



May 10, 2021

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2021-0006; Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X

To Whom It May Concern:

The Housing Policy Council¹ (HPC) and the Bank Policy Institute² (together, the Associations) appreciate the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB's) proposed rule (Proposed Rule) to amend Regulation X.³

The Associations and our members are committed to assisting borrowers affected by the COVID-19 emergency and have worked diligently to meet these consumers' needs since the very outset of the pandemic in March 2020. Over the course of the last year, following the initial surge in borrower requests for payment relief, the number of households in forbearance has declined month-over-month.⁴ With economic recovery now underway, we believe that consumers will continue to transition into permanent loss mitigation accommodations and feel confident that our member servicers have the staffing resources and processes in place to assist customers with this transition.

Further, we share the CFPB's goal for the Proposed Rule – to encourage borrower and servicer engagement to facilitate foreclosure avoidance with timely and accurate communications and an efficient process for borrowers to obtain a permanent, sustainable loss mitigation solution. As discussed further below, we do not believe these new rules are necessary, because existing regulations address all these needs. However, in the event that the CFPB does move forward with the Proposed Rule, we offer the following comments:

- **Foreclosure Review:** In spite of our concerns with the unintended consequences of a special pre-foreclosure review period, if the CFPB is to finalize the proposal:

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.

² The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, our members employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

³ Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X, 86 Fed. Reg. 18840 (Apr. 9, 2021).

⁴ Black Knight Mortgage Monitor, March 2021 Report at 8, https://cdn.blackknightinc.com/wp-content/uploads/2021/04/BKI_MM_Mar2021_Report.pdf.

- We recommend three exemptions with clear, unambiguous definitions: a) completed loss mitigation review; b) reasonable diligence efforts to contact borrowers; and c) vacant and abandoned properties.
- We also ask that the CFPB clarify that the foreclosure review period does not apply to foreclosures that were initiated prior to this rule’s effective date, regardless of whether that first legal notice must be re-issued under state law.
- If the CFPB decides to establish an alternative to the special review period, such as a “grace period” that would delay foreclosure referral after forbearance ends, the Associations would recommend a 60-day period.
- Finally, we request that CFPB codify in the official interpretations the CFPB’s description of the treatment of missed payments during forbearance programs; under Reg X, forbearance does not pause the homeowner’s underlying delinquency.
- **Incomplete Application for Streamlined Modifications:** We recommend three changes to the anti-evasion exception for streamlined loan modifications – (1) permit the incomplete application for borrowers who have not *rejected* the offer; (2) limit the waiver of fees and charges to those incurred during the COVID-19 forbearance period; and (3) clarify that amounts deferred prior to a streamlined modification can subsequently be capitalized in connection with a loan modification, subject to investor/insurer rules;
- **Early Intervention:** Rather than adding unnecessary complexity at this point in the pandemic, the CFPB should use the existing regulatory requirement for conveying information about loss mitigation. Instead of a new subsection, we recommend CFPB simply add specific COVID-19 examples to the existing official interpretations; and
- **Reasonable Diligence:** We recommend the CFPB clarify that the proposed reasonable diligence requirement would not apply when a borrower unilaterally ends his or her forbearance program, which changes the scheduled termination date of the forbearance period.

As HPC has discussed in previous letters and outreach to the CFPB, a new set of rules under Reg X, tailored for borrowers affected by natural or declared disasters or emergencies is warranted, as evidenced by this COVID-19 experience and previous disasters, natural and otherwise. The CFPB’s issuance of this Proposed Rule and the 2020 interim final rule⁵ as well as COVID-19 guidance and FAQs⁶ for mortgage servicers demonstrates the misalignment between borrower needs and the requirements of the existing rule. The current rules are not designed for situations where borrowers need immediate, yet temporary payment relief of an uncertain duration, relief that must be provided as quickly and efficiently as possible. Similarly, the current rules do not work well for borrowers who can and should transition from this temporary relief into permanent loss mitigation solutions in a simple and streamlined manner. As a result, existing Reg X requirements cause significant borrower confusion and unnecessary delays. The CFPB’s recent bulletin on consumer complaints highlights the consumer

⁵ 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).

