by other servicers. Servicers may obtain this information by, among other things, requesting that the borrower provide information in a loss mitigation application regarding any other mortgage loans with liens encumbering the property, conducting a search of the land records, reviewing a consumer report from a consumer reporting agency, or consulting a database designed to match senior and subordinate lien records.

~~*Appendix MS Mortgage Servicing Model Forms and Clauses*~~

~~1. *In general.* This appendix contains model forms and clauses for mortgage servicing disclosures. 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 deemed to be in compliance with disclosure requirements of the regulation. 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~~