CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1024

[Docket No. CFPB–2024–0024]

RIN 3170–AB04

Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties; Regulation X

AGENCY: Consumer Financial Protection Bureau.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is proposing a rule that would amend regulations originally issued in 2013 regarding the responsibilities of mortgage servicers. The proposed amendments would streamline existing requirements when borrowers seek payment assistance in times of distress, add safeguards when borrowers seek help, and revise existing requirements with respect to borrower assistance. The proposed rule would also require servicers to provide certain communications in languages other than English, such as when a borrower is seeking payment assistance with their mortgage. The proposed rule, if finalized, would increase the likelihood that investors and borrowers can avert the costs of avoidable foreclosure.

DATES: Comments must be received on or before September 9, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2024–0024 or RIN 3170–AB04, by any of the following methods:

• *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. A brief summary of this document will be available at *https://www.regulations.gov/docket/CFPB-2024-0024.*

• *Email: 2024-NPRM-MortgageServicing@cfpb.gov.* Include Docket No. CFPB–2024–0024 or RIN 3170–AB04 in the subject line of the message.

• *Mail/Hand Delivery/Courier:* Comment Intake—Mortgage Servicing, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.*

All submissions, 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 or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation and Guidance Program Analyst, 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:

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Abbreviations and Acronyms

The following abbreviations and acronyms are used in this proposed rule:

ACS = American Community Survey
AFR = Americans for Financial Reform
ASMB = American Survey of Mortgage Bankers
CARES Act = Coronavirus Aid, Relief, and Economic Security Act
CDIA = Consumer Data Industry Association
CFPA = Consumer Financial Protection Act
CFPB = Consumer Financial Protection Bureau
CPI–U = Consumer Price Index for All Urban Consumers
CRA = Credit Reporting Agency
DI = Depository Institution
FAQ = Frequently Asked Question
FHA = Federal Housing Administration
FHFA = Federal Housing Finance Agency
FRFA = Final Regulatory Flexibility Analysis
FSOC = Financial Stability Oversight Committee
GSE = Government-Sponsored Enterprise
HAMP = Home Affordable Modification Program
HHS = United States Department of Health and Human Services
HUD = United States Department of Housing and Urban Development
ICE = Intercontinental Exchange, Inc.
ICR = Information Collection Request
IRFA = Initial Regulatory Flexibility Analysis
MBA = Mortgage Bankers Association
MHA = Making Home Affordable
NAICS = North American Industry Classification System
NCLC = National Consumer Law Center
NMDB = National Mortgage Database Program
Non-DI = Non-Depository Institution
OCC = Office of the Comptroller of the Currency
OMB = Office of Management and Budget
PRA = Paperwork Reduction Act
RESPA = Real Estate Settlement Procedures Act
RFA = Regulatory Flexibility Act
RFI = Request for Information
SBA = Small Business Administration
SIGTARP = Office of the Special Inspector General for the Troubled Asset Relief Program

TILA = Truth in Lending Act
URLA = Uniform Residential Loan Application
USDA = United States Department of Agriculture
VA = United States Department of Veterans Affairs

I. Summary

A. Goals of the Rulemaking

Mortgage servicers handle the day-to-day management of mortgage loans and work with borrowers when they need help making their payments. Poor default servicing of home mortgages can have serious repercussions for both individual borrowers and the larger economy. The foreclosure crisis that began in 2007 demonstrated the risks. Leading up to that crisis, servicers did not have robust default servicing practices and generally lacked accountability when they failed to address borrower needs. Between July 2007 and August 2009, approximately 1.8 million homeowners lost their homes to foreclosure while another 5.2 million homeowners faced foreclosure initiation.[1]

In 2013, the CFPB finalized comprehensive mortgage servicing rules in response to these widespread servicing failures.[2] In the decade since, the market has changed, and servicing practices in the event of borrower default have further changed. Investors have increasingly required use of loss mitigation options that require little or no documentation. Streamlined loss mitigation options can improve overall profitability for investors by reducing servicer costs, increasing the rate at which borrowers resume making payments, and reducing foreclosures, which are often costly for investors. Streamlined loss mitigation options can also help borrowers to get help faster and free servicer resources for borrowers who need greater assistance.

The COVID–19 pandemic demonstrated that approaches to loss mitigation not contemplated in the 2013 Mortgage Servicing Final Rule could be successful and necessary for borrowers, servicers, and investors. During the COVID–19 pandemic, large numbers of borrowers were placed in long-term forbearance, with the vast majority successfully resuming payments. Additionally, macroeconomic factors, such as shifts in interest rates, require new approaches to default servicing practices. Loss mitigation approaches that were successful in the wake of the foreclosure crisis, such as reducing the interest rate to the current market rate in order to lower payments, are significantly less successful under current market conditions.

The changes in default servicing and market conditions have highlighted several areas where the prescriptive rules that the CFPB initially put in place may no longer be optimally effective for borrowers or servicers, and where more flexibility is needed in order to respond to future changes in the macroeconomic environment. Thus, the CFPB is proposing to remove certain prescriptive requirements from the existing rules. At the same time, the CFPB recognizes the continuing need to protect borrowers from harms such as unnecessary fees and avoidable foreclosures that can occur due to default mortgage servicing failures. Therefore, the CFPB is also proposing certain new procedural safeguards designed to protect borrowers from these harms while creating strong incentives for servicers to review borrowers for loss mitigation assistance quickly and accurately.

B. Key Changes

To achieve these goals, the CFPB is proposing and seeking comment on several topics, including four key groups of changes related to assisting borrowers during loss mitigation and early intervention, as well as seeking comment on a fifth key issue related to credit reporting. None of the proposed new requirements would apply to small servicers (as defined in Regulation Z § 1026.41(e)(4)(ii)).)).

1. Streamlined loss mitigation procedures and foreclosure procedural safeguards. The CFPB is proposing to streamline and simplify Regulation X's loss mitigation procedures by removing most of the existing requirements regarding incomplete and complete loss mitigation applications and replacing them with a new framework based on foreclosure procedural safeguards. Currently, a servicer generally must collect a complete loss mitigation application for all available options before making a determination about what loss mitigation options, if any, it will offer a borrower, and a borrower's foreclosure protections against initiation and sale are largely based on whether and when the borrower has submitted a complete loss mitigation application. Under the proposed framework, a servicer would not be required to collect a complete application prior to making a loss mitigation determination and would have flexibility to review a borrower for loss mitigation options sequentially rather than simultaneously, although a simultaneous review would be permitted. Under the proposed framework, once a borrower makes a request for loss mitigation assistance, the loss mitigation review cycle begins. It continues until either the borrower's loan is brought current or one of the following foreclosure procedural safeguards is met: 1) the servicer reviews the borrower for all available loss mitigation options and no available options remain, or 2) the borrower remains unresponsive for a specified period of time despite the servicer regularly taking steps to reach the borrower. During a loss mitigation review cycle, the servicer may not begin or advance the foreclosure process and borrowers would also be protected against the accrual of certain fees.

The CFPB is also proposing to remove currently required loss mitigation notices that would no longer be necessary under the new proposed framework, such as those notifying a borrower about whether a loss mitigation application is complete or incomplete.

2. Early intervention changes. The CFPB is proposing to require servicers to provide certain additional information in written early intervention notices, including, among other things, the name of the owner or assignee of the borrower's mortgage loan, a brief description of each type of loss mitigation option that is generally available from that owner or assignee, as well as a website to access a list of all loss mitigation options that may be available from that owner or assignee. The CFPB is also proposing a partial exemption for servicers from early intervention requirements while a borrower is performing under a forbearance, new live contact and written notice requirements when a borrower's forbearance is nearing its scheduled end, and timing for resuming compliance with early intervention when a borrower's forbearance ends.

3. Loss mitigation determination notices and appeals. The CFPB is proposing to require that servicers provide loss mitigation determination notices and appeal rights to borrowers regarding all types of loss mitigation options, instead of just loan modifications, and for offers as well as denials. The CFPB also is proposing to

[1] Cong. Oversight Panel, *October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After Six Months,* at 1 (Oct. 9, 2009), *https://www.congress.gov/111/cprt/JPRT52671/CPRT-111JPRT52671.pdf* (Oversight Panel Report). The impact of poor default servicing led to a decline in overall economic activity. John Weinberg, Fed. Rsrv. Bank of Richmond, *Federal Reserve History: The Great Recession and Its Aftermath, https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath* (written as of Nov. 22, 2013) (FRH Essay).

[2] The Consumer Financial Protection Bureau (CFPB) has made several amendments to the mortgage servicing rules in the intervening years. *See* part II.F for a discussion of amendments made after the 2013 Mortgage Servicing Rule was issued.

require servicers to include certain additional information in determination notices, including the key borrower-provided inputs, if any, that served as the basis for the determination; a list of other loss mitigation options that are still available to the borrower, if any, including a clear statement describing the next steps the borrower must take to be reviewed for those options or, if applicable, a statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain; and, if applicable, a list of any loss mitigation options that the servicer previously offered to the borrower that remain available but that the borrower did not accept. The CFPB is also proposing to clarify that loss mitigation determinations are subject to the notice of error procedures contained in § 1024.35.

4. Credit reporting. The CFPB is aware of a select number of specific instances where mortgage servicers may be furnishing information about borrowers undergoing loss mitigation review that raise questions about accuracy and consistency. While the CFPB is not proposing any regulatory changes at this time, the CFPB is requesting comment about possible approaches it could take to ensure servicers are furnishing accurate and consistent credit reporting information for borrowers undergoing loss mitigation review.

5. Language access. The CFPB is proposing several requirements to provide borrowers with limited English proficiency greater access to certain early intervention and loss mitigation communications in languages other than English so that they can access the information they need, when they need it. In general, the proposed rule would require mortgage servicers to provide Spanish-language translations of certain written communications to all borrowers. The proposed rule also would require servicers to make certain written and oral communications available in multiple languages and to provide those translated or interpreted communications upon borrower request. The proposed rule would require servicers to include brief translated statements in certain written communications notifying borrowers of the availability of the translations and interpretations, and how they can be requested. It also would require that borrowers who received marketing for a loan in a language other than English receive specific early intervention and loss mitigation communications in that same language upon the borrower's request.

II. Background

A. Mortgage Servicing During the Foreclosure Crisis

The 2007 foreclosure crisis led to a broad downturn in the economy and left lasting effects on the mortgage servicing industry. The foreclosure crisis was brought on, in part, by mortgage servicing failures and the lack of a standardized loss mitigation infrastructure.[3] As a result, between July 2007 and August 2009, approximately 1.8 million homeowners lost their homes to foreclosure and another 5.2 million homeowners faced foreclosure initiation.[4]

A lack of regulatory oversight at the Federal level and fragmented oversight at the State level also contributed to the crisis. The CFPB was created in 2011 to increase accountability in government by consolidating consumer financial protection authorities, which previously existed across several different Federal agencies. The creation of the CFPB increased Federal accountability with respect to consumer financial protection, which had not been the primary focus of any single Federal agency. Prior to the CFPB's creation, no Federal agency had comprehensive tools to set the rules for and oversee all consumer markets. The result was a system without effective rules or consistent enforcement, which was a significant factor in the foreclosure crisis.

Prior to 2007, the mortgage industry had never experienced such a sizable number of loss mitigation applications and foreclosures simultaneously.[5] The mortgage industry lacked a standardized approach and uniform structure to assist the millions of delinquent borrowers who needed mortgage payment relief. At the time, mortgage servicers were largely focused on managing the collection of mortgage payments and the foreclosure process for defaulted borrowers.[6] In addition, investor guidance to servicers regarding default servicing was limited and seldom provided meaningful standards for loss mitigation.[7]

In the period preceding the foreclosure crisis, loan modifications were rare, and borrowers were unlikely to receive any redress, with only approximately 3 percent of seriously delinquent loans obtaining a loan modification.[8] The loss mitigation processes at the time were fragmented and lacked sufficient industry-wide standards and procedures for servicers and investors to assist delinquent homeowners. Thus, the foreclosure crisis exposed major flaws in default servicing and created a need for permanent loss mitigation assistance programs. The absence of any standardized loss mitigation options at that time contributed to 2.8 million foreclosure starts in 2009, which was a 21 percent increase from 2008 and a 120 percent increase from 2007.[9] The emergence of the Making Home Affordable program (MHA) would later create a standardized set of guidelines and establish a framework for default servicing.

B. Early Standardization Efforts

The U.S. Department of the Treasury (Treasury) introduced MHA at the beginning of 2009. Treasury designed MHA to assist mortgage borrowers at risk of foreclosure by providing government-backed loss mitigation programs. MHA was the first program of its kind and had a major influence on future loss mitigation programs.

The cornerstone program under MHA was the Home Affordable Modification Program (HAMP), which offered permanently reduced mortgage payments to qualifying borrowers.[10] There were other specialty programs under MHA, such as programs to assist borrowers with underwater mortgages, short sale programs, and deed-in-lieu of foreclosure programs.[11] These programs were part of a wider government response intended to help struggling borrowers, preserve communities, and prevent avoidable foreclosures.[12] Prior to HAMP, there was no standard approach among servicers or investors for providing mortgage assistance to

[3] *See* FRH Essay.

[4] Oversight Panel Report at 1.

[5] *See* FRH Essay.

[6] *Id.*

[7] Martin Neil Baily et al., Initiative on Bus. & Pol'y at Brookings, *The Origins of the Financial Crisis,* at 20 (Brookings Inst., Fixing Fin. Sers.—Paper 3, 2008), *https://www.brookings.edu/wp-content/uploads/2016/06/11_origins_crisis_baily_litan.pdf.*

[8] Manuel Adelino et al., *Why Don't Lenders Renegotiate More Home Mortgages? Redefaults, Self-Cures, and Securitization,* at 3 (Nat'l Bureau Econ. Rsch., Working Paper 15159, 2009), *https://www.nber.org/system/files/working_papers/w15159/w15159.pdf.*

[9] Lynn Adler, *U.S. 2009 foreclosures shatter record despite aid,* Reuters (Jan. 14, 2010), *https://www.reuters.com/article/us-usa-housing-foreclosures-idUSTRE60D0LZ20100114/.*

[10] John Rao et al., Nat'l Consumer L. Ctr. (NCLC), *6.7.2.5 The HAMP ''Waterfall'', In* Mortgage Servicing and Loan Modifications (Digital version), *https://library.nclc.org/book/mortgage-servicing-and-loan-modifications/6725-hamp-waterfall (last visited July 1, 2024).*

[11] U.S. Dep't of Treas., *Making Home Affordable (MHA), https://home.treasury.gov/data/troubled-assets-relief-program/housing/mha (last visited July 1, 2024).*

[12] *Id.*

homeowners who wanted to keep making payments.[13]

However, the program fell short of its original projected target of the number of homeowners who would be assisted with the program. The HAMP application process was extensive and required borrowers to submit several documents to be evaluated for the program; for example, it required proof of financial hardship, income tax returns, bank statements, and paystubs.[14] These extensive documentation requirements led to challenges for borrowers and mortgage servicers. The document collection process adversely affected the ability of borrowers to receive permanent loan modifications due to events such as the servicer losing documents the borrower sent. These challenges were compounded by the sheer volume of borrower applications and inquiries during this time.[15] Changing documentation requirements created further difficulties in converting trial loan modifications into permanent loan modifications.

Although both borrowers and servicers faced challenges in keeping up with the documentation requirements of HAMP, the program provided several protections for distressed borrowers. Among other things, HAMP provided foreclosure protections to any borrower who submitted a HAMP loss mitigation application and established program guidelines that prohibited a servicer from referring a loan to foreclosure or conducting a scheduled foreclosure sale until the borrower was either evaluated for HAMP and determined to be ineligible, or the servicer had made reasonable attempts to solicit the borrower and was unsuccessful.[16] This guidance was critical in beginning to address the industry practice of ''dual-tracking'' borrowers, a practice where servicers would accept and review loss mitigation applications while simultaneously moving forward with foreclosure proceedings.

In February 2012, 49 State attorneys general, the District of Columbia, and the Federal government entered the National Foreclosure Settlement[17] with what were at the time the nation's five largest mortgage servicers.[18] It was the largest consumer financial protection settlement in U.S. history. Along with $50 billion in relief to distressed borrowers harmed by the wrongful foreclosures,[19] the settlement agreement included a description of when a servicer may refer a borrower to foreclosure or conduct a foreclosure sale. The settlement provided two standards for protecting borrowers from dual tracking—one for before a servicer refers a borrower to foreclosure, and the other for after the servicer has referred a borrower to foreclosure.[20] The 2013 Mortgage Servicing Final Rule was influenced by the foreclosure protections introduced by HAMP and the National Foreclosure Settlement.

C. CFPB's 2013 Mortgage Servicing Final Rule Aimed To Address the Challenges Previously Observed Prior to and During the Foreclosure Crisis

The CFPB finalized the 2013 Mortgage Servicing Final Rule in the wake of the widespread default servicing failures of the preceding years.[21] The rule was designed to help ensure that mortgage servicers maintain proper communication with borrowers and evaluate borrowers for all available loss mitigation options within a reasonable timeframe.[22]

Regulation X requires that a mortgage servicer obtain a complete loss mitigation application from a borrower prior to making a determination as to what loss mitigation option or options, if any, it may offer to the borrower.[23] A complete loss mitigation application is defined in the 2013 Mortgage Servicing Final Rule as an application for which the servicer has received all the information that the servicer requires from a borrower in evaluating applications for any loss mitigation options available to the borrower. The 2013 Mortgage Servicing Final Rule also contains requirements aimed at ensuring that borrowers know when their servicer has received their loss mitigation application, whether the application is complete or incomplete, and, if the application is incomplete, what additional information is needed to make the application complete.[24] Under the rule, the borrower generally only receives foreclosure protections once the application is complete.

The 2013 Mortgage Servicing Final Rule does contain limited exceptions to the general requirement that servicers cannot offer borrowers loss mitigation options based on an incomplete loss mitigation application. For example, it allows servicers to offer short-term forbearance programs or short-term repayment plans to borrowers based on an incomplete loss mitigation application.[25] Those limited exceptions do not specifically address streamlined loan modifications.

D. Streamlined Modifications and Other Borrower Protections Emerge

The concept of a low-to-no documentation loan modification was introduced in the years following the foreclosure crisis. For example, the Government Sponsored Enterprises (GSEs) Fannie Mae[26] and Freddie Mac[27] introduced a streamlined

[13] *Id.*

[14] HAMP also required a Third-Party Authorization Form if the borrower was represented by an attorney, a Dodd-Frank Verification Form, and a demonstrated ability to make their monthly mortgage payments following a loan modification. In additional to a loan application and the standard required supporting documents, a borrower might be asked to submit additional supporting documentation based on the borrower's particular situation.

[15] Off. of Special Inspector Gen. for the Troubled Asset Relief Program (SIGTARP), *Factors Affecting Implementation of the Home Affordable Modification Program,* at 26 (Mar. 25, 2010), *https://www.sigtarp.gov/sites/sigtarp/files/Audit_Reports/Factors_Affecting_Implementation_of_the_Home_Affordable_Modification_Program.pdf.*

[16] John Rao et al., NCLC, *10.6.1 HAMP Review As a Prerequisite to Foreclosure, In* Mortgage Servicing and Loan Modifications (Digital version), *https://library.nclc.org/book/mortgage-servicing-and-loan-modifications/1061-hamp-review-prerequisite-foreclosure (l*ast visited July 1, 2024).

[17] CFPB, *What was the National Mortgage Settlement?, https://www.consumerfinance.gov/ask-cfpb/what-was-the-national-mortgage-settlement-en-2071/* (last reviewed Sep. 8, 2020).

[18] *Id.*

[19] *Id.*

[20] Stephanie C. Robinson & Kerri M. Smith, K&L Gates, *National Mortgage Foreclosure Settlement Tackles ''Dual Tracking'' of Foreclosure and Loan Modification,* Consumer Fin. Servs. Watch (Apr. 5, 2012), *https://www.consumerfinancialserviceswatch.com/2012/04/05/national-mortgage-foreclosure-settlement-tackles-dual-tracking-of-foreclosure-and-loan-modification/.*

[21] 78 FR 10696 (Feb. 14, 2013) (2013 RESPA Servicing Final Rule), 78 FR 10902 (Feb. 14, 2013) (2013 TILA Servicing Final Rule). Throughout this notice, these rules are referred to collectively as the ''2013 Mortgage Servicing Final Rule.''

[22] *Id.*

[23] 12 CFR 1024.41(c)(2)(i).

[24] *See* CFPB, *2013 RESPA Servicing Rule Assessment Report,* at 11 (Jan. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf* (Servicing Rule Assessment Report).

[25] *See* 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).

[26] Fannie Mae, *Servicing Guide Announcement SVC–2013–05: Streamlined Modifications, Conventional Mortgage Loan Modifications, and Outbound Communications* (Mar. 27, 2013), *https://singlefamily.fanniemae.com/media/19256/display. This announcement describes updates and clarifications to the introduction to streamlined modifications, which targets borrowers whose mortgage loans are at least 90 days delinquent and who meet the eligibility requirements provided above. Prior to and after offering a Streamlined Modification, a servicer must continue to comply with the delinquency management and default prevention requirements in the Servicing Guide.*

[27] Tracy Hagen Mooney, Freddie Mac, *Bulletin—Number 2013–8: New Freddie Mac Streamlined Modification and Updates to Freddie Mac Standard Modification Requirements* (Mar. 27, 2013), *https://guide.freddiemac.com/ci/okcsFattach/get/1006761_3.* This bulletin announces the Freddie Mac Streamlined Modification which provides an additional modification opportunity to certain

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modification program in 2013. The GSE programs significantly reduced the documentation requirements needed for servicers to evaluate borrowers for a loan modification. The programs helped demonstrate that streamlining the loan modification process can have benefits for borrowers. For example, streamlined loan modifications generate significantly more participation, according to a 2018 report by the Urban Institute. The report, using data from 2012 to 2015, found that the rate at which struggling borrowers agreed to participate in a modification, or the ''take-up'' rate, improved from 20.2 percent without streamlining to 29.2 percent with the program.[28] Studies also show that the streamlined loan modification programs not only increased the take-up rate, but also resulted in strong loan performance two years after implementation.[29] Additionally, streamlining the loan modification process eased capacity concerns for servicers.

E. Loss Mitigation During the COVID–19 Pandemic

During the COVID–19 pandemic, mortgage delinquencies increased to levels not seen since the foreclosure crisis.[30] As a result, the Federal Government enacted policies that allowed borrowers to easily access loss mitigation options with limited documentation. These policies, combined with the relatively strong equity position of homeowners due to rapid home price appreciation and historically low interest rates, enabled most borrowers to resume payments or pay off their loan. Ultimately, foreclosures remained low, and credit losses to investors were minimized.[31]

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.[32] The legislation created certain protections for federally backed mortgage loans that ran from the act's effective date until September 30, 2021.[33] The CARES Act was followed by the Consolidated Appropriations Act of 2021 to provide additional protections for consumers affected by the ongoing COVID–19 pandemic.[34] Among other borrower protections, the CARES Act provided that all borrowers who were financially affected either directly or indirectly by the COVID–19 pandemic, upon a request, had the option to temporarily suspend their monthly mortgage payments. The CARES Act provided forbearance for up to 180 days for borrowers who asserted their financial hardship was caused by the COVID–19 pandemic. Generally, documentation was not required, and borrowers received foreclosure and fee protection.[35]

In February of 2021, the Federal Housing Administration (FHA), the Federal Housing Finance Agency (FHFA), the United States Department of Agriculture (USDA), and the Department of Veterans Affairs (VA) all announced they were extending their forbearance programs beyond the minimum 180 days required by the CARES Act.[36] Under the agencies' forbearance programs, nearly 5 million borrowers had a loan in forbearance by May of 2020.[37]

As part of the overarching Federal approach to help borrowers resume their mortgage payments, there was widespread adoption by servicers of streamlined evaluations for permanent loan modifications, which allowed borrowers to quickly be evaluated for and enter loss mitigation programs, preventing avoidable foreclosures. Of borrowers who exited forbearance, 29.4 percent obtained a streamlined payment deferral to bring their loans current.[38] The increased use and availability of other loss mitigation tools, such as payment deferrals and partial claims, also greatly contributed to positive borrower outcomes.

Based on the success of the shift towards streamlined loan modifications during the COVID–19 pandemic, the CFPB has preliminarily concluded that the streamlined loss mitigation offers contributed to performance for these loans after loss mitigation programs were implemented. The loan performance of these loans was superior to performance under the HAMP approach. The re-default rate for all mortgages that exited COVID–19 loss mitigation programs was at the relatively low rate of 10 percent as of June 7, 2022.[39] By comparison, the redefault rate for HAMP loan modifications was approximately 46 percent as of April 30, 2013.[40] In addition, the types of loan modifications that were prevalent during the foreclosure crisis generally do not offer payment relief in the current high interest rate environment because the payments required under those loan modifications would be higher than a borrower's current mortgage payment. The Federal housing agencies have recently introduced mortgage assistance programs specifically designed to

borrowers who are at least 90 days delinquent but not more than 720 days delinquent.

[28] Laurie Goodman et al., Urb. Inst., *Streamlining increases the success of mortgage modifications by 34 percent,* Urb. Wire (July 17, 2018), *https://www.urban.org/urban-wire/streamlining-increases-success-mortgage-modifications-34-percent* (Urban Wire 2018). While the redefault rate for streamlined loan modifications were slightly higher compared to standard modifications, the study concluded that streamlined loan modification options provided a 7.9 percent net benefit to all distressed borrowers.

[29] Robert M. Dunsky, Fed. Hous. Fin. Agency (FHFA), *Measures of Home Retention Following a Loan Modification* (Apr. 7, 2023), *https://www.fhfa.gov/blog/statistics/measures-of-home-retention-following-a-loan-modification.*

[30] Kristin Wong, CFPB, *New data show improving yet sustained housing insecurity risks* (June 22, 2021), *https://www.consumerfinance.gov/about-us/blog/new-data-show-improving-yet-sustained-housing-insecurity-risks/.*

[31] *See generally* U.S. Gov't Accountability Off., *COVID–19 Housing Protections: Mortgage Forbearance and Other Federal Efforts Have Reduced Default and Foreclosure Risks,* GAO–21–554, (July 12, 2021), *https://www.gao.gov/assets/gao-21-554.pdf.*

[32] Coronavirus Aid, Relief, and Economic Security Act (CARES Act), H.R. 748, 116th Cong. (2020).

[33] CARES Act section 4022 (2020).