⁶ Bureau of Consumer Fin. Prot., *Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act* (Apr. 3, 2020), https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf; Bureau of Consumer Fin. Prot., *The Bureau’s Mortgage Servicing Rules FAQs related to the COVID-19 Emergency* (Apr. 3, 2020), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf.

confusion caused by Reg X mandated notices provided to a consumer during a forbearance period.⁷ HPC has proposed before and we reiterate here the need for a new provision of Reg X that would provide more efficient and effective outreach and improved customer experience for those affected by a natural disaster or declared emergency. HPC's previous letter and details of that proposal are attached for reference (Appendix 1).

Finally, we are concerned that the CFPB's own data and other available data show that several of these proposals will have limited benefits, especially compared to the costs and burdens associated with implementation. For example, the CFPB cites Black Knight data showing that there are 242,000 borrowers who are not in a forbearance program and are seriously delinquent.⁸ The CFPB believes this group is at a heightened risk of referral to foreclosure. Most of these borrowers were seriously delinquent prior to the COVID-19 emergency, and half of that group is in active foreclosure. As a result, only about half as many borrowers as the CFPB identified as seriously delinquent and not in forbearance may benefit from certain provisions of these rules (e.g., the special pre-foreclosure review period). Separately, current Black Knight data shows that for COVID-19 related forbearances, only two percent of borrowers who have exited forbearance are delinquent and not in active loss mitigation (160,000 out of 7.1 million borrowers that are or were in forbearance).⁹ While there will be a significant number of borrowers exiting forbearance in the Fall, the positive outcomes indicate a trend that is encouraging. Additionally, the existing regulatory and investor/insurer requirements as well as the prolonged foreclosure process ensure that there are substantial opportunities for borrowers to successfully avoid foreclosure when possible. We reiterate that our members are committed to assisting borrowers and preventing avoidable foreclosures consistent with federal law and applicable investor/insurer requirements; the Associations believe that the current rules will meet these goals and the only change needed is one that we had recommended previously, to include streamlined modifications in the anti-evasion exceptions to the regulation.¹⁰

I. Special Pre-Foreclosure Review Period

We agree with the CFPB's general objective to provide every borrower with ample opportunity to avoid foreclosure and that servicers must dedicate time and resources to achieve this objective. At the same time, we know that the CFPB appreciates that there is an important balancing of the legitimate interests of delinquent borrowers to retain their homes and investors and insurers to protect their lien interests and minimize their risk exposure.

As such, we have several concerns with the reasons for imposing this review period. We are concerned that the brief time when the review period will be effective suggests that the need for this regulatory change is limited and the proposal is unnecessarily complicated. The CFPB's own analysis of the impact of this proposed review period shows a minimal impact on reducing foreclosures. Frankly, we

⁷ Bureau of Consumer Fin. Prot., *Complaint Bulletin: Mortgage forbearance issues described in consumer complaints* (May 2021), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-forbearance-issues_complaint-bulletin_2021-05.pdf.

⁸ Black Knight Mortgage Monitor, January 2021 Report at 12, https://cdn.blackknightinc.com/wp-content/uploads/2021/03/BKI_MM_Jan2021_Report.pdf.

⁹ Black Knight Mortgage Monitor, March 2021 Report at 11, https://cdn.blackknightinc.com/wp-content/uploads/2021/04/BKI_MM_Mar2021_Report.pdf.

¹⁰ Housing Policy Council, Comment Letter on Interim Final Rule on Treatment of Certain COVID-19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (July 23, 2020), <https://www.regulations.gov/comment/CFPB-2020-0022-0005>.

believe that the existing loss mitigation requirements of Regulation X combined with standard foreclosure proceedings, which require a set of legal steps that take several months to complete, should fulfill the CFPB's stated objectives.¹¹ The existing rules mandate that borrowers receive timely information about and, if the borrower applies, evaluation for loss mitigation before the servicer may proceed to foreclosure. Further, existing regulations require the servicer to reconsider a borrower for loss mitigation in certain circumstances after a foreclosure has been initiated. Other factors also diminish the necessity of this proposed special review period, such as the positive trends in economic and housing market conditions as well the array of effective loss mitigation options available to borrowers affected by COVID-19.

