

Legal Update

CFPB Makes Temporary Revisions of Default Servicing Rules to Assist Borrowers at Risk of Foreclosure

As COVID-19 infections are declining and a sense of normalcy begins to return, an estimated 1.75 million mortgage loan borrowers, many of whom have been negatively impacted by the COVID-19 global pandemic, are still in a forbearance program provided by their mortgage loan servicers.¹ These borrowers may be at a heightened risk of foreclosure as forbearance programs begin to expire and foreclosure moratoriums come to an end.

On June 28, 2021, the US Consumer Financial Protection Bureau (“CFPB” or “Bureau”) announced that it had finalized revisions to the Regulation X default servicing rules that are designed to assist delinquent borrowers impacted by the pandemic.² The revisions: (1) establish procedural safeguards on the initiation of foreclosures that essentially restrict many such initiations through the end of 2021, (2) require mortgage servicers to provide certain loss mitigation information to delinquent borrowers and borrowers in forbearance plans, and (3) give servicers additional flexibility to offer loss mitigation options to borrowers impacted by the pandemic. The CFPB explained that the revisions are intended to ensure that delinquent borrowers have a meaningful opportunity to be evaluated for loss mitigation options before servicers initiate foreclosure as federal and state foreclosure protections come to an end.

The revisions to Regulation X will become effective on August 31, 2021. Interestingly, on June 29, 2021, the day after the CFPB announced its final regulation amending the Regulation X default servicing rules, the US Federal Housing Finance Agency (“FHFA”) announced that Fannie Mae and Freddie Mac (the “GSEs”) servicers will not be permitted to make a first notice or filing for foreclosure that would be prohibited by the CFPB’s revisions to Regulation X before the revisions take effect, to ensure that borrowers with loans sold to Fannie Mae and Freddie Mac will be protected from foreclosure after the GSEs’ foreclosure moratoriums expire on July 31, 2021.³

In this Legal Update, we describe the unique challenges facing servicers and borrowers that prompted the CFPB to amend Regulation X and discuss the key provisions of the new rules.

Background: Forbearance Programs and Foreclosure Moratoriums Ending

Under the CARES Act, a borrower with a federally backed mortgage loan who experienced a financial hardship directly or indirectly due to the COVID-19 national emergency can request up to 360 days of

forbearance.⁴ Fannie Mae, Freddie Mac, the US Department of Housing and Urban Development (“HUD”), the Federal Housing Administration (“FHA”), the US Department of Veterans Affairs (“VA”), and the US Department of Agriculture (“USDA”) have previously adopted forbearance programs that provide forbearance pursuant to the CARES Act and, for certain borrowers, have expanded their forbearance programs beyond the minimum amount of time required by the CARES Act to a maximum of 18 months of forbearance.⁵ We understand that some private investors are offering similar forbearance programs.

Certain borrowers that entered into a CARES Act forbearance in March or April of 2020 will reach the maximum period of forbearance in September or October of this year, and the foreclosure moratoriums for FHFA, FHA, VA, and USDA loans are set to expire on July 31, 2021.⁶

Regulation X currently prohibits a servicer from initiating foreclosure until a borrower’s mortgage loan obligation is more than 120 days past due.⁷ While forbearance plans pause payments, they often do not pause a borrower’s delinquency. Borrowers who are in a CARES Act or similar forbearance program for the maximum period may be well over 120 days delinquent when they exit forbearance. For this reason, under existing RESPA regulations, a servicer may be able to refer a loan to foreclosure almost immediately after a borrower exits forbearance unless the borrower has an outstanding complete loss mitigation application.⁸

Compounding this issue, the CFPB believes that many borrowers may not realize the seriousness of the risk that their loan will be referred to foreclosure at the conclusion of a forbearance plan if all other requirements that must be met prior to foreclosure referral have been satisfied.⁹ Because borrowers have been able to request several extensions to their forbearance plans, some may not fully appreciate that their forbearance period truly is ending and that moratoriums on foreclosure activities are also ending. In addition, borrowers may plan to consider loss mitigation options only after their forbearance ends, not realizing that their loan could be referred to foreclosure soon after their forbearance ends.

