§ 1024.39 Early intervention requirements for certain borrowers.

(a) Live contact. A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower’s delinquency and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if applicable.

(b) Written notice. (1) Notice required. Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower’s delinquency. 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 telephone number to access servicer personnel assigned pursuant to §1024.40(a) and the servicer’s mailing address;

(iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;

(iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

(3) Model clauses. Model clauses MS–4(A), MS–4(B), and MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of paragraph (a) of this section.

(c) Conflicts with other law. Nothing in this section shall require a servicer to communicate with a borrower in a manner otherwise prohibited by applicable law.

EFFECTIVE DATE NOTES: 1. At 78 FR 60437, Oct. 1, 2013, §1024.39 was amended by revising paragraphs (b)(1) and (3), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

(b) Written notice. (1) Notice required. Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower’s delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.

(3) Model clauses. Model clauses MS–4(A), MS–4(B), and MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of this paragraph (b).

2. At 78 FR 63004, Oct. 23, 2013, §1024.39 was amended by adding paragraph (d), effective Jan. 10, 2014. For the convenience of the user, the added text is set forth as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

(d) Exemptions—(1) Borrowers in bankruptcy. A servicer is exempt from the requirements...
§ 1024.40 Continuity of contact.

(a) In general. A servicer shall maintain policies and procedures that are reasonably designed to achieve the following objectives:

(1) Assign personnel to a delinquent borrower by the time the servicer provides the borrower with the written notice required by §1024.39(b), but in any event, not later than the 45th day of the borrower's delinquency.

(2) Make available to a delinquent borrower, via telephone, personnel assigned to the borrower as described in paragraph (a)(1) of this section to respond to the borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement.

(3) If a borrower contacts the personnel assigned to the borrower as described in paragraph (a)(1) of this section and does not immediately receive a live response from such personnel, ensure that the servicer can provide a live response in a timely manner.

(b) Functions of servicer personnel. A servicer shall maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower as described in paragraph (a) of this section perform the following functions:

(1) Provide the borrower with accurate information about:

(i) Loss mitigation options available to the borrower from the owner or assignee of the borrower’s mortgage loan;

(ii) Actions the borrower must take to be evaluated for such loss mitigation 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 determination to deny a borrower’s loss mitigation application for any trial or permanent loan modification program offered by the servicer;

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

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

(v) Applicable loss mitigation deadlines established by an owner or assignee of the borrower’s mortgage loan or §1024.41.

(2) Retrieve, in a timely manner:

(i) A complete record of the borrower’s payment history; and

(ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a loss mitigation application;

(3) Provide the documents and information identified in paragraph (b)(2) of this section to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable; and

(4) Provide a delinquent borrower with information about the procedures for submitting a notice of error pursuant to §1024.35 or an information request pursuant to §1024.36.

§ 1024.41 Loss mitigation procedures.

(a) Enforcement and limitations. A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in §1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in §1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(b) Receipt of a loss mitigation application. (1) Complete loss mitigation application. A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating