



April 28, 2020

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau (CFPB)
1700 G Street, NW
Washington, DC 20552

RE: Reg X – Disaster-Related Contact

Director Kraninger:

The Housing Policy Council (HPC) is writing to propose that the Consumer Financial Protection Bureau (CFPB) consider adding a new section to Regulation X that would establish a distinct set of relevant processes for servicers to assist mortgage borrowers affected by federally declared disasters and emergencies.

The experiences of borrowers and servicers during the COVID-19 emergency, as well as previous natural disasters and emergencies, has proven that certain aspects of Regulation X lead to borrower confusion and unnecessary delays when servicers seek to provide borrowers with short-term payment relief. The existing Regulation X requirements mandate multiple communications with financially distressed borrowers who need information on available assistance programs, including how to apply, how to submit the necessary documentation, and expected timeframes.

In contrast, borrower access to short-term payment relief in connection with a natural disaster is much simpler, and does not require an application process and evaluation of documents to qualify, like a traditional loan modification. With COVID-19 emergency assistance, borrowers need only attest, orally or otherwise, to a hardship. For natural disasters, as well, the eligibility for short-term assistance has been similarly streamlined, with little to no documentation. Under the circumstances, the current multi-step Regulation X requirements create borrower confusion, providing information that conflicts with the relief being offered (and often already received). Further, the number of notification and contact requirements that are out of synch with the actual short-term relief process also cause delays and redirect critical staffing resources to impractical, unnecessary communications efforts.

We appreciate that the CFPB and other financial services regulators have issued temporary COVID-19 guidance and Frequently Asked Questions (FAQs), emphasizing the

importance of “good faith efforts” to comply with the Reg X is helpful, and we commend the CFPB and other regulators for being responsive to the industry.

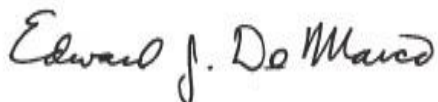
However, a more effective and permanent approach would be for the CFPB to establish separate processes and procedures under Reg X, designed to ensure that borrowers affected by a disaster or emergency receive appropriate and relevant communications from their servicers to access immediate relief.

Our proposal (“Disaster-Related Contact”) would be a new section in the regulations that would permit servicers to use an optional, alternative approach to contact borrowers, efficiently provide emergency assistance, and communicate relevant information throughout the relief period. By making it optional, Reg X would provide flexibility to allow servicers to develop new, streamlined processes to assist affected borrowers, or to maintain existing processes, and conform them in accordance with supervisory guidance, if they are unable to develop new processes.

As detailed in the attached table, if certain conditions are met, the Disaster-Related Contact provisions would apply rather than the early intervention requirements of 12 C.F.R. § 1024.39 and the loss mitigation procedures of 12 C.F.R. § 1024.41. Instead, the borrower would receive important information at critical times – at the beginning of the short-term payment relief and prior to the end of that relief. Additionally, during or at the end of the short-term relief, the borrower may be provided the option of a pre-approved long-term loss mitigation option that would not require an application or documentation or the option to submit a full loss mitigation application for evaluation under 12 C.F.R. § 1024.41. Finally, it is important to note that while the borrower is in this short-term payment relief accommodation, the servicer would be prohibited from proceeding with a foreclosure action.

The attached table provides details on our Disaster-Related Contact proposal and compares it to the existing requirements under Regulation X, as well as the regulators’ supervisory guidance and FAQs related to the COVID-19 emergency and the CARES Act. We welcome the opportunity to discuss this with you and your staff. Please do not hesitate to call Meg Burns, SVP for Mortgage Policy, at 202-589-1926.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive, slightly slanted style.