Finally, it is the CFPB’s position that it is not clear that servicers are well-positioned to handle the unprecedented volume of loans that may be facing foreclosure as forbearances expire on such a large scale. By and large, it appears that servicers have been much better positioned to handle the large number of borrowers needing assistance during the pandemic than they were during the 2008 global financial crisis.¹⁰ Servicers have made significant investments to enhance their default servicing capacity to comply with the Regulation X requirements that became effective in 2014. However, the CFPB has indicated that servicers have faced challenges responding to borrowers who have been negatively impacted by the COVID-19 national emergency and has cited servicers for, among other things, providing inaccurate information to borrowers about CARES Act forbearances and for not evaluating borrowers who submitted a complete loss mitigation application for a CARES Act forbearance.¹¹ The CFPB believes servicers may benefit from additional time to add necessary staff and refine systems and practices before initiating foreclosure.

The revisions to Regulation X are designed to address these issues by implementing procedural safeguards that, for many borrowers, essentially restrict foreclosure initiations through December 31, 2021, providing borrowers with additional information about the status of their forbearance and available loss mitigation options and giving servicers the flexibility to offer borrowers certain loan modifications without requiring a complete loss mitigation application. We discuss each of these provisions in more detail below.

Procedural Safeguards for Foreclosure Initiations until January 2022

The proposed version of the rules the CFPB released in April 2021 would have prohibited most foreclosure initiations until 2022.¹² In response to comments it received, the Bureau revised its proposal to implement certain procedural safeguards to which servicers must adhere prior to initiating foreclosure before January 1, 2022. These amendments essentially create narrowly tailored circumstances under which a servicer is permitted to initiate foreclosure prior to January 1, 2022, provided the safeguards have been met. These circumstances include when a borrower is not eligible for loss mitigation, the property is abandoned, or the borrower has been unresponsive to servicer outreach.¹³ The final rule generally requires servicers to ensure that one of three procedural safeguards has been met before making the first notice or filing to initiate a foreclosure because of a borrower's delinquency:

- **Complete Loss Mitigation Application Evaluated.** The borrower submitted a complete loss mitigation application and is not eligible for loss mitigation, rejects all loss mitigation, or fails to perform on a loss mitigation option. In addition, the borrower must have remained delinquent at all times since submitting the complete application;¹⁴
- **Abandoned Property.** The property securing the mortgage loan is abandoned according to the laws of the state or municipality where the property is located when the servicer makes the first notice of filing;¹⁵ or
- **Unresponsive Borrower.** The servicer did not receive any communications from the borrower for at least 90 days before the servicer initiates foreclosure, and the servicer has made certain outreach attempts to the borrower.¹⁶ The required outreach attempts are based on existing Regulation X requirements, but they include additional timing-related requirements that the CFPB explained are designed to ensure servicers contact borrowers at times that borrowers are most likely to respond.¹⁷

These safeguards only apply if:

- The borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020;¹⁸ and
- The statute of limitations applicable to the foreclosure action being taken in the laws of the state where the property securing the mortgage loan is located expires on or after January 1, 2022.¹⁹

In its discussion of the proposed rule, the CFPB addressed allowing servicers to initiate foreclosure if the borrower had been evaluated for all available loss mitigation options and the borrower either did not qualify or declined all options.²⁰ The CFPB explained that it was concerned such a rule would not account for changes in a borrower's loss mitigation eligibility status, especially given that these changes are more likely to occur during the pandemic. After evaluating the comments it received on the proposed rule, the CFPB concluded that prohibiting a servicer from initiating foreclosure in these circumstances would only help a small number of borrowers.²¹ Moreover, delaying foreclosure for a borrower who is not eligible for loss mitigation may not be in the borrower's best interest as it would allow the borrower's delinquency to grow. In addition, the Bureau noted that many loan owners already require servicers to re-evaluate a borrower's eligibility for loss mitigation if the borrower's financial circumstances change.

These foreclosure restrictions are temporary and are in effect through December 31, 2021. Because the rules become effective on August 31, 2021, the CFPB explained that the provisions are not

applicable if the servicer initiates foreclosure before August 31, 2021.²² However, the Bureau cautioned that the prohibitions against unfair, deceptive, or abusive practices still apply to borrowers who become eligible for foreclosure referral before August 31, 2021, or after the temporary protections expire, and that the Bureau fully intends to enforce these prohibitions.²³

In addition, the restrictions do not impact a servicer's ability to file for foreclosure based on a borrower's violation of a due-on-sale clause or because the servicer is joining a foreclosure action of a superior or subordinate lienholder.²⁴

As we explained above, because many forbearance programs pause payments but do not pause borrowers' delinquency, borrowers may be well over 120 days delinquent when they exit a CARES Act or similar forbearance program. Unless the servicer has an outstanding complete loss mitigation application, servicers may be permitted to initiate foreclosure almost immediately after the borrower exits forbearance. The CFPB explained that the new foreclosure restrictions are designed to ensure borrowers have sufficient time to consider and apply for loss mitigation options before a servicer initiates foreclosure.

