Renewed Amendment Number 5, Revision 1, Effective Date: December 11, 2017.

Amendment Number 6 Effective Date: December 22, 2003, superseded by Amendment Number 6, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 6, Revision 1, on December 11, 2017.

Renewed Amendment Number 6, Revision 1, Effective Date: December 11, 2017.

Amendment Number 7 Effective Date: March 2, 2004, superseded by Amendment Number 7, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 7, Revision 1, on December 11, 2017.

Renewed Amendment Number 7, Revision 1, Effective Date: December 11, 2017.

Amendment Number 8 Effective Date: December 5, 2005, superseded by Amendment Number 8, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 8, Revision 1, on December 11, 2017.

Renewed Amendment Number 8, Revision 1, Effective Date: December 11, 2017.

Amendment Number 9 Effective Date: April 17, 2007, superseded by Amendment Number 9, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 9, Revision 1, on December 11, 2017.

Renewed Amendment Number 9, Revision 1, Effective Date: December 11, 2017.

Amendment Number 10 Effective Date: August 24, 2009, superseded by Amendment Number 10, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 10, Revision 1, on December 11, 2017.

Renewed Amendment Number 10, Revision 1, Effective Date: December 11, 2017.

Amendment Number 11 Effective Date: January 7, 2014, superseded by Amendment Number 11, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 11, Revision 1, on December 11, 2017.

Renewed Amendment Number 11, Revision 1, Effective Date: December 11, 2017, as corrected (ADAMS Accession No. ML18018A043).

Amendment Number 12 Effective Date: Amendment not issued by the NRC.

Amendment Number 13 Effective Date: May 24, 2014, superseded by Amendment Number 13, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 13, Revision 1, on December 11, 2017.

Renewed Amendment Number 13, Revision 1, Effective Date: December 11, 2017, as corrected (ADAMS Accession No. ML18018A100).

Amendment Number 14 Effective Date: April 25, 2017, superseded by Renewed Amendment Number 14, on December 11, 2017.

Renewed Amendment Number 14 Effective Date: December 11, 2017.

Renewed Amendment Number 15 Effective Date: January 22, 2019.

Renewed Amendment Number 16 Effective Date: September 14, 2020.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Renewed Certificate Expiration Date: January 23, 2055.

Model Number: NUHOMS®–24P, –24PHB, –24PTH, –32PT, –32PTH1, –37PTH, –52B, –61BT, –61BTH, and –69BTH.

* * * * *

Dated June 15, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–13730 Filed 6–29–20; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1024

[Docket No. CFPB–2020–0022]

Treatment of Certain COVID–19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA) (Regulation X)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this interim final rule to amend Regulation X. The amendments temporarily permit mortgage servicers to offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application. Eligible loss mitigation options, among other things, must permit borrowers to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by the Federal Housing Administration (FHA), the mortgage insurance terminates. These amounts include, without limitation, all principal and interest payments forborne through payment forbearance programs made available to borrowers experiencing financial hardships due, directly or indirectly, to the COVID–19 emergency, including a payment forbearance program offered pursuant to section 4022 of the Coronavirus Aid, Relief, and Economic Security Act. These amounts also include principal and interest payments that are due and unpaid by borrowers experiencing financial hardships due, directly or indirectly, to the COVID–19 emergency.

DATES: This interim final rule is effective on July 1, 2020. Comments must be received on or before August 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0022, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-IFR-MortgageServicing@cfpb.gov.* Include Docket No. CFPB–2020–0022 in the subject line of the message.
- *Hand Delivery/Mail/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Joel Singerman, Counsel, or Terry J. Randall, Senior Counsel, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Interim Final Rule

Title 12 CFR part 1024 (Regulation X) generally requires servicers to obtain a complete loss-mitigation application before evaluating a mortgage borrower for a loss-mitigation option, such as a loan modification or short sale.[1] Regulation X provides an exception from this requirement for certain short-term loss mitigation options.[2] Due to the particular needs of mortgage servicers and borrowers during the novel coronavirus disease (COVID–19) pandemic emergency (COVID–19 emergency), the Bureau is amending Regulation X to temporarily permit mortgage servicers to offer certain loss mitigation options without obtaining a complete loss mitigation application. Servicers may offer eligible loss mitigation options to a borrower who has received a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency, including one offered pursuant to section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),[3] or who has had other principal and interest payments that are due and unpaid as a result of a financial hardship due, directly or indirectly, to the COVID–19 emergency.

The amendment conditions eligibility for the new exception on the loss mitigation option satisfying three criteria. First, the loss mitigation option must permit the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by FHA, the mortgage insurance terminates. These amounts include, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency, including one made pursuant to the Coronavirus Economic Stabilization Act, section 4022 (15 U.S.C. 9056). These amounts also include, without limitation all other principal and interest payments that are due and unpaid by a borrower experiencing financial hardship due, directly or indirectly, to the COVID–19 emergency. For purposes of this criterion, the term of the mortgage loan means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option. Second, any amounts that the borrower may delay paying through the loss mitigation option do not accrue interest; the servicer does not charge any fee in connection with the loss mitigation option; and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option. Third, the borrower's acceptance of the loss mitigation offer must resolve any prior delinquency. These criteria maintain important protections for borrowers and are intended to align with the COVID–19 payment deferral option announced by the Federal Housing Finance Agency (FHFA), discussed in part II, and other similar programs.

The interim final rule also excludes servicers from certain regulatory requirements if a borrower accepts an option offered pursuant to the new exception. Specifically, the interim final rule provides that the servicer is not required to continue the reasonable diligence efforts § 1024.41(b)(1) otherwise requires or send the acknowledgement notice § 1024.41(b)(2) otherwise requires.

II. Background

A. The Bureau's Regulation X Mortgage Servicing Rules

In February 2013, the Bureau issued the Mortgage Servicing Rules to implement the Real Estate Settlement Procedures Act of 1974,[4] and included these rules in Regulation X.[5] The Bureau later clarified and revised Regulation X's servicing rules through several additional notice-and-comment rulemakings.[6] In part, these rulemakings were intended to address deficiencies in servicers' handling of delinquent borrowers and loss mitigation applications during and after the 2008 financial crisis.[7] When the housing crisis began, servicers were faced with historically high numbers of delinquent mortgages, loan modification requests, and in-process foreclosures in their portfolios.[8] Many servicers lacked the infrastructure, trained staff, controls, and procedures needed to manage effectively the flood of delinquent mortgages they were obligated to handle.[9] Inadequate staffing and

[1] Section 1024.41(b)(1) (requiring servicer to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application); § 1024.41(c)(1)(i) (requiring evaluation of borrower for all loss mitigation options available to the borrower if the servicer receives a complete loss mitigation application more than 37 days before a scheduled foreclosure sale); and § 1024.41(c)(2)(i) (prohibiting servicer from offering a loss mitigation option based on an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application). Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are not subject to these requirements. 12 CFR 1024.30(b)(1).

[2] 12 CFR 1024.41(c)(2)(iii).

[3] Public Law 116–136, 134 Stat. 281 (2020).

[4] Public Law 93–533, 88 Stat. 1724 (12 U.S.C. 2601 *et seq.*).

[5] 78 FR 10695 (Feb. 14, 2013). In January 2013, the Bureau also issued separate ''Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)'' (2013 TILA Servicing Final Rule). *See* 78 FR 10902 (Feb. 14, 2013). The Bureau conducted an assessment of this rule in 2018–19 and released a report detailing its findings in early 2019. 2013 RESPA Servicing Rule Assessment Report, *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf*.