We have additional concerns that this review period may be counterproductive. As the CFPB recognizes in the preamble, for some borrowers, despite substantial outreach efforts by the servicer, the notification of foreclosure process initiation is the impetus to engage with the servicer. Delaying that notice may exacerbate this problem.

Further, if implemented, the exemptions to the review period would be optional under Regulation X, but in practice will be applied in accordance with investor/agency rules. Therefore, such exemptions may create unnecessary compliance confusion and potential liability.

In light of the short four-month effective period, these concerns call into question the overall necessity of the rule. Regardless, we recognize it is important to provide comments on the alternatives and exemptions discussed in the preamble. Accordingly, if the CFPB finalizes this proposal, the Associations prefer the date certain approach (end date of December 31, 2021), with exemptions discussed below. However, the Associations also believe that an acceptable alternative would be a 60-day grace period at the end of a borrower's forbearance period. A grace period of 60 days would be sufficient to allow the servicer to engage in additional reasonable diligence efforts to contact the borrower and the borrower sufficient time to explore and accept, if available, loss mitigation. Many servicers are already providing such a grace period as an additional measure to prevent avoidable foreclosures. No more than 60 days should be necessary, given that during the last 30 days of the forbearance program, servicers are engaged in extensive outreach efforts to ensure the borrower has a long-term solution post-forbearance.

Regardless of how the CFPB proceeds (a date certain or 60-day grace period), the CFPB should provide guidance on the impact of this additional period on credit reporting (i.e., absent clarity from the CFPB on the application of the Fair Credit Reporting Act when borrowers exit CARES Act forbearance without a post-forbearance accommodation, servicers should continue to be permitted to suspend credit reporting).

¹¹ In finalizing § 1024.41, the Bureau's intent was to achieve three main goals: First, it was designed to provide protections to borrowers to ensure that, to the extent a servicer offers loss mitigation options, a borrower would receive timely information about how to apply, and that a servicer would evaluate a complete application in a timely manner. Second, it was designed to prohibit a servicer from completing a foreclosure process by proceeding with a foreclosure sale until a borrower and a servicer had terminated discussions regarding loss mitigation options.¹⁶⁹ Third, it was designed to set timelines for loss mitigation evaluation that could be completed without requiring a suspension of the foreclosure sale date in order to avoid strategic use of these procedures to extend foreclosure timelines. (78 Fed. Reg. 106,69, 10815 (Feb. 14, 2013)).

Exemption for Completed Loss Mitigation Review

In response to the CFPB's contemplated exemption for a completed loss mitigation review, the Associations agree that if a borrower has been fully evaluated for loss mitigation options available through the investor/ insurer and the borrower is not eligible for any loss mitigation option, there is no additional consumer benefit derived from delaying the foreclosure referral.

The CFPB is considering limiting this exemption to apply only if the borrower has been evaluated for all available loss mitigation options after the rule's effective date. Given the relatively short timeframe for application of the proposed special pre-foreclosure review period, we believe the exception should include evaluations made within the six months prior to the effective date. Such a timeframe would encompass all borrowers evaluated after March 1, 2021, a point in time when the various applicable COVID-19 government programs were in effect. Evidence that the servicer has completed this evaluation is readily available, as Regulation X requires a servicer to send a borrower a notice upon completion of an evaluation.¹² We suggest the final rule affirm that this document would serve as evidence for compliance with this exemption.