Outreach to Delinquent Borrowers and Borrowers in Forbearance

The new rules require servicers to provide certain information to borrowers in forbearance plans that are expiring soon and to delinquent borrowers who are not in forbearance plans. The amendments are designed to ensure borrowers have timely and accurate information about their loss mitigation options.

Early Intervention to Delinquent Borrowers and Borrowers in Forbearance. Regulation X currently requires servicers to make regular attempts to establish live contact with delinquent borrowers, but servicers generally have discretion regarding what information they provide to borrowers during those contacts.²⁵ Servicers are not required to notify a borrower about any particular loss mitigation options but may instead inform borrowers that loss mitigation options may be available.²⁶ The new rules eliminate this discretion in certain circumstances.

Under the new rules, if a borrower is in a forbearance plan that is made available to borrowers experiencing a COVID-19-related hardship,²⁷ during the last live contact that occurs at least 10 days and no more than 45 days before the scheduled end of the forbearance program, servicers must:²⁸

- Tell the borrower when their forbearance is scheduled to end;
- List and briefly describe each of the types of loss mitigation that may be available to the borrower at the time of the live contact and the steps the borrower must take to be evaluated for each loss mitigation option; and
- Provide information about at least one way the borrower can find contact information for homeownership counseling services.

If the borrower is not in a forbearance plan at the time of the live contact and the owner or assignee of the loan makes a forbearance program available to borrowers experiencing a COVID-19-related hardship, the servicer must:²⁹

- Tell the borrower that forbearance programs are available for borrowers experiencing a COVID-19-related hardship;

- Unless the borrower states that they are not interested in receiving information about such programs, list and briefly describe any such forbearance programs made available at that time and the actions the borrower must take to be evaluated for such forbearance programs; and
- Provide the borrower with information about at least one way the borrower can find contact information for homeownership counseling services.

These requirements are in effect until October 1, 2022.³⁰

Regulation X already requires servicers to have personnel that are able to answer borrower questions on these topics when a borrower calls the servicer.³¹ Because of this, most servicers already work to be in a position to provide borrowers information about available loss mitigation options and the steps a borrower must take to be evaluated for the options. However, investors and agencies are rapidly developing new loss mitigation options to assist borrowers impacted by the pandemic. In this fast-paced environment of swiftly changing loss mitigation program options, it may be challenging for servicers to provide accurate and up-to-date information to personnel on these topics in a format they can quickly digest and communicate to borrowers during early intervention calls.

Reasonable Diligence to Complete Loss Mitigation Application. In addition to revising the early intervention requirements, the CFPB revised the requirement that servicers exercise reasonable diligence to complete a borrower’s loss mitigation application.

Regulation X provides that a complete loss mitigation application means an application that includes all the information the servicer needs to evaluate the borrower for all loss mitigation options made available to the borrower by the owner or assignee of the loan.³² The servicing rules further provide that servicers must exercise “reasonable diligence” to collect information needed to complete an incomplete loss mitigation application.³³ If a borrower is in a short-term forbearance plan that is offered to the borrower based on the evaluation of an incomplete loss mitigation application, such as a CARES Act forbearance that is offered to a borrower simply because the borrower requested assistance and affirmed they experienced a financial hardship during the pandemic, the servicing rules require servicers to reach out to the borrower prior to the end of the forbearance plan if the borrower remains delinquent and determine if the borrower wishes to complete their loss mitigation application.³⁴

The servicing rules, however, do not specify precisely when “near the end” of the short-term forbearance plan servicers must make this outreach. The Bureau thus revised the commentary to Regulation X to add that if a borrower is in a short-term payment forbearance program made available to borrowers experiencing a COVID-19-related hardship that was offered to the borrower based on an evaluation of an incomplete loss mitigation application and the borrower remains delinquent, the servicer must contact the borrower no later than 30 days before the scheduled end of the forbearance period to determine if the borrower would like to complete their loss mitigation application and be evaluated for all available loss mitigation options.³⁵

A CARES Act forbearance provided to a borrower because the borrower requested assistance and affirmed they experienced a financial hardship during the pandemic triggers this requirement. A forbearance that was not provided based on any information submitted by the borrower—for example, because the investor automatically provided a forbearance to all delinquent borrowers—would not trigger this requirement. Similarly, a forbearance that was provided based on the evaluation of a complete application would not trigger this requirement.