[6] Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 44686 (July 24, 2013); 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 FR 60382 (Oct. 1, 2013); Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 62993 (Oct. 23, 2013); Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 72160 (Oct. 19, 2016); Amendments to the 2013 Mortgage Rules Under RESPA (Regulation X) and TILA (Regulation Z), 82 FR 30947 (July 5, 2017); Mortgage Servicing Rules Under RESPA (Regulation X), 82 FR 47953 (Oct. 16, 2017). The Bureau also issued notices providing guidance on the Rule and soliciting comment on the Rule. *See, e.g.,* Applicability of Regulation Z's Ability-to-Repay Rule to Certain Situations Involving Successors-in-interest, 79 FR 41631 (July 17, 2014); Safe Harbors from Liability Under the Fair Debt Collections Practices Act for Certain Actions in Compliance with Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 71977 (Oct. 19, 2016); Policy Guidance on Supervisory and Enforcement Priorities Regarding Early Compliance With the 2016 Amendments to the 2013 Mortgage Servicing Rules Under RESPA (Regulation X) and TILA (Regulation Z), 82 FR 29713 (June 30, 2017).

[7] *See generally* 78 FR 10699–701.

[8] *See* discussion in Chapter 3 of the 2013 RESPA Servicing Rule Assessment Report. 2013 RESPA Servicing Rule Assessment Report, *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.*

[9] Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 FR 10696, 10700 (Feb. 14, 2013).

procedures led to a range of reported problems with servicing of delinquent loans, including some servicers misleading borrowers, failing to communicate with borrowers, losing or mishandling borrower-provided documents supporting loan modification requests, and generally providing inadequate service to delinquent borrowers.[10]

The Bureau's mortgage servicing rules addressed these concerns by establishing procedures that mortgage servicers generally must follow in evaluating loss mitigation applications submitted by mortgage borrowers.[11] Among other things, as relevant here, Regulation X generally requires servicers to obtain a complete loss-mitigation application from a borrower before offering the borrower a loss-mitigation option, such as a loan modification or short sale.[12] Servicers generally may not offer a loss-mitigation option based upon an evaluation of any information provided in connection with an incomplete application.[13] The loss mitigation provisions were motivated in part by concerns that some servicers were doing an inadequate job of communicating with borrowers regarding loss mitigation options,[14] and that some servicers were unwilling to work with borrowers to reach agreement on loss mitigation options.[15] The Bureau intended this restriction to help ensure that borrowers have a full and fair opportunity to be evaluated for loss mitigation options.[16]

However, in issuing these requirements, the Bureau recognized that more flexible requirements may be warranted when borrowers are facing certain hardships. For example, Regulation X provides flexibility for servicers when they offer short-term payment forbearance programs or short-term repayment plans, as defined in Regulation X, based upon an evaluation of an incomplete application.[17] In granting this flexibility, the Bureau explained that borrowers facing only temporary hardships might benefit from a more efficient application process that leads to a temporary solution without exhausting the protections under § 1024.41 that are determined as of the date a complete application is received.[18]

B. The CARES Act and COVID–19 Forbearances

By late March 2020, the COVID–19 emergency was significantly affecting the economy. Between March 15 and May 15, 2020, over 35 million people filed initial jobless claims, and the unemployment rate climbed to over 14 percent in April—the highest monthly level since 1948 when the Bureau of Labor and Statistics started tracking this series.[19]

On March 27, 2020, the CARES Act was enacted. Among other things, the CARES Act ensures that borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency and who have ''Federally backed mortgage loans'' [20] have access to payment forbearance programs (CARES Act forbearance) if they submit a request to their mortgage servicer and affirm that they are experiencing a financial hardship during the COVID–19 emergency.[21] By requiring servicers to grant CARES Act forbearances to certain borrowers with federally backed mortgages (which account for approximately 80 percent of mortgage borrowers), the CARES Act established payment forbearance as the primary tool that servicers of these loans would use initially to assist struggling borrowers during the COVID–19 emergency. The Bureau understands that servicers of other mortgages that are not ''Federally backed mortgage loans'' under the CARES Act may be offering similar payment forbearance programs to their borrowers.[22]

On April 3, 2020, the Bureau, the Board of Governors of the Federal Reserve System (the Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the State Banking Regulators issued a joint statement (Joint Statement) recognizing the serious impact the COVID–19 emergency was having on consumers and on the operations of mortgage servicers.[23] The Joint

[10] *See* U.S. Gov't Accountability Off., GAO–10–634, *Troubled Asset Relief Program: Further Actions Needed to Fully and Equitably Implement Foreclosure Mitigation Actions,* at 14–16 (2010), *https://www.gao.gov/assets/310/305891.pdf;* Hearing on Problems in Mortgage Servicing from Modification to Foreclosure Before the S. Comm. on Banking, Housing, and Urban Affairs, 111th Cong. 54 (2010) (statement of Thomas J. Miller, Att'y Gen. State of Iowa).

[11] *See generally* 12 CFR 1024.41. Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are generally exempt from these requirements. 12 CFR 1024.30(b)(1).

[12] 12 CFR 1024.41(b)(1) (requiring servicer to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application); § 1024.41(c)(1)(i) (requiring evaluation of borrower for all loss mitigation options available to the borrower if the servicer receives a complete loss mitigation application more than 37 days before a scheduled foreclosure sale); and § 1024.41(c)(2)(i) (prohibiting servicer from offering a loss mitigation option based on an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application). Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are not subject to these requirements. 12 CFR 1024.30(b)(1).

[13] 12 CFR 1024.41(c)(2)(i).

[14] 78 FR at 10807.

[15] *Id.* at 10814.

[16] *Id.* at 10815.

[17] 12 CFR 1024.41(c)(2)(iii); *see also* comments 41(c)(2)(iii)–1 and –4 (defining short-term payment forbearance program and short-term repayment plan for purposes of the regulation).

[18] 78 FR at 60400; 81 FR at 72246. Section 1024.41(i) limits the circumstances when a servicer must comply with the procedures described in § 1024.41. Servicers do not need to comply with the procedures described in § 1024.41 if the servicer has previously complied with the requirements of § 1024.41 for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application. Because a servicer who offers a borrower a short-term option based on evaluation of an incomplete application pursuant to § 1024.41(c)(2)(iii) has not evaluated a complete application submitted by the borrower, a servicer would have to comply with the procedures described in § 1024.41 if the borrower submits a complete application after the servicer offers the borrower a short-term payment forbearance program.

[19] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, https://www.bls.gov/ces* (last visited June 6, 2020).

[20] The CARES Act defines a ''Federally backed mortgage loan'' as any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one-to-four families that is insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 *et seq.*); insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20); guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a, 1715z–13b); guaranteed or insured by the Department of Veterans Affairs; guaranteed or insured by the Department of Agriculture; made by the Department of Agriculture; or purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act section 4022(a)(2).

[21] CARES Act section 4022(b). Upon receiving the borrower's request for forbearance, the servicer must provide a forbearance for up to 180 days with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID–19 emergency and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance. The servicer must extend the forbearance for up to an additional 180 days at the request of the borrower, provided that the request for an extension is made during the covered period. Note that the borrower may request that either the initial or extended forbearance period be less than 180 days. *See* CARES Act section 4022(b) and (c)(1).