Edward J. DeMarco
President
Housing Policy Council

Comparison of Early Intervention/Loss Mitigation Reg X Requirements, COVID-19 Supervisory Guidance, and Proposed Disaster-Related Contact Requirements

Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale / Open Issues
<p>Scope/Purpose/Applicability</p> <p>Early intervention requirements (1024.39) apply to delinquent borrowers (in general, live contact no later than 36th day of delinquency and again no later than 36th day after each payment is due as long as delinquent, and written notice no later than 45th day of delinquency).</p> <p>Loss mitigation requirements (1024.41) apply if a servicer receives a loss mitigation application. If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer must review to determine whether it is complete, provide acknowledgment notice, evaluate the borrower for all loss mitigation options available (if complete app), and provide written notice of the servicer’s determination of which loss</p>	<p>Agencies recognize the serious impact of COVID-19 emergency may have on consumers and the operations of servicers. The agencies recognize that there is a potential for consumer confusion about how to seek help or how to respond to some of the options that servicers may be offering at this time.</p> <p>To ensure that servicers have the capacity to offer short-term options and continue their work to assist struggling consumers without further straining their operational capacity or potentially confusing consumers in these programs, the agencies are issuing this joint statement to inform servicers of the agencies’ flexible supervisory and enforcement approach during this emergency regarding certain consumer communications required by the mortgage servicing rules.</p>	<p>If a servicer may grant or has granted a borrower affected by a natural or declared disaster or emergency “short-term payment relief” (as defined below) based on a representation by the borrower that the servicer does not confirm through independent due diligence, this separate procedure regarding borrower contact (“Disaster-Related Contact”) would apply, at the option of the servicer.</p> <p>Moreover, this Disaster-Related Contact procedure would apply regardless of whether the borrower is delinquent when the servicer grants the borrower short-term payment relief.</p> <p>A natural or declared disaster or emergency is a federal Major Disaster Declaration or Emergency Declaration.</p>	<p>Reg X loss mitigation rules establish procedures that servicers must follow to evaluate borrowers that apply for loss mitigation. Often during a natural or declared disaster or emergency, such processes, while intended to ensure a borrower’s application is properly evaluated, often lead to unnecessary delays and borrower confusion. The existing requirements also do not easily conform to the typical short-term hardship that borrowers experience due to a natural or declared disaster or emergency. Separate processes and procedures are needed to ensure that borrowers are receiving accurate information about the actual emergency assistance available, are in contact with their mortgage servicer, and know what to expect over the course of their temporary hardship and how to</p>

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mitigation options, if any, it will offer to the borrower.			resolve/conclude their reliance on special assistance
<p>Early Intervention/ Live Contact with Delinquent Borrowers (1024.39(a))</p> <p>A servicer must establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower’s delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. Promptly after establishing live contact with a borrower, the servicer must inform the borrower about the availability of loss mitigation options, if appropriate.</p> <p>If the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures under 1024.41 (defined to include contact during the borrower’s completion of a loss mitigation application, the servicer’s evaluation of a</p>	<p>The Agencies do not intend to take supervisory or enforcement action against servicers for delays in establishing or making good faith efforts to establish live contact with delinquent borrowers, provided that servicers are making good faith efforts to establish live contact within a reasonable time.</p> <p>If a servicer has established and is maintaining ongoing contact with a borrower under the loss mitigation procedures in 1024.41(c)(2)(iii) related to offering a borrower a short-term payment forbearance program or short-term repayment plan based on the evaluation of an incomplete application, the servicer does not need to comply with the live contact requirements.</p>	<p>If a borrower is eligible for a short-term payment relief accommodation or is already receiving such an accommodation, there would be no live contact requirement. Instead, contact between a servicer and borrower may include, but not be limited to, telephonic, written, or electronic communications and inbound and outbound contact options are permissible.</p> <p>A short-term payment relief accommodation is defined as a short-term (a period of no more than six months) accommodation that provides for a monthly payment amount less than the currently scheduled monthly payment (e.g., forbearance program or repayment plan). Servicers can offer multiple successive short-term payment relief accommodations.</p>	<p>If a borrower is already in contact with the servicer regarding assistance or receiving assistance, there is no need for additional contact at this stage.</p> <p>This aligns with the Supervisory Guidance (if a servicer is following 41(c)(2)(iii) (short term program or plan based on incomplete loss mit app), the servicer does not need to comply with the live contact requirements).</p>