[34] Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2020).

[35] CARES Act section 4022 (2020); CFPB, *CARES Act Forbearance & Foreclosure,* at 1 (May 2020), *https://files.consumerfinance.gov/f/documents/cfpb_csbs_industry-forbearance-guide_2020-06.pdf.* Under the CARES Act, servicers also were required to extend the forbearance for up to an additional 180 days at the request of the borrower, provided that the request for an extension was made during the covered period. The borrower could request that either the initial or extended forbearance period be less than 180 days. *See* CARES Act section 4022(b) and (c)(1).

[36] FHA, VA, and USDA permitted borrowers who were in a COVID–19 forbearance program prior to June 30, 2020, to be granted up to two additional three-month payment forbearance programs. *See* The White House, *Fact Sheet: Biden Administration Announces Extension of COVID–19 Forbearance and Foreclosure Protections for Homeowners* (Feb. 16, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/.* FHFA stated that the additional three-month extension allows borrowers to be in forbearance for up to 18 months. Eligibility for the extension was limited to borrowers who are in a COVID–19 forbearance program as of February 28, 2021, and other limits may have applied. *See* Press Release, FHFA, *FHFA Extends COVID–19 Forbearance Period and Foreclosure and REO Eviction Moratoriums* (Feb. 25, 2021), *https://www.fhfa.gov/news/news-release/fhfa-extends-covid-19-forbearance-period-and-foreclosure-and-reo-eviction-moratoriums.*

[37] Intercontinental Exchange, Inc. (ICE), *Mortgage Monitor report—December 2023,* at 23 (Dec. 2023), *https://www.blackknightinc.com/wp-content/uploads/2023/12/ICE_MM_DEC2023_Report.pdf.*

[38] *See* Press Release, Mortg. Bankers Ass'n (MBA), *Share of Mortgage Loans in Forbearance Decreases to 0.29% in October* (Nov. 20, 2023), *https://www.mba.org/news-and-research/newsroom/news/2023/11/20/share-of-mortgage-loans-in-forbearance-decreases-to-0.29-in-october.*

[39] *Id.*

[40] SIGTARP, *Rising Redefault Rates of HAMP Mortgage Modifications Hurt Homeowners, Communities and Taxpayers,* at 6 (July 24, 2013), *https://www.sigtarp.gov/sites/sigtarp/files/Audit_Reports/Rising_Redefaults_of_HAMP_Mortgage_Modifications.pdf.*

address high interest rate environments.[41]

F. Amendments to the Mortgage Servicing Rules

The CFPB has amended the 2013 Mortgage Servicing Final Rule several times. Prior to the COVID–19 pandemic, these amendments were primarily based on information gained about aspects of the 2013 Mortgage Servicing Final Rule that posed implementation challenges or required further clarification.[42] In 2020, the CFPB issued an interim final rule to amend Regulation X to assist mortgage borrowers with financial hardships due to the COVID–19 pandemic by temporarily allowing mortgage servicers to offer borrowers certain loss mitigation options based on the evaluation of incomplete loss mitigation applications.[43]

In 2021, the CFPB proposed, and then finalized with changes another rule to extend access to additional COVID–19-related loss mitigation options without requiring evaluation of a complete loss mitigation application.[44] As a result, mortgage servicers could get borrowers into certain streamlined loan modifications more quickly, ultimately helping borrowers avoid foreclosure. Under both the 2020 and 2021 rules, servicers could offer these loss mitigation options without evaluating a complete application only if the options had certain borrower protections built in, such as a required waiver of certain fees and charges.

B. Outreach and Engagement

Consistent with section 1022(b)(2)(B) of the CFPA, the CFPB has consulted with the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

III. Legal Authority

The CFPB is issuing this proposed rule pursuant to its authority under RESPA and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), including the authorities discussed below. The CFPB is issuing this proposed rule in reliance on the same authority relied on in adopting the relevant provisions of the 2013 RESPA Servicing Final Rule, as discussed in detail in the Legal Authority section and Section-by-Section Analysis of the 2013 RESPA Servicing Final Rule.[45]

A. RESPA

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the CFPB 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 CFPB to establish any requirements necessary to carry out section 6 of RESPA. Section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E) further authorizes the CFPB to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes.

The consumer protection purposes of RESPA, as articulated in the 2013 RESPA Servicing Final Rule and several subsequent rules amending it, include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers prevent avoidable costs and fees, and facilitating review for foreclosure avoidance options. The amendments to Regulation X in this notice of proposed rulemaking are intended to achieve some or all these purposes.

Specifically, and as described further below, the CFPB preliminarily believes that a more flexible approach to the loss mitigation process requirements in Regulation X would more effectively assist borrowers with preventing avoidable foreclosure due in part to the increased prevalence in recent years of streamlined loss mitigation options. Streamlining and simplifying the loss mitigation process while providing new borrower protections, as the CFPB is proposing to do, would facilitate review for foreclosure avoidance options and help borrowers prevent avoidable costs and fees.

B. Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1), authorizes the CFPB 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.[46] In addition, section 1032(a) of the Dodd-Frank Act authorizes the CFPB to "prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances."[47]

The authority granted to the CFPB in Dodd-Frank Act section 1032(a) is broad and empowers the CFPB to prescribe rules regarding the disclosure of the "features" of consumer financial protection products and services generally. Accordingly, the CFPB may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the CFPB "shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services."[48] The CFPB requests any such available evidence. The CFPB also requests comment on any sources that the CFPB should consider in determining whether to finalize the elements of this proposal prescribed under section 1032(a).

IV. Discussion of the Proposed Rule

A. Foreclosure Procedural Safeguards (§ 1024.41)

As discussed above, the CFPB seeks to improve upon the outcomes from the

[41] *See* Anoush Garakani & Nanci Weissgold, Alston & Bird, LLP, *FHA and VA Announce New Loss Mitigation Option,* Of Interest Consumer Fin. Blog, (Apr. 15, 2024), *https://www.alstonconsumerfinance.com/fha-and-va-announce-new-loss-mitigation-options/.*

[42] Since issuing the 2013 Mortgage Servicing Final Rule, the CFPB has engaged in continuous forward-looking efforts to prevent avoidable foreclosure. For example, in 2016 the CFPB outlined consumer protection principles to guide mortgage servicers, investors, government housing agencies, and policymakers as they developed new foreclosure relief solutions. *See* CFPB, *Consumer Financial Protection Bureau Outlines Guiding Principles For The Future Of Foreclosure Prevention* (Aug. 2, 2016), *https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-outlines-guiding-principles-future-foreclosure-prevention/.*

[43] CFPB, *Treatment of Certain COVID–19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA), Regulation X; Interim Final Rule,* 85 FR 39055 (June 30, 2020).

[44] CFPB, *Protections for Borrowers Affected by the COVID–19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,* 86 FR 18840 (Apr. 9, 2021) (proposed rule); 86 FR 34848 (Aug. 31, 2021) (final rule). The rule also contained several other provisions meant to protect borrowers experiencing financial hardship due to the COVID–19 pandemic.

[45] 78 FR 10696 (Feb. 14, 2013).

[46] 12 U.S.C. 5481(12), (14).

[47] 12 U.S.C. 5532(a).

[48] 12 U.S.C. 5532(c).

existing loss mitigation rules in § 1024.41 and to enhance their ability to account for a variety of macroeconomic conditions. To accomplish this, the CFPB is proposing to remove most of the existing requirements regarding incomplete and complete loss mitigation applications and to replace them with a new framework based on foreclosure procedural safeguards as discussed in more detail below in this part. In general, under the proposed framework, once a borrower makes a request for loss mitigation assistance, the loss mitigation review cycle would begin, and a servicer would need to ensure that one of the following procedural safeguards is met before beginning or advancing the foreclosure process or charging certain fees: (1) the servicer has reviewed the borrower for all available loss mitigation options and no available loss mitigation options remain; or (2) the borrower has not communicated with the servicer for at least 90 days despite the servicer having regularly taken steps to communicate with the borrower regarding their loss mitigation review. Among other things, the amendments would permit a servicer to review a borrower for loss mitigation options sequentially, instead of simultaneously. The foreclosure and fee protections would remain throughout the loss mitigation review cycle, until the borrower has come current or one of the procedural safeguards applies, much as is the case now for borrowers who are able to complete their loss mitigation applications. The proposed framework is intended to ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation without unnecessary delay. The CFPB preliminarily determines that stopping the advancement of foreclosure and the accumulation of certain fees on the borrower's account throughout the loss mitigation review cycle will provide strong incentives for servicers to complete loss mitigation reviews quickly and accurately.

1. Existing Loss Mitigation Procedures and Foreclosure Protections and the Proposed Loss Mitigation Landscape

At the time the CFPB finalized the existing overall complete application framework in the 2013 Mortgage Servicing Final Rule, described in part II and below, the CFPB stated that significant consumer benefits would result from requiring that borrowers be considered for all loss mitigation options in a single process. The CFPB stated that borrowers incurred more significant burdens in the market as evaluations occurred sequentially over time and borrower documents and information had to be continuously updated to make such documents and information current. The CFPB stated that the 2013 Mortgage Servicing Final Rule eliminated the need for borrowers to submit multiple applications for different loss mitigation options and provided for more efficient compliance by servicers with the requirements of the rule.

As detailed in part II, the loss mitigation landscape has changed dramatically over the past several years. The CFPB has preliminarily determined that streamlined loss mitigation options and the ability to do sequential review, with appropriate consumer safeguards, can help borrowers access loss mitigation more quickly and increase borrowers' chances of being able to avoid foreclosure.

Both industry and consumer groups have urged the CFPB to revise the existing regulatory framework to permit additional flexibility. In response to the CFPB's 2022 Request for Information Regarding Mortgage Refinances and Forbearances,[49] numerous stakeholders noted that the flexibility to more easily offer streamlined loss mitigation options would benefit borrowers, servicers, and investors.

Under the existing rule, a borrower's foreclosure protections are largely based on whether and when the borrower has submitted a complete loss mitigation application to the servicer. As defined in existing § 1024.41(b), a complete application is an application in connection with which the servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. In general, only if a servicer receives a complete application more than 37 days before a foreclosure sale must the servicer halt certain foreclosure activity while evaluating the borrower for all available loss mitigation options. Borrowers are also protected by a series of procedural requirements in existing § 1024.41(b) through (i), including notice requirements informing the borrower of what documents must be submitted and when, evaluation timeframes for servicers and related notices, and certain exceptions for when a servicer can offer a borrower any loss mitigation option based on an incomplete application. The limited number of exceptions for evaluation based on an incomplete application include specific requirements for each exception.

[49] *See* 87 FR 58487 (Sept. 27, 2022); *see also* CFPB, Request for Information Regarding Mortgage Refinances and Forbearances (Sept. 22, 2022), *https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/archive-closed/request-for-information-regarding-mortgage-refinances-and-forbearances/.*

2. The Proposed Foreclosure Procedural Safeguards Framework

The CFPB proposes to remove most of the application-based framework from § 1024.41, including the entirety of § 1024.41(b). As discussed in detail below, the CFPB also proposes to replace the existing prohibitions on foreclosure referral and sale in § 1024.41(f)(2) and (g) with a streamlined set of foreclosure procedural safeguards in revised § 1024.41(f)(2) and (3). The procedural safeguards refer to a loss mitigation review cycle and a request for loss mitigation assistance, which are proposed as new defined terms. The CFPB proposes to delete existing § 1024.41(g) in its entirety and to remove the temporary COVID–19 procedural safeguards at § 1024.41(f)(3). In addition, as discussed in part IV.C, the CFPB separately proposes new loss mitigation determination notice requirements in revised § 1024.41(c) that incorporate certain aspects of existing § 1024.41(c)(1), (c)(4) and (d) and proposes other revisions to existing § 1024.41(e), (h), (i) and (k) to conform to the other changes discussed throughout this notice. The CFPB would retain both the pre-foreclosure review period in existing § 1024.41(f)(1) and the small servicer requirements in existing § 1024.41(j) unchanged. Section 1024.41 generally does not apply to small servicers, but the pre-foreclosure review period in existing § 1024.41(f)(1) does apply to small servicers, and will continue to apply to small servicers if this proposal is finalized.

Under proposed § 1024.41(f)(2), a loss mitigation review cycle begins when a borrower makes a request for loss mitigation assistance more than 37 days before a foreclosure sale. Once the cycle begins, the servicer would be required to ensure that one of the following procedural safeguards is met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process: (1) the servicer has reviewed the borrower for all available loss mitigation options and no available loss mitigation options remain, the servicer has sent the borrower all notices required by § 1024.41(c) and (e), if applicable, and the borrower has not requested any appeal within the applicable time period or, if applicable, all of the borrower's appeals have been denied; or (2) the borrower has not communicated with the servicer for at least 90 days despite the servicer having regularly taken steps to communicate with the borrower regarding their loss mitigation review. The proposed fee provision in § 1024.41(f)(3) would provide that during a loss mitigation review cycle, no fees 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 shall accrue on the borrower's account.

i. Loss Mitigation Review Cycle

The CFPB proposes a new definition, loss mitigation review cycle, in § 1024.31 to describe the period of time that the proposed procedural safeguards in § 1024.41(f)(2)(i)–(ii) and (f)(3) would be in effect. Loss mitigation review cycle would mean a continuous period of time beginning when the borrower requests loss mitigation assistance, provided the request is made more than 37 days before a foreclosure sale. A loss mitigation review cycle would end when a servicer implements a loss mitigation solution for the borrower so that the borrower's loan is brought current, or when one of the procedural safeguards in paragraph (f)(2)(i) or (ii) are met.

A loss mitigation review cycle would continue while a borrower is in a temporary or trial loss mitigation period, such as a forbearance or loan modification trial payment plan, and the loan has not yet been brought current. The loss mitigation review cycle would continue during forbearance. Borrowers in forbearance would typically need additional loss mitigation assistance to become current. The cycle would also continue during a trial payment plan, to provide the borrower an adequate opportunity to perform on the plan and become current. If the trial is unsuccessful and the borrower is not brought current, the servicer must ensure that one of the procedural safeguards in paragraph (f)(2)(i) or (ii) is met before the cycle ends and the servicer can begin or advance foreclosure.

ii. Request for Loss Mitigation Assistance

The CFPB proposes to add request for loss mitigation assistance as a new defined term in § 1024.31 to mean any oral or written communication, occurring through any usual and customary channel for mortgage servicing communications, whereby a borrower asks a servicer for mortgage relief. Thus, a loss mitigation review cycle would begin as soon as the borrower simply asks for mortgage relief or otherwise indicates that they need mitigation assistance. As discussed in detail below, the CFPB intends for the definition of request for mortgage relief to be construed broadly.

After the 120-day pre-foreclosure review period provided in § 1024.41(f)(1) elapses, the existing rules make certain foreclosure safeguards provided in § 1024.41 contingent on the borrower having submitted a complete loss mitigation application. As a result, if a loan is more than 120 days delinquent and the borrower has yet to submit a complete loss mitigation application, the existing rules allow servicers to initiate, continue, or conduct foreclosures against borrowers while they participate in the loss mitigation review process, a practice known as ''dual tracking.'' Dual tracking can cause substantial consumer harm to borrowers and investors alike. For example, dual tracking can result in inconsistent and confusing communications, servicing errors, and additional costs to borrowers. These types of harms increase the risk that borrowers will not complete the loss mitigation process successfully, which in turn can lead to foreclosures that borrowers and investors otherwise could have avoided.[50]

The proposed rule would significantly reduce the periods during which dual tracking could occur by establishing procedural safeguards against foreclosure that begin as soon as the borrower makes a request for loss mitigation assistance and that continue for the entire loss mitigation review cycle. The CFPB anticipates that beginning foreclosure protections earlier in the loss mitigation process would provide an additional incentive for servicers to review borrowers for loss mitigation quickly and accurately. This incentive will be particularly important if the CFPB finalizes the other proposed changes to § 1024.41, many of which would remove prescriptive timelines for servicers' review of borrowers' requests for loss mitigation assistance.

Under the proposed rule, a borrower could make a request for loss mitigation assistance either orally or in writing. Borrowers currently ask their servicers to review them for loss mitigation assistance both orally and in writing, and excluding either oral or written communications could unduly restrict a borrower's ability to request review for loss mitigation assistance. However, to ensure that a request for loss mitigation assistance is directed to appropriate servicer personnel, the proposed definition also specifies that the request must come through the servicer's usual and customary channels for mortgage servicing communications. Because a request for loss mitigation assistance halts foreclosure initiation or advancement until the foreclosure procedural safeguards are met, the CFPB has preliminarily determined that servicers should be able to expect borrowers to reach out to personnel capable of either escalating or acting on their requests for loss mitigation assistance. As a result, certain borrower communications would not meet the definition of a request for loss mitigation assistance. For example, requests for mortgage relief made through informal channels, such as social media messaging or handwritten notes on payment coupons, would not constitute a request for loss mitigation assistance under the proposed rule unless the servicer used such informal channels for mortgage servicing communications.

The proposed rule further specifies that a request for loss mitigation assistance is to be construed broadly. A borrower does not need to use a specific form or any specific language to submit a request for loss mitigation assistance that triggers the proposed foreclosure procedural safeguards in § 1024.41(f)(2). Additionally, a servicer should presume that a borrower who experiences a delinquency as defined in § 1024.31 has made a request for loss mitigation assistance when they contact the servicer unless they clearly express some other intention. For example, a borrower who calls to inform the servicer that they will make a payment tomorrow has, absent more, not made a request for loss mitigation assistance.

The proposed rule provides three examples of communications that would be considered requests for loss mitigation assistance while also clarifying that these examples are not exhaustive. The first proposed example provides that a request for loss mitigation assistance includes any communication in which a borrower expresses an interest in pursuing a loss mitigation option, as defined in existing § 1024.31. Therefore, a request for loss mitigation assistance would include any request from a borrower for temporary or long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation

[50] *See* 78 FR 10696, 10819 (Feb. 14, 2013).

programs sponsored by a locality, a State, or the Federal government. Consistent with the directive to construe a request for loss mitigation assistance broadly, a borrower would not need to ask their servicer to review them for a specific loss mitigation option; rather, the borrower could simply express a general interest in goals such as staying in their home, receiving payment assistance, pursuing an alternative to foreclosure, or some combination of those objectives. To emphasize this point further, the second proposed example provides that a request for loss mitigation assistance includes situations in which a borrower indicates that they have experienced a hardship and asks the servicer for assistance with making payments, retaining their home, or avoiding foreclosure.

The third proposed example provides that a request for loss mitigation assistance includes any communication in which, in response to a servicer's unsolicited offer of a loss mitigation option, a borrower expresses an interest in pursuing the loss mitigation option offered or any other loss mitigation option. The CFPB intends this example to clarify that an unsolicited offer of a loss mitigation option from a servicer would be considered a request for loss mitigation assistance if, in response to the offer, the borrower expressed any interest in exploring an alternative to foreclosure, even if the borrower expresses disinterest in the specific unsolicited offer. The CFPB preliminarily views this clarification as necessary to ensure that a borrower's response to a servicer's unsolicited offer of loss mitigation would trigger the procedural safeguards against foreclosure in proposed § 1024.41(f) as long as such response included a request for some form of mortgage relief.

Additionally, the proposed rule would establish a process that is similar to the process provided in existing comment 31 (*Loss Mitigation Application*)–1 for vetting a borrower's representative who submits a loss mitigation application on behalf of a borrower. The CFPB preliminarily finds it reasonable to allow a borrower's representative to make a request for loss mitigation assistance on a borrower's behalf. For example, a borrower in need of loss mitigation assistance may ask a housing counselor or other knowledgeable person to assist them in making a request for loss mitigation assistance. However, the CFPB acknowledges that servicers may have concerns regarding potential liability under State and Federal privacy laws for communicating with a person claiming to be a representative of a borrower. To address these concerns, proposed comment 31 (*Request for Loss Mitigation Assistance*)–1 would clarify that servicers may use reasonable procedures to determine if a person who claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf. Reasonable procedures may include, for example, requiring purported agents to provide documentation from a borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer would treat a request for loss mitigation assistance as having been submitted by the borrower.

The proposed rule also would address servicer's options for handling requests for loss mitigation assistance received from potential successors in interest. Existing comments 41(b)–1.i and .ii currently address servicers' options for reviewing and evaluating loss mitigation applications received from potential successors in interest. The proposed rule would renumber these comments as comments 41(f)(2)–7.i and ii and then amend them to reflect the new foreclosure protections in § 1024.41(f)(2).

Specifically, proposed comment 41(f)(2)–7.i would provide that, if a servicer receives a request for loss mitigation assistance from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but is not required to, comply with the foreclosure procedural safeguards in § 1024.41(f)(2) with respect to that person. The proposed comment also would clarify how § 1024.41(i)'s limitation on duplicative requests applies to that person.

Proposed comment 41(f)–7.ii would provide that, if a servicer receives a request for loss mitigation assistance from a potential successor in interest and elects not to comply with the foreclosure procedural safeguards before confirming that person's status, the servicer must comply with those safeguards with respect to that person as soon as the person becomes a confirmed successor in interest and must treat the request for loss mitigation assistance as if it had been received on the date that the servicer confirmed the successor in interest's status.

The CFPB is seeking comment on these proposed requirements and associated commentary and, in particular, requests comment on the following issues:

(i) Should the proposed definition of a request for loss mitigation assistance limit the communication channels through which borrowers may make requests for loss mitigation assistance? What alternative channels should the CFPB consider, if any?

(ii) Are there additional examples of requests for loss mitigation assistance the CFPB should provide?

(iii) Should the rule require servicers to provide borrowers with notices that acknowledge when borrowers have made requests for loss mitigation assistance? If so, what information should such notice provide? What potential challenges and burdens might such notice create for servicers?

iii. Advancing the Foreclosure Process

As noted above, the CFPB is proposing procedural safeguards that, under certain circumstances, limit any actions that advance the foreclosure process beginning when borrowers have requested loss mitigation assistance. Under existing § 1024.41(f) and (g), servicers are prohibited from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances, as well as from moving for foreclosure judgment or order of sale or conducting a foreclosure sale under other circumstances. These restrictions not only apply to servicers, but also foreclosure counsel retained by servicers. However, currently, servicers may still proceed with other interim foreclosure actions, such as mediation or arbitration, even if those actions may not be beneficial to the borrower or may be unnecessary for borrowers that shortly thereafter obtain loss mitigation.

The CFPB has heard from some stakeholders that while some foreclosure actions can prompt borrowers to cure delinquency, other actions that advance the foreclosure process after a borrower has requested loss mitigation assistance and while the servicer is evaluating them for such assistance can confuse borrowers and affect the success of that request. Additionally, borrowers and servicers may accrue foreclosure costs (often the responsibility of the borrower under the loan contract) that could be avoided if foreclosure actions were paused during loss mitigation review. For example, servicer foreclosure counsel and borrower attorneys may both continue to file required affidavits and responses in foreclosure litigation, drafting and preparing responses and filings that may not eventually be required if the borrower is approved for loss mitigation. The legal fees and filing costs for such actions, which are often paid by the borrower either out of their own funds or added to the balance of the borrower's mortgage, could be avoided if foreclosure processes were halted during the loss mitigation review.

When finalizing existing § 1024.41(f) and (g) in 2013, the CFPB stated it recognized foreclosure processes were complex. To balance the needs of borrowers, servicers, and investors, the CFPB limited foreclosure prohibitions to foreclosure initiation and sale but did not prohibit interim actions. However, since that time, the CFPB has heard that many servicers now typically place a complete hold on foreclosure activity upon receipt of a complete loss mitigation application. Given this shift in industry practice, in proposing to replace the existing complete application framework as discussed above, the CFPB has preliminarily determined that building on that shift in industry practice by including foreclosure advancement in the foreclosure procedural safeguards, in addition to initiation and sale, will help address concerns about borrower confusion and costs related to interim foreclosure actions that advance the foreclosure process. Applying the foreclosure procedural safeguards to foreclosure advancement might also help provide servicers with additional incentive to quickly and accurately review loss mitigation requests so that they can proceed with foreclosure activity (if the proposed procedural safeguards are met) when necessary. As a result, the CFPB is proposing to require that when a borrower requests loss mitigation assistance more than 37 days before a foreclosure sale, a servicer is required to ensure that one of the safeguards discussed below in this part is met before it makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process. If a borrower requests loss mitigation assistance more than 37 days before a foreclosure sale, but the foreclosure process advances without one of the safeguards being met, the foreclosure advancement would constitute a violation of this regulation, if finalized as proposed.

Under the proposed rule, advancing the foreclosure process would include any judicial or non-judicial actions that advance the foreclosure process and were not yet completed prior to the borrower's request for a loss mitigation option. Such actions might include, for example, certain filings, such as those related to mediation, arbitration, or reinstatement that take place prior to final order or sale; certain affidavits, motions, and responses that advance the foreclosure process; or recordings or public notices that occur before a final foreclosure judgment or sale. The CFPB is not proposing to require servicers to dismiss pending foreclosures. However, actions such as necessary filings to pause the foreclosure proceedings may be required until the safeguards are met. The CFPB is seeking comment on all aspects of these proposed requirements and in particular requests comment on the following issues:

(i) Should the CFPB provide or codify additional detail as to the meaning of advancing the foreclosure process, and if so, what details should it provide?

(ii) Are there State or local foreclosure laws or requirements that might affect a servicer's ability to comply with this requirement, and if so, how?

(iii) Should the CFPB consider excepting any interim foreclosure actions, such as mediation or arbitration, where the borrower would prefer to participate in those meetings, and if so, should the CFPB identify any minimum standards for servicers to determine borrower preference regarding participation in those meetings?

iv. No Remaining Loss Mitigation Options

The CFPB proposes that the procedural safeguards in § 1024(f)(2) would apply during a loss mitigation review cycle, as defined in § 1024.31. As long as a borrower requests loss mitigation assistance more than 37 days before a foreclosure sale, the servicer would be required to ensure that one of the procedural safeguards in § 1024.(f)(2)(i) or (ii) is met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process. The CFPB preliminarily determines that this proposed approach will create incentives for servicers to review borrowers for loss mitigation quickly and accurately and will also effectively protect borrowers from avoidable foreclosures and certain fees.