[22] Such programs may be based on servicers' own programs or policy initiative or may be required by State or local laws.

[23] 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.* On the same day, the Bureau issued additional compliance guidance to provide mortgage servicers with enhanced clarity about existing flexibility in the Bureau's mortgage

Continued

Statement informed servicers of the agencies' flexible supervisory and enforcement approach during the emergency regarding certain consumer communications required by Regulation X, and provided guidance on servicers' compliance with Regulation X when offering CARES Act forbearances and other payment forbearance programs during the COVID–19 emergency.[24] The Joint Statement explained that, when a borrower requests a CARES Act forbearance and affirms that the borrower is experiencing a financial hardship during the COVID-emergency, it constitutes an incomplete loss mitigation application for purposes of Regulation X.[25] Although receipt of an incomplete application generally triggers a servicer's obligations under § 1024.41, the Joint Statement also provided that a CARES Act forbearance qualifies as a short-term payment forbearance program[26] under Regulation X, so certain loss mitigation requirements under Regulation X do not apply.[27]

By early June 2020, as a result of the CARES Act and other similar forbearance programs made available by owners or investors of mortgage loans, as many as 4.3 million mortgage borrowers (or 8.55 percent of mortgage borrowers) nationwide were in forbearance programs.[28] After reaching a historic low in January of 2020 (just above 3 percent), the mortgage delinquency rate (which includes loans in forbearance) had more than doubled by early June and was at its highest level since 2013. The delinquency rate was 3.1 percentage points higher in April than in March—a monthly increase three times the previous record set in November of 2008 during the great recession.[29]

C. COVID–19 Emergency: Post-Forbearance Options and Post-Delinquency Options

The CARES Act does not specify how borrowers receiving CARES Act forbearances must repay the forborne payments. While there are good reasons for this, it creates uncertainty for stakeholders as to how borrowers must repay these amounts when CARES Act forbearances expire. As many initial forbearance periods were set at 90 days, many of them will expire in June or July 2020.

The Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Company (Freddie Mac), FHA, and other owners or insurers of mortgage loans have announced programs to assist borrowers in repayment of the forborne amounts.[30] On May 13, 2020, FHFA announced that Fannie Mae and Freddie Mac would make a payment deferral program available to borrowers in a COVID–19 forbearance plan (FHFA COVID–19 payment deferral) and to borrowers who have experienced a financial hardship resulting from COVID–19 that has affected their ability to make their full monthly payment.[31] FHFA indicated that these programs will be available to borrowers who are able to return to making their normal monthly mortgage payment.[32] According to FHFA, these programs take the missed mortgage payments and make them a payment due at the sale of the home, refinancing of the mortgage loan, or the end of the loan.[33] Fannie Mae and Freddie Mac have established streamlined application procedures for these programs that permit servicers to offer an FHFA COVID–19 payment deferral without collecting Fannie Mae's and Freddie Mac's ''complete Borrower Response Package.''[34] Rather, Fannie Mae and Freddie Mac permit servicers to offer FHFA COVID–19 payment deferrals to any borrowers who meet certain criteria if the borrower indicates to the servicer that (1) the borrower can afford to resume their normal monthly payments due before the forbearance and (2) the borrower cannot afford full reinstatement or a repayment plan to bring their mortgage loan current when they exit forbearance.[35] Fannie Mae and Freddie Mac prohibit servicers from charging borrowers who accept an FHFA COVID–19 payment deferral administrative fees, and direct servicers to waive all late charges, penalties, stop payment fees, or similar charges upon completing a COVID–19 payment deferral.[36] This program takes effect on July 1, 2020.[37] Other mortgage investors and insurers have also announced similar loss mitigation options.[38]

After FHFA announced these deferral programs, industry stakeholders and consumer advocates raised concerns about whether servicers could offer an FHFA COVID–19 payment deferral using the streamlined application procedures described above without violating Regulation X's general prohibition of offering a loss mitigation option based on an evaluation of an incomplete application.[39] The Bureau has evaluated the interaction between the FHFA payment deferral procedures and Regulation X, and engaged in informal outreach with FHFA, mortgage servicers, trade associations, consumer advocacy groups, and others. Industry stakeholders and consumer advocates urged the Bureau to take steps to ensure that servicers would not be in violation of Regulation X if they were to use the streamlined procedures.

The Bureau supports the goal of the FHFA's COVID–19 payment deferral program and certain other similar programs designed to assist borrowers experiencing financial hardships due, directly or indirectly, to the COVID–19 emergency. Through these programs, eligible borrowers can eliminate the immediate potential risk of losing their homes, resume repaying the mortgage loan with no delinquency and no additional fees or interest, and better plan how eventually to repay the

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servicing rules that they may use to help consumers during the COVID–19 emergency. Bureau of Consumer Fin. Prot., *Bureau's Mortgage Servicing Rules FAQs related to the COVID–19 Emergency, https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf.*

[24] Joint Statement, *supra* note 23.

[25] *Id.* The Joint Statement also explained that servicers may provide multiple sequential short-term payment forbearance programs under the Regulation X mortgage servicing rules.

[26] Comment 41(c)(2)(iii)–1 explains that a short-term payment forbearance program is a loss mitigation option pursuant to which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program for purposes of § 1024.41(c)(2)(iii) allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

[27] Joint Statement, *supra* note 23.

[28] Mortgage Bankers Ass'n, *Share of Mortgage Loans in Forbearance Increases to 8.55%, https://www.mba.org/2020-press-releases/june/share-of-mortgage-loans-in-forbearance-increases-to-855.*

[29] Black Knight Fin. Servs., *Mortgage Monitor* (Apr. 2020), *https://www.bls.gov/ces/.*

[30] FHFA, *FHFA Announces Payment Deferral as New Repayment Option for Homeowners in COVID–19 Forbearance Plans* (May 13, 2020), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Payment-Deferral-as-New-Repayment-Option-for-Homeowners-in-COVID-19-Forbearance-Plans.aspx;* HUD Mortgagee Letter 2020–06, *https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf.*

[31] FHFA, *supra* note 30.

[32] *Id.*

[33] *Id.* While initial forbearance under the CARES Act and similar programs probably constitute short-term payment forbearance programs under § 1024.41(c)(2)(iii), the anticipated repayments arrangements may not constitute short-term repayment plans under that section. *See also* Joint Statement, *supra* note 23.

[34] *See* Fannie Mae Lender Letter 2020–07, *https://singlefamily.fanniemae.com/media/22916/display;* Freddie Mac Bulletin 2020–15, *https://guide.freddiemac.com/app/guide/bulletin/2020-15?_ga=2.76149522.621170394.1590694543-1945440177.1590694543.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] HUD Mortgagee Letter 2020–06, *supra* note 30.

[39] *See, e.g.,* JDSupra, *Can Mortgage Servicers Legally Offer the GSEs' COVID deferral options?* (May 14, 2020), *https://www.jdsupra.com/legalnews/can-mortgage-servicers-legally-offer-42513/.*

forborne amount that servicers have deferred. In addition, the streamlined application procedures offered by Fannie Mae, Freddie Mac, and others may help ensure that servicers have sufficient resources to address the unusually large number of borrowers who will be exiting CARES Act or similar forbearances and may be seeking assistance in the coming months. There are circumstances where Regulation X may require a servicer to collect a complete application from a borrower before offering this type of program. However, that result may not serve the particular needs of borrowers and servicers during the COVID–19 emergency.