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<p>complete loss mit app, or after the servicer has provided a notice stating that the borrower is not eligible for any options pursuant to the rule), the servicer complies with 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact.</p> <p>Live contact requirements do not apply when a borrower is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment. (Borrower is not considered delinquent).</p>			
<p>Early Intervention/ Written Notice to Delinquent Borrowers (1024.39(b))</p> <p>A servicer must provide to a delinquent borrower a written notice with certain information no later than the 45th day of the borrower’s delinquency and again no later than 45 days after each payment due date so long as the borrower</p>	<p>The Agencies do not intend to take supervisory or enforcement action against servicers for delays in sending the written early intervention notice to delinquent borrowers, provided that servicers are making good faith efforts to provide this notice within a reasonable time.</p>	<p>If a borrower is in contact with the servicer about a short-term payment relief accommodation or is already receiving a short-term payment relief accommodation, there would be no early intervention written notice requirement. This would be true even if the accommodation is not designed to bring the borrower current.</p>	<p>If a borrower is already in contact with the servicer regarding assistance or receiving assistance, there is no need for additional contact at this stage.</p> <p>Sending such notice likely would create borrower confusion.</p>

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<p>remains delinquent. A servicer is not required to provide the written notice more than once during any 180-day period.</p> <p>Written notice requirements do not apply when a borrower is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment. (Borrower is not considered delinquent).</p> <p>Notice can be tailored to provide additional information that the servicer determines would be helpful.</p>		<p>Contact between a servicer and borrower may include, but not be limited to, telephonic, written, or electronic communications.</p>	
<p>Reasonable Diligence and Review of Loss Mitigation Application (1024.41(b)(1) and (2))</p> <p>A servicer must exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.</p> <p>Servicers may suspend reasonable diligence efforts to</p>	<p>The CARES Act requires borrowers to make a request to the servicer for a forbearance and affirm that they are experiencing a financial hardship during the COVID-19 emergency. This request and affirmation constitute an incomplete loss mitigation application.</p>	<p>A borrower requesting a short-term payment relief accommodation is not submitting a loss mitigation application. Therefore, the application review requirements of § 1024.41 would not apply.</p> <p>Similarly, if during, or at the end of, the short-term payment relief accommodation, a servicer determines that a borrower qualifies for a pre-</p>	<p>This avoids the customer confusion on being asked to submit a complete loss mitigation application and provides the borrower time to recover from the disaster/emergency by providing a short-term payment relief accommodation.</p>

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<p>complete a borrower’s loss mitigation application while the borrower is performing under a short-term forbearance program until near the end of the program, unless the borrower requests additional assistance.</p> <p>If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer must promptly upon receipt, review the loss mitigation application to determine if the loss mitigation application is complete.</p>	<p>Reminder of ability to suspend reasonable diligence efforts during short-term forbearance.</p>	<p>approved loss mitigation option, <i>without documentation from the borrower</i>, and the borrower agrees to a pre-approved loss mitigation option, the borrower would not need to submit a loss mitigation application and § 1024.41 would not apply.</p> <p>The requirements of § 1024.41 would only apply if, at any time, the borrower chooses to submit a loss mitigation application for evaluation of possible loss mitigation options.</p>	
<p>Acknowledgment of Receipt of Loss Mitigation Application (1024.41(b)(2))</p> <p>Servicer provides acknowledgment notice within 5 days of receipt of the application, stating whether the application is complete or incomplete.</p> <p>Must be sent even if the borrower has been offered or is in a short-term forbearance program or repayment plan</p>	<p>Agencies do not plan to cite servicers for failing to provide the acknowledgment notice within 5 days of receipt of an incomplete application (whether the servicer receives the incomplete application before or during the forbearance or repayment plan period), provided the servicer sends the acknowledgment notice before the end of the forbearance period, for a short-term forbearance program (or the end</p>	<p>A borrower requesting a short-term payment relief accommodation is not submitting a loss mitigation application. Therefore, § 1024.41 would not apply and there would be no requirement to send an acknowledgment notice.</p> <p>The requirements of § 1024.41 would only apply if, at any time, the borrower chooses to submit a complete loss mitigation</p>	<p>Receipt of an acknowledgment notice causes borrower confusion. It does not assist the borrower in seeking relief and does not provide the borrower with useful information.</p>