Flexibility to Offer Loan Modifications Based on an Incomplete Application

The loss mitigation provisions of Regulation X provide that if a borrower submits a complete loss mitigation application,³⁶ the servicer must evaluate the borrower for all options made available to the borrower by the owner of the loan pursuant to a prescribed process that includes deadlines and notice requirements.³⁷ Regulation X further provides that servicers may not evade this requirement by offering loss mitigation based on an evaluation of an incomplete loss mitigation application.³⁸ This is known as the “anti-evasion” requirement.

According to the Bureau, the anti-evasion requirement is designed to ensure the loss mitigation evaluation process is streamlined and the borrower is evaluated for all available loss mitigation options at the same time rather than being required to apply multiple times for different options.³⁹ While these are worthy goals, they trade off with the ability of servicers to get help to borrowers quickly. Completing a loss mitigation application can be time-consuming, and the requirement may delay or even prevent a borrower’s entry into a loss mitigation program. The CFPB has previously amended Regulation X three times to give servicers some flexibility to offer certain types of loss mitigation based on the review of an incomplete application.⁴⁰ These exceptions have allowed servicers to offer forbearances to borrowers impacted by the COVID-19 pandemic based only on a request for assistance, as required by the CARES Act for government-backed loans and as permitted by similar programs offered by private investors. The exceptions also have allowed servicers to offer deferrals to borrowers of amounts forborne under the CARES Act and forbearances offered by private investors based on an incomplete loss mitigation application.

This most recent revision to the loss mitigation provisions allows servicers to offer loan modifications to borrowers based on a review of an incomplete loss mitigation application as long as the loan modification meets the criteria described below.

- **Modification Is Made Available to Borrowers with COVID-19-Related Hardship.** The loan modification is made available to borrowers experiencing a COVID-19-related hardship;⁴¹
- **Loan Term Extends by No More than 480 Months.** The loan modification extends the term of the loan by no more than 480 months from the date the loan modification is effective;⁴²
- **Principal and Interest Payments Do Not Increase.** For the entire modified term, the loan modification does not cause the borrower’s required monthly principal and interest payment to increase beyond the monthly principal and interest payment required prior to the loan modification;⁴³
- **Amounts Moved to End Do Not Accrue Interest.** Interest does not accrue for any amounts that the borrower may delay paying until the mortgage loan is refinanced; the mortgaged property is sold; the loan modification matures; or, for FHA loans, the mortgage insurance terminates;⁴⁴
- **Delinquency Ends.** Either the borrower’s acceptance of the option ends any preexisting delinquency on the mortgage loan or the loan modification offered is designed to end any preexisting delinquency on the mortgage loan upon the borrower’s satisfaction of a trial modification plan and acceptance of a permanent loan modification; and⁴⁵
- **No Fees Are Charged in Connection with Modification, and Certain Fees Are Waived.** The servicer does not charge any fees in connection with the loan modification and waives all existing late charges, penalties, stop payment fees, or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower’s acceptance of the loan modification.⁴⁶

Other Features. As long as the loan modification meets the criteria detailed above, investors and agencies have flexibility to add other features. For example, a modification that amortizes the past amounts due over the remaining term or over a new modified term and charges interest on those amounts could qualify for the exception.⁴⁷ However, when the amounts are deferred and do not become due until the end of the loan, a loan modification would only qualify for the exception if those amounts do not accrue interest.⁴⁸

Existing Modifications Offered by Investors or Agencies. The Bureau explained that the exception is designed to allow servicers to offer loan modifications like the GSE's flex modification programs, FHA's COVID-19 owner-occupant loan modification, and other comparable programs to borrowers quickly and in a streamlined manner.⁴⁹ But all loan modification options offered by investors or agencies do not meet the requirements detailed in the new rule. For example, the CFPB noted that FHA's COVID-19 owner occupant loan modification may increase a borrower's principal and interest payment in certain limited situations.⁵⁰ While servicers generally are able to offer loan modifications to borrowers with whatever features they choose, if the loan modification does not meet the criteria of the new rule, servicers could only offer the modification if the offer is based on the review of a complete application or if the offer is not based on any information provided from the borrower.