Under the first proposed procedural safeguard in § 1024.41(f)(2)(i), a servicer would be able to begin or advance the foreclosure process if the servicer has reviewed the borrower for loss mitigation and no available loss mitigation options remain, the servicer has sent the borrower all notices required by proposed § 1024.41(c)(1) and (h)(4) if applicable, and the borrower has not requested any appeal within the applicable time period or, if applicable, all of the borrower's appeals have been denied.[51]

Existing comment 31 (Request for Loss Mitigation Assistance)–2, which the CFPB is not proposing to amend, provides that a loss mitigation option is available through the servicer if it is an option for which the borrower may apply, even if the borrower ultimately does not qualify for that option. For purposes of proposed § 1024.41, a loss mitigation option would not be available if (1) the borrower affirmatively opts out of review for that option; (2) the servicer offers the borrower the option and the borrower rejects it; or (3) the servicer finds the borrower ineligible for the option.

The CFPB is proposing to retain existing § 1024.41(a), which clarifies that § 1024.41 imposes no duty on a servicer to provide a borrower with any specific loss mitigation option. The CFPB acknowledges that a servicer must follow applicable investor guidelines regarding which loss mitigation options, if any, are available to the borrower and for which the borrower may qualify.

Under the proposed framework, a servicer would not be required to collect a complete loss mitigation application for all available options prior to making a determination about whether to deny or offer a loss mitigation option to a borrower. As a result, the servicer would have more flexibility to review a borrower for loss mitigation options sequentially rather than simultaneously, although a simultaneous review would be permitted. While the CFPB expects that this approach would create incentives for servicers to conduct loss mitigation reviews and place borrowers into loss mitigation options quickly, the CFPB recognizes that more complex situations may arise. For example, under the proposed framework, a borrower may decline an offer for a specific type of loss mitigation and seek first to learn what other options exist. The servicer may evaluate the borrower for additional options and the borrower may later decide that they would like to accept the offer that they previously declined. Investor guidelines, including what are commonly referred to as waterfalls, will continue to determine whether any loss mitigation option is available and whether the borrower qualifies for a given option.[52] However, as further discussed in part IV.C, to achieve the goal that borrowers be

[51] Regarding the reference to notices and appeals in § 1024.41(f)(2)(i), *see* the discussion of the proposed rule's amendments to § 1024.41(c) and (h).

[52] A waterfall is an evaluation criteria that sets an order ranking for evaluation of loss mitigation options.

informed of whether certain loss mitigation options are or will continue to be available, the CFPB is proposing to add loss mitigation determination notice disclosure requirements related to this issue. The CFPB encourages servicers to work with borrowers throughout the loss mitigation process, including by allowing borrowers to select an option that the borrower previously rejected, subject to investor requirements.

Similarly, the CFPB encourages a servicer to re-review a borrower for an option for which the borrower was previously denied during the same loss mitigation review cycle. Such a review may be due to changed borrower circumstances or other reasons, subject to investor requirements. The CFPB is proposing changes to § 1024.41(i) and deleting no longer applicable commentary regarding duplicative requests to align that provision with the new proposed regulatory framework. The proposed language clarifies that servicers must comply with the requirements of § 1024.41 for a borrower's request for loss mitigation assistance during the same loss mitigation review cycle unless one of the procedural safeguards is met.

A loss mitigation review cycle would continue while a borrower is in a temporary or trial loss mitigation period, such as a forbearance or loan modification trial payment plan, and the loan has not yet been brought current. Thus, if a borrower were placed in a loan modification trial payment plan and missed a payment or otherwise became unable to perform on the trial plan, the servicer would not be permitted to advance the foreclosure process immediately. Rather, the servicer would be required to review the borrower for any remaining available loss mitigation options.

The CFPB requests comment on all aspects of proposed § 1024.41(f)(2)(i), including the advantages and disadvantages of permitting a sequential review process.

v. Unresponsive Borrower

Under the second proposed procedural safeguard in § 1024.41(f)(2)(ii), a servicer would be able to begin or advance the foreclosure process if the servicer has regularly taken steps to identify and obtain any information and documents necessary from the borrower to determine which loss mitigation options, if any, it will offer to the borrower, and, if the servicer has made a loss mitigation determination, has regularly taken steps to reach the borrower regarding that determination, but the borrower has not communicated with the servicer for at least 90 days.

The CFPB preliminarily determines that allowing a servicer to proceed with foreclosure for a borrower who has been unresponsive for less than 90 days may encourage less rigorous and less effective servicer outreach. The CFPB proposes comment 41(f)(2)(ii)–3 to clarify that servicers cannot delay or procrastinate in their efforts to obtain information or documentation necessary to evaluate a borrower for loss mitigation, and that servicers cannot delay or procrastinate in their efforts to notify borrowers of available loss mitigation options. Accordingly, comment 41(f)(2)(ii)–3 states that, although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation review, throughout the loss mitigation review cycle, the servicer must regularly communicate the status of the loss mitigation review to the borrower, which includes requesting documentation and information that the servicer requires from the borrower and communicating available loss mitigation options.

This proposed procedural safeguard, requiring that the servicer has regularly taken steps to identify and obtain any information and documents necessary from the borrower and has regularly taken steps to reach the borrower, is intended to ensure that servicers are making efforts to be in regular contact with borrowers during the loss mitigation review cycle before moving forward in circumstances where a borrower is unresponsive. This safeguard is based on the existing rule's requirement that servicers exercise reasonable diligence in obtaining documents and information from the borrower to complete the loss mitigation application. In exercising reasonable diligence, servicers must promptly communicate with borrowers about the status of their application, any missing documents or information the servicer needs to evaluate the borrower for loss mitigation, and any deadlines by which the borrower should submit the documents or information the servicer needs. Once a servicer obtains all the information and documentation from the borrower to evaluate the loss mitigation application, the servicer is required to communicate to the borrower that the application is complete, and later communicate what loss mitigation options, if any, it can offer to the borrower.

While the proposed loss mitigation framework removes most of the existing requirements regarding incomplete and complete loss mitigation applications, the CFPB has preliminarily determined that the proposed procedural safeguard requiring that servicers regularly communicate with borrowers at various stages of the loss mitigation review cycle before servicers can begin or advance foreclosure will protect borrowers from avoidable foreclosure. Moreover, while the CFPB proposes to replace the term ''reasonable diligence'' with the ''regularly taken steps'' phrasing that uses simpler language, it does not intend to reduce or lessen a servicer's existing obligation to identify and obtain needed information and to communicate with borrowers about their loss mitigation determination status. For example, under the proposed rule, servicers would still be required to reach out to borrowers through multiple live and written methods, including the borrower's preferred method if so indicated.

Even as the CFPB expects servicers to be in regular contact with borrowers seeking loss mitigation, including borrowers who have been unresponsive for a period of time, the CFPB acknowledges that it would be harmful to borrowers, servicers, and investors if a servicer was never able to begin or advance the foreclosure process. The CFPB preliminarily believes 90 days is a sufficient timeframe to allow borrowers to respond to a servicer's communication attempts. The CFPB's proposal of 90 days is similar to the timeframe used for the unresponsive borrower provision of the temporary special COVID–19 loss mitigation procedural safeguards put in place in 2021.[53]

The CFPB also proposes several changes to commentary to clarify proposed § 1024.41(f)(2)(ii). The CFPB proposes to make minor amendments to existing comment 41(f)(3)(ii)(C)–1 and transfer it to proposed comment 41(f)(2)(ii)–1. Existing comment 41(f)(3)(ii)(C)–1 provided clarity regarding when a borrower was considered to be unresponsive for purposes of the now expired temporary special COVID–19 loss mitigation procedural safeguards in § 1024.41(f)(3). The CFPB is proposing to remove the last sentence of comment 41(f)(3)(ii)(C)–1, since that sentence was primarily applicable to borrowers who may not have communicated with their servicer at all since becoming delinquent. The CFPB preliminarily determines that the subject sentence has limited utility for the new proposed procedural safeguards in § 1024.41(f). The CFPB is also proposing to relocate existing comment

[53] 86 FR 34848, 34885 (June 30, 2021).

41(f)(3)(ii)(C)–2, which generally provides that communication from a borrower's representative constitutes communication from the borrower themselves, to proposed comment 41(f)(2)(ii)–2. Though existing comment 41(f)(3)(ii)(C)–2 was finalized as part of the now expired temporary special COVID–19 loss mitigation procedural safeguards in § 1024.41(f)(3), the CFPB preliminarily believes that it remains applicable to the new proposed procedural safeguards in § 1024.41(f), and therefore proposes to relocate it without amendment.

The CFPB requests comment on all aspects of proposed § 1024.41(f)(2)(ii) and, in particular, requests comment on the following issues:

(i) Does 90 days provide borrowers with a sufficient amount of time to respond to a servicer's communication and avoid foreclosure? If not, what amount of time is sufficient?

(ii) Does the CFPB's proposal to require servicers to regularly take steps to obtain information and to regularly take steps to contact borrowers before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process, adequately provide servicers with the appropriate incentives to make regular attempts to obtain missing information or contact the borrower regarding loss mitigation determinations? Should the CFPB consider more specific requirements, or provide additional clarification in the commentary, for determining when a servicer has ''regularly taken steps'' in accordance with proposed § 1024.41(f)(2)(ii)? Are there ways that the CFPB could further simplify and streamline these proposed requirements?

vi. Abandoned Property

The CFPB recognizes that the 2021 Mortgage Servicing Final Rule's temporary special COVID–19 procedural safeguards included an exception for abandoned property, generally stating that the servicer may begin the foreclosure process if the property securing the mortgage loan is abandoned according to the laws of the State or municipality where the property is located. As described in the preamble to that rule, this procedural safeguard was specific to the circumstances of the COVID–19 pandemic, including the extended foreclosure moratorium, and the expected surge in foreclosure activity. The CFPB stated that this safeguard was not intended to define abandoned property or principal residence more broadly for purposes of Regulation X. The CFPB requests comment on all aspects of proposed § 1024.41(f)(2)(ii), including on whether the CFPB should include an abandoned property exception in this rulemaking, and, if so, what the content of that exception should be.

vii. Fee Protections

The CFPB proposes to replace the temporary COVID–19 procedural safeguards at § 1024.41(f)(3) with a proposed requirement that during a loss mitigation review cycle, no fees 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 shall accrue on the borrower's account.

The CFPB preliminarily determines that borrowers who have made a request for loss mitigation assistance should not continue accruing fees that make it harder for them to resolve the delinquency and avoid foreclosure. In addition, the CFPB preliminarily determines that fee protections may create incentives for servicers under the proposed new framework to efficiently process a borrower's request for loss mitigation assistance and evaluate them for loss mitigation solutions quickly and accurately.

The CFPB has previously acknowledged that the waiver of delinquency-related fees benefits borrowers who are already experiencing financial hardship. In the 2020 Mortgage Servicing Interim Final Rule and the 2021 Mortgage Servicing Final Rule (COVID–19-related mortgage servicing rules finalized in line with section 4022 of the CARES Act,[54] which restricted the accrual of interest, penalties, and fees during forbearance), the CFPB allowed servicers to offer certain loss mitigation options to borrowers even if the borrowers had not yet submitted a complete application, as long as the options incorporated a fee waiver as a safeguard. In the 2020 Mortgage Servicing Interim Final Rule, the CFPB explained that benefits of the fee waiver included (1) eliminating the immediate potential risk of foreclosure, (2) permitting borrowers to resume repayment with no delinquency and no additional fees or interest, and (3) enabling borrowers to better plan how to eventually repay the amount that was deferred. Similarly, in the 2021 Mortgage Servicing Final Rule, the CFPB explained that loss mitigation options qualifying for the complete application exception adopted in the final rule (which included required fee waivers) avoided imposing additional economic hardship on borrowers who had already experienced prolonged hardship due to the pandemic.

The proposed fee protection would be broad, and would restrict the accrual of interest, penalties, and fees during the loss mitigation review cycle. Though this broad prohibition may result in servicers making payments to third party companies for delinquency-related services that servicers may not be able to recoup, as stated above, the CFPB preliminarily determines that this result may further create incentives for servicers to process loss mitigation applications quickly and accurately in order to minimize costs and lost revenue.

viii. Removing Aspects of the Current Application-Based Framework From § 1024.41

As discussed in detail above, the CFPB proposes to amend the existing § 1024.41 loss mitigation framework to simplify the loss mitigation process for borrowers and servicers, and to provide more flexibility to servicers while continuing to protect borrowers from avoidable foreclosures and certain fees. As a result of the proposed amendments, the CFPB proposes to remove most of the application-based framework from § 1024.41. Specifically, the CFPB proposes to remove the existing provisions regarding loss mitigation application reviews and notices in § 1024.41(b); complete application evaluations and notices in § 1024.41(c)(1); ''anti-evasion'' facially-complete applications, and exceptions for short-term loss mitigation options and COVID–19-related options in § 1024.41(c)(2); notices of complete application in § 1024.41(c)(3); and the associated commentary. The CFPB is also proposing to remove § 1024.41(c)(4), which generally requires a servicer to exercise reasonable diligence in obtaining information or documentation not in the borrower's control; however, as discussed in detail in part IV.C, the CFPB plans to incorporate the general requirements of existing § 1024.41(c)(4) into proposed § 1024.41(c)(2). The CFPB is also proposing a technical edit to § 1024.38(b)(2)(vi). This proposed technical edit would remove the reference to the notice requirement in existing § 1024.41(b)(2)(i)(B), which the CFPB proposes to remove.

The CFPB preliminarily determines that these provisions are no longer necessary under the proposed loss mitigation framework. Under the new

[54] The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, section 4022, 134 Stat. 281, 490 (2020).

framework that the CFPB is proposing, all borrowers would receive foreclosure protections as soon as they request loss mitigation assistance. Thus, under the proposed loss mitigation framework, the existing § 1024.41 provisions listed above are no longer necessary. For example, it would no longer be necessary to define an application as either complete or incomplete for purposes of the CFPB's loss mitigation rules, as the proposed loss mitigation framework removes that distinction. In addition, it would no longer be necessary to require the servicer to notify the borrower within five days that the servicer has received and determined that the loss mitigation application is incomplete to ensure the borrower has enough time to complete its loss mitigation application and obtain foreclosure protections because the proposed loss mitigation framework would require all borrowers to receive foreclosure protections as soon as they request loss mitigation assistance.

The CFPB also proposes conforming changes to § 1024.41(k) and its associated commentary. Generally, existing § 1024.42(k) addresses servicers' obligations and borrower protections following a mortgage servicing transfer when a loss mitigation application is pending. Primarily, the proposed conforming changes would replace the terms loss mitigation application and complete loss mitigation application with references to a request for loss mitigation assistance. The CFPB also proposes to make other changes throughout § 1024.41(k) and its associated commentary to conform to the changes discussed elsewhere in this proposal.

The CFPB requests comment on all aspects of its proposal to remove the existing loss mitigation framework in § 1024.41 and associated commentary. In particular, the CFPB requests comment on whether the CFPB should consider alternatives that would retain parts of the existing § 1024.41 loss mitigation framework. For example, consumer advocates have suggested the CFPB amend the definition of ''complete application'' in existing § 1024.41(b)(1) to include a list of specific documents that a borrower must submit. If so, how would their retention combine with the proposed § 1024.41 loss mitigation framework?

B. Changes to Early Intervention Requirements (§ 1024.39)

In addition to removing language relating to the COVID–19 pandemic, as discussed in part IV.G, the CFPB proposes to amend the early intervention requirements in § 1024.39 in three other ways. First, it proposes to amend the content of § 1024.39(b) written notices to require that those notices include certain additional information, such as the name of the investor currently holding the borrower's mortgage. Second, it proposes to create alternative early intervention notice requirements in § 1024.39(e) for borrowers performing under the terms of a forbearance agreement. Third, it proposes to amend comments 39(a)–4.i.A and 39(a)–6 so that those comments reflect the procedural safeguards established by proposed § 1024.41(f).

1. Requiring Investor Specific Information in Written Early Intervention Notices

The CFPB proposes to require a servicer to include additional information in the written early intervention notices required under § 1024.39(b)(2) to more fully inform the borrower about loss mitigation options that may be available from the owner or assignee of the borrower's loan. Under these proposed requirements, a servicer would provide contact information for borrowers to access a list of such loss mitigation options, the name of the investor, *i.e.,* owner or assignee of the borrower's loan, as well as additional descriptive information about each type of loss mitigation option that is generally available from that investor. The CFPB also proposes to make conforming changes to relevant existing commentary and to remove model clauses MS–4(A) and MS–4(B), currently in appendix MS–4.

Servicers are currently required to provide a delinquent borrower with a written early intervention notice containing certain information no later than 45 days into the borrower's delinquency and at specified intervals thereafter while the borrower remains delinquent.[55] Section 1024.39(b)(2) currently requires that written early intervention notices include certain information to ensure that a borrower is made aware of available loss mitigation options and the ability to contact the servicer to understand their options. Section 1024.39(b)(2)(ii) currently states that the written early intervention notice must include the telephone number to access servicer personnel assigned pursuant to § 1024.40(a) and the servicer's mailing address. Sections 1024.39(b)(2)(iii) and (iv) currently require that, if applicable, the written early intervention notice must include a statement providing a brief description of examples of loss mitigation options that may be available from the servicer, and either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer.

As discussed in part IV.A, the CFPB is proposing to allow servicers to review borrowers for loss mitigation options sequentially rather than requiring that servicers evaluate a borrower for all available options at the same time. As a result, under the proposed rule, a borrower may only receive information about the option for which they were most recently reviewed. Borrowers could benefit, however, from more information at the beginning of the process in order to better understand their options.

The CFPB is proposing to require servicers to include two additional resources for borrowers, the details of which would be disclosed under § 1024.39(b)(2)(ii). In addition to the telephone number to access servicer personnel assigned pursuant to existing § 1024.40(a) and the servicer's mailing address, the CFPB is proposing that the written early intervention notice must also include the telephone number where the borrower can access a list of all loss mitigation options that may be available from the owner or assignee of the borrower's loan and a website to access the same list of all loss mitigation options that may be available from the owner or assignee of the borrower's loan. The telephone number provided may be the same as the telephone number to access servicer personnel, which is already required to be included in the written early intervention notice under Regulation X's continuity of contact provision pursuant to § 1024.40(a). The website would be a resource where borrowers in delinquency could obtain information about all loss mitigation options that the owner or assignee of their loan may make available. Servicers may outsource the development and maintenance of the website, but must ensure that the information available is accessible, accurate, and complete.

The CFPB is proposing that the servicer disclose the name of the owner or assignee of the borrower's loan along with a statement providing a brief description of each type of loss mitigation option that is generally available from the investor of the borrower's loan under § 1024.39(b)(2)(iii). The CFPB is proposing that the servicer disclose the name of the owner or assignee of the loan both for transparency and so that borrowers and their housing counselors may better navigate the loss mitigation

[55] These requirements are similar to those imposed by the GSEs and FHA.

process and understand what loss mitigation options may be available to them from the particular investor on their loan through the servicer. The CFPB is proposing to change the language in existing § 1024.39(b)(2)(iii) from servicer to owner or assignee because available loss mitigation options are determined by the investor and not the servicer. This proposed change is not intended to be substantive, but rather is for the purpose of clarifying and cross-referencing the terminology used across Regulation X when referring to loss mitigation options as defined under § 1024.31.

The CFPB is proposing to amend the existing § 1024.39(b)(2)(iii) requirement that servicers include a statement providing a brief description of examples of loss mitigation options that may be available from the investor. Under the proposed rule, servicers would be required to include a statement providing a brief description of each type of loss mitigation option that is generally available from the investor. The existing framework allows servicers to list generic examples of loss mitigation options, without specifying a number of examples or requiring that all types or categories of loss mitigation options are listed on the written early intervention notice. The proposed amendment would instead require servicers to provide greater specificity to borrowers based on the types of loss mitigation that the investor offers, but would strike a balance by still not necessarily requiring a description of all individual programs that may be available from the investor on the borrower's loan in the written early intervention notice itself. For example, types of loss mitigation options could include forbearance, deferral, and loan modification. Under the proposed rule, if the investor offers various forbearance, deferral, and loan modification programs, each such category would constitute a different type of loss mitigation option and servicers need only give a brief description of each category, even if there were multiple programs under each category made available by the investor. Consistent with this change, the CFPB is proposing to make conforming terminology amendments to existing comments 39(b)(2)(iii)–1 and 39(b)(2)(iii)–2.

The CFPB is proposing to amend § 1024.39(b)(2)(iv) to include a statement informing the borrower how to make a request for loss mitigation assistance, and no longer require the inclusion of a statement informing the borrower about how to obtain more information about loss mitigation options from the servicer. The proposed additions in § 1024.39(b)(2)(ii) and (iii) would otherwise require the servicer to provide more information about loss mitigation options that may be available, without a request for more information from the borrower. The borrower would still receive the telephone number to access servicer personnel and the servicer's mailing address should the borrower wish to seek additional information about loss mitigation assistance beyond that which would already be made available through the proposed requirements. For consistency, the CFPB is proposing to make conforming terminology amendments to existing comment 39(b)(2)(iv)–1.

The CFPB is also proposing to remove model clauses MS–4(A) and MS–4(B) in appendix MS–4, as well as relevant regulatory text in § 1024.39(b)(3), which allows servicers to use model clauses MS–4(A) and MS–4(B) to comply with the requirements of § 1024.39(b). The CFPB proposes these changes because the language in model clauses MS–4(A) and MS–4(B) would no longer align with the proposed rule's requirements.

2. Alternative Early Intervention Notice Requirements for Borrowers Performing Pursuant to the Terms of a Forbearance

Under the existing rules, servicers generally must provide early intervention live contact and written notices to delinquent borrowers, including borrowers performing pursuant to the terms of a forbearance. In response to its September 2022 Request for Information (RFI),[56] the CFPB received comments asking it to change how these requirements apply to borrowers who have accepted a forbearance. One industry trade group noted that requiring early intervention notices to continue while a borrower is performing pursuant to the terms of a forbearance creates unnecessary borrower confusion because the notices do not reflect the fact that the borrower and the servicer have entered into a forbearance. Additionally, several consumer advocates indicated that the current early intervention notice requirements are deficient because they do not require servicers to provide borrowers in forbearance with written notice at the end of their forbearance period. These commenters asked the CFPB to consider adding a new requirement that servicers send a notice to borrowers at least 30 days before the end of their forbearance period that explains their options post-forbearance.

The CFPB proposes to address these concerns by creating alternative early intervention notice requirements for borrowers performing pursuant to the terms of a forbearance. These proposed requirements would replace the current temporary COVID–19 related live contact provisions at § 1024.39(e) and would consist of three provisions, proposed § 1024.39(e)(1), (2), and (3). As discussed in more detail below, proposed § 1024.39(e)(1) would provide that servicers may forgo the live contact and written early intervention notice requirements of § 1024.39(a) and (b) while a borrower is in a forbearance; proposed § 1024.39(e)(2) would provide that servicers must provide delinquent borrowers with forbearance-specific live contact and written early intervention notices prior to the scheduled end date of their forbearance; and proposed § 1024.39(e)(3) would establish procedures for resuming compliance with § 1024.39(a) and (b) after a borrower's forbearance period ends.

i. Partial Exemption From § 1024.39(a) and (b) if a Borrower Is Performing Pursuant to the Terms of a Forbearance (Section 1024.39(e)(1))

The CFPB proposes to add a new § 1024.39(e)(1) that would partially exempt servicers from the requirements of § 1024.39(a) and (b) while a borrower performs pursuant to the terms of a forbearance. As noted above, providing borrowers with early intervention notices while they are in forbearance may create borrower confusion. For example, a borrower who just entered into a forbearance may think that the servicer failed to process the forbearance if, shortly after executing the agreement, they receive a written early intervention notice encouraging them to contact their servicer to learn more about loss mitigation options and how to apply. Additionally, where the borrower and servicer have entered into a forbearance, borrower-servicer communication is already established, obviating the need for early intervention notices as a tool to prompt such communication.[57] Furthermore, as discussed in part IV.A, proposed § 1024.41(f)(2) would provide borrowers

[56] *See* CFPB, *Request for Information Regarding Mortgage Refinances and Forbearances,* 87 FR 58487 (Sept. 27, 2022); *see also* CFPB, *Request for Information: Mortgage Refinances and Forbearances,* Docket ID CFPB–2022–0059, *https://www.regulations.gov/document/CFPB-2022-0059-0001/comment* (last visited July 1, 2024).

[57] As discussed in the 2013 Mortgage Servicing Final Rule, one of the principal rationales for requiring early intervention loss mitigation notices is to correct impediments to borrower-servicer communication so that borrowers have a reasonable opportunity to pursue loss mitigation at the early stages of their delinquency. *See* 78 FR 10696, 10788–89 (Feb. 14, 2013).

with foreclosure protections for the entirety of a loss mitigation review cycle, such that a servicer could not initiate or advance foreclosure proceedings against a borrower who accepts a forbearance unless the procedural safeguards in proposed § 1024.41(f)(2)(i) or (ii) were met. As a result, suspending early intervention requirements while a borrower performs pursuant to the terms of a forbearance poses less risk to the borrower alongside these proposed procedural safeguards.

ii. Contact and Notice Requirements for a Forbearance Nearing Its Scheduled End (Section 1024.39(e)(2))

The CFPB proposes to add a new § 1024.39(e)(2) that would require servicers to attempt to establish live contact with and to send written notices to delinquent borrowers nearing the scheduled end of their forbearance. Specifically, proposed § 1024.39(e)(2)(i) would provide that servicers must make good faith efforts to establish live contact with delinquent borrowers at least 30 days, but no more than 45 days, before the scheduled end of their forbearance. During such live contact, servicers would be required to notify delinquent borrowers of the date their forbearance is scheduled to end and of the availability of loss mitigation options, if appropriate, as set forth in § 1024.39(a). Similarly, proposed § 1024.39(e)(2)(ii) would provide that servicers must send delinquent borrowers a written notice at least 30 days, but no more than 45 days, before the scheduled end of their forbearance. This written notice would disclose the date that the borrower's current forbearance is scheduled to end as well as the content of the written notice as set forth in proposed § 1024.39(b)(2)(i) through (v).

These live contact and written notice requirements would apply only to delinquent borrowers because delinquent borrowers typically will need to apply for additional loss mitigation options. In contrast, if a borrower were to cure their delinquency during their forbearance period, the information provided by proposed § 1024.39(e)(2) would not be relevant to the borrower and, in fact, could confuse the borrower by incorrectly stating that they were delinquent.