Exemption for Reasonable Diligence Efforts

The Associations believe a servicer should be able to proceed with foreclosure if the servicer has exercised reasonable diligence to contact the borrower and has been unable to reach the borrower. We agree that reasonable diligence would need to be defined, and we support the CFPB's recommendation to use the Home Affordable Modification Program (HAMP) definition.¹³ We ask that the CFPB explicitly clarify that the two written notices requirement may be satisfied by using notices already required under Regulation X (e.g., the early intervention written notice or the proposed contact no later than 30 days prior to the end of the forbearance period) or other applicable law (e.g., state required breach notice), if the delivery method meets the HAMP requirements. A servicer should be able to meet this exemption if the reasonable diligence efforts occurred either within the 30 days prior to the effective date or after the effective date. This exemption would apply to an unresponsive borrower that is more than 120 days delinquent, including those that were in a forbearance plan and those that were never in a forbearance plan during the COVID-19 emergency. Such an exemption would not undermine the purpose of the special pre-foreclosure review period because the foreclosure referral could prompt communication from the customer. Additionally, for those that have been unresponsive for a significant period of time, including those that were seriously delinquent prior to the COVID-19 emergency and never entered a forbearance, additional time is highly unlikely to result in successful contact.

Exemption for Abandoned Properties

We ask that the CFPB explicitly and clearly exempt abandoned properties from the special pre-foreclosure review period. This would align with the various federal and state foreclosure moratoria and CFPB's intent. The CFPB notes that the special pre-foreclosure review only applies to a borrower's principal residence, and if a borrower has abandoned the property, depending on the facts and

¹² 12 CFR § 1024.38(c)(1)(ii).

¹³ Reasonable diligence is the following communication attempts over a period of 30 days: (1) making a minimum of four telephone calls to the last known phone number of record, at different times of the day; and (2) sending two written notices to the last address of record by sending one letter via certified/express mail or via overnight delivery service with return receipt/delivery confirmation and one letter via regular mail.

circumstances and applicable law, the property “may no longer be the borrower’s principal residence.”¹⁴ However, certainty is warranted. As the CFPB knows, vacant and abandoned properties have a negative impact on communities, affecting home values and creating neighborhood blight. Given the scope of the various existing foreclosure moratoria and the purposes of the CFPB’s proposed review period, we ask the CFPB to provide a clear and complete exemption for abandoned properties.

To define abandoned property, we propose the rule provide two options: (1) abandoned property as defined under applicable state law; and (2) if there is no such applicable law, the presumption of abandonment adopted by the National Conference of Commissioners on Uniform State Law in the Uniform Home Foreclosure Procedures Act, which is attached as an appendix (Appendix 2). Under this exemption, servicers can move forward with foreclosure of abandoned properties and help limit the negative impact those properties have on communities. Further, the rule should state that a determination of abandonment need not to have occurred after the effective date of the rule.

The CFPB should stipulate the prospective nature of the application of the special pre-foreclosure review period.

We ask the CFPB to clarify that the special pre-foreclosure review period does not apply to proceedings where the first legal notice/filing has already been made, regardless of whether state law would require a new first notice of foreclosure upon resumption of the foreclosure action. It is our understanding that the proposed prohibition for first legal notice or filing would not impact foreclosures for which the first notice/filing has been made prior to the effective date of the rule. Once any applicable foreclosure moratoria are lifted, those foreclosure proceedings can resume, and in certain states, a new first notice/filing is necessary to continue. Borrowers in foreclosure prior to the pandemic have been afforded the protections of Regulation X. Specifically, prior to the foreclosure referral, and as required under Regulation X, the servicer engaged in substantial outreach efforts to the delinquent borrower. When a loss mitigation application was received, the servicer evaluated the borrower for all available loss mitigation options. Further, Regulation X requires the servicer to consider a borrower for loss mitigation in certain circumstances after a foreclosure has been initiated.

Such a clarification will reinforce consistent application of state laws regarding foreclosure for all foreclosures that have been initiated, including those that have been filed in states that may require a refiling and states that may require a restart.

The CFPB should add commentary on the impact of forbearance programs.

We appreciate the CFPB’s acknowledgment in the preamble that forbearance programs do not pause delinquency.¹⁵ This is a key reason the CFPB believes this special pre-foreclosure review period is needed. This is an important, and often misunderstood, point regarding the impact of forbearance programs. We ask the CFPB to include an official interpretation, either in relation to the definition of delinquency (§ 1024.31) or the existing pre-foreclosure review period (§ 1024.41(f)(1)), a statement

¹⁴ 86 Fed. Reg. 18840, 18841. Separately, the CFPB states that “an abandoned property is less likely to be a borrower’s principal residence.”

