

~~servicer has established for borrowers to assert an error pursuant to § 1024.35 or make an information request pursuant to § 1024.36.~~

~~(2) *Safe harbor.* A servicer's policies and procedures satisfy the requirements in paragraph (b)(1) of this section if servicer personnel do not engage in a pattern or practice of failing to perform the functions set forth in paragraph (b)(1) of this section where applicable.~~

~~(c) *Duration of continuity of contact.* A servicer shall ensure that the personnel it assigns and makes available to a borrower pursuant to paragraph (a) of this section remain 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; or~~

~~(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 transferee servicer.~~

~~(d) *Conditions beyond a servicer's control.* A servicer has not violated this section if the servicer's failure to comply with this section is caused by conditions beyond a servicer's control.~~

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

(a) *Scope.* This section applies to any servicer that makes loss mitigation options available to borrowers in the ordinary course of business with respect to the procedures for reviewing and responding to a loss mitigation application. Nothing in this section shall be construed to impose an obligation on an owner, assignee, guarantor, or insurer of a mortgage loan, unless such entity is also a servicer of a mortgage loan.

(b) *Loss mitigation application.* (1) *Complete loss mitigation application.* A complete loss mitigation application means a borrower's submission requesting evaluation for a loss mitigation option for which a servicer has received all the information the servicer regularly obtains and considers in evaluating loss mitigation applications by the deadline established by the servicer pursuant to paragraph (f) of this section.

(2) *Incomplete loss mitigation application.* (i) Upon receipt of an incomplete loss mitigation application, a servicer shall exercise reasonable diligence in obtaining information from a borrower to make the loss mitigation application complete.

(ii) If a servicer receives an incomplete loss mitigation application earlier than 5 days (excluding legal public holidays, Saturdays, or Sundays) before the deadline established pursuant to paragraph (f), the servicer shall notify the borrower orally or in writing within 5 days (excluding legal public holidays, Saturdays, or Sundays) after receiving the incomplete loss mitigation application, of the following:

(A) That the loss mitigation application is incomplete;

(B) The additional documents and information the borrower must submit to make the loss mitigation application complete; and

(C) The date by which the borrower must submit the additional documents and information.

(c) *Review of loss mitigation applications.* Within 30 days of receiving a borrower's complete loss mitigation application that is submitted prior to the deadline established pursuant to paragraph (f) of this section, a servicer shall:

(1) Evaluate the borrower for all loss mitigation options available from the servicer for which the borrower may qualify; and

(2) Provide the borrower with a notice stating the servicer's determination of whether it will offer the borrower a loss mitigation option.

(d) *Denial of loan modification options.* A servicer that denies a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer shall state in the notice provided to the borrower pursuant to paragraph (c)(2) of this section:

(1) The specific reasons for the servicer's determination for each such trial or permanent loan modification program; and

(2) The fact that the borrower may appeal the servicer's determination, the deadline for the borrower to make an appeal, and any requirements for making an appeal.

(e) *Borrower response.* (1) *In general.* A servicer may require that a borrower accept or reject an offer of a loss mitigation option by a deadline established by the servicer that is no earlier than 14 days after the servicer communicates the loss mitigation option to the borrower.

(2) *Acceptance.* A borrower that does not satisfy the servicer's requirements for accepting a loss mitigation option, but submits the first payment that would be owed pursuant to any such loss mitigation option within the deadline established by the servicer, shall be deemed to have accepted the offer of a loss mitigation option.

(3) *Rejection.* A servicer may deem a borrower that has not accepted an offer of a loss mitigation option within 14 days after the servicer offers the loss mitigation option to the borrower to have rejected the offer of a loss mitigation option.

(4) *Interaction with appeal process.* A servicer shall permit a borrower to accept or reject a loss mitigation option concurrently with making an appeal pursuant to paragraph (h) of this section.

(f) *Deadline for loss mitigation applications.* A servicer may establish a deadline for a borrower to provide a complete loss mitigation application, which shall be no earlier than 90 days before a scheduled foreclosure sale.

(g) *Prohibition on foreclosure sale.* A servicer shall not conduct a foreclosure sale if a borrower has provided a complete loss mitigation application to the servicer for a loss mitigation option within the deadline established by the servicer pursuant to paragraph (e) of this section, unless:

(1) The servicer has provided the borrower a notice pursuant to paragraph (c)(2) of this section that the borrower is not eligible for a loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal, or the time for requesting an appeal has expired;

(2) The servicer denies the borrower's appeal, as applicable;

(3) The borrower rejects the servicer's offer of a loss mitigation option;

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

(h) *Appeal process.* (1) *Appeal process required for loan modification denials.* A servicer that denies a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer shall permit a borrower to appeal the servicer's determination.

(2) *Deadlines.* A servicer shall permit a borrower to make an appeal within at least 14 days after providing the notice required pursuant to paragraph (c)(2).

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

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option. A servicer's offer of a loss mitigation option after appeal shall be subject to paragraph (e). A servicer's decision under this paragraph is not subject to another appeal.

(i) *Duplicative requests.* A servicer is only required to comply with the requirements of this provision for a single complete loss mitigation application for a borrower's mortgage loan account.

(j) *Other liens.* (1) *Duty to identify other servicers.* Any servicer that receives a loss mitigation application shall:

(i) Within 5 days, determine if any other servicers service mortgage loans that have senior or subordinate liens encumbering the property that is the subject of the loss mitigation application; and

(ii) Provide any other servicers identified pursuant to paragraph (j)(1)(i) with a copy of the loss mitigation application.

(2) *Receipt of loss mitigation application.* A servicer that offers loss mitigation options in the ordinary course of business shall comply with the requirements of this section with respect to any loss mitigation application received pursuant to paragraph (j)(1)(ii) of this section as if such loss mitigation application was provided by a borrower. ◀