For these and the reasons discussed below, the Bureau is amending Regulation X to specify that servicers may offer loss mitigation options that meet certain criteria based on the evaluation of an incomplete application, and that servicers need not comply with certain other Regulation X requirements once the borrower accepts that option. These criteria are intended to align with the criteria outlined in FHFA's COVID–19 payment deferral and other comparable programs, such as FHA's COVID–19 partial claim.

The Bureau believes that this flexibility is appropriate during the COVID–19 emergency, which presents extraordinary circumstances. The Bureau will evaluate comments received under the interim final rule to determine whether it is appropriate to revise the amendments. The Bureau will also continue to monitor the market to assess consumers' experiences under these programs and the interim rule.

As part of this rulemaking, the Bureau consulted with FHFA, the Board, FDIC, NCUA, OCC, and the Department of Housing and Urban Development.

III. Legal Authority

The Bureau is issuing this interim final rule pursuant to its authority under RESPA and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[40] including the authorities discussed below. This interim final rule amends a provision previously adopted by the Bureau in the 2016 Mortgage Servicing Final Rule.[41] In doing so, the Bureau relied on one or more of the authorities discussed below, as well as other authority. The Bureau is issuing this interim final rule in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the 2013 Mortgage Servicing Final Rule,[42] as discussed in detail in the Legal Authority and Section-by-Section Analysis of the 2013 Mortgage Servicing Final Rule.

A. Respa

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, section 6(k)(1)(E) of RESPA, and 12 U.S.C. 2605(k)(1)(E), and authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. The consumer protection purposes of RESPA include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees and facilitating review for foreclosure avoidance options. The amendments to Regulation X in this interim final rule are intended to achieve some or all these purposes.

B. Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1), authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' RESPA is a Federal consumer financial law.

IV. Administrative Procedure Act

Under the Administrative Procedure Act,[43] notice and opportunity for public comment are not required if the Bureau for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[44] Similarly, publication of this interim final rule at least 30 days before its effective date is not required where the Bureau has identified good cause for a different effective date.[45]

The Bureau finds that prior notice and public comment are impracticable because there is insufficient time to solicit comment and finalize amendments between the FHFA's announcement of its COVID–19 payment deferral program on May 13, 2020, and its effective date of July 1, 2020. As discussed more fully in part II, the economic effects of the COVID–19 emergency have resulted quickly in major challenges in the mortgage market. Congress enacted the CARES Act in late March, making forbearances available to many borrowers with federally backed mortgages, which account for approximately 80 percent of the mortgage market.

Because the CARES Act does not specify how borrowers provided CARES Act forbearances will repay the forborne payments, Fannie Mae, Freddie Mac, FHA, and other owners or insurers of mortgage loans worked quickly after they placed borrowers in these forbearances to devise loss mitigation options for borrowers who could not afford to repay the forborne amounts in a lump sum at the conclusion of the forbearance period. FHFA, Fannie Mae, and Freddie Mac announced a COVID–19 post-forbearance program, the COVID–19 payment deferral, on May 13, 2020.[46] These programs take effect on July 1, 2020, and, because significant numbers of borrowers entered 90-day forbearances in late March and early April, this coincides with when many borrowers' forbearance periods will end. Thus, starting on July 1, 2020—absent immediate action by the Bureau—servicers would have to reconcile FHFA's COVID–19 payment deferral programs with the anti-evasion requirement in the servicing rules. As a practical matter, servicers would not be able to offer the payment deferral to some borrowers without first having them complete their loss mitigation applications, a step that would delay or obstruct relief to borrowers and frustrate the purpose and immediate need for the program.[47] It is critical that the Bureau's temporary revision to Regulation X be in effect when these forbearance programs take effect to ensure that borrowers and

[40] Public Law 111–203, 124 Stat. 1376 (2010).

[41] 81 FR 72160 (Oct. 19, 2016).

[42] 78 FR 10695 (Feb. 14, 2013).

[43] 5 U.S.C. 551 *et seq.*, 701 *et seq.*

[44] 5 U.S.C. 553(b)(B).

[45] 5 U.S.C. 553(d)(3).

[46] Borrowers who are not exiting forbearance may be also be eligible for this program if their mortgage loan became delinquent resulting from a financial hardship due, directly or indirectly, to the COVID–19 emergency. Due to the rising delinquency rate discussed in part I, significant numbers of borrowers who are not exiting forbearance could be eligible.

[47] As noted above, in the short period between the FHFA's announcement of its program and the issuance of this rule, the Bureau has consulted with stakeholders from industry, consumer groups, and regulators regarding the interaction between the FHFA's program and the servicing rules. As also noted above, industry stakeholders and consumer advocates urged the Bureau to take steps to ensure that servicers would not be in violation of Regulation X if they were to use the streamlined procedures.

mortgage servicers can take advantage of these programs.

Thus, prior public comment is impractical because there is insufficient time to solicit comment and finalize amendments before FHFA's COVID–19 payment deferral programs take effect on July 1, 2020.

For similar reasons, the Bureau also finds that delaying this rulemaking to allow for prior public comment would be contrary to the public interest, because the amendments are necessary to avoid the harm to borrowers and to the housing market that would result if the amendments did not take effect on July 1, 2020. As discussed above in part II, the Bureau believes that the FHFA COVID–19 payment deferral program and other comparable programs, described more fully in part V, will benefit both borrowers and servicers during the current COVID–19 emergency. These programs will help eligible borrowers avoid foreclosure by quickly entering an agreement regarding repayment of their forborne payments. Absent these streamlined procedures, servicers likely would require borrowers to submit a complete loss mitigation application before servicers would consider them for these programs. This could result in significant delays before borrowers can be offered the payment deferral program. In some cases, borrowers might not complete a loss mitigation application, which could prolong their delinquency, increase their costs, and put them at imminent risk of foreclosure. Given the large number of mortgage borrowers currently in forbearance or experiencing a delinquency related to the COVID–19 emergency, even a small fraction of those borrowers experiencing foreclosure could translate to large aggregate consequences. For instance, as noted above, approximately four million borrowers have entered forbearance since March 2020. Even if only one-tenth of 1 percent of these borrowers would experience foreclosure absent a deferral, that would translate to thousands of additional foreclosures. Thus, avoiding foreclosures may help prevent significant consequences for the housing market and imposing costs both on borrowers and servicers.

In addition, the streamlined procedures permitted for FHFA's COVID–19 payment deferral program would minimize the burden on servicers by allowing them to offer the payment deferral program without obtaining and processing a complete application from the borrower. This is especially important during the COVID–19 emergency because servicers will be transitioning many borrowers from forbearances to longer term solutions at the same time, potentially overwhelming servicers' systems and delaying providing relief to borrowers. Indeed, the Bureau understands that servicers have already begun receiving abnormally high call volumes, beginning in March 2020.[48]

For these same reasons, the Bureau also finds that there is good cause for this interim final rule to be effective less than 30 days after publication, to ensure that these amendments are in effect by the July 1, 2020 effective date of the FHFA COVID–19 payment deferral, to avoid harm to borrowers and to the housing market.