¹⁵ 86 Fed. Reg. 18840, 18863 (“[B]ecause forbearance generally does not pause the homeowner’s underlying delinquency, many of these borrowers will be more than 120 days delinquent when exiting their forbearance program. Thus, it is possible that a servicer may refer a loan to foreclosure soon after forbearance ends, before borrowers have an opportunity to pursue foreclosure avoidance options, unless a foreclosure moratorium or other restriction is in place or the borrower brings their accounts current.” (footnote omitted)).

that, for purposes of Regulation X, forbearance programs do not pause or extinguish delinquency. While a forbearance program pauses or defers payment obligations, it does not nullify or pause the delinquency; the borrower is still obligated to fully satisfy the missed payments, and if the borrower fails to do so as they exit forbearance (e.g., through a post-forbearance deferment or loan modification), the mortgage delinquency will be equal to the length of the forbearance plus any preexisting delinquency.

II. Streamlined Loan Modifications

We support the CFPB's proposed exemption from the anti-evasion provision to permit the offering of certain streamlined loan modifications without a complete loss mitigation application. Providing a clear avenue for streamlined loan modifications will help servicers better use their resources to respond to loss mitigation assistance requests efficiently and effectively. These options are beneficial to borrowers, and we suggest three modifications to the proposal.¹⁶

First, under the proposal, a servicer would not be required to comply with paragraphs 41(b)(1) or (2) "once the borrower *accepts* an offer" for a qualifying streamlined loan modification. Providing this regulatory relief on "acceptance" may create ambiguity. After extending the offer of a loss mitigation option under 41(c)(2)(vi) but before the borrower has "accepted" it, the servicer would be unable to determine how to proceed. As a result, some servicers may have a continued need to comply with 41(b)(1) and (2) while awaiting the borrower's acceptance. Such a result is contrary to the CFPB's stated intent. Compliance with 41(b)(1) and (2) for each borrower that exits forbearance would "likely interfere with [servicers] ability to provide effective, efficient, and accurate assistance."¹⁷

To avoid this contravening result, we propose that the reasonable diligence requirements should not apply until a consumer has rejected the loan modification or, if 30 days has passed without the consumer responding to the loan modification offer, presumed to have rejected the loan modification. This would better align with existing exemptions under 41(c)(2). For example, under 41(c)(2)(iii), a servicer must promptly provide a written notice after offering the loss mitigation option, unless the borrower has rejected the offer. We propose that, once a servicer offers a loss mitigation option pursuant to § 1024.41(c)(2)(vi)(A), unless the borrower rejects the offer, the servicer is not required to comply with paragraph 41(b)(1) or (2). If a borrower rejects such offer or 30 days has passed, the time period for the servicer to send the 5-day notice under (b)(2) and comply with (b)(1) would begin. Accordingly, we suggest the following modifications to § 1024.41(c)(2)(vi)(B):

~~"(B) Once the borrower accepts~~ **Unless the borrower rejects** an offer made pursuant to paragraph (c)(2)(vi)(A) of this section **or 30 days has passed without the borrower responding to such offer**, the servicer is not required to comply with paragraph (b)(1) or (2) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option described in paragraph (c)(2)(vi)(A) of this section. **If the borrower rejects an offer made pursuant to paragraph (c)(2)(vi)(A) or 30 days has passed, paragraphs (b)(1) and (2) would apply.** ~~However~~ **Further**, if the borrower fails to perform under a trial loan modification plan offered pursuant to paragraph (c)(2)(vi)(A) of this section or requests further assistance, the

¹⁶ We note that these are similar to the modifications we offered in response to the CFPB's interim final rule regarding payment deferral programs (available here: <https://www.regulations.gov/comment/CFPB-2020-0022-0005>).

¹⁷ 86 Fed. Reg. 18840, 18861.

servicer must immediately resume reasonable diligence efforts as required under paragraph (b)(1) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer’s offer of the trial loan modification plan.”