The CFPB proposes that servicers must provide the live contact and written notices described in proposed § 1024.39(e)(2)(i) and (ii) at least 30 days, but no more than 45 days, before the scheduled end of a borrower's forbearance for several reasons. First, this timing should help maximize the likelihood that borrowers have time to apply for additional loss mitigation while being close enough to the end of forbearance that it is sensible for them to do so. Second, the CFPB understands that some mortgage investors already require servicers to contact borrowers at least 30 days before the scheduled end of their forbearance.[58] Aligning the timing of the live contact and written notice requirements described in proposed § 1024.39(e)(2)(i) and (ii) with existing investor requirements should avoid duplicative contact efforts that would increase servicer burden and potentially cause borrower confusion. Third, the CFPB preliminarily finds that the communications described in proposed § 1024.39(e)(2)(i) and (ii) would be more useful to borrowers if they occurred roughly contemporaneously. For example, borrowers and servicers may have more productive conversations if borrowers have access to the written notice at the time of live contact. Alternatively, if the written notice arrived shortly after the servicer established live contact, it could reinforce the information provided during live contact.

The CFPB further proposes to tie the timing requirements described in proposed § 1024.39(e)(2)(i) and (ii) to the scheduled end of the borrower's forbearance rather than the actual end date of the borrower's forbearance because a consumer may leave a forbearance early or the parties may agree to extend the forbearance period. As a result, tying the timing requirements to the scheduled end of the borrower's forbearance would provide servicers a more certain date for compliance purposes. If a borrower's forbearance ended before the servicer either sent the written notice described in proposed § 1024.39(e)(2)(ii) or attempted to establish live contact as described in proposed § 1024.39(e)(2)(i), proposed § 1024.39(e)(3) would provide servicers with procedures for resuming compliance with § 1024.39(a) and (b).

The live contact and written notice requirements described in proposed § 1024.39(e)(2)(i) and (ii) would parallel the live contact and written notice requirements described in § 1024.39(a) and (b)(2), respectively, except that they also would require the servicer to disclose the date that the borrower's forbearance is scheduled to end. The CFPB proposes this approach for two reasons. First, borrowers who remain in forbearance for many months are likely to benefit from a reminder about the need to work with their servicer if they wish to obtain a permanent loan modification. Second, because proposed § 1024.39(e)(1) would partially exempt servicers from the requirements of § 1024.39(a) and (b) while a borrower performs pursuant to the terms of a forbearance agreement, borrowers who remain in forbearance for many months also likely would not receive the early intervention notices required by § 1024.39(a) and (b) for several months and likely would benefit from receiving such information again given the lapse of time since they were previously provided such notices.

iii. Procedures for Resuming Compliance With § 1024.39(a) and (b) (Section 1024.39(e)(3))

Proposed § 1024.39(e)(3) would provide that, when a forbearance ends for any reason, including, but not limited to, the borrower's successful completion of a forbearance or the borrower's nonperformance under the terms of a forbearance, a servicer that was exempt from § 1024.39(a) and (b) pursuant to § 1024.39(e)(1) must resume compliance with § 1024.39(a) and (b) after the next payment due date following the forbearance end date. This proposed approach would align with the approach used in § 1024.39(c)(2) for resuming compliance with § 1024.39(a) and (b) after the borrower has become a debtor in a bankruptcy proceeding.[59] Additionally, the CFPB preliminarily finds that resuming compliance on the next payment due date provides servicers with a clear date for resuming compliance.

Existing § 1024.39(b)(1) provides that a servicer is not required to provide the written notice required by § 1024.39(b) more than once during any 180-day period. Because it would be functionally identical to the § 1024.39(b) written notice, the § 1024.39(e)(2)(ii) written notice is a suitable substitute for the § 1024.39(b) written notice and should reset the start date for calculating the 180-day period in § 1024.39(b). To this end, proposed § 1024.39(e)(3) would clarify that, for purposes of providing the written notice required by § 1024.39(b) after resuming compliance, the 180-day period referenced in § 1024.39(b) begins with the date the

[58] *See* Fannie Mae, *Forbearance Plan Terms, In* Fannie Mae Servicing Guide—Fannie Mae Single Family, at 319 (May 8, 2024), *https://singlefamily.fanniemae.com/media/39096/display* (Fannie Mae Forbearance Plan Terms); Freddie Mac Single Family, *Contact Requirements when transitioning from a forbearance plan* (Oct. 11, 2023), *https://guide.freddiemac.com/app/guide/section/9203.14.*

[59] *See* 12 CFR 1024.39(c)(2)(i) (''[A] servicer that was exempt from paragraphs (a) and (b) of this section . . . must resume compliance with paragraphs (a) and (b) of this section *after the next payment due date that follows* the earliest of the following events . . ..'') (emphasis added).

servicer provided the last written notice to the borrower under either § 1024.39(b) or § 1024.39(e)(2)(ii), whichever is later.

3. Amendment To Comment 39(a)–4.i.A

Promptly after establishing live contact, § 1024.39(a) requires a servicer to inform a delinquent borrower about the availability of loss mitigation options ''if appropriate.'' Existing comment 39(a)–4.i states that it is appropriate for a servicer to inform a delinquent borrower about the availability of loss mitigation options if the borrower notifies the servicer of a material adverse change in their financial circumstances that is likely to cause them to experience a long-term delinquency for which loss mitigation options may be available.

The CFPB proposes to amend the example in comment 39(a)–4.i.A to clarify that it is appropriate for a servicer to inform a delinquent borrower about the availability of loss mitigation options if the borrower notifies the servicer of a hardship for which a loss mitigation option may be available. The CFPB proposes this change to make clear that it would be appropriate to inform borrowers about the availability of loss mitigation options whenever a loss mitigation option may be available to the borrower, irrespective of the projected length of the borrower's delinquency or the extent to which the borrower's financial circumstances have changed.

4. Amendment To Comment 39(a)–6

Existing comment 39(a)–6 clarifies, among other things, that:

> [i]f the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41, including during the borrower's completion of a loss mitigation application or the servicer's evaluation of the borrower's complete loss mitigation application, or if the servicer has sent the borrower a notice pursuant to § 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options, the servicer complies with § 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact.

To reflect the new loss mitigation requirements in proposed § 1024.41, discussed in part IV.A, proposed comment 39(a)–6 would replace the phrase ''maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41'' with the phrase ''maintaining regular contact with the borrower during a loss mitigation review cycle under § 1024.41'' and would strike examples referencing the borrower's completion of a loss mitigation application, the borrower's complete loss mitigation application, and the § 1024.41(c)(1)(ii) notice.

The CFPB requests comment on all aspects of proposed § 1024.39(e) and, in particular, requests comment on the following issues:

(i) Do the live contact and written notice requirements in proposed § 1024.39(e)(2)(i) and (ii) align with existing investor requirements for contacting borrowers before the end of their forbearance period?

(ii) Would borrowers in a forbearance who are no longer delinquent for purposes of § 1024.39 benefit from additional servicer contact before the scheduled end of their forbearance period? If so, what information should servicers provide to such borrowers during such contact?

C. Loss Mitigation Determinations—Covered Errors and Appeals Process (§§ 1024.35 and 1024.41)

The CFPB proposes to amend Regulation X to clarify that inaccurate loss mitigation determinations are a covered error under the existing error resolution provisions in § 1024.35. In addition, the CFPB proposes to amend the current loss mitigation appeal process provisions in § 1024.41(h) to clarify how they relate to the procedures in § 1024.35 and to expand them to cover all loss mitigation determinations, instead of only loan modification denials. Lastly, the CFPB proposes to amend comment 41(h)(3)–1 to remove all references to a complete application, conforming to changes the CFPB proposes to make throughout § 1024.41, as discussed above.

The CFPB is aware of confusion about whether the ''catch-all'' category in the error resolution procedures in § 1024.35(b)(11) includes loss mitigation determinations. Although the CFPB did not explicitly specify loss mitigation determinations as a covered error category in the 2013 Mortgage Servicing Final Rule, it has always intended for the catch-all to cover a broad range of errors—including errors related to loss mitigation determinations. However, courts have interpreted this issue inconsistently, with some courts finding that the catch-all does include loss mitigation determinations, and others finding that it does not. Thus, the CFPB believes that it should provide clarity on this issue in a manner that is consistent with its longstanding interpretation and original intent.

Given the interrelatedness of the subject matter and policy goals of the two provisions, the CFPB proposes to amend both the error resolution provision in § 1024.35 and the appeal process provision in § 1024.41(h) as described below.

1. Error Resolution Provisions

Regulation X's error resolution provisions in § 1024.35 currently implement RESPA sections 6(k)(1)(C) and 6(e), requiring a servicer to comply with several specific procedural requirements, including conducting a reasonable investigation, for any written notice from the borrower that asserts a covered error and that meets other specified criteria. Under RESPA, servicers must respond to qualified requests to address errors related to ''allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties.'' 12 U.S.C. 2605(k)(1)(C). Section 1024.35 lists ten specifically enumerated categories of covered errors, plus a catch-all for ''any other error relating to the servicing of a borrower's mortgage loan.''

The CFPB has consistently viewed servicer activities related to whether a borrower is able to avoid foreclosure—including loss mitigation determinations—as core duties of mortgage servicing, fitting squarely within RESPA and Regulation X's coverage and purpose. As defined in § 1024.31, a loss mitigation option is an alternative to foreclosure. Borrowers request loss mitigation options to avoid foreclosure, and, if a servicer makes an error related to a loss mitigation determination, that error ultimately may result in a foreclosure. Losing a home due to an avoidable foreclosure may be one of the greatest financial harms that can come to a mortgage borrower. Thus, the CFPB has consistently viewed servicer errors related to loss mitigation determinations as errors relating to the servicing of a borrower's mortgage loan.

In promulgating the 2013 Mortgage Servicing Final Rule, the CFPB considered but declined to add an enumerated category in § 1024.35 for a servicer's failure to correctly evaluate a borrower for a loss mitigation option.[60] However, the CFPB did not conclude that errors related to loss mitigation determinations were excluded from § 1024.35's reach. Rather, the CFPB explained in preamble that it intended the appeals process in § 1024.41(h) as well as the catch-all in § 1024.35 to be available for borrowers who encountered errors related to loss mitigation.

The CFPB stated that it intended the catch-all error provision to be broad and flexible. RESPA expressly prohibits

[60] 78 FR 10696, 10744 (Feb. 14, 2013).

servicers from, among other things, failing to take timely action to respond to a borrower's request to correct errors relating to avoiding foreclosure or other standard servicer's duties. In promulgating the 2013 Mortgage Servicing Final Rule, including the error resolution provisions, the CFPB stated that it believed that any error related to the servicing of a borrower's mortgage loan also relates to standard servicer duties. In the preamble discussion regarding the catch-all provision, the CFPB stated that it recognized that the mortgage market was fluid, and the CFPB could not anticipate in advance all types of errors related to servicing that a borrower may encounter. In finalizing the catch-all, the CFPB aimed to create error resolution procedures that were flexible enough to adapt to changes in the mortgage market and to encompass the various types of errors that borrowers may encounter with respect to their mortgage loans.

The CFPB emphasized that its approach to loss mitigation was not limited to the loss mitigation procedures set forth in § 1024.41 but involved a coordinated use of tools in different provisions of the rules, including the error resolution procedures in § 1024.35.[61]

The CFPB's 2016 Mortgage Servicing Final Rule reiterated the CFPB's view that § 1024.35's error resolution requirements have always applied to errors related to loss mitigation determinations. At that time, the CFPB was considering whether to extend the period during which a borrower could exercise appeal rights in cases where servicing of the borrower's loan has been transferred. The CFPB explained that it decided not to provide such an extension, but noted that even absent appeal rights, borrowers may still submit a notice of error relating to the loss mitigation or foreclosure process and to the servicing of the loan, and servicers must comply with the notice of error provisions.[62]

However, as noted above, the catch-all has not always been interpreted as broadly as the CFPB intended in the 2013 Mortgage Servicing Final Rule. Given the inconsistent application, the CFPB has preliminarily determined that both servicers and borrowers would benefit from the CFPB expressly clarifying that errors related to loss mitigation determinations are subject to the error resolution procedures in § 1024.35. Thus, the CFPB proposes to amend § 1024.35(b)(11) to specify that it covers a servicer's failure to make an accurate loss mitigation determination.

The proposed additional language would not create additional rights for consumers or extra burdens for servicers. Rather the additional language regarding inaccurate loss mitigation determinations is intended to merely clarify what the CFPB has always considered to be a covered error under the catch-all provision.

The CFPB anticipates that this provision would work together with proposed § 1024.41(c), which would require servicers to provide more specific information to borrowers in loss mitigation determination offer and denial notices, allowing borrowers to have more insight into specific reasons for servicers' loss mitigation determinations and whether those inputs were accurate. Proposed § 1024.35(b)(11) would not, however, cover challenges to investor requirements or specifications, such as, for example, a requirement that a borrower complete a trial period before being offered a loan modification.

2. Appeals Process

Section 1024.41(h) currently permits a borrower to appeal a denial of a loan modification program as long as the borrower's complete loss mitigation application is timely received, and the borrower appeals within specific timeframes. Different personnel must review an appeal than those responsible for evaluating the borrower's complete loss mitigation application. Within 30 days of a borrower making an appeal, the servicer must provide a notice to the borrower stating the servicer's determination.

The CFPB recognizes that an appeal process similar to that in existing § 1024.41(h) may be useful when a borrower believes an error has occurred in a loss mitigation determination. A borrower may be more familiar with the concept of an appeal and thus might be more likely to submit an appeal to a servicer rather than a notice of error under § 1024.35. Thus, the CFPB is proposing to retain a revised appeals process in § 1024.41(h). As described in proposed § 1024.41(h)(2), however, when the appeal meets the error resolution procedural requirements of § 1024.35, the proposed rule would require servicers to treat it as a notice of error and to comply with those procedural requirements.

Similarly, proposed § 1024.41(h)(2) would provide that if a borrower submits a notice of error under § 1024.35 relating to a loss mitigation determination, the notice of error is also an appeal under § 1024.41(h) if the borrower submits notice of error within 14 days after the servicer provides its loss mitigation determination. The CFPB also proposes to amend § 1024.41(h)(4) to require that, when a notice of error is also an appeal, a servicer must complete the notice of error response requirements in § 1024.35 prior to making a determination about the borrower's appeal under § 1024.41(h). As a result, the proposed rule would require servicers to respond to a notice of error within 30 days, the time allowed under existing § 1024.41(h)(4) for an appeal, even in those circumstances when § 1024.35 allows servicers more than 30 days to respond to notices of error.

In addition, if a borrower contests a loss mitigation determination in a manner that does not satisfy the procedural requirements of § 1024.35, the proposed rule would require a servicer to continue to treat the borrower's statement as an appeal under § 1024.41(h) and to respond to it in accordance with its policies and procedures for appeals.

The appeal rights in § 1024.41(h) currently apply only to loan modification denials; they do not cover other types of loss mitigation. In the 2013 Mortgage Servicing Final Rule, the CFPB explained that it was limiting the appeal provision to loan modification denials because this approach maintained consistency with existing appeals and escalation processes established under State law or Federal regulatory agency requirements, including obligations pursuant to the National Mortgage Settlement and the California Homeowner Bill of Rights. This limited approach was consistent with a national focus on loan modifications as a necessary and under-used tool for addressing the historic rates of foreclosures. As discussed in part II, default mortgage servicing has changed dramatically in the intervening years. As a result, the CFPB proposes to amend § 1024.41(h) to apply to all loss mitigation determinations, not just loan modification denials. This proposed change would require servicers to provide appeal determination notices. As discussed below in this part, in the case of a loss mitigation offer, the primary benefit to borrowers of requiring detailed determination notices is to assist the borrower with potential appeals or notices of error in cases where the terms of the offer may depend on borrower-provided inputs. By providing details on the inputs used as basis for the determination, the proposed notices may enable borrowers to recognize errors in determinations and to file a notice of error or an appeal.

[61] *Id.*at 10816.

[62] 81 FR 72160, 72281 (Oct. 19, 2016).

Finally, the CFPB proposes to amend § 1024.41(h)(1) to remove the reference to the servicer receiving a complete loss mitigation application 90 days or more before a foreclosure sale, because it would no longer be applicable under the proposed framework.

3. Loss Mitigation Determination Notices

The CFPB proposes to amend the loss mitigation determination notice and loan modification denial notice provisions in existing § 1024.41(c) and (d) to require that servicers provide determination notices regarding both offers and denials as well as all types of loss mitigation options, instead of just loan modifications. Under the proposed rule, servicers would provide borrowers with additional information in connection with their loss mitigation determinations, including, for example, the specific reason or reasons for the determination to offer or deny loss mitigation assistance and any key borrower-provided inputs that served as the basis of the determination. The CFPB also proposes requirements regarding offers of loss mitigation from a servicer when a borrower has not requested loss mitigation assistance. The CFPB proposes to make conforming changes to relevant existing commentary and renumber certain provisions for alignment with the proposed changes.

Additionally, under this proposal, existing § 1024.41(c)(4), which relates to denials of loss mitigation solely because the servicer lacks required documents or information not in the borrowers' control and associated determination notices, would be relocated to § 1024.41(c)(2) with certain revisions.

Section 1024.41(c) currently requires servicers to evaluate a borrower for all available loss mitigation options upon receipt of a complete application and to provide, among other information, a notice stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower. Under existing § 1024.41(d), if the servicer denies the borrower any trial or permanent loan modification option, the notice must include information such as the specific reason or reasons for the servicer's determination, but this requirement does not apply to determinations on loss mitigation options other than loan modifications.

As discussed above in part IV.A, the CFPB proposes to replace the existing loss mitigation framework with a new framework that will allow servicers to review borrowers for loss mitigation options sequentially. Accordingly, the CFPB proposes to amend § 1024.41(c) to remove references to complete applications and related timing requirements so that it instead focuses on loss mitigation determination notice requirements more generally. The notices would add new specific information as well as include some of the information required under existing § 1024.41(c), such as the amount of a time a borrower has to accept or to reject an offer and the right to appeal.

i. Expansion of Determination Notice Requirements to Offers and Loss Mitigation Options Other Than Loan Modifications

Under existing § 1024.41(d), borrowers only receive the specific reason or reasons for a loss mitigation determination when that determination is a denial. The CFPB preliminarily determines that servicers should be required to disclose the same information for loss mitigation offers in order to inform borrowers about the information relied upon while conducting the review, as this information could require correction or serve as the basis for an appeal. As noted in part II, non-loan modification loss mitigation options, such as forbearances, deferrals, and partial claims, have become increasingly common in recent years. The CFPB therefore also proposes to broaden the determination notice requirements to apply more generally to all types of loss mitigation offers and denials, not solely denials of loan modifications.

ii. Additional Information in Determination Notices

In addition to disclosing the amount of time the borrower has to accept or to reject an offer, notice of the borrower's right to appeal the loss mitigation determination, and the specific reason or reasons for that loss mitigation determination, the CFPB is proposing to require that servicers include the additional information discussed below in determination notices.

a. Borrower-Provided and Non-Borrower Provided Inputs

Servicers may rely on a variety of borrower-provided and non-borrower-provided inputs when determining whether to offer or to deny loss mitigation assistance to a borrower. Borrower-provided inputs, for example, can include information such as household income. Non-borrower provided inputs, for example, can include property valuations and credit scores. The CFPB proposes to require disclosure of the key borrower-provided inputs that served as the basis for the determination. For example, if a servicer relied on income information provided by the borrower, the servicer would be required to state that this information served as the basis for the determination and to provide the income figure relied upon. The CFPB preliminarily determines that borrowers would benefit from being made aware of the specific information that went into the servicer's determination so that they have an opportunity to correct any errors, file an appeal, or both. Errors could prevent a borrower from being appropriately evaluated for all available loss mitigation options for which they may be eligible, and therefore lead to a foreclosure action that could have been avoided. Allowing the borrower insight into the specific borrower-provided inputs in the written determination notice may help ensure the borrower promptly contacts the servicer and seeks a correction where there is an error. The CFPB preliminarily determines that providing this information to borrowers may prevent avoidable foreclosures.

The CFPB is not requiring proactive disclosure of all non-borrower provided inputs, although a borrower or the borrower's representative would be able to access this information via mail, telephone, or website, as detailed in the notice. Such information may not be useful to the borrower when they are simply used in the review process and do not serve as the basis for the determination. For example, a servicer could deny a loan modification after reviewing the borrower's income information, credit score, and the property's present value. Under the proposed rule, if the servicer only relied on the borrower's income in making the determination, the servicer would only be required to disclose the borrower's income relied on and not the property value or credit score. If, however, credit score was determinative for the servicer, the servicer would be required to disclose the credit score as the specific reason for the determination. The CFPB is aware that certain borrower-provided inputs constitute sensitive consumer information. As the CFPB has previously noted, it expects servicers and other financial institutions to take appropriate measures to protect consumer data.[63]

The CFPB proposes that determination notices must include a telephone number, mailing address, and website to access a list of non-borrower provided inputs, if any, that the servicer

[63] *See* CFPB, *Consumer Financial Protection Circular 2022–04* (Aug 11, 2022), *https://www.consumerfinance.gov/compliance/circulars/circular-2022-04-insufficient-data-protection-or-security-for-sensitive-consumer-information/.*

used in making the loss mitigation determination. The CFPB preliminarily determines that it would be useful for borrowers exercising their appeal rights and seeking this information to have access to it upon request, such that borrowers could readily identify and correct any errors on file with the servicer.

b. Enabling the Borrower To Access a List All Loss Mitigation Options That May be Available From the Investor

Consistent with allowing for sequential loss mitigation review, the CFPB proposes that a written determination notice must include a telephone number and website to access a list of all loss mitigation options that may be available from the investor. This proposed requirement mirrors the CFPB's proposed requirements as to the written early intervention notice, such that the borrower would be able to access this resource readily at this stage of the loss mitigation review process rather than solely at the point of early intervention. Making this information more accessible to the borrower is expected to allow borrowers to assess their options in deciding whether to use their appeal rights, file a notice of error, accept or decline an offer, or request review for a different loss mitigation option.

Under the proposed rule, the servicer would be responsible for ensuring that the website is accessible, contains accurate information, and that the lists are complete, but the servicer may outsource the development and/or maintenance of the website to a third party. The requirement that this information also be available via telephone is intended to ensure that borrowers who may not have access to the internet are still able to receive this information. The telephone number may be, but is not required to be, the same as the telephone number that a servicer may provide in order for the borrower to contact assigned personnel under the continuity of contact provision pursuant to § 1024.40(a)(2). The CFPB anticipates that this requirement should not overly burden servicers because it is the same information made available in the written early intervention notice provided pursuant to § 1024.39(b).

c. Remaining Available Loss Mitigation Options, Previously Offered Options, and Continued Availability of Offered Options

The CFPB also proposes to require servicers to disclose additional information about remaining loss mitigation options, including previously offered options that the borrower did not accept, and whether offered options will remain available if the borrower requests review for additional options prior to accepting or rejecting an offer. Informing the borrower of all other loss mitigation options that are still available, if applicable, along with a clear statement describing the next steps the borrower must take to be reviewed for those options, could be useful for the borrower to engage with the servicer as to what loss mitigation assistance they could still request following the determination. If no loss mitigation options remain available, then the servicer would be required to include a statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain. Additionally, the servicer would be required to include a list of any loss mitigation options that were previously offered that remain available, but that the borrower did not accept at the time. If the loss mitigation determination results in an offer, the servicer would be required to include a statement informing the borrower whether the offered option would remain available if the borrower were to request further review for other loss mitigation options prior to accepting or rejecting the offer. If the determination results in a loss mitigation offer of a forbearance, the servicer would be required to include a statement informing the borrower of the specific payment terms and duration of the forbearance. This proposed disclosure requirement regarding forbearances is similar to an existing disclosure requirement in current § 1024.41(c)(2)(iii). As noted above, the CFPB is proposing to delete that existing provision. However, the CFPB expects that it would continue to benefit borrowers to have a written notice confirming that their servicer is aware of and agrees to a forbearance for a certain period of time.

iii. Denial Due to Missing Documents or Information Not in the Borrower's Control

Existing § 1024.41(c)(4) generally prohibits a servicer from denying a loss mitigation application due solely to missing information not in the borrower's or servicer's control unless the servicer has exercised reasonable diligence to obtain that information and has been unable to obtain it for a significant period of time following the 30-day period during which servicers are generally required to make a determination on a complete loss mitigation application under current § 1024.41(c)(1)(ii). If the servicer does deny such a loss mitigation application, they must send a written notice informing the borrower of the missing information, that the servicer has requested the information, and that the servicer will evaluate the borrower for all available loss mitigation options promptly upon receiving it. The CFPB is proposing to replace current § 1024.41(c)(4) and related commentary with proposed § 1024.41(c)(2), which would have similar requirements but also include certain changes to align with the other proposed changes in § 1024.41.

As noted in part IV.A, the CFPB is proposing to remove existing § 1024.41(c)(1)(ii). Thus, the regulatory text in current § 1024.41(c)(4) and related commentary pertaining to the 30-day review period in existing § 1024.41(c)(1)(ii) would no longer be relevant under the new proposed loss mitigation framework. Instead, proposed § 1024.41(c)(2)(i) would prohibit servicers from denying a loss mitigation application due solely to missing information not in the borrower's or servicer's control unless the servicer has regularly taken steps to obtain the missing information and has been unable to obtain the information for at least 90 days. For example, if a servicer receives a request for loss mitigation on a Monday and requests information not in the borrower's or servicer's control on the following Friday, assuming the servicer regularly took steps to obtain the missing information, the servicer may send a written notice to the borrower, in accordance with proposed § 1024.41(c)(2), 90 days from the Friday it requested the information not in the borrower's or servicer's control. While every situation will vary, the CFPB expects that regularly taking steps would minimally include repeated attempted contact throughout the 90-day period with the relevant third party from whom the servicer needs to obtain the information. Requiring that the servicer has regularly taken steps to obtain any information and documents necessary from a party other than the borrower or the servicer is intended to ensure that servicers are making efforts to obtain needed information before denying a loss mitigation application due to missing information. While the CFPB proposes to replace the term reasonable diligence with the regularly taking steps phrasing that uses simpler language, it does not intend to reduce or to lessen a servicer's current obligation to obtain missing documents or information not in the borrower's control. The CFPB's proposal of 90 days is similar to the timeframe used for the unresponsive borrower provision in proposed § 1024.41(f)(2)(ii). The CFPB preliminarily determines that proposed § 1024.41(c)(2)(ii) will provide an incentive to servicers to obtain needed information from third parties in a timely manner.