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based on an incomplete loan application. (Comment 41(c)(2)(iii)-2).	of the repayment period, for a short-term repayment plan).	application for evaluation of possible loss mitigation options.	
<p>Communications Related to Short-Term Loss Mitigation based on Incomplete Loan Application: Written Notice (1024.41(c))</p> <p>Servicer must provide written notice stating: (1) the specific payment terms; (2) the duration of the program or plan; (3) that the servicer offered the program or plan based on an evaluation of an incomplete application; (4) that other loss mitigation options may be available; and (5) that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all available options regardless of whether the borrower accepts the short-term program or plan. Additional language may be included.</p>	Reminder of these requirements and that both of these communications can be tailored to individual borrowers' circumstances.	<p>Written Confirmation of Short-Term Payment Relief Accommodation: Within 10 days (excluding legal public holidays, Saturdays, and Sundays) of acceptance of a short-term accommodation, the servicer provides the borrower an electronic or written confirmation, which may be included in the periodic statement, with details of the short-term payment relief accommodation. This confirmation notice shall state the amount of each payment due during the accommodation (if that payment amount may change, state that it may change), the date by which the borrower must make each payment, and whether the mortgage loan will be current at the end of the accommodation if the borrower complies with the accommodation. This notice also shall state that the servicer will contact the borrower prior</p>	This is in line with existing Reg X requirements related to communications to borrowers in short-term loss mitigation programs or plans based on incomplete loan applications. This provides communication at the critical times (the beginning of the program/plan and the end) with key information tailored to the borrower's situation.

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		to the end of the accommodation with next steps and options.	
<p>Communications Related to Short-Term Loss Mitigation based on Incomplete Loan Application: Near End of Plan Communication (1024.41(c))</p> <p>If the borrower remains delinquent near the end of the forbearance program or repayment plan, the servicer must contact the borrower prior to the end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. This contact could be orally or be included as a note on a consumer’s regular periodic statement. Additional language may be included.</p>		<p>Contact Prior to the End of Accommodation: Prior to the end of a short-term accommodation, the servicer contacts (or attempts to contact) the borrower with information regarding next steps and options. This contact may be orally or in writing, and the information may be included in the periodic statement.</p> <p>If a servicer determines that a borrower qualifies for a pre-approved loss mitigation option, <i>without documentation from the borrower</i>, and the borrower agrees to a pre-approved loss mitigation option, the borrower would not need to submit a loss mitigation application and § 1024.41 would not apply.</p> <p>The borrower may choose to submit a complete loss mitigation application for an evaluation for all available</p>	<p>This is in line with existing Reg X requirements related to communications to borrowers in short-term loss mitigation programs or plans based on incomplete loan applications. This provides communication at the critical times (the beginning of the program/plan and the end) with key information tailored to the borrower’s situation.</p>

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		<p>options, and, at that time, § 1024.41 would apply.</p> <p>If a borrower completes the short-term accommodation and does not either accept the pre-approved loss mitigation option (if applicable) or submit a loss mitigation application, Reg X and investor-directed requirements would apply.</p>	
<p>Prohibition on Foreclosure Referrals and Sales</p> <p>1024.41(f) prohibition on foreclosure referral and 1024.41(g) prohibition on foreclosure sale.</p>	N/A	A servicer shall not make a foreclosure referral, move for foreclosure judgment or order of sale, or conduct a foreclosure sale while the borrower is in a short-term payment relief accommodation.	This parallels the existing requirements under § 1024.41(f) and (g).