Second, we propose that the CFPB narrow the fee waiver requirement to apply only to fees and charges accrued during the actual forbearance and clarify that such waiver does not apply to pass-through costs (e.g., property preservation fees, inspection fees, and attorney fees). As proposed, the requirement to waive all existing late charges, penalties, stop payment fees, or similar charges does not adequately distinguish between fees and charges accrued during a payment forbearance and those that accrued prior to forbearance. Some borrowers entered a COVID-19 related forbearance already seriously delinquent with associated late fees and penalties. We believe the rule is intended to focus on the dismissal of fees and charges under the forbearance program rather than any pre-existing charges and fees. Therefore, we propose the following modification to this provision of paragraph (c)(2)(vi)(2):

“waives all existing late charges, penalties, stop payment fees, or similar charges **accrued during the forbearance** promptly upon the borrower’s acceptance of the loan modification.”

Finally, we ask the CFPB to clarify the provision that deferred amounts not accrue interest. Specifically, we ask the CFPB to state in the official interpretations that amounts deferred prior to a streamlined loan modification can subsequently be capitalized to principal in connection with a loan modification, subject to investor/insurer rules, and the proposed language of (c)(2)(vi)(A)(2) only applies to new amounts being deferred as part of the modification. Based on the CFPB’s explanation in the preamble, we believe this is the CFPB’s intent; however, for clarity, this should be expressly stated in the official interpretations.

III. Early Intervention – Live Contact

We agree that servicers must make good faith efforts to contact and inform borrowers facing a COVID-19-related hardship of the help available. The CFPB is concerned that the unique circumstances of the COVID-19 emergency may have interfered with or may continue to interfere with some borrowers’ ability to obtain and understand the important information servicers are required to provide under existing rules regarding foreclosure avoidance options.¹⁸ However, we are concerned that, as proposed, the new 39(e) will lead to significant borrower confusion, frustrating the CFPB’s stated purpose.

Under proposed 39(e)(1), if a borrower affirms a COVID-19 related hardship, the servicer must “list and briefly describe” forbearance programs available and the actions the borrower must take to be evaluated. The preamble indicates that this requirement “is not limited to forbearance programs specific to COVID-19 or only available during the COVID-19 emergency.”¹⁹

Similarly, for the last live contact made under 39(a) prior to a borrower’s forbearance ending, under proposed 39(e)(2), the servicer must list and briefly describe “each of the types of forbearance

¹⁸ 86 Fed. Reg. 18840, 18849.

¹⁹ 86 Fed. Reg. 18840, 18851. Programs that must be listed include COVID-19 specific forbearance programs and generally available programs where COVID-19 related hardships are sufficient to meet the hardship-related requirements for the forbearance program, regardless of length.

extension, repayment options, and other loss mitigation options made available by the owner or assignee of the borrower’s mortgage loan” and the actions the borrower must take to be evaluated. Again, this list is not limited to COVID-19 specific loss mitigation options, but rather any program that could be available, but may not meet the borrower’s specific needs.²⁰

We are concerned that these requirements will increase, not decrease, borrower confusion. First, we are concerned that these requirements portray loss mitigation programs as a menu of options, which is not entirely accurate. Rather, these programs are generally offered in a hierarchical order that is designed to discern which program is most appropriate for the consumer, based on various factors that take into consideration the specific situation of the borrower. These factors may include affordability of the monthly payment, preservation of home equity; longer-term costs; and efficiency, in terms of compilation and transmission of additional financial information. A tailored and brief communication that helps a consumer understand *that* assistance is available and that the programs available are designed to address the financial circumstances of the borrower may be more effective and accurate.

This less prescriptive approach is consistent with the existing early intervention requirements, both for the live contact and the written notice requirements. For example, in the current live contact requirements, the servicer has the discretion to determine how to convey the information in a manner that enables the borrower to quickly and easily access loss mitigation assistance that will address his or her unique financial circumstances.²¹ The official interpretations provide useful examples of when a servicer has reasonably determined how to inform a borrower about the availability of loss mitigation options.²² The current requirements and commentary recognize that a full list of all types of options may be unrealistic and not in the consumer’s best interest and, instead, allows servicers to provide general statements and examples. The ability to tailor borrower communications to ensure they are relevant, effective and understandable is critical.