Proposed § 1024.41(c)(2)(ii) also would require servicers to provide a notice to borrowers if they deny such an application. The notice requirements in proposed § 1024.41(c)(2)(iii) would retain aspects of the notice requirements in existing § 1024.41(c)(4), including requiring a statement that the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the missing third-party information, but also would provide borrowers with additional information. Existing § 1024.41(c)(4) does not allow the servicer to state a period of time after which the servicer will not complete its loss mitigation evaluation even if the servicer receives the missing information. As noted in part IV.A, the CFPB is proposing a new § 1024.41 loss mitigation framework that would generally require a servicer to exhaust review for all available loss mitigation options prior to advancing foreclosure, and this new framework allows for the possibility of sequential loss mitigation review. The CFPB preliminarily determines that it is important for a servicer to be able to determine with certainty whether it has met the procedural safeguards in proposed § 1024.41(f)(2)(i) to(ii) and can move forward with foreclosure. This is especially the case if a servicer elects or is required by the loan's investor to conduct review for loss mitigation options sequentially, which could involve a lengthy overall process. Therefore, the CFPB is proposing to require a servicer to inform the borrower that the servicer will complete its evaluation of the request for loss mitigation assistance if the servicer receives the referenced missing documents or information within 14 days of providing the missing information determination notice to the borrower. This proposed timeframe is similar to the timeframe during which a servicer must allow a borrower to appeal a loan modification denial pursuant to existing § 1024.41(h)(2).

Proposed § 1024.41(c)(2)(iii) also would require servicers to provide borrowers with the information contained in proposed § 1024.41(c)(1)(iv) through (ix), which includes, among other things, a list of all other loss mitigation options that are still available to the borrower and a statement describing the next steps the borrower must take to be reviewed for those loss mitigation options, or a statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain. The CFPB preliminarily determines that providing this information would aid borrowers in protecting their rights, which may include filing an appeal pursuant to proposed § 1024.41(h), a notice of error pursuant to § 1024.35, or both.

The CFPB requests comment on all aspects of proposed § 1024.41(c)(2). In particular, the CFPB is interested in whether a more prescriptive standard would be helpful for determining whether a servicer took regular steps to obtain missing information not in the borrower's or servicer's control, or if there is clearer language to convey the concept of ''regularly taking steps'' that still allows for flexibility over a variety of circumstances over time.

iv. Unsolicited Loss Mitigation Offers

The CFPB understands that servicers may frequently and routinely review borrowers for loss mitigation, using automated processes required by investors, without a borrower request and solely based on information already on record.[64] While potentially helpful to borrowers, these reviews and subsequent offers nevertheless may fail to inform borrowers about other loss mitigation options for which they may have been eligible, because such information is not required under current § 1024.41(c)(1)(ii).

The CFPB preliminary determines that, in these circumstances, borrowers would not necessarily benefit from notices of denials, but that the additional information regarding available options in notices of offers would be helpful to borrowers deciding whether to seek additional loss mitigation assistance. The CFPB proposes that servicers provide the borrower with a notice when it offers a loss mitigation option, even when the servicer has reviewed no borrower-provided information. The notice would be required to include the amount of time the borrower has to accept or reject the offer of loss mitigation, and information notifying the borrower, among other things, of remaining available loss mitigation options and investor information.

v. Removal and Amendment of Current Commentary

The CFPB proposes to remove comment 41(c)(1)–1 because the new proposed framework refers to the servicer's review of a borrower's request for loss mitigation assistance, and the language would be updated throughout Regulation X consistent with this change. The new proposed removal of comment 41(c)(1)–1 does not constitute a substantive change in how the CFPB views the relationship between an investor and servicer, including with respect to reviewing requests for loss mitigation assistance in accordance with CFPB regulations. The CFPB also proposes to make conforming edits to current comments 41(d)–1 through –4 in accordance with the changes to the loss mitigation determination notice requirement described above. Under the proposed rule, comment 41(d)–1 would no longer discuss disclosure requirements if a denial was based on investor criteria, such as a waterfall, because the current obligation to approve or deny every loss mitigation option following the servicer's receipt of a complete loss mitigation application would no longer apply under the new proposed framework. Instead, even if a borrower qualifies for a loss mitigation option, other options may still remain available for them rather than be automatically denied because of the position of the option in the investor's waterfall.

The CFPB proposes to remove comment 41(d)–2 because a net present value (NPV) calculation is no longer a frequently used calculation in the loss mitigation review process. Therefore, requiring disclosure of the key borrower-provided inputs that served as the basis of the determination, and all non-borrower provided inputs available via telephone or on a website, should allow borrowers and their representatives to better identify critical information and allow for future changes to servicer practices in loss mitigation evaluations. Additionally, the CFPB proposes to remove comment 41(d)–3 because servicers would be required to send specific determination notices for both offers and denials of all forms of loss mitigation, not solely for denials of loan modification options.

Finally, the CFPB proposes to update comment 41(d)–4 to apply the requirement that the specific reason or reasons for the denial be listed in the notice to all determinations, and not solely denials. The CFPB also proposes to remove references to the investor's hierarchy of eligibility criteria in comment 41(d)–4. As noted above, borrowers who are offered a loss mitigation option may remain eligible for other loss mitigation options in the investor's waterfall for which they have not yet been reviewed. Additionally, in connection with the proposed removal

[64] *See, e.g.,* Bill Maguire, Freddie Mac, *Guide Bulletin 2023–8: Servicing Updates* (Mar. 29. 2023), *https://guide.freddiemac.com/app/guide/bulletin/2023-8.*

of § 1024.41(d), the CFPB also proposes to relocate comments 41(d)–1 and (d)–4 to appear as comments 41(c)–1 and 41(c)–2.

The CFPB proposes to update § 1024.41(e)(1) to remove references to a complete loss mitigation application and instead apply the existing timing requirements to a borrower's request for loss mitigation assistance. Under the new proposed framework, which allows for sequential review for loss mitigation assistance, the timing requirements of § 1024.41(e)(1) would be triggered by a borrower's initial request for loss mitigation assistance, regardless of whether the servicer subsequently reviews the borrower for additional loss mitigation options. For example, if a foreclosure sale is scheduled for December 1 and a borrower makes a request for loss mitigation assistance on August 1, the borrower would be entitled to the 14-day period to accept or reject any offered loss mitigation option because the initial request for loss mitigation assistance occurred 90 days or more before a scheduled foreclosure sale. This would be the case regardless of when the servicer makes the offer to the borrower.

The CFPB requests comment on all aspects of its proposal to amend Regulation X's requirements related to loss mitigation determination notices and, in particular, requests comment as to whether there are opportunities for further simplification and streamlining of the loss mitigation determination notices.

D. Language Access

The CFPB is proposing several requirements that would provide borrowers with limited English proficiency greater access to mortgage servicing communications in languages other than English. These proposed requirements are a first step towards the goal of ensuring that all borrowers have access to information they need, when they need it, regardless of the language they may use to communicate. In general, the proposed rule would require mortgage servicers to accurately provide or make available in multiple languages certain written and oral communications under the CFPB's mortgage servicing early intervention and loss mitigation provisions, including any applicable amendments to those provisions as discussed within this proposed rule. The proposed rule would also impose certain requirements aimed at helping to ensure that borrowers who receive marketing for a loan in a language other than English receive the identified early intervention and loss mitigation communications accurately in that same language. Finally, the CFPB is also proposing conforming edits to § 1024.32(a)(2), which currently provides for optional servicing disclosures in languages other than English.

Based on the most recently available 2022 American Community Survey of 1-Year Estimates from the United States Census, almost one fourth of the population is estimated to reside in a household that speaks a language other than English.[65] Of those households, almost one fifth have limited proficiency in English, meaning that while they may be highly literate in their preferred language, they both do not speak English as their primary language (sometimes referred to as ''non-native English speakers'') and have a limited ability to read, speak, write, or understand English.[66] Nationally, the most frequently spoken languages among these households are Spanish, Chinese (including Mandarin or Cantonese), French/Cajun/Haitian, Russian/Polish/Other Slavic languages, Tagalog (including Filipino), German or West Germanic languages, Vietnamese, Arabic, and Korean. Additional languages may be more common in particular regions. According to the survey, as of 2022, Spanish-speaking households account for 13 percent of households in the United States and for 59 percent of households with limited English proficiency in the United States, while the other languages are used at rates between 1 percent and 9 percent of households with limited English proficiency nationally.[67]

CFPB outreach and market monitoring has shown that when borrowers with limited English proficiency are not able to access early intervention and loss mitigation communications in their preferred language or when they obtain inaccurate translations of these communications, those borrowers may have reduced ability to receive effective loss mitigation assistance and may experience avoidable foreclosures.[68] Mortgage servicing communications provide critical information for borrowers, and when those communications relate to delinquency, they are often the first step to help borrowers explore loss mitigation options to avoid foreclosure. These communications provide instructions and binding agreement details, and many contain technical legal information or information about complex and specialized financial topics. Borrowers who fluently communicate in English may have difficulty understanding some of this legal and financial text, and that difficulty may compound for borrowers with limited English proficiency. The increased difficulty in understanding this information may result in missed information or a lack of communication with the servicer if borrowers do not receive language assistance, or it may push borrowers to seek outside sources for assistance that may not be well versed in these topics or may not act in the borrower's interest.

Based on discussions with stakeholders, the CFPB understands that there are some mortgage servicers that are successfully addressing borrower language needs. These servicers effectively determine which languages are necessary for the geographic areas in which they do business, the investors they serve, and their business models. In determining which languages are best for their business, these servicers can quickly adapt as those borrower needs or business models change. They can provide informed translations and interpretation services, accurately conveying information to many borrowers in their preferred language, and do so in hundreds of languages.

However, these efforts are not universal across the mortgage market. Borrowers, consumer advocates, and industry stakeholders have expressed concern that borrowers' ability to access mortgage information in their preferred

[65] *See* U.S. Census Bureau, *2022 American Communities Survey Estimates Data: Detailed Household Language by Household Limited English Speaking Status, American Community Survey Table B16002, https://data.census.gov/table/ACSDT1Y2022.B16002?t=Language%20Spoken%20at%20Home&y=2022* (last visited July 1, 2024) (2022 ACS Table). This survey identifies ''limited English-speaking households,'' which it defines as a household in which no member 14 years old and over (1) speaks only English or (2) speaks a non-English language and speaks English ''very well.'' This notice uses the term limited English proficiency, which for purposes of this notice effectively has the same meaning.

[66] For more information about what ''limited English proficiency'' means, *see, e.g.,* Civ. Rights Div. of the U.S. Dep't of Justice, *Commonly Asked Questions, https://www.lep.gov/commonly-asked-questions.* (last visited July 1, 2024).

[67] *See, e.g.,* 2022 ACS Table; *see also* Edward Golding et al., *Is Limited English Proficiency a Barrier to Homeownership?,* Urb. Inst. (Mar. 2018), *https://www.urban.org/sites/default/files/publication/97436/is_limited_english_proficiency_a_barrier_to_homeownership.pdf.*

[68] *See, e.g., 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, 72163 (Oct. 19, 2016). *See also* CFPB, *Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace,* at 6–7 (Nov. 2017), *https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf;* CFPB, *Statement Regarding the Provision of Financial Products and Services to Consumers With Limited English Proficiency,* 86 FR 6306 (Jan. 21, 2021).

language remains challenging.[69] Some servicers may not offer borrowers translated mortgage-related financial disclosures and written documents or may not provide access to oral interpretation services.[70] Further, even when servicers make available communications in a borrower's preferred language, borrowers may not be able to obtain or effectively use those communications in their preferred language because (1) the availability may not be widely known, (2) the communications may have accuracy issues, or (3) accessing the communications in the borrower's preferred language may be prohibitively difficult.[71] For example, borrowers that prefer languages other than English often find that they encounter delays using interpretation services offered by their mortgage servicer.[72]

The CFPB expects mortgage servicers to assist borrowers with limited English proficiency. As noted in the 2016 Mortgage Servicing Final Rule, this includes communicating with borrowers clearly in the borrower's preferred language, where possible, and especially when lenders advertise in the borrower's preferred language.[73] In that rule, the CFPB stated that it was not imposing mandatory language translation requirements or other language access requirements at that time because, among other reasons, it had not had the opportunity to take comment from all interested parties about the challenges in addressing language access in the mortgage servicing context. The CFPB stated that it would continue to consider language access in connection with mortgage servicing and that it would further consider translation or interpretation in the mortgage servicing context, if appropriate.[74] Since that time, the CFPB has conducted outreach and stakeholder engagement and received comments from borrowers, consumer advocates, and industry stakeholders on more recent rulemakings and requests for information. Based on the information received, the CFPB better understands the challenges and obstacles faced by both mortgage borrowers and the mortgage servicing industry, as well as the successful actions some have taken to overcome these challenges.

In order to meet the language access goals identified above and in recognition of the successful industry practices noted above, the CFPB is proposing to require servicers to provide (1) Spanish-language translations of certain written communications to all borrowers; (2) upon borrower request, translation or interpretation services of certain written and oral communications in the requested language (as long as it is one of the ''servicer-selected languages'' discussed below), as well as brief translated statements on certain written communications in five servicer-selected languages identifying the availability of translations in those languages and how the borrower can request those translations (*i.e.,* translation and interpretation availability statements); and (3) upon borrower request, translation or interpretation services of certain written and oral communications in languages the servicer knows or should have known were used in marketing to the borrower for that mortgage loan.

The CFPB is not including proposed regulation text for these proposed requirements as there may be multiple ways to structure the specific requirement options detailed above, which will vary based on the aspects of the proposed rule ultimately finalized. The CFPB recognizes that public input will help design an effective intervention, including potentially identifying additional relevant details or alternative approaches, and is eager to consider those suggestions as it drafts regulatory text. Though the CFPB is currently proposing to limit these requirements to delinquency-related communications, it may also consider additional language access and translation requirements in future rulemakings.

The CFPB is seeking comment generally on current language access practices and standards in the mortgage servicing industry that could help further inform the final rule, and specifically:

(i) What is the capacity and availability of translation and interpretation services used by servicers, including third-party translation services? Have servicers experienced difficulty obtaining translation or interpretation services, and if so, what are the details of those difficulties?

(ii) What difficulties have borrowers experienced obtaining translation or interpretation services?

(iii) Are there servicers that specialize in servicing mortgage loans for borrowers who speak languages other than English and Spanish, and if so, do they also originate mortgages using those languages?

(iv) Are there details the CFPB should provide on the extent to which and how servicers currently translate or engage interpretation services for less frequently spoken languages in the United States?

(v) How accurate are translations and interpretations of mortgage servicing communications currently and what practices are used to ensure accuracy? Are there factors that affect the enforceability of requiring accuracy that the CFPB might consider? Are there bona fide errors that may occur that the CFPB should consider?

(vi) Are there any relevant State laws that may affect provision of mortgage servicing communications in languages other than English?

(vii) Are there additional flexibilities the CFPB should consider to help ensure servicers are able to properly tailor these requirements to the language needs of their borrowers?

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[69] *See, e.g.,* comments received in response to recent rulemakings and requests for information, such as the CFPB's *Request for Information on the Equal Credit Opportunity Act and Regulation B,* 85 FR 46600 (Aug. 3, 2020), and the CFPB's *Protections for Borrowers Affected by the COVID–19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X,* 86 FR 34848 (June 30, 2021). *See also* Petition from NCLC to Rohit Chopra, Director, CFPB Re. Request for RESPA Rulemaking: Home Equity Lines of Credit, Home Equity Conversion Mortgages, Language Access, and Manufactured Housing (Aug. 29, 2023), *https://www.regulations.gov/document/CFPB-2023-0045-0001;* Letter from Edward J. DeMarco, President, Hous. Pol'y Council to Rohit Chopra, Director, CFPB Re. CFPB's Upcoming Rulemaking on Regulation X Loss Mitigation Rules (Nov. 29, 2023), *https://www.housingpolicycouncil.org/_files/ugd/d315af_e2ce077e731d403f9c1f840762 2158c8.pdf;* Letter from Pete Mills, Senior Vice President, MBA to Rohit Chopra, Director, CFPB Re. Upcoming Rulemaking to Modernize the Loss Mitigation Rules of Regulation X (Dec. 6, 2023), *https://www.mba.org/docs/default-source/advertising/mba-regulation-x_early-intervention-and-loss-mitigation-letter_december-2023.pdf.*

[70] CFPB, *Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace,* at 12 (Nov. 2017), *https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf.*

[71] *See, e.g.,* NCLC, et al., Comments on *the Federal Housing Finance Agency's Request for Input on the Enterprise Equitable Housing Finance Plans* (Oct. 25, 2021), *https://www.nclc.org/wp-content/uploads/2022/08/FHFA_Equitable_Hsg_Finance_RJ_LEP.pdf;* Kleimann Commc'n Grp., *Language Access for Limited English Proficiency Borrowers: Final Report* (Apr. 2017), *https://www.fhfa.gov/sites/default/files/2023-04/Borrower-Language-Access-Final-Report-June-2017.pdf* (Kleimann 2017 Report); Ams. for Fin. Reform (AFR), *Barriers to Language Access in the Housing Market: Stories from the Field* (May 2016), *https://ourfinancialsecurity.org/wp-content/uploads/2016/05/AFR_LEP_Narratives_05.26.2016.pdf* (AFR 2016 Paper).

[72] *See* Kleimann 2017 Report; AFR 2016 Paper.

[73] 81 FR 72160, 72163–64, (Oct. 19, 2016); *See also* CFPB, *New rule ensures mortgage servicers provide options to potentially vulnerable borrowers exiting forbearance* (Sept. 30, 2021), *https://www.consumerfinance.gov/about-us/blog/new-rule-ensures-mortgage-servicers-provide-options-potentially-vulnerable-borrowers-exiting-forbearance/.*

[74] 81 FR 72160, 72163, (Oct. 19, 2016).

1. Specified Communications for the Proposed Rule

i. Specified Written Communications

The CFPB is proposing that the written communication requirements discussed in this part would apply to the (1) written early intervention notices required under § 1024.39(b), including any changes set forth in this proposal, (2) the § 1024.39(e)(2) proposed written notices for borrowers whose forbearances will end soon, and (3) written notices regarding loss mitigation currently required under § 1024.41, as well as any content changes or additions set forth in this proposal, as discussed above. Collectively, these notices are referred to in this part as the specified written communications. The CFPB is proposing that the requirements discussed in this part would apply to the notices identified above, but would not apply to the website referred to in those notices. For example, the proposed requirements would apply to the early intervention notice, but not the website listing loss mitigation options that the CFPB is proposing to require servicers to reference in that notice. The CFPB is seeking comment on whether it should make subject to these requirements any other written communications required by the CFPB's mortgage servicing rules (such as the transfer of servicing notice, etc.) or the website that the CFPB is proposing to require servicers to reference in certain notices.

ii. Specified Oral Communications

The CFPB is proposing that the oral communication requirements discussed in this part would apply to (1) live contact communications required under § 1024.39(a) and, if finalized, § 1024.39(e), and (2) oral communications made in compliance with a servicer's continuity of contact requirements under § 1024.40. These communications are referred to in this part as the specified oral communications. The CFPB is seeking comment on whether it should make subject to these requirements any additional oral communications required by the CFPB's mortgage servicing rules.

2. Translation and Interpretation Service Proposed Requirements

i. Spanish Language Translations for Specified Written Communications

The CFPB is proposing to require that servicers accurately translate each of the specified written communications into Spanish and provide the Spanish versions with the English versions to all borrowers. As noted above, Spanish-speaking households account for almost one in eight households and a majority of households with limited English proficiency nationally. The CFPB has preliminarily determined that the number of Spanish-speaking households warrant provision of requiring Spanish translations of the specified written communications to all mortgage borrowers.

The CFPB is proposing that translations provided by the servicer in Spanish must be accurate. Inaccurate translations would violate not only this translation requirement, but also the underlying communication content requirements. The CFPB is not proposing specific format requirements (*e.g.,* spacing, layout, font size, readability on electronic devices) for servicers when providing both English and Spanish versions of the specified written communications.

The CFPB seeks comment on these proposed requirements and on whether it should consider (1) format or readability requirements and (2) providing flexibility or exceptions (for example, for servicers without any Spanish-speaking borrowers).

ii. Translations of Specified Written Communications and Interpretations of Specified Oral Communications Upon Request

The CFPB also aims to address the language access needs of the 10 percent of United States households with limited English proficiency that speak a language other than English or Spanish. First, the CFPB is proposing to require that servicers, upon borrower request, provide accurate translations of the specified written communications to borrowers in certain servicer-selected languages. Second, the CFPB is proposing to require that servicers, upon borrower request, make available and establish a connection (*e.g.,* making a telephone connection in real time) with interpretation services before or within a reasonable time of establishing connection with borrowers during the specified oral communications to the extent that the borrower's requested language is one selected by the servicer under the requirements of the proposed rule. For this aspect of the proposed rule, the CFPB is proposing to require that servicers would be the party responsible for coordinating with the interpretation services such that those services are able to translate in real-time (*e.g.,* through a conference call) the conversation between the servicer personnel and the borrower. The proposed rule would limit the burden on borrowers that may prefer a language other than English by permitting those borrowers to receive the specified communications in the borrower's preferred language without having to spend additional time waiting for connection to interpretation services or receive those services in a separate phone call. For both aspects of this proposed requirement, the CFPB is proposing to require a servicer to act only upon receipt of a borrower's request for translation or interpretation services.

The CFPB is proposing to require that servicers must ensure that the translations and interpretation services used under this proposed requirement are accurate. Failure to provide accurate translations or interpretations would result in a violation of not only this proposed requirement, but also the underlying requirements.

The CFPB is proposing to provide individual servicers with discretion to select the languages used for translation and interpretation, but also proposes caveats to that discretion. The servicer would be required to select languages that (1) collectively address the needs of at least a significant majority of their non-Spanish speaking borrowers with limited English proficiency (although interpretation services must also be made available in Spanish), and (2) must include the five languages identified for the translation and interpretation availability statement, as discussed below. The CFPB acknowledges that servicers may need to reevaluate the language decisions periodically, to ensure they continue to meet the standard for discretion. The CFPB has also identified alternative methods for determining the languages for which servicers must be able to provide translations and discusses those alternatives in part IV.D below.

The CFPB has preliminarily determined that allowing a servicer discretion to select which languages it uses to comply with this proposed requirement will best serve borrowers over time as language demographics and servicer business strategies may change. The CFPB recognizes that the composition of the United States population is not static, and the utilization of various languages in the United States will change. Additionally, regional language usage may differ from national language usage. Permitting individual servicer discretion also allows for flexibility as a servicer changes its business strategies, such as when a servicer shifts the regions in which it primarily services mortgage loans. The flexibility would also prevent servicers from being required to translate the specified written communications in languages that are not spoken by the borrowers that they serve, preventing servicers from incurring unnecessary costs.

The CFPB is seeking comment on these proposed requirements and specifically requests comment on:

(i) Should the CFPB provide minimum standards for identifying translator or interpreter services, such as requiring ''qualified'' translators or interpreters, and if so, what the requirements should be?

(ii) Should the CFPB provide minimum standards for language selection, such as standards related to significant majority determinations, and if so, what they should be?

(iii) Should the CFPB require servicers to periodically reevaluate the language determinations?

(iv) Are there certain languages that the CFPB should consider specifying as required for translation or interpretation, no matter the preferences of the servicer's borrowers?

iii. Five Brief In-Language Statements (Other Than English or Spanish) Regarding Translation and Interpretation Availability in the English Specified Written Communications

To increase borrower awareness of the availability of the translations and interpretations discussed above, the CFPB is proposing to require servicers to provide five brief statements, accurately translated into five languages other than English or Spanish, in the English version of the specified written communications. Under the proposed rule, these statements would identify the availability of translated versions of the specified written communications and interpretation services for the specified oral communications in those five languages and how the borrower can request those translations or interpretation services (*i.e.,* translation and interpretation availability statements).

According to stakeholder feedback, borrowers that prefer languages other than English or Spanish may not be aware that translations or interpretations are available from their servicer or may not know how to obtain those services in their preferred language.[75] In-language statements highlighting the availability and instructions for obtaining translations and interpretation services may increase the likelihood that borrowers will successfully request translations and interpretations services. For example, in complying with the proposed translation and interpretation availability statement requirement, a servicer might identify Chinese, Vietnamese, Tagalog, Russian, and French as the top five languages used by a significant majority of its collective non-Spanish speaking borrowers with limited English proficiency. The servicer would include in the English version of the specified written communications a statement in each of those five languages (*i.e.,* five statements in total) that tells the borrower communications are available in [Chinese/Vietnamese/Tagalog/Russian/French] upon request and briefly describes how the borrower can make that request.

For the languages selected for the translation and interpretation availability statements, the CFPB is proposing that servicers must select five of the most frequently used languages from the languages spoken collectively by a significant majority of their borrowers with limited English proficiency that prefer languages other than English and Spanish, as discussed above. The CFPB has preliminarily determined to limit the number of languages to five languages. Based on examples reviewed by the CFPB of the specified written communications currently in use with this type of statement, it appears that five statements would be feasible to include on the specified written communications without affecting their readability or significantly adding length.

The CFPB is not proposing specific model language for the translation and interpretation availability statements for several reasons. Regulation X currently provides flexibility to servicers to develop their own terminology and scripts to use for many of their required written and oral communications. The CFPB also recognizes that some servicers already provide these types of statements in certain of their written communications. To reduce implementation costs for those currently providing statements that would comply with this proposal, the CFPB has preliminarily determined servicers should have the flexibility to determine the terminology and phrasing for the statements.

The CFPB is seeking comment on these proposed requirements and specifically requests comment on:

(i) Are there current process or technology limitations that may prevent a servicer from complying with this proposed requirement, and if so, what they are?

(ii) Are there certain languages that the CFPB should consider specifying as required for the translation and interpretation availability statements?

(iii) Should the CFPB consider requiring more or fewer than five languages for the translation and interpretation availability statements? Should the CFPB address situations where the languages spoken collectively by a significant majority of a servicers' borrowers with limited English proficiency are fewer than five different languages?

(iv) How are servicers currently notifying borrowers of the availability of translations or interpretation services, including the language or languages currently used?

iv. Translation and Interpretation Services in Languages Used in Marketing Upon Request

The CFPB is also proposing that, if a borrower received marketing for their mortgage loan before origination in a language other than English, and the servicer knows or should have known of that marketing, the servicer must comply with the translation and interpretation service requirements in part IV.D for that language, even if it is not a language selected by the servicer under that requirement. For example, if a servicer knows or should have known that a mortgage it services was marketed to a borrower in Navajo, then, under the proposed rule, it would be required to provide accurate Navajo translations of the specified written communications upon the borrower's request and must engage accurate Navajo interpreter services under the conditions specified in the proposed rule upon the borrower's request. Failure to provide accurate translations or interpretations would result in a violation of not only this requirement, but also the underlying requirements of the specified written or oral communications, as applicable.

