

~~(vi) Copies of any information or documents provided by a borrower to a servicer in accordance with the procedures set forth in §§ 1024.35 or 1024.41.~~

#### **1024.39 Early intervention requirements for certain borrowers.**

~~(a) Oral notice. If a borrower is late in making a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle, a servicer shall notify or make good faith efforts to notify the borrower orally not later than 30 days after the payment due date that the borrower is late and that loss mitigation options, if applicable, may be available. If the servicer attempts to notify the borrower by telephone, good faith efforts require calling the borrower on at least three separate days in order to reach the borrower. A servicer is not required to notify or make good faith efforts to notify the borrower under this paragraph if the borrower makes the payment within 30 days after the payment due date.~~

~~(b) Written notice. (1) In general. If a borrower is late in making a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle, a servicer shall provide to the borrower a written notice that complies with paragraph (b)(2) of this section not later than 40 days after the payment due date. A servicer is not required to provide the written notice if the borrower makes the payment within 40 days after the payment due date. A servicer is not required to provide the written notice more than once during any 180-day period.~~

~~(2) Content of the written notice. The notice required by paragraph (b)(1) of this section shall include:~~

- ~~(i) A statement encouraging the borrower to contact the servicer;~~
- ~~(ii) The servicer's mailing address and telephone number;~~
- ~~(iii) A statement, if applicable, providing a brief description of loss mitigation options that may be available from the servicer;~~
- ~~(iv) A statement, if applicable, informing the borrower how to obtain more information about loss mitigation options from the servicer;~~
- ~~(v) A statement explaining that foreclosure is a legal process to end the borrower's ownership of the property and an estimate, expressed in a number of days from the date of a missed payment, of when the servicer makes the referral to foreclosure; and~~
- ~~(vi) The website address, if applicable, and telephone number to access:~~
  - ~~(A) Any State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) for the State in which the borrower's property is located; and~~
  - ~~(B) Either the Bureau list of homeownership counselors or counseling organizations or the HUD list of homeownership counselors or counseling organizations.~~

~~(3) Model clauses. Model Clauses MS 4(A), MS 4(B), MS 4(C), MS 4(D), and MS 4(E) in Appendix MS 4 to this part may be used to comply with the requirements of paragraphs (b)(1) and (b)(2) of this section.~~

#### **1024.40 Continuity of contact.**

~~(a) Continuity of contact requirements. (1) In general. No later than five days after a servicer has notified or made a good faith effort to notify a borrower as required by § 1024.39(a),~~

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

(2) *Access to assigned personnel.* A servicer shall 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.

(b) *Functions of servicer personnel.* (1) *Reasonable policies and procedures.* A servicer shall establish policies and procedures reasonably designed to ensure the servicer personnel it makes available to the borrower pursuant to paragraph (a) of this section perform the following 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 the 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 paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C) of this section to persons authorized to evaluate a borrower for loss mitigation options offered by the servicer if the servicer personnel assigned to the borrower are 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.

(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:~~