Further, eligibility for options may change as time elapses or future required payments are not made. For example, the GSEs allow a deferral to incorporate as many as 18 months of missed principal and interest payments plus servicer advanced tax and insurance and other expenses. If live contact is made during the 18th month, and the customer does not respond that they are interested in that option until after missing a 19th month of payment, the customer will no longer be eligible for the deferral program without making an additional payment. Providing all potential scenarios to a customer as part of eligibility will be unwieldy for servicers and highly complicated for customers.

For the above stated reasons, we do not think the CFPB needs to alter the existing requirements. Further, we do not believe a new subsection for the early intervention provision is needed to achieve the CFPB’s goals. Instead, the CFPB should simply add examples to the official interpretations for live contact, specific to COVID-19.²³ For example, the official interpretations could state that a servicer has made a reasonable determination to provide information about loss mitigation options if, while COVID-19 forbearance programs are available, the servicer asks whether a borrower is experiencing a COVID-19 related hardship and, if so, the servicer provides the following: (1) general

²⁰ 86 Fed. Reg. 18840, 18853.

²¹ 12 CFR § 1024.39(a) and 12 CFR pt. 1024, Supp. I, comment 39(a)-4.ii.

²² 12 CFR pt. 1024, Supp. I, comment 39(a)-4.i.

²³ 12 CFR pt. 1024, Supp. I, comment 39(a)-4.i.

information on temporary relief through forbearance programs; (2) a statement that permanent options may be available at the end of forbearance; (3) a statement that eligibility will be dependent on several factors; and (4) information on actions the borrower must take to be evaluated. A similar example could be added for live contact with borrowers already in forbearance during the COVID-19 emergency. We also ask that CFPB clarify in the regulatory text or official interpretations that it is not prescribing any particular loss mitigation option or order of options and that the CFPB recognizes that any description of options must be consistent with applicable investor requirements. These modifications will help to fulfill the CFPB intent – borrowers will understand there are options available and what to do next to access a permanent repayment accommodation.

IV. Loss Mitigation Application – Reasonable Diligence

The Associations appreciate the CFPB’s alignment of the proposed timing for engaging in reasonable diligence efforts with that of the GSEs. However, we request that CFPB clarify that this requirement would not apply if a borrower voluntarily ended their forbearance program early. In that circumstance, it is highly likely that the servicer will not know at least 30 days prior to that voluntary end date, and therefore, it would be impossible for the servicer to comply with this provision. We ask the CFPB to clarify that this provision does not apply if a borrower terminates their forbearance program. Such a clarification would not frustrate the purpose of this provision, as a borrower that is ending their forbearance program is in contact with their servicer.

V. Conclusion

Finally, we want to highlight the unified core comments from the financial trade associations representing national mortgage servicing interests, including our two Associations, the Mortgage Bankers Association and National Mortgage Servicing Association, and the American Bankers Association. While there may be slight variations and technical differences in our comment letters, these organizations agree that the final rule should:

- Include clear exemptions to the special pre-foreclosure review period to prevent the harm the Proposed Rule seeks to address;
- Clarify the scope of the streamlined modification exemption to reduce hurdles for borrowers; and
- Streamline the proposed early intervention requirements to assure efficient and effective communication with borrowers.

Thank you for the opportunity to provide these comments on the Proposed Rule. The Associations’ members stand ready to work with borrowers, the CFPB, and other interested parties to ensure that avoidable foreclosures are prevented. Additionally, as we noted above, we ask the CFPB to engage in comprehensive rulemaking to provide a specific Regulation X provision to better address disaster- and emergency-related contact and assistance. If you have any questions, please contact Meg Burns, EVP, HPC, at 202-589-1926.

Sincerely,

Housing Policy Council

Bank Policy Institute

Appendix 1

HPC letter to CFPB on Disaster-Related Contact with chart (updated June 2, 2020)



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.

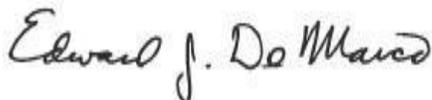
However, a more effective and permanent approach would be for the CFPB to establish separate processes and procedures under Reg X, designed to ensure that borrowers affected by a disaster or emergency receive appropriate and relevant communications from their servicers to access immediate relief.