V. Section-by-Section Analysis

Section 1024.41 Loss Mitigation Procedures

41(c) Evaluation of loss mitigation applications

41(c)(2) Incomplete loss mitigation application evaluation

41(c)(2)(i) In general

Section 1024.41(c)(2)(i) states that, in general, servicers shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by making an offer based upon an incomplete application.[49] Currently, the provision points to two paragraphs providing exceptions to the anti-evasion requirement, § 1024.41(c)(2)(ii) and (iii). In this interim final rule, the Bureau is adding a temporary exception under new § 1024.41(c)(2)(v). As described in the section-by-section analysis of § 1024.41(c)(2)(v), the new exception applies to certain loss mitigation options that permit borrowers to delay repayment of forborne or delinquent amounts accrued due to the COVID–19 emergency. The Bureau is amending § 1024.41(c)(2)(i) to include a reference to the new exception in paragraph (c)(2)(v).

41(c)(2)(v) Certain COVID–19-Related Loss Mitigation Options

In general, § 1024.41 requires servicers to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower.[50] In this interim final rule, the Bureau is adding a temporary exception to this requirement under new § 1024.41(c)(2)(v) for certain loss mitigation options that permit borrowers to delay repayment of forborne or delinquent amounts accrued during a COVID–19-related forbearance. As described in the respective section-by-section analyses, new § 1024.41(c)(2)(v)(A) sets forth the minimum specific criteria that the loss mitigation option must meet for the new exception to apply, and new § 1024.41(c)(2)(v)(B) offers servicers relief from certain regulatory requirements when a borrower accepts a loss mitigation option under the new exception.

As discussed in part II, FHFA, FHA, and others have recently announced loss mitigation options to assist borrowers experiencing hardships related to the COVID–19 emergency in repaying amounts that accrued through forbearance or delinquency.[51] In general, these programs permit borrowers who can resume their normal periodic payments to move the forborne or delinquent payments to the end of the mortgage loan and cure any preexisting delinquency. Under those programs, the deferred amounts must not accrue interest, servicers may not charge any fee in connection with the loss mitigation option and must waive various preexisting fees, if applicable, and servicers are permitted to offer the deferral programs to borrowers based on streamlined application procedures.

The Bureau believes that the FHFA COVID–19 payment deferral and certain similar programs would provide benefits both to borrowers and servicers during the COVID–19 emergency. Through these programs, borrowers who can resume their normal periodic payments but who cannot afford to repay the forborne or delinquent amounts in the short-term should be able to eliminate the immediate potential risk of losing their homes to foreclosure, resume repaying the mortgage loan with no delinquency and no additional fees or interest, and better plan how eventually to repay the forborne or delinquent amount that has been deferred.

In addition, the streamlined application procedures authorized by Fannie Mae and Freddie Mac should help ensure that servicers have sufficient resources to address requests from the unusually large number of borrowers who will be seeking assistance from them in the coming months as many CARES Act forbearances end. And borrowers dealing with the social and economic effects of COVID–19 may be less likely

[48] *See,* Mortgage Bankers Ass'n, *MBA Survey Shows Spike in Loans in Forbearance and Servicer Call Volume, https://www.mba.org/2020-press-releases/april/mba-survey-shows-spike-in-loans-in-forbearance-servicer-call-volume.*

[49] Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are not subject to this requirement. 12 CFR 1024.30(b)(1).

[50] *Id.*

[51] FHFA, *supra* note 30; HUD Mortgagee Letter 2020–06, *supra* note 30.

than they would be under normal circumstances to take the steps necessary to complete a loss mitigation application to receive a full evaluation. This could prolong their delinquencies and put them at risk for foreclosure. Moreover, by allowing servicers to assist borrowers eligible for deferrals more efficiently, servicers will have more resources to assist borrowers who are unable to resume making their normal periodic payment, and are therefore ineligible for a FHFA COVID–19 payment deferral, submit a complete loss mitigation application for evaluation.

The Bureau acknowledges that borrowers accepting a loss mitigation offer under new § 1024.41(c)(2)(v)(A) will not receive protections under § 1024.41 that are critical in other circumstances. As the Bureau explained in the 2013 Mortgage Servicing Final Rule, the general prohibition against evaluating a borrower for all available loss mitigation options based on a single, complete application ensures that borrowers have a full understanding of their loss mitigation options when deciding on a program.[52] It also makes the loss mitigation application process more efficient by eliminating multiple, sequential evaluations that are sometimes based on similar application information,[53] with the resulting efficiency often saving borrowers time and resources.

Nonetheless, the Bureau believes that the protections set forth in new § 1024.41(c)(2)(v)(A) and (B), described below, provide sufficient safeguards for borrowers in the narrow context of the COVID–19 emergency. The Bureau solicits comment on all aspects of the new exception.

41(c)(2)(v)(A)

New § 1024.41(c)(2)(v)(A) permits servicers to offer a loss mitigation option based upon an evaluation of an incomplete application, as long as the loss mitigation option meets the criteria set forth in § 1024.41(c)(2)(v)(A)(*1*) through (*3*). Under new § 1024.41(c)(2)(v)(A)(*1*), the loss mitigation option must permit the borrower to delay paying covered amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by FHA, the mortgage insurance terminates. New § 1024.41(c)(2)(v)(A)(*1*) defines ''covered amounts'' for these purposes to include, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency,[54] including a payment forbearance program made pursuant to the CARES Act. ''Covered amounts'' under § 1024.41(c)(2)(v)(A)(*1*) also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing a similar financial hardship. And ''the term of the mortgage loan'' under § 1024.41(c)(2)(v)(A)(*1*) means the loan term according to the obligation between the parties in effect when the borrower is offered the loss mitigation option under the new exception.

Under new § 1024.41(c)(2)(v)(A)(*2*), any amounts that the borrower may delay paying as described in paragraph (c)(v)(2)(A)(*1*) must not accrue interest; the servicer must not charge any fee in connection with the loss mitigation option; and the servicer must waive all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option. And, under § 1024.41(c)(2)(v)(A)(*3*), the borrower's acceptance of the offer must end any preexisting delinquency.

The criteria in § 1024.41(c)(2)(v)(A)(*1*) through (*3*) provide borrowers with safeguards to ensure that borrowers are sufficiently protected when receiving a loss mitigation offer described in § 1024.41(c)(2)(v)(A) without an evaluation of a complete loss mitigation application. First, to qualify for the exception, new § 1024.41(c)(2)(v)(A)(*1*) requires that any forborne or delinquent principal or interest payments be moved to the end of the loan or, for loans that FHA insures, until the mortgage insurance terminates. This ensures that borrowers in forbearance programs will not face a balloon payment immediately after the forbearance period ends, and it will ease the financial strain of having to make additional periodic payments to catch up on a mortgage loan for delinquent borrowers who are not in forbearance. The alternatives could exacerbate borrowers' hardships and lead to foreclosure. As a result of the eligibility criteria under new § 1024.41(c)(2)(v)(A)(*1*), many borrowers receiving a loss mitigation option under § 1024.41(c)(2)(v)(A) will have years to plan to address the deferred payments. This may be particularly important during the COVID–19 emergency, as many borrowers may be facing extended periods of economic uncertainty.

The Bureau notes that new § 1024.41(c)(2)(v)(A)(*1*) allows for some flexibility among loss mitigation options that may qualify for the exception. For example, although the loss mitigation options must defer all forborne or delinquent principal and interest payments under new § 1024.41(c)(2)(v)(A)(*1*), the rule does not specify how servicers must treat any forborne or delinquent escrow amounts. A loss mitigation option would qualify for the new exception if it defers repayment of escrow amounts, in addition to principal and interest payments, as long as it otherwise satisfies new § 1024.41(c)(2)(v)(A).