Waiver of Other Requirements. The rule provides that if a borrower accepts⁵¹ an offer pursuant to the new exception, the servicer generally is not required to comply with Regulation X's requirement to send a letter within five days of receipt of a loss mitigation application that acknowledges receipt of the application and, if the application is incomplete, lists the additional information the borrower must submit to complete the application. In addition, if a borrower accepts an offer pursuant to the new exception, the servicer is not required to comply with the requirement to exercise reasonable diligence to obtain a complete application from the borrower.⁵²

A More Permanent Solution. Like the interim final rule the CFPB promulgated in 2020 that allows servicers to offer deferrals to borrowers based on the review of an incomplete application, this new rule is limited to borrowers impacted by the COVID-19 pandemic.⁵³ The pandemic is not the only emergency situation for which additional flexibility to offer loan modifications could be useful. Borrowers could benefit from the ability to obtain a loan modification or a deferral without submitting a complete loss mitigation application in the wake of smaller-scale emergencies such as hurricanes or wildfires, which occur with some regularity. It remains to be seen whether the CFPB will address these types of circumstances in future rulemakings in similar fashion as it responded to the COVID-19 national emergency.

The revisions to Regulation X will become effective on August 31, 2021. As forbearance plans and foreclosure moratoriums expire, we expect the CFPB to actively supervise and investigate servicers' compliance with the default servicing requirements in addition to ensuring strict adherence with all servicing regulations. We are available to assist in revising policies, procedures, training, and consumer-facing materials in accordance with the new requirements.

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Endnotes

- ¹ Mortgage Bankers Association, “Share of Mortgage Loans in Forbearance Decreases to 3.50 Percent,” July 19, 2021, available at: <https://www.mba.org/2021-press-releases/july/share-of-mortgage-loans-in-forbearance-decreases-to-350-percent>.
- ² Consumer Financial Protection Bureau, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,” 86 Fed. Reg. 34848, June 30, 2021.
- ³ Federal Housing Finance Agency, “FHFA Protects Borrowers After COVID-19 Foreclosure and REO Eviction Moratoriums End,” Jun. 29, 2021, available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Protects-Borrowers-After-COVID-19-Foreclosure-and-REO-Eviction-Moratoriums-End.aspx>.
- ⁴ 15 U.S.C. § 9056(b).
- ⁵ Federal Housing Finance Agency, “FHFA Extends COVID-19 Forbearance Period and Foreclosure and REO Eviction Moratoriums,” Feb. 25, 2021, available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Forbearance-Period-and-Foreclosure-and-REO-Eviction-Moratoriums.aspx>; Press Release, The White House, “Fact Sheet: Biden Administration Announces Extension of COVID-19 Forbearance and Foreclosure Protections for Homeowners,” Feb. 16, 2021, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>.
- ⁶ Federal Housing Finance Agency, “FHFA Extends COVID-19 Foreclosure and REO Eviction Moratoriums,” June 24, 2021, available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Foreclosure-and-REO-Eviction-Moratoriums.aspx>; Press Release, The White House, “Fact Sheet: Biden-Harris Administration Announces Initiatives to Promote Housing Stability By Supporting Vulnerable Tenants and Preventing Foreclosures,” June 24, 2021, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-biden-harris-administration-announces-initiatives-to-promote-housing-stability-by-supporting-vulnerable-tenants-and-preventing-foreclosures/>.
- ⁷ 12 C.F.R. § 1024.41(f)(1)(i).
- ⁸ In addition to prohibiting the initiation of foreclosure until the borrower is more than 120 days delinquent, Regulation X prohibits the initiation of foreclosure if the borrower has an outstanding complete loss mitigation application. *Id.* § 1024.41(f)(2).
- ⁹ Consumer Financial Protection Bureau, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,” 86 Fed. Reg. at 34876 – 77.
- ¹⁰ See, e.g., Consumer Financial Protection Bureau, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,” 86 Fed. Reg. 18840, 18863, April 9, 2021 (stating that “[s]ervicers should be in a much better position to handle the increased volume of default servicing at this time than they were during the 2008 crisis”).
- ¹¹ Consumer Financial Protection Bureau, Supervisory Highlights: COVID-19 Prioritized Assessments Special Edition, Issue 23, January 2021, available at https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-23_2021-01.pdf.
- ¹² Read our analysis of the CFPB’s proposal to prohibit foreclosures until 2022 [here](#).
- ¹³ New 12 C.F.R. § 1024.41(f)(3).
- ¹⁴ *Id.* § 1024.41(f)(3)(ii)(A).
- ¹⁵ *Id.* § 1024.41(f)(3)(ii)(B).