When marketing for financial products is provided in a borrower's preferred language, the CFPB has preliminarily determined that such marketing might falsely imply to the borrower (or sometimes explicitly promise) that future communication regarding that financial product will also be available in that language, regardless of any disclaimers that might be used. Borrowers with limited English proficiency might shop for mortgage products based on the implied or explicit promise of future in-language communications to ensure that they can better understand the terms of and communications about the mortgage product.

The CFPB recognizes that servicers may not have direct involvement in the

[75] *See, e.g.,* Kleimann 2017 Report.

marketing for the mortgage, and there may be limited information available to the servicer about those marketing efforts. As such, the CFPB is limiting the proposed rule to those situations where a servicer knows or should have known of that in-language marketing.

The CFPB is seeking comment on these proposed requirements and specifically requests comment on:

(i) What information is currently in a loan's servicing file or information readily available elsewhere that might inform servicers of the language that was used to market the borrower's mortgage loan before origination?

(ii) How prevalent is it for institutions that originate a mortgage to retain servicing rights for that mortgage?

(iii) Should the requirement described be limited to only those servicers that originated the mortgages at issue, or are there other exceptions that should be created?

(iv) Should the CFPB consider other ways to help ensure implied or explicit promises about the future availability of language access made to borrowers during marketing are upheld?

3. Alternatives for Determining Which and How Many Languages To Require

As discussed above, the CFPB is proposing to permit individual servicers discretion to determine the languages used to comply with the requirements above. Regarding this servicer discretion, the CFPB is proposing the languages selected should be based on the collective needs of a significant majority of a servicer's non-Spanish-speaking borrowers with limited English proficiency. The CFPB is seeking comment on whether the proposed servicer discretion described above is the appropriate method to determine how many and which languages a servicer should use or whether alternative methods, such as a list maintained by a designated source outside the regulation, or a threshold or ranking system established by the CFPB would be better suited for the proposed requirements.

4. Interaction With § 1024.32(a)(2)

Because the CFPB is proposing to require translations for the specified written and oral communications, the CFPB is also proposing conforming amendments to existing § 1024.32(a)(2). Section 1024.32(a)(2) currently provides servicers the option of providing borrowers with servicing disclosures required under subpart C of Regulation X in languages other than English, provided that the disclosures are also made available in English upon a recipient's request. The CFPB is proposing to amend this requirement to make clear that this optionality remains as to subpart C, except as otherwise required by the sections this proposal would amend to require translations for the written communications discussed in part IV.D.

E. Credit Reporting Protections for Borrowers Undergoing Loss Mitigation Review

Through the CFPB's market monitoring activities, the CFPB is aware of a select number of specific instances where mortgage servicers may be furnishing information about borrowers undergoing loss mitigation review that raise questions about accuracy and consistency.

First, the CFPB has learned that some servicers furnish information indicating a consumer is delinquent in making a payment even after a borrower and servicer have agreed to some type of loss mitigation option, and the borrower is performing according to the terms of that loss mitigation option. For example, the CFPB is aware of situations where the servicer has agreed to reduce a borrower's monthly payment by modifying the underlying mortgage loan agreement, but the servicer continues to furnish negative credit reporting information after the borrower performs on the modified agreement. The CFPB has heard that this occurs when the servicer has not implemented the loss mitigation option in their servicing system in a timely manner and instead continues to report delinquency based on the loan terms that were in place prior to the loss mitigation option. Continuing to report delinquency based on the loan terms in place before the loss mitigation agreement may raise questions about the accuracy and consistency of credit reports.

Second, the CFPB has learned that some servicers may be using the Metro 2 Format and associated Consumer Data Industry Association (CDIA) guidance inconsistently, or not at all, when reporting tradeline data when the borrower is affected by a natural disaster.[76] For example, the CFPB has heard that some servicers report the ''AW'' code for some mortgages that the servicer knows were affected by a natural disaster but not others. While the CFPB is aware that CDIA has characterized some tradeline data as optional, reporting optional tradeline data for certain mortgages, but not others, raises questions about credit reporting accuracy and consistency.

The CFPB is aware that some creditors already make policy decisions to not factor in certain types of negative credit reporting information, such as late payments, that are associated with the ''AW'' code when assessing credit risk. By excluding the ''AW'' code from credit reports for certain borrowers that the servicer knows are affected by a natural disaster but not others that the servicer also knows are affected by a natural disaster, servicers may undermine the utility of credit reporting data for future creditors.

The CFPB also understands that some servicers furnish tradeline data without context that could give creditors more complete and accurate information about a borrower's potential credit risk. For example, some servicers do not consistently report a mortgage in forbearance using the forbearance code set forth under CDIA's guidance on reporting accounts placed in forbearance as a result of a natural or declared disaster.[77] Failing to include the forbearance code or other tradeline data that provides needed context about a mortgage that is in loss mitigation review may lead creditors to falsely conclude that a borrower merely stopped making payments for a certain period of time without the mortgage servicer's agreement. This circumstance also raises questions about the report's accuracy.

Inaccurate information may result in lenders inaccurately assessing a borrower's credit risk for several years after the information appears on a credit report. Moreover, the information in these reports is used by many different types of businesses, such as insurers, landlords, and employers, to make eligibility and other decisions about borrowers. Thus, inaccurate information in a credit report may have far-reaching effects on a borrower.

[76] Most servicers provide consumer credit information to one or more credit reporting agencies (CRAs) using a standardized electronic data reporting format called the ''Metro 2 Format.'' The Metro 2 Format transmits consumer credit account data and is maintained and updated by the Consumer Data Industry Association (CDIA). From time to time, CDIA will provide guidance to furnishers on how to report data to CRAs. Tradelines are the accounts in a borrower's name reported by furnishers such as mortgage servicers. For each tradeline, furnishers generally provide the type of credit (*e.g.,* mortgage), the loan amount, the account balance, the account payment history (including the timeliness of payments), whether the account is delinquent or in forbearance, and other relevant information that pertains to the type of credit being reported.

[77] CDIA incorporates its FAQs in their Credit Reporting Resource Guide, which is a resource that includes the Metro 2 Format. CDIA's guidance on reporting accounts placed in forbearance is found in FAQ 45. *See* Consumer Data Indus. Ass'n, *Credit Reporting Resource Guide, Question 45: How should accounts in forbearance be reported?, https://crrg.s3.amazonaws.com/FAQ+45.pdf* (last visited July 1, 2024).

In light of the concerns mentioned above, the CFPB is considering a variety of solutions that could improve the accuracy and consistency of credit reporting information furnished by servicers. These solutions could include adding to or amending CFPB regulations to ensure servicers report accurate information or amending furnisher guidance to improve or enhance the guidance provided to furnishers on how to report tradeline data. The CFPB seeks to learn more about furnishing concerns so that it can better understand how to address them.

The CFPB is requesting comment about possible approaches it could take to ensure mortgage servicers are furnishing accurate and consistent credit reporting information for borrowers undergoing loss mitigation review. In particular, the CFPB requests comments on the following issues:

(i) What servicer practices may result in the furnishing of inaccurate or inconsistent information about mortgages undergoing loss mitigation review?

(ii) What protocols or practices do servicers currently use to ensure that mortgages are being reported accurately and consistently? Are there specific protocols or practices for ensuring loans in forbearance or borrowers affected by a natural disaster are reported accurately and consistently?

(iii) Would it be helpful to have a special code that would be used to flag all mortgages undergoing loss mitigation review in tradeline data?

(iv) What steps should the CFPB take to ensure servicers furnish accurate and consistent tradeline data?

F. Record Retention (§ 1024.38)

The CFPB is proposing to amend existing § 1024.38(c)(1) to specify that the requirement to retain records that document actions taken with respect to a borrower's mortgage loan account includes retention of records evidencing compliance with Regulation X. The CFPB is also proposing to amend existing comment 38(c)(1)–1 with an example illustrating these requirements as they would apply if this proposal's amendments to the loss mitigation framework are finalized.

In the 2013 Mortgage Servicing Final Rule, the CFPB noted that the record retention requirement and timeframe were necessary for servicer compliance with specific legal obligations and to ensure that the CFPB and other regulators have an opportunity to supervise servicers' compliance with applicable laws effectively. However, the CFPB has heard from stakeholders that some servicers may be interpreting the existing requirement to be more limited. Existing § 1024.38(c)(1) requires that a servicer retain records of actions taken with respect to a borrower's mortgage loan account. That category of actions is broad, and it includes actions taken to evidence compliance with Regulation X. To make clearer that servicers must retain records that evidence compliance with Regulation X, the CFPB is proposing to amend § 1024.38(c)(1). The CFPB is also proposing to amend comment 38(c)(1)–1 to provide an example illustrating requirements regarding methods of record retention if this proposal's amendments to the loss mitigation framework are finalized. The proposed comment notes that a servicer could use a computer program to create and retain records of the date a borrower makes a request for loss mitigation assistance, so long as the servicer ensures it can easily access those records. The CFPB notes that, if this proposal is finalized, a servicer would also be required to create and retain records of additional actions taken to evidence compliance with its requirements, such as creating and retaining records demonstrating the date the servicer stops advancement of the foreclosure process or creating and retaining records that demonstrate the servicer's steps regularly taken to identify and obtain information and documents necessary for loss mitigation review or to notify a borrower of a loss mitigation determination.

The CFPB is seeking comment on these proposed requirements and, in particular, whether the CFPB should provide minimum standards to evidence compliance or specific requirements for recordkeeping, including whether it should provide data standards for mortgage servicers.

G. Removal of Regulations Implemented in Response to the COVID–19 Pandemic

In response to the COVID–19 pandemic, the CFPB amended §§ 1024.31, 1024.39, 1024.41 and related commentary in its June 2020 and June 2021 servicing rules. Among other things, the CFPB added COVID–19-related hardship as a defined term, added temporary COVID–19-related additional early intervention live contact requirements, added temporary special COVID–19-related loss mitigation procedural safeguards, added temporary exceptions from the general anti-evasion requirements for certain COVID–19 related loss mitigation options, and addressed servicer's contact and reasonable diligence requirements relating to delinquent borrowers exiting a short-term payment forbearance program made available to borrowers experiencing a COVID–19-related hardship.

Because both the temporary additional early intervention live contact requirements and the temporary special COVID–19 loss mitigation procedural safeguards have expired and the COVID–19 Public Health Emergency expired on May 11, 2023,[78] the CFPB proposes to remove the language relating to the COVID–19 pandemic added by the June 2020 and June 2021 servicing rules from §§ 1024.31, 1024.39(a), 1024.39(e), 1024.41(c)(2)(i), 1024.41(c)(2)(v), 1024.41(c)(2)(vi), 1024.41(f)(3) and comments 39(a)–3, 39(a)–4.i, 39(a)–4.ii, 39(a)–6, 41(b)(1)–4.iv, 41(f)(3)–1, 41(f)(3)(ii)(C)–1, and 41(f)(3)(ii)(C)–2.

H. Other Conforming Changes

In addition to the changes discussed in part IV above, the proposed rule would amend regulatory text in 1024.35(9) and (10), 1024.38(b)(2)(iv)–(vi) and (b)(3)(iii), 1024.40(b)(1)(ii)–(iv) and (b)(2)(ii) and various commentary to § 1024.31, 1024.38, 1024.39, and 1024.41 to conform with other changes in the proposed rule. For example, the proposed rule would update commentary to § 1024.38 regarding servicer policies and procedures to delete references to a complete application and instead refer to a borrower making a request for loss mitigation assistance.

I. Other Servicing Issues—Requests for Comment

1. Zombie Mortgages

In recent years, some borrowers are hearing from companies that claim to own or have the right to collect on long-dormant second mortgages, also known as zombie mortgages. Many borrowers, having not received any notices or periodic statements for years, concluded that these second mortgages had been modified along with the first mortgage, discharged in bankruptcy, or forgiven. These companies often demand the outstanding balance on the second mortgage, plus fees and interest, and threaten to foreclose if the borrower does not or cannot pay. The CFPB is concerned about homeowners who may be facing foreclosure threats and other collection activity because of long-dormant second mortgages.

The CFPB issued an April 2023 advisory opinion providing guidance on

[78] Press Release, U.S. Dep't of Health & Human Servs., *HHS Secretary Xavier Becerra Statement on End of the COVID–19 Public Health Emergency* (May 11, 2023), *https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html.*

debt collectors attempting to foreclose on zombie mortgages.[79] The advisory opinion noted that entities selling or collecting on these second mortgages may also be subject to certain requirements under RESPA, the Truth in Lending Act, and the CFPB's mortgage servicing rules. For example, unless an exemption applies, the CFPB's mortgage servicing rules require servicers to provide periodic statements to consumers. The CFPB seeks data and information on the prevalence of this issue. The CFPB also seeks comments on whether and to what extent this issue may continue to cause consumer harm in the future, and any additional actions the CFPB could take, including amending existing rules, to better protect borrowers from harm caused by collection activity on these types of mortgages.

2. Disclosure of Deferred Amounts

As noted in part II, non-loan modification loss mitigation options, including deferrals, have become increasingly common in recent years. In a deferral, missed payments are typically moved to the end of the loan term and generally become due when a borrower refinances, sells, or otherwise terminates their mortgage. The CFPB wants to ensure that borrowers are not taken by surprise when these amounts become due. The CFPB therefore requests comment on whether there are actions it could take, including amending existing rules, to help ensure that borrowers are regularly reminded of deferred amounts that may be due at the end of their loan terms.

3. Successors in Interest

In 2016, the CFPB finalized three sets of rule changes relating to successors in interest. First, the CFPB adopted definitions of successor in interest for purposes of Regulation X's subpart C and Regulation Z that are modeled on the categories of transfers protected under section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982. Second, the CFPB finalized rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest. Third, the CFPB finalized rules providing that a confirmed successor in interest is a borrower for purposes of § 1024.17 and subpart C of Regulation X and a consumer for purposes of § 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41 of Regulation Z.[80]

Despite these added protections, the CFPB has received reports from housing counselors and consumer advocates indicating that potential successors in interest continue to encounter delays and other communication difficulties when contacting servicers in an effort to confirm their successor in interest status. These challenges can have downstream implications for successors in interest by interfering with their ability to obtain loss mitigation reviews and to trigger foreclosure protections. Additionally, the CFPB has received reports from housing counselors and consumer advocates indicating that there are categories of homeowners who do not fit the current Regulation X definition of a successor in interest, such as, for example, non-relatives who receive property upon the death of a borrower or co-owners who do not sign their home's promissory note. Often servicers will not allow such homeowners to access information about the mortgage on their home or to apply for loss mitigation.

The CFPB seeks comment on additional actions it could take, including amending existing rules, to better protect potential successors in interest, confirmed successors in interest, and homeowners who do not fit the current Regulation X definition of a successor in interest. The CFPB also seeks data and information on the prevalence of consumer protection issues relating to these consumers.

4. Relation to State laws

Section 1024.5(c)(1) provides that state laws that are inconsistent with RESPA and Regulation X are preempted, but only to the extent of that inconsistency. Comment 5(c)(1)–1 provides that State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. The CFPB recognizes that some States impose their own mortgage servicing requirements and that those requirements may be based on the early intervention and loss mitigation requirements in the CFPB's current mortgage servicing rules, resulting in some overlap if this proposal to amend those requirements were finalized.

The CFPB is requesting comment on possible preemption interventions it could undertake if this proposal is finalized. The CFPB seeks comment on the following:

(i) Are there inconsistencies between the CFPB's proposal, if finalized, and existing State law? If so, what are the details of such inconsistency?

(ii) Are there specific burdens or costs caused by any potential inconsistency or overlap between the CFPB's proposal, if finalized, and State laws related to early intervention and loss mitigation?

V. Proposed Effective and Compliance Dates

The CFPB proposes that all changes proposed herein, except for the proposed language access requirements discussed in part IV.D, take effect 12 months after publication of a final rule in the **Federal Register**. This timing is consistent with the 2013 Mortgage Servicing Final Rule, which provided servicers 11 months (330 days) from its publication in the **Federal Register** to implement requirements relating to force-placed insurance, error resolution and information requests, general servicing policies and procedures, early intervention, continuity of contact, and loss mitigation procedures.[81] Apart from the proposed language access requirements, the current proposal largely streamlines or builds upon requirements in the current regulation. Therefore, the CFPB preliminarily determines that 12 months would be an appropriate amount of time for servicers to implement all proposed changes other than the proposed language access requirements.

The CFPB proposes that the proposed language access provisions discussed in part IV.D take effect 18 months after publication of a final rule in the **Federal Register**. These proposed language access provisions generally would require mortgage servicers to make certain written and oral communications under the CFPB's mortgage servicing early intervention and loss mitigation provisions available in multiple languages. To implement these proposed provisions, the CFPB anticipates that servicers would need additional time to complete tasks, such as updating systems and software, coordinating with third party service providers, revising policies and procedures, training staff, and performing compliance testing; therefore, the CFPB preliminarily finds that an effective date of 18 months after publication in the **Federal Register** may be appropriate. The CFPB seeks comments on the proposed effective dates.

The CFPB also seeks comment on whether it should allow servicers to comply early with any or all of the proposed provisions. With respect to provisions that have a proposed effective date of 12 months after publication of a final rule in the **Federal Register**, the CFPB proposes to permit optional early compliance only to the extent that a servicer could comply with

[79] *See* 88 FR 26475 (May 2023).

[80] *See* 12 CFR 1024.30(d); 12 CFR 1026.2(a)(11).

[81] 78 FR 10696, 10842 (Feb. 14, 2013).

all provisions that have the same 12-month effective date. For example, under the proposed rule, a servicer could not begin to conduct sequential reviews of loss mitigation options as would be permitted under proposed § 1024.41(f)(2) prior to the final rule's effective date unless they also were able to comply with all other provisions in the rule with an effective date of 12 months. The CFPB preliminarily determines that the provisions with a 12-month effective date are too intertwined and too interdependent to allow early compliance on a provision-by-provision basis. For the language access provisions that have a proposed effective date of 18 months after publication of a final rule in the **Federal Register**, the CFPB proposes to permit servicers to choose optional early compliance with those provisions without requiring early compliance with other provisions. The CFPB understands that some servicers already offer translations of certain written communications and the CFPB would not wish to discourage servicers from continuing to offer such translations prior to the rule's effective date.

VI. CFPA Section 1022(b) Analysis

In developing this proposed rule, the CFPB has considered the proposed rule's potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[82] The CFPB requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the CFPB's analysis of the benefits, costs, and impacts.

A. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the CFPB has obtained from industry, other regulatory agencies, and publicly available sources, including reports published by the CFPB. These sources form the basis for the CFPB's consideration of the likely impacts of the proposed rule. The CFPB provides estimates, to the extent possible, of the potential benefits and costs to consumers and covered persons of the proposed rule given available data. However, as discussed further below, the data with which to quantify the potential costs, benefits, and impacts of the proposed rule are generally limited.

Considering these data limitations, the analysis below generally includes a qualitative discussion of the benefits, costs, and impacts of the proposed rule. General economic principles and the CFPB's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

B. Small Servicer Exemption

Small servicers—generally, those that service 5,000 or fewer mortgage loans, all of which the servicer or affiliates own or originated—are exempt from all new requirements under the proposed rule.[83] Therefore, the discussion of potential benefits and costs below generally does not apply to small servicers or to consumers whose mortgage loans are serviced by small servicers.

C. Baseline for Analysis

In evaluating the benefits, costs, and impacts of this proposed rule, the CFPB considers the impacts of the proposed rule against a baseline in which the CFPB takes no action. This baseline includes the Mortgage Servicing Final Rules as currently in effect.[84]

D. Potential Benefits and Costs to Consumers and Covered Persons of the Proposed Rule

This section discusses the benefits and costs to consumers and covered persons of the following main provisions in the proposed rule: (1) the replacement of the complete application framework with a streamlined process that allows for the possibility of sequential loss mitigation reviews and includes proposed foreclosure procedural safeguards throughout a loss mitigation review cycle; (2) ensuring consumers are informed of all available loss mitigation options early in the process and changes to early intervention requirements when consumers are in forbearance; (3) fee protections during a loss mitigation review cycle; (4) changes to loss mitigation determination notice requirements; (5) clarification of notice of error requirements and appeal rights; and (6) new language access requirements discussed in the preamble.

The primary goal of these proposed amendments would be to reduce avoidable foreclosures, including by getting homeowners into loss mitigation solutions more quickly. These proposed amendments aim to address this goal by removing certain prescriptive requirements from the existing rules and proposing certain procedural safeguards to protect borrowers and align servicer incentives with reviewing borrowers for loss mitigation assistance quickly and accurately. As such, the discussion below of the primary costs and benefits to consumers and covered persons focuses on proposed changes in the rule as they relate to the goals of reducing avoidable foreclosures and protecting borrowers from harms that can occur during the loss mitigation review process.

The CFPB also would amend existing record retention requirements to clarify that they include retention of records evidencing compliance with the regulation overall. For covered persons who are not already retaining these records, the CFPB anticipates that this proposed amendment would impose at most minimal costs to update policies and procedures since the relevant records are already produced through compliance with the existing rule, and storage systems are already in place to comply with other record retention requirements.

1. Updating the Complete Application Framework

Proposed amendments to § 1024.41 would replace the existing rule's complete application framework with a streamlined process that allows for the possibility of sequential loss mitigation reviews. A loss mitigation review cycle would begin when the borrower requests loss mitigation assistance and would terminate at the time the mortgage is successfully brought current or one of the procedural safeguards in proposed § 1024.41(f)(2) is met. Certain procedural safeguards against foreclosure would persist during the loss mitigation review cycle. Under the proposed rule, investors could still require that servicers perform a simultaneous review for all available loss mitigation options. However, the proposed rule would allow flexibility for sequential loss mitigation reviews with corresponding proposed foreclosure procedural safeguards throughout a loss mitigation review

[82] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the CFPB 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 and services; the impact of rules on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[83] Regulation Z § 1026.41(e)(4)(ii) defines the term ''small servicer'' as a servicer that either: ''(A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; (B) Is a Housing Finance Agency, as defined in 24 CFR 266.5; or (C) Is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor . . .''

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

cycle, and thus this analysis focuses on that approach.

i. Benefits and Costs to Consumers

Generally, the goal of this proposed amendment would be to reduce avoidable foreclosure by aligning servicer incentives so that servicers could review borrowers for loss mitigation options quickly and accurately. There are two primary considerations of costs and benefits to consumers in this proposed rule. The first relates to preventing borrower harm by preventing avoidable foreclosures and other consequences of delinquency. For example, for borrowers experiencing financial distress, allowing flexibility for an expedited review of loss mitigation options may prevent the borrower from incurring costs associated with the foreclosure process and experiencing negative impacts to their credit reporting. As outlined below, the cost of foreclosure to borrowers is large and manifests through both monetary and non-monetary costs.

The second consideration relates to the potential consequences for borrowers' consideration of all available loss mitigation options. The existing rule provides that once an application is complete, the servicer must evaluate the borrower for all loss mitigation options simultaneously. This includes options for the borrower to sell their home or liquidation options even if the borrower has indicated they would like to remain in the home. The proposed framework would allow servicers to evaluate borrowers more quickly and would provide flexibility to the servicer so that the servicer would not need to review the borrower for non-retention options in instances where the borrower has indicated they would like to remain in the home, for example. Upon informing the borrower of the results of a loss mitigation review, the new framework also would require servicers to provide information about other available loss mitigation options. This will allow borrowers to ask for review for other loss mitigation options that they may prefer.

Avoidance of Foreclosure and Other Consequences of Delinquency

Both the proposed loss mitigation review framework and proposed foreclosure procedural safeguards would play an important role in reducing the probability that a borrower enters foreclosure and that an avoidable foreclosure is completed, which would otherwise cause borrowers to lose their homes, incur expenditures associated with the foreclosure process and incur non-monetary costs associated with foreclosure. The proposed loss mitigation review framework would provide greater flexibility to servicers to evaluate borrowers for loss mitigation options more quickly and accurately. The CFPB expects that the proposed loss mitigation review framework would increase access to loss mitigation for many borrowers, allowing more borrowers to be evaluated for loss mitigation options than they otherwise would have and reducing avoidable foreclosures. Furthermore, the proposed rule would expand foreclosure procedural safeguards to begin the moment the borrower requests loss mitigation assistance as opposed to the existing rule's foreclosure protections, which generally begin only after the receipt of a complete loss mitigation application. The proposed rule would prevent servicers from initiating or advancing foreclosure proceedings against borrowers from the moment they request loss mitigation assistance until the mortgage is successfully brought current or one of the procedural safeguards in proposed § 1024.41(f)(2) is met. The CFPB expects that the proposed foreclosure procedural safeguards would reduce the probability of foreclosure, as described in more detail below.

The proposed loss mitigation review framework would be expected to reduce avoidable foreclosures by increasing the likelihood that a borrower receives a loss mitigation option sooner. The CFPB understands there are a subset of borrowers who fail to complete a loss mitigation application despite significant improvements in mortgage servicing practices since the 2013 Mortgage Servicing Rules. The barriers to completing a loss mitigation application were well demonstrated during HAMP. Responses to the American Survey of Mortgage Borrowers [85] (ASMB 2020 Survey) also suggest that borrowers experiencing financial distress had difficulty accessing loss mitigation programs during the COVID–19 pandemic. Among borrowers who had payment concerns or difficulties in 2020, half of respondents reported that they did not think they qualified for a program or that they did not know how or where to apply for programs. More than one-quarter of respondents experiencing financial distress reported that they experienced ''challenges in getting help to address loan payment concerns or difficulties'' due to the application process being ''too much trouble.'' [86] In interviews conducted for the CFPB's 2019 RESPA Servicing Assessment, housing counselors reported that the leeway servicers have in defining when an application is complete under the existing rule makes it challenging to determine whether their application is complete or what additional information is necessary to complete it.[87] Taken together, this suggests that a substantial share of borrowers who initiate applications may not complete them and that, across servicers, many delinquent borrowers do not initiate applications at all.[88]

Under the existing rule, servicers generally are required to collect documentation for all the options that may be available to the borrower prior to making a determination as to what loss mitigation option or options the servicer may offer to the borrower. This framework proved beneficial for many borrowers. However, as discussed above, it remains the case that some borrowers do not complete the application for loss mitigation assistance in a timely manner or at all. The requirement to obtain and submit documents that may not be relevant to options the borrower is interested in may contribute to borrowers' difficulties in completing an application. Moreover, delays in processing an application can occur when a borrower submits a partial application or otherwise. This delay can result in the borrower needing to resubmit documents that may have become stale (*i.e.,* proof of income). Servicers following investor guidelines might ask borrowers to resubmit

[85] The American Survey of Mortgage Borrowers (ASMB) is a survey conducted annually and jointly sponsored by the FHFA and the CFPB as part of the National Mortgage Database (NMDB) program. The purpose of the ASMB is to collect voluntary feedback directly from mortgage borrowers about their experience with their mortgage and property. The feedback collected by the ASMB on past surveys includes information about a range of topics related to maintaining a mortgage and property. The ASMB 2020 Survey focused on borrower experiences with their mortgage during the COVID–19 pandemic and received over 1700 responses. *See* 85 FR 46104 (July 31, 2020).