New § 1024.41(c)(2)(v)(A)(*1*) is also flexible with respect to repayment requirements—it does not specify how a servicer must structure repayment of the deferred amounts. Requiring repayment either in a lump sum or over a specified period at the end of the loan term through additional periodic payments, among other possible approaches, would satisfy new § 1024.41(c)(2)(v)(A)(*1*). The Bureau notes that the provision specifically defines the mortgage loan term for these purposes to mean the loan term in effect when the borrower is offered the loss mitigation option. As a result, the exception under new § 1024.41(c)(2)(v)(A) is available for eligible loss mitigation options that would technically extend the term of the loan in accommodating repayment of forborne or delinquent amounts.

The Bureau also notes that new § 1024.41(c)(2)(v)(A)(*1*) provides a standard specific to loans insured by FHA. This is intended to ensure that the new exception extends to certain loss mitigation options available for FHA loans. The Bureau understands that FHA permits servicers to offer loss mitigation options that would otherwise satisfy the criteria of § 1024.41(c)(2)(v)(A) based on an evaluation of an incomplete loss mitigation application, and that these options would generally provide similar benefits to borrowers and servicers as other loss mitigation options offered under § 1024.41(c)(2)(v)(A). In some circumstances, these loss mitigation options would require repayment when the mortgage insurance terminates. The FHA-specific standard in new § 1024.41(c)(2)(v)(A)(*1*) ensures that such repayment requirements do not exclude these loss mitigation options from the new exception.

Second, for the exception to apply, new § 1024.41(c)(2)(v)(A)(*2*) requires that (1) any amounts that the borrower

[52] 78 FR at 10828.

[53] *Id.*

[54] New § 1024.41(c)(2)(v)(A) states that ''COVID–19 emergency'' has the same meaning as under CARES Act section 4022(a)(1).

may delay paying as part of the loss mitigation agreement do not accrue interest, (2) the servicer charges no fee in connection with the loss mitigation option, and (3) the servicer waives a variety of other fees promptly upon the borrower's acceptance. This requirement will prevent the application of standards that impose additional economic hardship on borrowers, better enabling the borrowers to address other financial needs during the COVID–19 emergency.

Third, for the exception to apply, new § 1024.41(c)(2)(v)(A)(*3*) requires that the borrower's acceptance of the offer end any preexisting delinquency.[55] This ensures that borrowers who accept a loss mitigation option under new § 1024.41(c)(2)(v)(A) do not face a risk of imminent foreclosure because, under existing § 1024.41(f)(1)(i), servicers are generally prohibited from making the first notice or filing required under applicable law to initiate the foreclosure process until a mortgage loan obligation is more than 120 days delinquent.

The Bureau understands that the FHFA COVID–19 payment deferral and FHA's COVID–19 partial claim, both of which are described in part II, satisfy the criteria in new § 1024.41(c)(2)(v)(A)(*1*) through (*3*). These programs have included these criteria to assist borrowers in addressing financial hardships caused by the COVID–19 emergency, in part by helping to keep their mortgage loans current following the hardship.[56] The Bureau notes, however, that the exception is not limited to those programs. Servicers may offer loss mitigation options under other programs, as long as the loss mitigation options meet the criteria described in § 1024.41(c)(2)(v)(A).

41(c)(2)(v)(B)

New § 1024.41(c)(2)(v)(B) provides servicers relief from certain regulatory requirements if a borrower accepts an offer made pursuant to new § 1024.41(c)(2)(v)(A). It states that, in that scenario, the servicer is not required to comply with § 1024.41(b)(1) or (2) with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option described in new § 1024.41(c)(2)(v)(A).

Section 1024.41(b)(1) and (2) generally sets forth servicers' obligations upon first receiving a borrower's loss mitigation application. Section 1024.41(b)(1) generally requires a servicer to exercise reasonable diligence in obtaining documents and information to complete the loss mitigation application. Section 1024.41(b)(2) generally requires the servicer to review the application to assess completeness and provide a written notice within five days (excluding legal public holidays, Saturdays, and Sundays) stating, among other things, that the servicer has determined that the loss mitigation application is either complete or incomplete; the additional documents and information the borrower must submit to make the application complete, if applicable; a reasonable date by which the borrower should submit the additional documents and information; and a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

These protections are part of a regulatory regime designed to ensure that borrowers generally receive an evaluation for all available loss mitigation options based upon a single application. As explained in the section-by-section analysis of new § 1024.41(c)(2)(v)(A), this regulatory regime is intended to give borrowers information about their loss mitigation options when deciding on a program and make the application process more efficient, which can save borrowers time and resources.

Notwithstanding these important benefits, however, the Bureau believes that, in the context of a loss mitigation offer under new § 1024.41(c)(2)(v)(A), the protections under § 1024.41(b)(1) and (2) introduce undue burden for both servicers and borrowers attempting to navigate the unusual challenges caused by the COVID–19 emergency. Servicers are currently dealing with an abnormally high number of requests for loss mitigation assistance due to the pandemic. According to the Mortgage Bankers Association (MBA), between early March and early June 2020, approximately four million borrowers entered into forbearance programs.[57] Over that period, the percentage of all mortgage loans in forbearance increased from 0.19 percent to 8.55 percent.[58] If servicers were required to exercise reasonable diligence to obtain a complete application for each of these borrowers when they exit the forbearance programs, as required under § 1024.41(b)(1), or to provide borrower-specific notifications of the documents and information each individual applicant must submit to complete the application, as required under § 1024.41(b)(2), it would likely interfere with their ability to provide effective and efficient assistance. And borrowers dealing with the social and economic effects of the COVID–19 emergency may be less likely than normal to take the steps necessary to complete a loss mitigation application to receive a full evaluation. The Bureau notes that, if a borrower does wish to pursue a complete application and receive the full protections of § 1024.41, they may do so notwithstanding new § 1024.41(c)(2)(v).

The Bureau stresses that servicers are required to comply with § 1024.41, including § 1024.41(b)(1) and (2), if the borrower submits a new application after accepting a loss mitigation option under new § 1024.41(c)(2)(v)(A). In general, servicers are required to comply with § 1024.41 if a borrower submits a loss mitigation application, unless the servicer has previously complied in connection with a complete application submitted by the borrower and the borrower has been delinquent at all times since submitting that complete application.[59] If a borrower has accepted a loss mitigation option offered under new § 1024.41(c)(2)(v)(A), neither of these elements will be present the first time the borrower submits a later loss mitigation application. The exception described under new § 1024.41(c)(2)(v)(A) is available only if the loss mitigation application is incomplete and, under new § 1024.41(c)(2)(v)(A)(*3*), the borrower's acceptance of the option ends any preexisting delinquency of the borrower's mortgage loan account. As a result, servicers must comply with the requirements of § 1024.41 for the first later application, which may occur during the same conversation in which the borrower accepts the offer under § 1024.41(c)(2)(v)(A).

Additionally, servicers may be required to comply with early intervention obligations if a borrower's mortgage loan account becomes delinquent after a loss mitigation option takes effect under

[55] After the borrower accepts a loss mitigation option under new § 1024.41(c)(2)(v)(A), if a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, a new delinquency would begin. *See generally* 12 CFR 1024.31(definition of delinquency).