- ¹⁶ *Id.* § 1024.41(f)(3)(ii)(C).
- ¹⁷ Consumer Financial Protection Bureau, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,” 86 Fed. Reg. at 34885.
- ¹⁸ New 12 C.F.R. § 1024.41(f)(3)(i)(A).
- ¹⁹ *Id.* § 1024.41(f)(3)(i)(B).
- ²⁰ Consumer Financial Protection Bureau, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,” 86 Fed. Reg. 18840, 18864, April 9, 2021.
- ²¹ Consumer Financial Protection Bureau, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,” 86 Fed. Reg. at 34884.
- ²² *Id.* at 34886.
- ²³ *Id.* at 34878.
- ²⁴ 12 C.F.R. § 1024.41(f)(1)(ii), (iii).
- ²⁵ Regulation X requires servicers to inform borrowers about the availability of loss mitigation options “if appropriate” during the early intervention conversations. 12 C.F.R. § 1024.39(a).
- ²⁶ Comment 4 to 12 C.F.R. § 1024.39(a).
- ²⁷ The CFPB is revising Regulation X to define “COVID-19-related hardship” to mean “a financial hardship due, directly or indirectly, to the national emergency for the COVID-19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020), and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)).” Revised 12 C.F.R. § 1024.31.
- ²⁸ New 12 C.F.R. § 1024.39(e)(2). The rule further provides that if the scheduled end date of the forbearance program occurs between August 31, 2021, and September 10, 2021, the required information must be provided during the first live contact made after the effective date of the rule. *Id.*
- ²⁹ *Id.* § 1024.39(e)(1).
- ³⁰ *Id.* § 1024.39(e). The Bureau explained that it believes most borrowers taking advantage of CARES Act forbearances will have exited forbearance by September 30, 2022. Consumer Financial Protection Bureau, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,” 86 Fed. Reg. at 34860.
- ³¹ *Id.* § 1024.40(b) (requiring that servicers assign dedicated personnel to delinquent borrowers and that these personnel are able to provide the borrower with accurate information about the loss mitigation options available to the borrower and the actions the borrower must take to be evaluated for such options, among other topics).
- ³² 12 C.F.R. § 1024.41(b)(1).
- ³³ *Id.*
- ³⁴ Comment 4(iii) to 12 C.F.R. § 1024.41(b)(1).
- ³⁵ New comment 4(iv) to 12 C.F.R. § 1024.41(b)(1).
- ³⁶ A complete loss mitigation application is defined as “an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.” 12 C.F.R. § 1024.41(b)(1). Generally, servicers have the flexibility to determine what information is needed to constitute a complete loss mitigation application. Comment 41(b)(1)-1.
- ³⁷ 12 C.F.R. § 1024.41(c)(1).
- ³⁸ *Id.* § 1024.41(c)(2)(i). It is worth noting that the servicing rules do not prohibit servicers from offering loss mitigation to borrowers when that offer is not based on any information provided by a borrower. Comment 41(c)(2)(i)-1.
- ³⁹ Consumer Financial Protection Bureau, “Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z),” 78 Fed. Reg. 60382, 60298, Oct. 1, 2013.
- ⁴⁰ *Id.* (allowing servicers to offer short-term forbearance programs based on the review of an incomplete application); Consumer Financial Protection Bureau, “Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z),” 81 Fed. Reg. 72160, Oct. 19, 2016 (allowing servicers to offer short-term repayment plans based on the review of an incomplete application); Consumer Financial Protection Bureau, “Treatment of Certain

COVID-19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA) (Regulation X),” 85 Fed. Reg. 39055, June 30, 2020 (allowing servicers to offer certain deferrals to borrowers based on an incomplete application).

⁴¹ New 12 C.F.R. § 1024.41(c)(2)(vi)(A)(3).

⁴² *Id.* § 1024.41(c)(2)(vi)(A)(1).

⁴³ *Id.*

⁴⁴ *Id.* § 1024.41(c)(2)(vi)(A)(2).

⁴⁵ *Id.* § 1024.41(c)(2)(vi)(A)(4).

⁴⁶ *Id.* § 1024.41(c)(2)(vi)(A)(5).

⁴⁷ Consumer Financial Protection Bureau, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,” 86 Fed. Reg at 34870.

⁴⁸ *Id.*

⁴⁹ *Id.* at 34867.

⁵⁰ *Id.* at 34869.

⁵¹ The Bureau explained that a borrower can verbally accept the offer. *Id.* at 34873.

⁵² New 12 C.F.R. § 1024.41(c)(2)(vi)(B).

⁵³ 12 C.F.R. § 1024.41(c)(2)(v).

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