[86] *See* Lynn Conell-Price et al., CFPB, *Borrower Experiences with Mortgage Servicing During the COVID–19 Pandemic,* at 3, 10–11 (June 2024), *https://files.consumerfinance.gov/f/documents/cfpb_borrower-experiences-with-mortgage-servicing_2024-06.pdf* (CFPB June 2024 Report). This question, Question 38 in the ASMB, asked borrowers, ''Were any of the following a challenge to you in getting help to address your concerns or payment difficulties?'' *See* 85 FR 46104, 46113 (July 31, 2020).

[87] Servicing Rule Assessment Report at 171–72.

[88] Analysis of five servicers' data reported by the CFPB in the Servicing Rule Assessment Report showed a wide range in share of initiated loss mitigation applications that were completed across servicers from about 40 to 95 percent. This variation likely reflects in part differences in how servicers tracked and compiled data on completed applications. Servicing Rule Assessment Report at 139.

documents multiple times before conducting a review for loss mitigation options. Providing flexibility to servicers by allowing sequential review for loss mitigation options, as proposed, would increase the likelihood that a borrower receives at least one suitable loss mitigation option quickly [89] and, therefore, would increase their chances of avoiding foreclosure.[90]

For some borrowers, the ability to enter a particular loss mitigation option may be the only way for them to become or remain current and avoid foreclosure. Delays in loss mitigation review can directly lead to foreclosure and the borrower losing their home. For example, some loss mitigation programs are subject to a cap of 12 cumulative deferred past due principal and interest payments,[91] which includes the period of loss mitigation review. Borrowers will be ineligible for this type of loss mitigation program if loss mitigation review and offer are delayed past the 12-month mark for any reason.

Furthermore, reducing the hurdles to obtain a loss mitigation option may benefit borrowers who would successfully complete a loss mitigation application and receive and accept a loss mitigation option under the current framework. To the extent those borrowers receive a loss mitigation option more quickly under the proposal than under the existing rule, their period of delinquency would be reduced. This will reduce negative impact on their credit history. It also would reduce their exposure to fees associated with default, such as late fees, property inspection fees, and foreclosure-related fees.

The CFPB does not have data enabling us to estimate how much the proposed provision would shorten loss mitigation processes. Interviews with servicers conducted for the CFPB's 2019 RESPA Servicing Assessment indicate that the requirement to evaluate the borrower for all options at once is time-consuming for servicers.[92] The same report analyzed seven servicers' operations data and found longer durations between a borrower initiating and completing a loss mitigation application after the complete application framework became effective (median 63 days in 2015, post-Rule, relative to a median of 36 days in 2012, pre-Rule, *i.e.,* in the absence of a complete application requirement).[93] We caution that these data do not allow us to estimate the increase in time directly attributable to the complete application requirement as opposed to changes in conditions over these three years or other aspects of the rule. These findings suggest that the proposed provision may allow borrowers to be reviewed for loss mitigation options more quickly.

The CFPB also believes that the proposed foreclosure procedural safeguards would benefit consumers significantly by providing them with foreclosure protections more quickly. Under the proposed rule, borrowers would have protection from foreclosure as soon as they indicate that they need mortgage assistance as opposed to waiting until an application is complete. This means most borrowers would receive foreclosure protections earlier in the process. Moreover, because many borrowers do not complete a loss mitigation application under the existing rules, these borrowers would receive foreclosure protections under the proposed rule, which could increase their likelihood of accessing loss mitigation. The CFPB expects that by receiving foreclosure protections earlier in the process borrowers would have an increased likelihood of avoiding foreclosure.

The proposed rule also could prevent some foreclosures by requiring that servicers evaluate borrowers for other available loss mitigation options if the initially chosen loss mitigation option is not successfully implemented (*e.g.,* if the borrower does not complete trial modification payments). Under the existing framework, servicers are required to simultaneously evaluate borrowers for all available options and offer or deny the available options at the same time. Servicers are not required to review another application or re-evaluate previously denied options if the borrower remains delinquent (as in the case where the borrower does not complete trial modification payments). For borrowers whose circumstances change (*e.g.,* new employment), this can result in borrowers being denied access to loss mitigation options because they were not eligible at the time of application completion even though they become newly eligible after application. The CFPB expects that, because it would require servicers to evaluate borrowers for other available loss mitigation options if a previously offered loss mitigation option is not finalized, the proposed rule would provide borrowers with increased opportunities to finalize a loss mitigation option successfully and to become current.

The CFPB does not have data to estimate how many borrowers would avoid foreclosure due to this additional opportunity for evaluation. However, the CFPB understands that some borrowers who accept a loss mitigation option and enter a trial payment plan do not succeed at bringing their loan current through that option. Borrowers in this situation who have not yet been reviewed for all available loss mitigation options might be able to become current or remain in their home under the proposed rule if they were approved for and successfully completed a different loss mitigation option after failing a trial payment plan.

For borrowers who avoid foreclosure due to the proposed provision, the per borrower benefits would be substantial. Estimates of the cost of foreclosure to consumers are large and include substantial monetary and non-monetary costs. Some of these costs are borne directly by the borrower and others are borne by non-borrowers. In the CFPB's June 2021 Final Rule, we estimated an average per-borrower benefit of avoiding foreclosure of at least $30,100 or $35,300 in 2023 dollars.[94] This figure relies on a study by the Department of Housing and Urban Development in 2010, which estimated a borrower's average out-of-pocket cost from a completed foreclosure of $10,300 or $14,630 in 2023 dollars and estimated the average effect of foreclosure on close neighboring house values at $14,531, or $20,640 in 2023 dollars.[95] This number

[89] Under existing § 1024.41(c), servicers may under some circumstances evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option based on the incomplete application if the application has remained incomplete for a significant period of time. *See* 12 CFR 1024.41(c)(2)(ii). By lowering barriers to receiving an offer, the proposed application framework is expected to lead to more loss mitigation offers, a portion of which will allow consumers to avoid foreclosures that would have occurred under the existing rule.

[90] *See* Urban Wire 2018.

[91] *See* Freddie Mac, *Payment Deferral Solutions, https://sf.freddiemac.com/working-with-us/servicing/products-programs/payment-deferral* (last visited July 1, 2024).

[92] Servicing Rule Assessment Report at 152, 155–56.

[93] The CFPB assessed the 2013 Mortgage Servicing Final Rule between 2018 and 2019 and released a report detailing its findings in early 2019. *Id.* at 142.

[94] 86 FR 34848 (June 30, 2021).

[95] Estimates from HUD include direct costs to the borrower: moving costs, legal fees, tax penalties, and administrative charges. These estimates from HUD are based on a number of assumptions and circumstances that may not apply to all borrowers who experience a foreclosure sale or those that remediate through non-foreclosures options. U.S. Dep't of Hous. & Urb. Dev., *Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Positions* (2010), Adjustment for inflation uses the change in the Consumer Price Index for All Urban Consumers (CPI–U) U.S. city average series for all items, not seasonally adjusted, from January 2010 to September 2023. *See* U.S. Bureau of Lab. Stat.,

Continued

likely underestimates the average borrower benefit of avoiding foreclosure due to additional monetary and non-monetary costs to the borrower of foreclosure not included in this estimate. Additional monetary costs to the borrower include loss of equity [96] and the option value from realizing future housing price appreciation.[97] Additional non-monetary costs may include, but are not limited to, increased housing instability, reduced homeownership, financial distress,[98] and adverse medical conditions.[99] While these estimates are based on data from 2008 or earlier, the CFPB believes the inflation-adjusted estimates provide a reasonable lower bound for the cost of foreclosure to borrowers.

In addition to the above estimate, there would be significant benefits to the borrower of avoiding foreclosure with respect to their credit profile. Foreclosure has a significant impact on a borrower's credit score that can make it difficult to access future credit.[100] The benefit to consumers is even larger if the borrower can shorten the period of loan delinquency by entering a loss mitigation solution faster under the proposed rule compared to baseline.

The CFPB does not have data to estimate the number of borrowers experiencing financial distress who would not complete a loss mitigation application under existing rules and would not therefore receive a loss mitigation offer but would receive a loss mitigation offer under the proposed rule. The CFPB also does not have data to predict how many borrowers would experience foreclosure but for a loss mitigation solution received under the proposed loss mitigation review framework. However, existing evidence suggests that the number of borrowers who would receive a loss mitigation solution under the proposed rule might be substantial. At the national level, a November 2023 report from Intercontinental Exchange (ICE) Mortgage Technology estimates that 751,000 loans were at least 60 days delinquent. The same report estimates 214,000 total loans in active foreclosure in September.[101] The CFPB's 2019 RESPA Servicing Rule Assessment reports on the share of delinquent borrowers from a sample of five servicers who initiated loss mitigation applications in 2015 under the existing complete application framework. Out of the population of borrowers who became 60 days delinquent in 2015, six months later 45 percent of borrowers had initiated a loss mitigation application.[102] The CFPB requests data and other information that could help estimate the extent to which the proposed provisions would increase the number of consumers who receive a loss mitigation option and the number that could avoid foreclosure as a result.

Consequences for Borrower Consideration of All Available Loss Mitigation Options

The proposed loss mitigation review framework may create costs for borrowers if it prevents them from considering and receiving loss mitigation options that they would prefer to those for which they are initially considered. For example, under the proposal, a borrower might be considered for and receive an offer of payment deferral without having provided the documentation required to be considered for a loan modification. This could be harmful to borrowers that would, instead, benefit from a loan modification and who may not understand the difference between the two loss mitigation options. Assuming the borrower is eligible for both options but does not know this, an immediate offer of deferral may induce the borrower to accept that option because they do not realize there are other options available that may be more fitting for their circumstances. Borrowers who receive a streamlined offer may not understand all the loss mitigation options they may have been eligible for if they had submitted a complete application.

In the 2013 RESPA Servicing Final Rule, the CFPB explained that borrowers would benefit from the complete application requirement, in part, because borrowers would generally be better able to choose among available loss mitigation options if the servicer is required to review them for all options and present any options for which they are eligible simultaneously. The CFPB acknowledges that borrowers accepting an offer without being reviewed for all available options could be prevented from considering loss mitigation options that they may prefer to the initial option for which they are reviewed. However, if a borrower is interested in and eligible for another form of loss mitigation, the proposed rule would allow them to request and receive a review for all available options that they have not already been reviewed for after the servicer's initial offer. In addition, other proposed revisions to the early intervention notice requirements in the proposed rule, discussed below in (2), are designed to ensure the borrower has access to information about and the opportunity to seek review for all options for which they may qualify. These parts of the proposal should mitigate the risk that a borrower is not evaluated for all options in which they may have an interest.

The CFPB's 2019 RESPA Servicing Rule Assessment also showed that servicers generally only offered borrowers one loss mitigation option even under the existing rule's complete application framework. Investor-required evaluation rules sometimes prescribe sequential review and automatically deny a borrower all other options for which the borrower qualifies.[103] This indicates that in many cases the existing complete application framework may not result in the borrower receiving detailed information on multiple available options.

ii. Benefits and Costs to Covered Persons

The primary benefits to servicers would be a reduction in costs for collecting and processing paperwork associated with loss mitigation applications. Evaluating a complete application for all loss mitigation options is more resource intensive than evaluating eligibility for a single option or subset of options. Thus, if a servicer evaluates a borrower for fewer than all loss mitigation options—as the proposed rule would allow—the servicer will save resources, avoiding parts of the evaluation process that would have occurred under the existing complete application framework. These benefits could be especially beneficial to servicers when a borrower applies for options that are designed to be streamlined and made available quickly with no or minimal paperwork. In those cases, the servicer would avoid

Consumer Price Index, https://www.bls.gov/cpi/ (last visited July 1, 2024).

[96] Campbell et al., *Forced Sales and House Prices,* Am. Econ. Rev. 101 (2011), *https://www.aeaweb.org/articles?id=10.1257/aer.101.5.2108.*

[97] Janice Eberly & Arvind Krishnamurthy, *Efficient credit policies in a housing debt crisis,* Brookings Papers on Econ. Activity, Fall 2014, at 73–136 (2014).

[98] Rebecca Diamond et al., *The Effect of Foreclosures on Homeowners, Tenants, and Landlords,* Nat'l Bureau of Econ. Res., Working Paper No. 27358 (2020).

[99] *See* Janet Currie et al., *Is there a link between foreclosure and health?,* 7 Am. Econ. J.: Econ. Pol'y 63 (2015), *https://www.aeaweb.org/articles?id=10.1257/pol.20120325.*

[100] *See* Jim Akin, *How Does a Foreclosure Affect Credit?,* Experian (July 27, 2023), *https://www.experian.com/blogs/ask-experian/how-does-a-foreclosure-affect-credit/.*

[101] ICE, *Mortgage Monitor report,* at 23–24 (Nov. 2023), *https://www.blackknightinc.com/wp-content/uploads/2023/11/ICE_MM_NOV2023_Report.pdf.*

[102] Servicing Rule Assessment Report at 124–25.

[103] *See* Servicing Rule Assessment Report at 158.

evaluation costs for options that require more extensive documentation that is time-consuming to collect, compile, evaluate, and retain in servicing systems.

The CFPB understands that the process of conducting an evaluation for all loss mitigation options and communicating the determination to consumers can require considerable staff time. Among other things, servicers must communicate with borrowers, exercise diligence to obtain all documents and information needed for review of any potentially available loss mitigation options, and review of all possible options, even ones in which the borrower may not be interested. In the CFPB's 2019 RESPA Servicing Assessment and based on interviews with servicers, the CFPB discussed that the requirement of evaluation for all options at once and a decision letter on outcomes for all options was the costliest provision of the 2013 Rule for servicers.[104]

The proposal would also remove the existing requirement in § 1024.41(b)(2) that a servicer send, within five days of receiving the borrower's loss mitigation application, a written notice containing information about the completeness of the borrower's loss mitigation application and any needed documents and information. The removal of this notice requirement would constitute a cost savings to servicers.

The total number of loss mitigation applications servicers receive annually may vary considerably with market conditions that affect borrower delinquency rates. To come up with a rough estimate, we consider the 1.8 percent rate of delinquent borrowers at the end of 2023,[105] or roughly 56 million currently active mortgage loans, and the 45 percent rate of delinquent borrowers who initiated loss mitigation applications in the 2015 servicer operations data analyzed for the CFPB's 2019 RESPA Servicing Rule Assessment.[106] These inputs imply a rough estimate of 450,000 loss mitigation applications annually. The CFPB does not have data to quantify the reduction in costs to servicers from the provision in terms of average savings per loss mitigation application. Given the large number of loss mitigation applications, even a modest reduction in staff time needed for communication or review of loss mitigation options with borrowers and efforts to obtain all documents needed for review of all possible options could lead to substantial cost savings.

The proposed rule may increase costs to servicers if it delays foreclosures that would have occurred under the existing rule. The CFPB understands that the cost of servicing nonperforming loans is greater than the cost of servicing performing loans. By delaying initial foreclosure proceedings, servicers may have to advance principal and interest payments to investors and continue to fund escrow. Once the foreclosure process has started there continues to be an array of fees, which vary by state. Only some of these fees are recoverable for the servicer when the foreclosure is completed. In addition, servicers may incur significant penalties if foreclosure is initiated after the foreclosure start deadline outlined in the servicer agreement. For example, the Federal Housing Administration penalizes servicers that do not refer by 180 days after initial delinquency,[107] and the Government Sponsored Enterprises (GSEs) impose penalties if foreclosure is not completed within state-specific timelines.[108] Because the proposed rule is intended to align servicer incentives and provide for servicer incentives to review borrowers for loss mitigation quickly and accurately, the CFPB expects any foreclosure delays relative to baseline will be minimal and, therefore, the additional costs of the proposal will be minimal.

Relative to the existing rule, the proposed foreclosure procedural safeguards may begin earlier (when the borrower first requests loss mitigation assistance rather than when there is a complete application) and potentially end later (such as, for example, when a loss mitigation option is successfully implemented rather than when the borrower enters an option that may not be successfully implemented). The proposed foreclosure procedural safeguards also would continue for a borrower who fails a trial payment plan if the borrower has not yet been reviewed for all available options; and those protections would generally continue until the borrower has either been reviewed for all available options and none remain, another loss mitigation option has been successfully implemented, the loan is brought current, or the borrower remains unresponsive for a specified period of time despite the servicer regularly taking steps to reach the borrower. Assuming some borrowers in that situation would ultimately face foreclosure, the proposed foreclosure procedural safeguards could be more costly for the servicer than a prompt foreclosure following the borrower's initial failure of the trial payment plan.

The CFPB expects that the costs of beginning foreclosure protections earlier and expanding them from initiation and sale to cover all foreclosure advancement may be minimal. The CFPB understands that many servicers already place a pause on foreclosure proceedings as soon as the loss mitigation process begins, and some investor guidelines may require foreclosure to be paused even before an application is complete (when the existing framework's prohibition on these practices begins).[109] Nevertheless, the main difference in time preceding a foreclosure under the proposal would result from the prevention of dual tracking after a request for loss mitigation assistance but before the loss mitigation application is completed. By providing clear requirements, these amendments may reduce complexity for servicers.

The CFPB does not have data to predict the additional possible duration of the proposed foreclosure procedural safeguards or number of borrowers to whom they would apply. The CFPB previously estimated that, under the existing rule, the typical duration from initiating a loss mitigation application to completing it was roughly two months.[110] Under the proposed rule, this suggests that the gap between the start of loss mitigation review and foreclosure initiation is two months for

[104] *Id.* at 152, 155–56.

[105] Estimate from MBA's National Delinquency Survey for 2023 Q4 combining borrowers either 60 to 89 days delinquent (0.7 percent of active loans) or 90 days or more delinquent (1.1 percent of active loans). *See* MBA, *Mortgage Delinquencies Increase in the Fourth Quarter of 2023* (Feb. 8, 2024), *https://www.mba.org/news-and-research/newsroom/news/2024/02/08/mortgage-delinquencies-increase-in-the-fourth-quarter-of-2023.*

[106] Servicing Rule Assessment Report at 125.

[107] *See* Karan Kaul et al., *Reforming the FHA's Foreclosure and Conveyance Processes,* Urb. Inst. (Feb. 2018), *https://www.urban.org/sites/default/files/publication/96801/reforming_the_fhas_foreclosure_and_conveyance_processes_1.pdf.*

[108] *See, e.g.,* Fannie Mae, *Servicing Guide, A1–4.2–02, Compensatory Fees for Delays in the Liquidation Process* (Feb. 13, 2019), *https://servicing-guide.fanniemae.com/svc/a1-4.2-02/compensatory-fees-delays-liquidation-process;* Freddie Mac, *Single Family Seller Servicer Guide-9301.46 Allowable delays in completing a foreclosure, https://guide.freddiemac.com/app/guide/section/9301.46* (last visited July 1, 2024).

[109] Servicing Rule Assessment Report at 171–73. For example, guidance for loans with GSE investors is that foreclosure can proceed if the borrower isn't being reviewed for loss mitigation but if a borrower calls and the servicer can determine that the borrower would like to be reviewed for loss mitigation either the foreclosure is held for loss mitigation review or it will continue if it is determined that the borrower is not eligible for loss mitigation.

[110] This estimate is based on the 63-day median durations between loss mitigation application initiation and completion in 2015 at five large servicers analyzed in the Servicing Rule Assessment Report. *See* Servicing Rule Assessment Report at 140.

the typical borrower. The CFPB expects that servicers would incur additional costs for less than this two-month period due to the likely earlier onset of loss mitigation review, which will partially offset this two-month period relative to baseline. For example, if loss mitigation review begins one month earlier compared to baseline, then foreclosure initiation will be delayed by only one month (not two) for a typical borrower compared to baseline. In this example, the additional cost to the servicer from the proposal would be one month of servicing the non-performing loan. The CFPB understands that there may be some cases where the gap between the start of loss mitigation review and foreclosure initiation may be longer than the two months proposed here, but any costs incurred due to the delay will still be partially offset by starting loss mitigation review sooner.

Any delay in completing foreclosure would create additional costs to service the loan before foreclosure. The Mortgage Bankers Association reported an annual cost of servicing non-performing loans of $1,857 and performing loans of $176.[111] The difference in mortgage servicing costs between non-performing and performing loans is $1,681, or $140 per month, on average. Thus, the CFPB estimates that the additional average servicing costs associated with servicing non-performing loans would be near $140 per month. The average monthly cost may be lower if some of these costs are recoverable from the investor.

Servicers also would incur costs to manage compliance risk and ensure that the provision is not violated. This would encompass the cost of developing systems to ensure compliance with the conditions under which a loss mitigation review cycle ends along with the prohibition on initiating or advancing foreclosures, to ensure that they do not inadvertently violate the protections. On net, these costs may be lower than compliance costs under the existing rule compared to baseline due to the simpler prohibition on initiating or advancing foreclosure.

The proposed changes also would bring the servicing rules into closer alignment with current servicing practices, which are largely set by investors. If the proposed rule increases the likelihood that non-performing loans are modified or speeds the process of achieving a permanent loss mitigation, then servicers and investors may benefit from either or both changes.

2. Changes to Early Intervention Notice Requirements

The proposal would make changes to the early intervention notice requirements in § 1024.39. Specifically, the proposal would amend the content of § 1024.39(b) written notices by adding to existing notice requirements a new requirement that the notices identify the name of the owner or assignee, currently holding the borrower's mortgage, a brief description of each type of loss mitigation option that is generally available from the investor, and a website address and phone number where the borrower can obtain a list of all of the loss mitigation options that may be available from that borrower's investor. Additionally, the proposal would create alternative early intervention notice requirements at § 1024.39(e) for borrowers performing under the terms of a forbearance. Under the proposed alternative notice requirements, servicers would receive a partial exemption from the live contact and early intervention written disclosure requirements of § 1024.39(a) and (b) while a borrower is performing pursuant to the terms of a forbearance. However, servicers would be required to provide new oral and written notices to delinquent borrowers near the scheduled end of their forbearance period.

i. Benefits and Costs to Consumers

Proposed § 1024.39(b) would benefit borrowers by better informing them about their possible loss mitigation options earlier in the loss mitigation process. Given that the proposed rule would allow servicers to consider borrowers for loss mitigation options one at a time (as discussed above in this part), it may be more critical for borrowers to receive information about all available options upfront than under the existing rule. That is, providing information on all options upfront may mitigate the chance that borrowers accept an inferior option for their needs due to ignorance of a superior alternative for which they have not yet been reviewed.

The existing written early intervention notices rules do not require the servicer to inform the borrower of the investor's identity and do not require a servicer to provide any resource from which the borrower can obtain information regarding each loss mitigation option that may be available from that investor. This can make it difficult or impossible for a borrower to discover the investor's identity and to determine which loss mitigation options are available for their loan. The main benefit of the proposed provision would be to remedy that problem for some borrowers, allowing them to learn more about their available loss mitigation options. This information may benefit borrowers by enabling them to request a loss mitigation option that may seem appropriate for their situation. In addition, making borrowers aware of options that may be appropriate to their situation earlier in the process may prompt some borrowers to contact their servicer and apply for help sooner. Borrowers who apply for consideration sooner also may successfully enter a loss mitigation option sooner and benefit from avoiding potential fees and other consequences that accompany a longer period of loan delinquency (as discussed above in this part).

Proposed § 1024.39(e) would benefit borrowers in two ways. First, it would eliminate borrower confusion that may currently occur when borrowers receive early intervention notices that do not reflect the fact that a forbearance is in place. Proposed § 1024.39(e) would eliminate this source of borrower confusion by exempting servicers from the early intervention notice requirements of § 1024.39(a) and (b) while borrowers perform under the terms of a forbearance agreement.

Second, proposed § 1024.39(e) would benefit borrowers who are delinquent and are nearing the end of a forbearance period by making it more likely that they are aware of their options at the end of the forbearance period with sufficient time to take the action most appropriate for their circumstances. Borrower responses to the ASMB 2020 Survey demonstrated that many borrowers in forbearance plans in 2020 were unsure of how their deferred payments would be repaid when their forbearance period was up (roughly 13 percent of respondents).[112] Borrowers in this situation may benefit from receiving contact from their servicer prior to the end of their scheduled forbearance because it would help them work with their servicer to find other loss mitigation options. This, in turn, might result in more borrowers resolving their delinquencies and reducing delinquency related fees than would

[111] *See* Marina Walsh, *Chart of the Week—June 21, 2024: Annual Cost of Servicing Performing and Non-Performing Loans,* MBA Newslink (June 24, 2024), *https://newslink.mba.org/servicing-newslink/2024/june/chart-of-the-week-annual-cost-of-servicing-performing-and-non-performing-loans/.*

[112] *See* CFPB June 2024 Report at 19–20. Question 26 of the ASMB 2020 Survey asked, ''When your forbearance period ends or has ended, which of the following best describes how your deferred or reduced payments will be repaid?'' Roughly 13 percent of the applicable respondents selected ''Unsure/Don't know.'' *See* 85 FR 46104, 46112 (July 31, 2020).

occur in the absence of the proposed rule.

For both proposed provisions, the total benefits to borrowers would depend on the number of borrowers who might benefit as discussed above. The CFPB cannot currently quantify this number due to lack of information about how many people respond to early intervention notices today, how many recipients of early intervention notices would find the new information important, and how this might change the rate of responses to the notices. The CFPB requests data and other information that could help estimate these quantities.

ii. Benefits and Costs to Covered Persons

For servicers, the main costs of these provisions would come from the costs of developing the new disclosures. Determining the appropriate information about the relevant investor for a borrower's loan and their loss mitigation options may be the costliest addition because it is tailored to each loan. This may require additional employee time to develop a process for linking loan investor and loss mitigation information to production of early intervention written notices. However, the added cost should not be overstated; under the existing rule, servicers must provide relevant loss mitigation information to borrowers when they contact the servicer to ask for help. Thus, the existing rule already requires servicers to have a way of knowing the investors' requirements for individual loans upon request. There may be additional costs to servicers from developing and maintaining the website and telephone resources that provide information on the relevant loss mitigation options for different investors to borrowers.