[56] Press Release, *Freddie Mac Announces COVID–19 Payment Deferral* (May 13, 2020), *https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-announces-covid-19-payment-deferral?_ga=2.125995917.1203641316.1592241885-952089942.1591127071; see also* Fannie Mae Lender Letter (LL–2020–07) (as updated on June 10, 2020), *https://singlefamily.fanniemae.com/media/22916/display;* FHA Mortgagee Letter 2020–06 (Apr. 1, 2020), *https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf.*

[57] Mortgage Bankers Ass'n, *supra* note 28.

[58] *Id.*

[59] 12 CFR 1024.41(i).

§ 1024.41(c)(2)(v)(A).[60] These include live contact and written notification obligations that, in part, require servicers to inform borrowers of the availability of additional loss mitigation options and how the borrowers can apply.[61]

Further, the Bureau believes that a borrower whose mortgage loan account becomes delinquent following acceptance of a loss mitigation option under § 1024.41(c)(2)(v)(A) will have sufficient notice that other options may be available should the borrower wish to submit another application. In general, borrowers who previously received a forbearance will have received at least two written notifications earlier in the loss mitigation process, as required under Regulation X: (1) The written notice required under § 1024.41(b)(2) when the borrower submits the initial application requesting forbearance, and (2) written notification of the terms and conditions of the forbearance program, required under § 1024.41(c)(2)(iii), stating that the servicer offered the program based on evaluation of an incomplete application, that other loss mitigation options may be available, and that the borrower still has the option to submit a complete application to receive an evaluation for all available options.[62] Additionally, many borrowers receiving an offer under § 1024.41(c)(2)(v)(A) are likely to have received early intervention efforts by their servicers, including the written notice required under Regulation X stating, among other things, a brief description of examples of loss mitigation options that may be available, as well as application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer.[63]

In light of these protections, as well as the safeguards set forth in new § 1024.41(c)(2)(v)(A), the Bureau believes the requirements of § 1024.41(b)(1) and (2) would introduce burden for servicers and borrowers that is unnecessary in this limited context.

VI. Request for Comment

The Bureau invites comment on this interim final rule. The Bureau is particularly interested in whether the amendments appropriately balance providing flexibility to servicers to offer relief quickly during the COVID–19 emergency with providing important protections for borrowers engaged in the loss mitigation application process, such as protections from foreclosure. The Bureau also seeks comment on whether to require written disclosures for this, or any similar exceptions that the Bureau may authorize in the future. The Bureau also seeks comment on whether the Bureau should extend the exception established in new § 1024.41(c)(3)(v) to other post-forbearance loss mitigation options made available to borrowers affected by other types of disasters and emergencies.

VII. Effective Date

This interim final rule is effective on July 1, 2020.

VIII. Dodd-Frank Act Section 1022(b) Analysis

In developing this interim final rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Dodd-Frank Act.[64] In developing this interim final rule, the Bureau has consulted with appropriate Federal agencies regarding the consistency of this final rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.[65]

The Bureau considered the benefits, costs, and impacts of this interim final rule against a baseline in which the Bureau takes no action. The baseline under this approach includes the CARES Act and the forbearances that have already been granted under the CARES Act and substantially similar programs.[66]

In considering the relevant potential benefits, costs, and impacts of this interim final rule, the Bureau has used feedback received to date and its knowledge of consumer financial markets. The discussion below of these potential costs, benefits, and impacts is partly qualitative, reflecting the specialized nature of the amendments. The Bureau requests comment on this discussion generally, as well as the submission of data or other information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of the interim final rule.

The interim final rule's provisions generally would decrease burden incurred by industry participants and benefit consumers by providing a limited exception to the general requirement under § 1024.41 for borrowers to submit a complete loss mitigation application before servicers may offer any loss mitigation option based on the evaluation of an incomplete application. Under the interim final rule, this limited exception would be available for loss mitigation options that permit payments forborne under an eligible forbearance, as well as payments that are due and unpaid, related to the COVID–19 emergency to be deferred to the end of the mortgage loan. As is described in more detail below, the Bureau does not believe that these changes would restrict consumer access to consumer financial products and services relative to what would occur under the baseline.

Exception to Regulation X anti-evasion provision allowing FHFA COVID–19 payment deferrals without a complete loss mitigation application. The interim final rule revises § 1024.41(c)(2)(i) and adds § 1024.41(c)(2)(v) to allow servicers to offer a payment deferral, or a similar loss mitigation option in certain circumstances based on the evaluation of an incomplete loss mitigation application. In general, for the exception to apply, borrowers must already have received a forbearance or delinquency related to the COVID–19 emergency, the forborne or delinquent payments must be deferred to the end of the mortgage loan without accruing interest and with a variety of fees waived, and the borrower's acceptance must end any preexisting delinquency. The Bureau understands that the FHFA COVID–19 payment deferral and FHA's COVID–19 partial claim satisfy the criteria, although the interim final rule is not limited to these programs.

[60] Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are not subject to these requirements. 12 CFR 1024.30(b)(1).

[61] *See* 12 CFR 1024.39(a) and (b). Also, servicers are to have policies and procedures in place to advise borrowers of all of their loss mitigation options. 12 CFR 1024.38. During the COVID–19 emergency, one of the loss mitigation options to be presented to borrowers with federally backed mortgages is their right to CARES Act forbearance.

[62] *See* 12 CFR 1024.41(c)(2)(iii).

[63] The early intervention written notice is generally required no later than the 45th day of a borrower's delinquency. 12 CFR 1024.39(b). If a borrower is delinquent during a forbearance program, the servicer will likely be required to provide the written notice to the borrower.

[64] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(A)) requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact of the proposed rule on insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act (12 U.S.C. 5516); and the impact on consumers in rural areas.

[65] Section 1022(b)(2)(B) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(B)) requires that the Bureau consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

[66] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

As noted above, § 1024.41(c)(2)(i), in part, prohibits evasion of the requirement for servicers to evaluate borrowers for all available loss mitigation options in a single application once they have received a complete application. In the 2013 Mortgage Servicing Final Rule, the Bureau explained its view that borrowers would benefit from this requirement, in part because borrowers would generally be better able to choose among available loss mitigation options if they are presented simultaneously. This interim final rule is unlikely to affect this benefit in most cases, given the narrow scope and particular circumstances of the exception. Even if a borrower may be interested in and eligible for another form of loss mitigation besides a deferral, receiving a deferral would not generally remove the borrower's right under § 1024.41 to submit a complete loss mitigation application and receive an evaluation for all available options after the deferral is in place. Moreover, in the specific case of the FHFA COVID–19 payment deferral program, in practice, the incomplete applications that may result in deferrals will generally be created as a result of servicer outreach specifically for the purposes of granting a deferral: Fannie Mae and Freddie Mac have directed their servicers to proactively reach out to borrowers currently under a CARES Act forbearance and to grant deferrals to all eligible borrowers.[67] Further, to be eligible for the exception under new § 1024.41(c)(2)(v)(A), a loss mitigation option must bring the loan current. In most cases, borrowers must be more than 120 days delinquent before a servicer may make the first notice or filing required under applicable law to initiate foreclosure proceedings.[68] Thus, if a borrower wishes to pursue another loss mitigation option after accepting the deferral, the borrower will still have a considerable amount of time to complete a loss mitigation application before they would be at risk for foreclosure. In summary, in these specific circumstances, the Bureau believes that allowing servicers to grant deferrals without a complete loss mitigation application will not materially affect borrowers' ability to choose among available loss mitigation options.