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 Revised 6-2-20

Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale
<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>

Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale
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>

Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale
<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>

Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale
<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>

Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale
<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>

Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale
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 Notice of Short-Term Payment Relief Accommodation: Within 10 days (excluding legal public holidays, Saturdays, and Sundays) of offering a short-term accommodation, unless the borrower has rejected the offer, the servicer provides the borrower an electronic or written notice, which may be included in the periodic statement, with details of the short-term payment relief accommodation. This confirmation notice shall state: (i) the amount of each payment due during the accommodation (if that payment amount may change, state that it may change); (ii) the date by which the borrower must make each payment; (iii) whether the mortgage loan will be current at the end of the accommodation if the borrower complies with the accommodation; (iv) that the servicer will contact the borrower prior</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> <p>The notice also would include contact information for dedicated personnel, which is meant to align with the requirements of § 1024.40.</p>

Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale
		<p>to the end of the accommodation with next steps and options; (v) 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; and (vi) contact information of personnel assigned to the borrower to respond to the borrower’s inquiries, and, as applicable, assist the borrower with available loss mitigation options.</p>	

<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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Existing Reg X Requirement	Supervisory Guidance Related to COVID-19/CARES Act	Proposed Disaster-Related Contact Requirement	Rationale
		<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).
<p>Escrow Analysis</p> <p>§ 1024.17(i) requires servicers to submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer must conduct an escrow account analysis before submitting the statement.</p>	<p>The Agencies do not intend to cite in an examination or bring an enforcement action against mortgage servicers for delays in sending the annual escrow statement, provided that servicers are making good faith efforts to provide these statements within a reasonable time.</p> <p>The FAQs restated the exemption available under § 1024.17(i)(2).</p>	<p>A servicer may delay the performance of the escrow analysis under § 1024.17(i) after a reasonable period of time from the conclusion of the short-term payment relief accommodation.</p> <p>The existing exemption for sending the annual statement (1024.17(i)(2)) would continue to apply.</p>	While the existing regulation states the analysis must still be performed, our proposal would provide flexibility on when the analysis is conducted. This would help ensure the analysis is accurate and useful given the short-term payment accommodation.

<p>§ 1024.17(i)(2) provides an exemption from sending the statement if a borrower is more than 30 days overdue, but the analysis must still be performed. If the servicer does not issue the annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer must provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.</p>			
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Appendix 2:
Excerpt from the Uniform Home Foreclosure Procedures Act,
drafted by the
National Conference of Commissioners on Uniform State Laws

Sec. 603 PRESUMPTION OF ABANDONMENT.

(a) In a proceeding under [judicial or nonjudicial foreclosure], mortgaged property is presumed to be abandoned property if:

(1) a [building inspector] determines that the property is abandoned; or

(2) three or more of the following subparagraphs apply to the property:

(A) There are:

(i) one or more doors on the property that are boarded up, broken off, or continuously unlocked;

(ii) multiple windows that are boarded up or closed off; or

(iii) multiple window panes that are broken.

(B) Gas, electric, or water service to the property has been terminated or utility consumption is so low that it indicates the property is not regularly occupied.

(C) Rubbish, trash, or debris has accumulated on the property.

(D) A governmental agency has determined that the property is unfit for occupancy or poses a threat to public health or safety.

(E) A creditor has changed the locks or otherwise secured the property and, for at least 30 days thereafter, the homeowner has not contacted the creditor to request entrance to the property or re-entered the property.

(F) One or more written statements signed by the homeowner indicate a clear intent to abandon the property.

(G) A law-enforcement agency has received reports of at least two separate incidents of trespass, vandalism, or other illegal acts being committed on the property in the 180 days before determination of abandonment is sought.

(H) The homeowner is dead and there is no evidence that a household member or heir of the homeowner is in actual possession of the property.

(b) An affidavit attesting to the conditions described in subsection (a) and any other facts evidencing abandonment must be signed by and based on personal knowledge of the affiant and state the basis for that personal knowledge. A person may submit one or more affidavits as evidence of abandonment.