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April 13, 2021

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Proposes Regulation X Amendments to Assist Borrowers Affected by the COVID-19 Emergency

In the April 9, 2021 issue of the Federal Register ([86 FR 18840](#)), the Bureau of Consumer Financial Protection (Bureau) published proposed amendments to Regulation X, with a request for comments, to assist borrowers affected by the COVID-19 emergency.

You may submit comments, identified by Docket No. CFPB-2021-0006, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* 2021-NPRM-COVIDMortgage-Servicing@cfpb.gov. Include Docket No. CFPB-2021-0006 in the subject line of the message.
- *Hand Delivery/Mail/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Due to circumstances associated with the COVID-19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Comments must be received by the Bureau on or before May 10, 2021. All submissions should include the agency name and docket number for this proposed rulemaking.

The Bureau is taking this action to help ensure that borrowers affected by the COVID-19 pandemic have an opportunity to be evaluated for loss mitigation before the initiation of foreclosure. The proposed amendments would establish a temporary COVID-19 emergency pre-foreclosure review period until December 31, 2021, for principal residences. In addition, the proposed amendments would temporarily permit mortgage servicers to offer certain loan modifications made available to borrowers experiencing a COVID-19-related hardship based on the evaluation of an incomplete application. The Bureau also proposes certain amendments to the early intervention and reasonable diligence obligations that Regulation X imposes on mortgage servicers.

These proposed amendments to Regulation X, if made final, would amend §§1024.31, 1024.39, 1024.41 and the Official Interpretations in Supplement I to Part 1024, as follows:

- Amend §1024.31 by adding a definition of “COVID-19-related hardship”;
- Amend §1024.39 by revising paragraph (a) and adding paragraph (e);
- Amend §1024.41 by revising paragraphs (c)(2)(i), and (c)(2)(v)(A)(1); adding paragraph (c)(2)(vi); revising paragraph (f)(1)(i); and adding paragraph (f)(3).
- In Supplement I to Part 1024 under Subpart C—Mortgage Servicing:
 - Under §1024.39, revise comment 39(a) “Live Contact”; and
 - Under §1024.41, revise comment 41(b)(1) “Complete loss mitigation application”.

(4 pages)

Below is a summary of the proposed amendments taken from the *Federal Register* publication:

Section 1024.31 Definitions. The proposed amendment would define COVID–19-related hardship to mean “a financial hardship due, directly or indirectly, to the COVID–19 emergency as defined in the Coronavirus Economic Stabilization Act, section 4022(a)(1) (15 U.S.C. 9056(a)(1)).” Pursuant to section 4022(a)(1) “[t]he term ‘COVID–19 emergency’ means the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.).”

Section 1024.39(a) Live Contact. The proposed amendment would revise paragraph 39(a) to incorporate a reference to proposed paragraph 39(e) by amending the last sentence to read: “Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate, and take the actions described in paragraph 39(e) of this section, if applicable.”

Section 1024.39(e) Temporary COVID–19 Related Live Contact. The Bureau is proposing to add paragraph 39(e) to require temporary additional actions in certain circumstances when a servicer establishes live contact with a borrower during the COVID–19 emergency. Proposed paragraph 39(e) would temporarily require servicers to take additional actions during live contacts established under existing paragraph 39(a) requirements for one year after the effective date of the rule finalizing the proposed amendments (the final rule). The preamble to the proposed amendments proposes an effective date of the final rule to be on or before August 31, 2021, and at least 30 days, or if it is a major rule, at least 60 days, after publication of the final rule in the *Federal Register*.

Proposed paragraph 39(e)(1) would require a servicer to ask a borrower who is not in a forbearance program at the time of the live contact whether the borrower is experiencing a COVID–19-related hardship and, if so, to list and briefly describe available forbearance programs and the actions the borrower must take to be evaluated for such forbearance programs. In the preamble to the proposed amendments, the Bureau states that the proposed requirement is not limited to forbearance programs specific to COVID–19 or only available during the COVID–19 emergency. Programs that meet the proposed requirement also include generally available programs where COVID–19-related hardships are sufficient to meet the hardship-related requirements for the forbearance program. Examples of forbearance programs a servicer may need to describe to the borrower include any payment forbearance program made pursuant to the CARES Act, section 4022 (15 U.S.C. 9056), investor-provided forbearance programs whose eligibility includes borrowers with COVID–19-related hardship, or State law required COVID–19-related forbearance program options.