Borrowers will likely benefit from the new exception to the extent that they are more able to receive a payment deferral without having to submit a complete loss mitigation application. In most cases, this will result in a reduction in the time necessary to gather required documents and information. In some cases, if borrowers would not otherwise complete a loss mitigation application and could not otherwise obtain relief with respect to the forborne or delinquent payments, the interim final rule will enable borrowers to obtain the deferral in the first place. Without a deferral, borrowers may need to repay the forborne or delinquent payments immediately. Borrowers who can do so would use savings, sell assets, or incur additional debt. Borrowers who cannot immediately repay the forborne or delinquency balances could suffer foreclosure or other negative consequences. Thus, for borrowers who obtain a deferral under the new exception, the benefit of the provision is, at a minimum, the interest on savings or asset appreciation that need not be foregone or the borrowing costs that need not be incurred. For other borrowers, the benefit of the provision is the value of preventing delinquency fees and foreclosure.

The Bureau does not have data available to predict what fraction of borrowers currently under a forbearance or delinquency related to the COVID–19 emergency would not be able to complete a loss mitigation application if required to complete the application in order to receive a deferral offer. However, the Bureau believes that in the present circumstances that percentage could be substantial due to limitations in servicer capacity. As discussed above, data from the MBA indicates that as of June 7, 2020, roughly 8.55 percent of all mortgages were currently in forbearance, a total of about 4.3 million loans, almost all of which entered forbearance following the passage of the CARES Act and thus could exit forbearance around the same time. Processing complete loss mitigation applications for all these borrowers in a short period of time would likely strain many servicers' resources. This might lead to more borrowers who have incomplete applications that never reach completion and who fail to get a deferral under the baseline compared to what might occur under standard market conditions. The Bureau also does not have data available to predict how many borrowers currently in a forbearance or a delinquency related to the COVID–19 emergency would experience foreclosure but for a payment deferral offered under the exception in this interim final rule.

Covered persons will benefit from the reduction in burden from the requirement to process complete loss mitigation applications for deferrals described in § 1024.41(c)(2)(v)(A) that are eligible for the exception. Given the number of loans that are currently in a forbearance due to the COVID–19 emergency, this benefit could be substantial. This may be particularly true for loans serviced on behalf of Fannie Mae and Freddie Mac. As part of the FHFA COVID–19 payment deferral program, Fannie Mae and Freddie Mac are requiring servicers of their loans to actively attempt to contact consumers currently in a CARES Act forbearance in order to verify eligibility for a deferral.[69] Thus, with or without the interim final rule, servicers of loans that are owned, insured, or guaranteed by Fannie Mae and Freddie Mac are required to attempt to contact borrowers currently in a CARES Act forbearance. Without the interim final rule, in each case, the servicers would further need to collect documentation needed for a complete loss mitigation application, and to process the complete application before a deferral could be offered. Multiplied by millions of such loans in forbearance, these costs could be substantial.

Potential specific impacts of the interim final rule. The Bureau believes that a large fraction of depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans qualify as ''small servicers'' for purposes of the mortgage servicing rules because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. Small servicers are not subject to the relevant portions of Regulation X, § 1024.41, and so are not affected by the amendments in this interim final rule.

With respect to servicers that are not small servicers as defined in § 1026.41(e)(4), the Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the final rule on

[67] The Bureau notes as well that one of the eligibility criteria for the Fannie Mae and Freddie Mac programs is that the borrower states that they are able to resume payments under the original terms of the mortgage. The Bureau expects that borrowers in those circumstances generally will not require other types of loss mitigation.

[68] 12 CFR 1024.41(f)(1)(i).

[69] Press Release, *Freddie Mac Announces COVID019 Payment Deferral* (May 13, 2020), *https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-announces-covid-19-payment-deferral?_ga=2.125995917.1203641316.1592241885-952089942.1591127071; see also* Fannie Mae Lender Letter (LL–2020–07) (as updated on June 10, 2020), *https://singlefamily.fanniemae.com/media/22916/display;* FHA Mortgagee Letter 2020–06 (Apr. 1, 2020), *https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf.*

depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans.

The Bureau has no reason to believe that the additional flexibility offered to covered persons by this interim final rule would differentially affect consumers in rural areas. The Bureau requests comment regarding the impact of the amended provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

IX. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) [70] does not apply to a rulemaking where general notice of proposed rulemaking is not required.[71] As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

X. Paperwork Reduction Act

The Bureau has determined that the interim final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[72]

XI. Congressional Review Act

Pursuant to the Congressional Review Act,[73] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a ''major rule'' as defined by 5 U.S.C. 804(2). As discussed in part IV, the Bureau finds that there is good cause for the rule to take effect without prior notice and comment. Accordingly, this rule may take effect at such time as the Bureau determines. 5 U.S.C. 808(2).

XII. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1024

Banking, Banks, Condominiums, Consumer protection, Credit unions, Housing, Insurance, Mortgage servicing, Mortgagees, Mortgages, National banks, Savings associations, State member banks.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation X, 12 CFR part 1024, as set forth below:

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

■ 1. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

Subpart C—Mortgage Servicing

■ 2. Section 1024.41 is amended by revising paragraph (c)(2)(i) and adding paragraph (c)(2)(v) to read as follows:

§ 1024.41 Loss mitigation procedures.

* * * * *

(c) * * *

(2) *Incomplete loss mitigation application evaluation*—(i) *In general.* Except as set forth in paragraphs (c)(2)(ii), (iii), and (v) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

* * * * *

(v) *Certain COVID–19-related loss mitigation options.* (A) Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a borrower a loss mitigation option based upon evaluation of an incomplete application, provided that all of the following criteria are met:

(*1*) The loss mitigation option permits the borrower to delay paying covered amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates. For purposes of this paragraph (c)(2)(v)(A)(*1*), ''covered amounts'' includes, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency, including a payment forbearance program made pursuant to the Coronavirus Economic Stabilization Act, section 4022 (15 U.S.C. 9056); it also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing financial hardship due, directly or indirectly, to the COVID–19 emergency. For purposes of this paragraph (c)(2)(v)(A)(*1*), ''COVID–19 emergency'' has the same meaning as under the Coronavirus Economic Stabilization Act, section 4022(a)(1) (15 U.S.C. 9056(a)(1)). For purposes of this paragraph (c)(2)(v)(A)(*1*), ''the term of the mortgage loan'' means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option.

(*2*) Any amounts that the borrower may delay paying as described in paragraph (c)(2)(v)(A)(*1*) of this section do not accrue interest; the servicer does not charge any fee in connection with the loss mitigation option; and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option.

(*3*) The borrower's acceptance of an offer made pursuant to paragraph (c)(2)(v)(A) of this section ends any pre-existing delinquency on the mortgage loan.

(B) Once the borrower accepts an offer made pursuant to paragraph (c)(2)(v)(A) of this section, 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)(v)(A) of this section.

* * * * *

Dated: June 23, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

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[70] 5 U.S.C. 601 *et seq.*

[71] 5 U.S.C. 603(a), 604(a).

[72] 44 U.S.C. 3501 *et seq.*

[73] 5 U.S.C. 801 *et seq.*