For a borrower who is in a forbearance program for a COVID–19-related hardship, proposed paragraph 39(e)(2) would require that the servicer provide, during the last required live contact made prior to the end of the forbearance period, the date the borrower’s current forbearance program ends and list and briefly describe forbearance extensions, repayment options, and other loss mitigation options available to resolve the borrower’s delinquency at the end of the forbearance program and the actions the borrower must take to be evaluated for such options. In the preamble to the proposed amendments, the Bureau states that it is not proposing to limit this

requirement to COVID–19-specific loss mitigation options or programs only provided during the COVID–19 crisis; instead, servicers must provide information to borrowers about any available options that may meet their specific needs, and for which a COVID-19-related hardship would meet applicable hardship-related requirements under the program. That is, under proposed paragraph 39(e)(2), servicers must provide borrowers with information about all available loss mitigation types, such as, for example, repayment plans, loan modifications, short-sales, and others.

Section 1024.41(b)(1) Complete Loss Mitigation Application. Section 1024.41(b)(1) provides, inter alia, that a servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. Proposed new comment 41(b)1–4.iv would provide that if the borrower is in a short term payment forbearance program because of a financial hardship due to the COVID–19 emergency that is based on evaluation of an incomplete application, the servicer must contact the borrower no later than 30 days prior to the end of the forbearance period to determine if the borrower would like to complete the loss mitigation application for a full loss mitigation evaluation. If the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application prior to the end of the forbearance period.

Section 1024.41(c)(2) Incomplete loss mitigation application evaluation. Paragraph 41(c)(2)(i) provides that, in general, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an incomplete application. Proposed paragraph 41(c)(2)(vi)(A) would provide that, notwithstanding paragraph 41(c)(2)(i), a servicer may offer a borrower a loan modification based upon an incomplete application, if the following criteria are met:

- The loan modification extends the loan term by no more than 480 months from the date the loan modification is effective.
- The loan modification does not cause the monthly principal and interest payment to increase.
- Any amounts for which the borrower delays repayment until refinance of the loan, sale of the mortgaged property, or maturity of the loan modification, do not accrue interest.
- The servicer does not charge any fee in connection with the loan modification and waives all existing late charges, penalties, stop payment fees or similar charges upon the borrower's acceptance of the loan modification.
- The loan modification is available to borrowers experiencing a COVID–19-related hardship.
- The borrower's acceptance of the offer ends any preexisting delinquency, or the loan modification ends any preexisting delinquency upon the borrower satisfying requirements for completing a trial modification period and accepting a permanent loan modification.

Proposed paragraph 41(c)(2)(vi)(B) would provide servicers relief from the regulatory requirements of paragraphs 41(b)(1) and (b)(2) when a borrower accepts a loan modification under proposed paragraph 41(c)(2)(vi)(A), but would require a servicer to immediately resume reasonable diligence efforts as required under paragraph 41(b)(1) with regard to any loss mitigation application the borrower submitted before the servicer's offer of a trial loan modification plan if the borrower fails to perform under the trial loan modification plan offered pursuant to proposed paragraph 41(c)(2)(vi)(A) or if the borrower requests further assistance.

Section 1024.41(f) Prohibition on foreclosure referral. Section 1024.41(f) would be amended by revising paragraph (f)(1) and adding proposed paragraph (f)(3), as follows:

(1) *Pre-foreclosure review period.* Paragraph (f)(1) would incorporate a reference to proposed paragraph (f)(3) in paragraph (f)(1)(i) to read: “A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless: (i) A borrower’s mortgage loan obligation is more than 120 days delinquent and paragraph (f)(3) does not apply [.]” Be advised that section 1024.41 generally does not apply to small servicers (*see* sections 1024.30(b)(1) and 1026.41(e)(4)); but the pre-foreclosure review period in section 1024.41(f)(1) does apply to small servicers (*see* section 1024.41(j)).

“(3) *Special COVID–19 Emergency pre-foreclosure review requirements.* A servicer shall not rely on paragraph (f)(1)(i) to make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after December 31, 2021.” Note, however, that proposed paragraph (f)(3) would not apply to a servicer’s ability to rely on paragraphs (f)(1)(ii) or (iii) to make the first notice or filing.

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