Additionally, with respect to § 1024.39(e), servicers may benefit from no longer providing early intervention notices while borrowers are in forbearance, although they would incur an additional cost for sending end-of-forbearance notices to these borrowers. Assuming typical forbearance periods of three to six months, the net effect of these two changes for the average borrower may be minimal. That is, the increased cost of providing the proposed end of forbearance notices and the reduced cost of no longer providing notices under § 1024.39(a) and (b) may offset each other.

The CFPB does not have data to estimate these increased costs to servicers. However, we note that any additional costs of gathering, maintaining, and providing this information may be smaller than the reductions in costs to servicers associated with simplifying the required application and evaluation process as discussed above in (1). The CFPB also requests data or other information to help estimate changes in costs associated with more expansive early intervention notices.

3. Fee Protections

Proposed amendments to § 1024.41(f)(3) would prohibit fees 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 beginning when a borrower requests loss mitigation assistance and continuing throughout a loss mitigation review cycle. This prohibition would encompass both amounts typically imposed on a borrower's account directly by the servicer, such as late charges and stop payment fees, as well as payments to third party companies for delinquency-related services, such as property inspections.

i. Benefits and Costs to Consumers

The benefit of this provision to the borrower would be the value of delinquency-related fees prevented while a loss mitigation application is pending. The CFPB does not have data to estimate the average amount of fees that would otherwise be incurred by borrowers during the loss mitigation application process. However, GSE loan guidelines provide a ceiling with maximum allowable charges: monthly late charges cannot exceed 5 percent of the principal and interest payment, or roughly $88 for the average outstanding mortgage at the end of 2023 [113] and allowable reimbursements for monthly property inspection fees cannot exceed $30 for exterior inspections and $45 for interior inspections.[114]

Given uncertainty about the impact of the proposed changes on loss mitigation review cycle durations, it is not possible to estimate the number of months borrowers would receive these protections on average. Under the existing rule (and prior to COVID–19 temporary exceptions), 2015 servicer operations data from the CFPB's 2019 Servicing Rule Assessment suggests the typical duration from initiating a loss mitigation application to receiving an evaluation from the servicer was roughly two months under the existing rule and slightly more than one month prior to the 2013 Mortgage Servicing Final Rule.[115] Under the proposed rule, the CFPB expects that for many borrowers the protections may apply for less than a month and have no impact on monthly fees incurred (both for borrower benefit and servicer cost) in cases where servicers offer and borrowers accept streamlined loss mitigation options that require little or no documentation. The CFPB understands that in an environment where servicers predominantly offer streamlined loss mitigation options it is likely that many borrowers who request help will experience these protections for under a month, but that in some cases where evaluation is more involved, the average borrower may experience protections for near two months and benefit from avoiding roughly $236 in fees.[116] Estimating the total benefit to consumers also requires information on the number of consumers submitting loss mitigation applications. As discussed above in section (1), we estimate roughly 450,000 loss mitigation applications annually given current delinquency rates and market size but note that this number

[113] The estimate of $88 is based on the average monthly principal & interest payment of $1,760 estimated for outstanding mortgages nationally as of the third quarter of 2023 estimate in the NMDB Aggregate Statistics. *See* FHFA, *National Mortgage Database (NMDB®) Aggregate Statistics, https://www.fhfa.gov/DataTools/Downloads/Pages/National-Mortgage-Database-Aggregate-Data.aspx* (last updated June 28, 2024); *see also* Freddie Mac, *Single-Family Seller/Servicer Guide, Section 9102.2: Late charges* (Mar. 2, 2016), *https://guide.freddiemac.com/app/guide/section/9102.2; and* Fannie Mae, *Single-Family Selling Guide, B8–3–02, Special Note Provisions and Language Requirements* (June 3, 2020), *https://selling-guide.fanniemae.com/Selling-Guide/Origination-through-Closing/Subpart-B8-Closing-Legal-Documents/Chapter-B8-3-Notes/1032999801/B8-3-02-Special-Note-Provisions-and-Language-Requirements-06-03-2020.htm#Late.20Charges.20for.20Conventional.20Mortgages.*

[114] *See* Freddie Mac, *Single-Family Seller/Servicer Guide, Exhibit 57: 1-to 4-Unit Property Approved Expense Amounts, https://guide.freddiemac.com/app/guide/exhibit/57* (last visited July 1, 2024); *see also* Fannie Mae, *Single-Family Servicing Guide, F–1–05: Expense Reimbursement* (Oct. 11, 2023), *https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-F-Servicing-Guide-Procedures-Exhibits-Quick-Referen/Chapter-F-1-Servicing-Guide-Procedures/F-1-05-Expense-Reimbursement/1045188371/F-1-05-Expense-Reimbursement-03-08-2023.htm.*

[115] This estimate is based on combining the requirement under the existing rule that servicers evaluate complete applications within 30 days and the 63-day median durations between loss mitigation application initiation and completion in 2015 at five large servicers analyzed in the Servicing Rule Assessment Report. The same report indicates that 88 percent of complete loss mitigation options received servicer decisions within 30 days, and many received decisions within the first week. *See* Servicing Rule Assessment Report at 140, 157.

[116] This estimate ranges from $236 for a duration of 2 months with monthly late fees of $88 and exterior inspection fees of $30.

may vary considerably with market conditions.

ii. Benefits and Costs to Covered Persons

The cost to servicers of the proposed fee prohibition would be the value of the lost fees they would otherwise charge to borrowers with the same estimates discussed above regarding consumer benefit. The CFPB understands that investors typically require their servicers to engage and pay third party companies during delinquencies for a variety of activities, such as regular property inspections. In these cases, the prohibition would prevent servicers from recouping their expenses from payments they must make to third party companies for delinquency-related services, although they may still be able to recoup these expenses later at a foreclosure sale. Incurring these expenses may further incentivize servicers to process loss mitigation applications expediently, mitigating the overall expenses incurred by servicers as well as for borrowers. To the extent servicers either are able to retain any fee income or are required to advance the fees to investors (as may be the case for late fees), servicers will likewise have increased incentives to process loss mitigation applications expediently, mitigating the overall expenses incurred by servicers as well as for borrowers.

4. Loss Mitigation Determination Notices

Proposed amendments to § 1024.41(c) would add new requirements for loss mitigation determination notices that would, in relevant part, (a) require offer and denial notices for all loss mitigation options, (b) require more detail in the notices specifying the key borrower-provided inputs that served as the basis for the determination, (c) provide contact information that the borrower can use to access a list of non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination, (d) require the servicer to provide a website through which a borrower could access a list of non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination; (e) require certain disclosures regarding loss mitigation options that may remain available to the borrower, and (f) require that the servicer inform the borrower as to whether an offer will still be available if the borrower requests to be reviewed for other loss mitigation options. If the loss mitigation offer is for a forbearance, the amendments also would require that the determination notice include information regarding the terms and duration of the forbearance. Disclosure of the terms and duration of the forbearance is not a new requirement but is being moved into the proposed determinations section to provide the borrower additional information and because of the proposed amendment of § 1024.41(c)(2)(iii), where the requirement currently resides.

i. Benefits and Costs to Consumers

The purpose of the existing loan modification denial notice provision in § 1024.41(d) is to provide borrowers with information that might help them correct an erroneous denial, and the proposed changes to determination notices would extend that benefit to any loss mitigation determination rather than to permanent loan modification denials only. Additionally, the proposed changes would require detail to be included in the notices on specific inputs used in the determination, better enabling borrowers to recognize potentially erroneous denials and fully understand the basis for the determination.

In the case of a denial, ensuring the consumer understands the reasons for the denial including any specific numerical input used in the determination is necessary to enable the consumer to recognize and respond to potential errors that may occur in determinations. Requiring this for all loss mitigation options rather than only permanent loan modifications as specified under the existing rule recognizes the increasing prevalence of alternative types of loss mitigation options, such as forbearances and deferrals. This additional information could reduce confusion for borrowers and help some borrowers understand their loss mitigation determinations better under the proposal compared to baseline.

In the case of an offer, the primary benefit to borrowers of requiring detailed determination notices is to assist the borrower with potential appeals in cases where the terms of the offer may depend on certain inputs. By providing details on the inputs used as basis for the determination, the proposed notices may enable borrowers to recognize errors in determinations that may have led to worse terms in the offer than if the correct information had been used. In such cases, if the borrower appeals an error that they would not otherwise have recognized or been able to substantiate, and accepts an offer on better terms, they will benefit by the difference in terms between the initial and appealed offer terms.[117] The total number of borrowers affected would depend on two things: the number of borrowers who would newly receive determination notices and the share of those borrowers who would appeal successfully due to those notices.

Due to uncertainty about trends in borrower distress, prevalence of loss mitigation options other than permanent loan modifications, and the rate of loss mitigation applications that servicers would deny, the CFPB does not have sufficient information to estimate the additional number of required notices. ICE Mortgage Technology reported that roughly 8.8 million borrowers had entered temporary forbearance between when the CARES Act was passed in Spring 2020 and the end of 2023.[118] Although this was a period of unprecedented high volumes of forbearance plans, it serves as an upper bound on the number of borrowers who could benefit from the proposed changes to required notices. It is especially relevant given that proposal would newly require more detailed determination notices for forbearances.

The CFPB does not have data to estimate the share of those borrowers who would newly appeal a determination successfully. Based on data on loss mitigation applications and appeals from five large servicers in 2015 analyzed for the CFPB's 2019 Servicing Rule Assessment, the rate of successful appeals on loss mitigation applications was 0.1 percent.[119] This data offers a rough estimate of the current rate of successful appeals, although we recognize uncertainty in this estimate due to potential differences between the servicers these data characterize and the population of all servicers, as well as other market changes in the last nine years. The CFPB requests data and other information that could help estimate the extent to which the proposed provisions would increase the number of consumers who newly receive determination notices and increase the likelihood of appeals that successfully result in a change to the loss mitigation decision or terms.

In addition, the proposed rule requires that the servicer inform the borrower as to what loss mitigation

[117] CFPB is proposing to expand appeal provisions to loss mitigation offers as well as denials, as discussed in part IV.D.

[118] ICE, *Mortgage Monitor report,* at 26 (Feb. 2024), *https://www.blackknightinc.com/wp-content/uploads/2024/02/ICE_MM_FEB2024_Report.pdf; see also* ICE Mortgage Technology, *First Look at December 2023 Mortgage Data* (Jan. 24, 2024), *https://www.icemortgagetechnology.com/resources/data-reports/first-look-at-december-2023-mortgage-data.*

[119] Servicing Rule Assessment Report at 163.

options are still or will remain available. This would benefit borrowers by better informing them about their available loss mitigation options, if any, after an initial loss mitigation determination. This should reduce confusion for borrowers and ensure they understand all potential options available before making a choice about accepting an offer from the servicer. In the case of an acceptance, it may prevent borrowers from accepting an inferior option for their needs. For borrowers that receive a forbearance, this change should help reduce confusion among borrowers receiving forbearance offers that was common with forbearance offers during the COVID–19 pandemic.[120] The CFPB requests data and other information about how many and the extent to which borrowers would benefit from these changes.

ii. Benefits and Costs to Covered Persons

Requiring determination notices for all loss mitigation determinations—not only for denials of permanent loan modifications relating to complete applications—could increase costs to servicers associated with preparing and mailing a greater number of determination notices, as well as identifying and making available borrower-provided and non-borrower-provided inputs used in the determination. However, the CFPB anticipates that the costs of additional determination notices for non-loan modification options should be partially offset by the proposed removal of the required notice under existing § 1024.41(c)(2)(iii), which requires servicers to provide borrowers with a notice stating the terms of any forbearance or repayment plan they are offered.[121] In other words, when the servicer offers the borrower a forbearance or repayment plan, the provision will essentially require them to send a notice with different content requirements than under the existing rule, but not increase the overall volume of notices in such cases. The CFPB expects servicers may incur one-time costs to update their processes when offering this type of loss mitigation option.

The increased detail required in determination notices may not substantially affect costs per notice given that servicers already have the required information on inputs underlying their determinations, other loss mitigation options available, and forbearance terms and durations. However, including this information may increase questions and/or alleged errors from borrowers, particularly if numerical inputs are difficult to understand or do not align with other common usages of the same term (*e.g.,* the servicer's definition of income might be different from the borrower's understanding of their income).

An estimate of the increased costs to servicers would depend on the costs of identifying the relevant borrower-provided and non-borrower-provided inputs, which may vary depending on the complexity of the determination process, the costs of developing and maintaining a website through which consumers can access the required information, and the additional number of required notices and the average cost of providing and mailing each notice. However, the CFPB understands that most loss mitigation determinations are relatively standardized due to servicers' obligations to follow investor requirements. Due to uncertainty about trends in the incidence of borrower distress, prevalence of loss mitigation options other than permanent loan modifications, and the rate of loss mitigation applications that servicers would deny, the CFPB does not have sufficient information to estimate the additional number of required notices. However, as discussed above regarding consumers' benefits, recent circumstances relating to COVID–19 related forbearances provide an example of extenuating circumstances when loss mitigation options other than permanent loan modifications affect very large numbers of borrowers.

5. Notice of Error and Appeals Requirements

Amendments to § 1024.35(b) make explicit that loss mitigation determinations are subject to notice of error provisions. As discussed in the preamble to § 1024.35, the CFPB has consistently viewed servicer errors related to loss mitigation determinations as errors subject to the notice of error provisions. Amendments to § 1024.41(h) also provide that that section's right of appeal applies for all loss mitigation options, not just permanent loan modifications. For example, some forbearance options may not currently be subject to appeal rights, and appeal rights would be extended to them under the proposal.

i. Benefits and Costs to Consumers

The main aim of explicitly listing loss mitigation determinations as within the scope of the existing error resolution provision would be to provide clarity to both consumers and servicers that notice of error requirements apply to loss mitigation determinations. For consumers, the main value of this addition would be to increase servicer accountability by increasing the likelihood, timeliness, and quality of servicers' responses. For example, this clarity may help ensure that a servicer responds to a notice of error about a loss mitigation determination from a borrower by conducting a reasonable investigation and correcting any error if their investigation confirms one. This may benefit the borrower if the correction allows them to be offered an appropriate loss mitigation option. Borrowers also could save on legal costs if they can resolve the issues through error resolution instead of through outside legal action. While the CFPB does not have information to precisely estimate the expected number of borrowers this would affect, prior analysis by the CFPB indicates that loss mitigation is already a common reason for formal error assertions.[122] Beyond this additional clarity, the CFPB anticipates this provision will have minimal impact on benefits and costs to servicers and borrowers as it does not change Regulation X's requirements.

The main benefit to borrowers of expanding the right to appeal in § 1024.41(h) such that it applies to all loss mitigation options would be an increased likelihood of successful loss mitigation.[123] If the borrower believes a mistake was made and that the resulting loss mitigation determination was incorrect, they may appeal that outcome and the appeal is required to be reviewed by different personnel than those responsible for the original determination. If an appeal confirms that the servicer incorrectly denied a loss mitigation option, then the borrower gains access to a new loss mitigation opportunity through the appeal. Thus, expanded appeal rights may allow more borrowers to achieve suitable loss mitigation arrangements.

ii. Benefits and Costs to Covered Persons

Newly allowing borrowers to appeal denials of loss mitigation options beyond permanent loan modifications

[120] *See* CFPB June 2024 Report at 18–20.

[121] Note that, notwithstanding the requirements of 1024.41(c)(2)(iii), in some cases investors may require servicers to send other notices related to forbearance and repayment plan offers. *See, e.g.,* Fannie Mae Forbearance Plan Terms.

[122] Servicing Rule Assessment Report at 211. Analysis of Servicer Operations Data from seven large servicers on formal written error assertions (both Qualified Written Requests asserting errors and Notices of Error) for loans serviced in 2015 indicate that ''loss mitigation'' was the most commonly reported reason for these assertions.

[123] Note that the proposed changes do not change the existing right to use the error resolution process for loss mitigation.

as well as newly allowing borrowers to appeal loss mitigation offers under proposed § 1024.41(h) may increase the volume of appeals. Some servicers' costs may increase to cover any expenses associated with responding to a higher volume of appeals. The CFPB does not have data to estimate the additional volume of appeals requests resulting from these changes nor to precisely estimate the average cost to servicers of responding to an additional appeal.

The proposed amendment to § 1024.35(b) also clarifies that the CFPB has always interpreted that loss mitigation determinations are and continue to be covered by the notice of error provision. Though § 1024.35(b) is a provision that applies to small servicers, the clarification the CFPB is proposing to add to this provision is not a change to the existing rule, so the CFPB does not expect any changes in the costs and benefits to covered persons, including small servicers, from this clarification.

6. Language Access Requirements

As discussed in part IV.D, the CFPB is proposing requirements to provide borrowers with limited English proficiency greater language access to mortgage servicing communications. These include requirements to provide select written and oral mortgage servicing communications—including the early intervention notice and loss mitigation option determination notices—in a borrower's preferred language in certain cases. For the specified written communications, the proposal requires an accurate Spanish language translation of the communication to be provided to all borrowers with the English version. The proposal also requires servicers to provide, upon borrower request, accurate translations of the specified written communications to the borrower in certain servicer-selected languages (as detailed in part IV.D) and to include five brief in-language statements in the English version of the specified written communications stating the availability of translations and interpretation services for those languages and providing how the borrower can request those translations or interpretation services. For the specified oral communications, the CFPB proposes requiring servicers, upon borrower request, to make available and establish connection with interpretation services before or within a reasonable time of establishing connection with borrowers, to the extent the borrower's requested language is one of the servicer-selected languages. The proposal also would require a servicer, under certain circumstances, to provide translations of the specified written communications and interpretations of the specified oral communications in languages that were used in marketing the mortgage product to the borrower upon the borrower's request.

i. Benefits and Costs to Consumers

The main benefit to borrowers of these proposed changes would be to increase access to and understanding of servicer communications, as well as lowered costs to borrowers with limited English proficiency to obtain that access. For example, if borrowers with limited English proficiency previously used translation services through other sources, receiving critical written materials in their preferred language from their servicer may save them time and/or expense in obtaining translations or interpretations. This increased access and understanding may in turn increase the likelihood the servicer is able to complete early intervention with a delinquent borrower and, if applicable, the borrower is able to identify available loss mitigation options and make a request for loss mitigation assistance. If borrowers with limited English proficiency were previously unable to obtain a translation or interpretation of these materials, or were deterred from doing so by cost, the complexity of the task, or privacy concerns, the new requirements could significantly increase the likelihood that a borrower may now have access to this information, increasing the likelihood the borrower completes a loss mitigation application. For example, translated materials may increase borrowers' awareness of important deadlines or necessary steps to obtain their preferred loss mitigation options. Obtaining better outcomes in this way may enable some borrowers to avoid foreclosures they would otherwise have experienced, reducing costs associated with foreclosure as discussed above in this part. Further, access to reliable translations and interpretation services may enable some borrowers to avoid harm where they would otherwise obtain inaccurate or incomplete translations or interpretations, including harm caused by predatory practices.[124] Better access and understanding of servicer communications may allow borrowers to obtain better loss mitigation options for their situation.

As discussed in part IV.D, the proposed requirements for establishing specified oral communications may reduce additional hold times some borrowers with limited English proficiency currently incur to establish a connection to translation services provided by the servicer during oral communications or may result in previously unavailable real-time interpretations. In some cases, the removal of these delays may increase the likelihood that more borrowers with limited English proficiency use existing translation services and may impact the efficacy of servicers' early intervention and loss mitigation efforts through oral communication.

The proposed language access changes may benefit a large subset of borrowers. Roughly 30 million U.S. households speak a language other than English at home and nearly 5.5 million households within that population have limited English proficiency according to estimates from the 2022 American Community Survey. Borrowers from those households might substantively benefit from increased access to key written and oral communications in a language they understand very well, although the CFPB does not have data to precisely estimate the average benefit of improved understanding to each borrower. Spanish speakers represent the second largest language group in the United States after English speakers and, thus, a large share of borrowers with limited English proficiency would benefit from the requirement to send specified written servicing communications in Spanish as well as English.[125] While the CFPB recognizes that the number of households with limited English proficiency responsive to the 2022 American Community Survey does not equate to the number of borrowers with limited English proficiency who have mortgages, let alone mortgages in distress, the CFPB has preliminarily concluded these estimates are representative of the scale of borrowers with limited English proficiency that could be impacted by the proposal.

Data from the ASMB 2020 Survey supports this preliminary conclusion. Responses to the ASMB 2020 Survey indicate a similar share of respondents experiencing financial distress who

[124] For example, borrowers with limited English proficiency may place trust in interpreters who speak their preferred language without receiving full information on the incentives and business interests of their interpreter. *See, e.g.,* Kleimann 2017 Report.

[125] The 2022 American Community Survey 1-Year Estimates indicate that 16.9 million US households (out of 130 million total) speak Spanish at home and over 3.2 million of those are also Limited English-speaking households. *See* U.S. Census Bureau, *Language Spoken at Home, https://data.census.gov/table/ACSST1Y2022.S1601?q=language%20at%20home* (last visited July 1, 2024); *see also* 2022 ACS Table.

speak a language other than English at home and speak English less than ''very well'' to the analogous shares for the total population reported in the 2022 American Community Survey 1-year Estimates from the United States Census. Specifically, 22 percent of respondents experiencing financial distress indicated that they speak a language other than English at home and 6 percent of borrowers indicated that they speak another language at home and speak English less than ''very well.'' [126] Because this survey is administered only in English and Spanish, it does not address the prevalence of borrowers with limited English proficiency who speak languages other than Spanish. Thus, we expect that the ASMB 2020 Survey data likely underestimates the full share of borrowers with limited English proficiency experiencing financial distress.

ii. Benefits and Costs to Covered Persons

Requiring certain written mortgage servicing communications in specified languages other than English may impose new or additional costs on servicers. A requirement to send both English- and Spanish-language communications to all borrowers may result in updates to software systems to create the Spanish version of the communications and may increase mailing costs for communications sent by mail if these require additional pages of text. Smaller costs for software system updates may apply for some servicers when adding the in-language translation availability statements to the English version of the written communications. Servicers may incur similar software system update and mailing costs to provide translations upon borrower request in certain servicer-selected languages, as detailed in part IV.D. A requirement to provide specified written communications in languages other than English and Spanish when the servicer has or should have knowledge of in-language marketing to the borrower before origination, and upon borrower request, could increase costs by requiring servicers to develop and maintain systems for tracking languages used in marketing and sending appropriate written communications based on that request. Servicers also may incur one-time costs to develop translations in languages they currently do not offer and may incur ongoing costs to maintain these translations or to tailor the translated templates they develop to borrower circumstances. A requirement that servicers comply with the translation and interpretation service requirements for languages used in marketing before origination for the borrower, if the servicer knows or should have known of that marketing, also could prompt servicers to develop and maintain systems for tracking this information when servicing rights are obtained, at least in cases where the servicer is not the originator of the loan. The CFPB has heard from stakeholders concern that requiring servicers that know or should have known of languages used in marketing to provide translation and interpretation services, as applicable, in those languages could create incentives for firms that originate loans to avoid marketing in languages other than English to reduce anticipated servicing costs.

The proposed requirement to ease access to interpretation services over the phone by connecting these services before or within a reasonable time of establishing connection with borrowers with limited English proficiency may require servicers to adapt processes and could require additional staff or additional staff time. Servicers who are not already following this practice may need to establish a process for connecting stored information on borrower language preference with their process for oral communications. In some cases, this may not impose meaningful ongoing costs beyond those described above for complying with the changes to written notice requirements. However, complying with this requirement may require some servicers to make interpretation services available for more time overall in order to establish connections with them before or within a reasonable time of establishing connection with borrowers with limited English proficiency. Servicers that currently do not offer or only offer a limited number of languages for interpretation may experience additional costs for increasing the languages available for interpreter services to borrowers. Estimates of total servicer costs to comply with these language access requirements would depend on the language access methods currently offered by the servicer, the volume of borrowers with limited English proficiency, and the rate the servicer pays staff or third-party services for translations or interpretations.

The CFPB requests data and other information that could help estimate the benefits and costs of providing language access services of the types we are considering.

The CFPB expects that, if finalized as proposed, the rule would impose ongoing compliance costs on servicers. The CFPB requests comments on potential compliance costs of the proposed rule.

E. Potential Specific Impacts of the Proposed Rule on Insured Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, As Described in CFPA Section 1026

The CFPB believes that a large majority 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 Regulation X because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. In the past, the CFPB has estimated that more than 95 percent of insured depositories and credit unions with $10 billion or less in total assets service 5,000 mortgage loans or fewer.[127] The CFPB believes that servicers that service loans that they neither own nor originated tend to service more than 5,000 loans, given the returns to scale in servicing technology. Small servicers are exempt from the new proposed requirements and therefore would not be directly affected by them.

The CFPB believes that the consideration of benefits and costs of covered persons presented above generally describes the impacts of the rule on the minority of depository institutions and credit unions with $10 billion or less in total assets that service more than 5,000 loans.

F. Potential Specific Impacts of the Proposed Rule on Consumer Access to Credit

Restrictions on servicers' ability to foreclose on mortgage loans could, in theory, reduce mortgage lending profitability and cause lenders to increase interest rates or reduce access to mortgage credit, particularly for loans with a higher estimated risk of default. The CFPB cannot rule out the possibility that the rule will have the effect of increasing mortgage interest

[126] *See* CFPB June 2024 Report at 8. ''Distressed borrower'' respondents are defined as those who agreed with the question ''Did you have any concerns or difficulties making your mortgage payments at any time in 2020?'' Respondents who reported that they speak a language other than English at home were asked ''How well do you speak English?'' with possible responses of ''very well'', ''well'', ''not well'', and ''not at all.'' For comparison, the 2022 American Community Survey 1-Year Estimates indicate that 23 percent of U.S. households speak a language other than English at home and 4 percent of US households speak a language other than English at home and are considered ''Limited English'' speaking households. *See* 2022 ACS Table.

[127] 81 FR 72160 (Oct. 19, 2016).

rates or restricting access to credit for some borrowers, particularly for borrowers with lower credit scores whom financial institutions may judge to have a higher likelihood of default in the first few months of the loan term. The CFPB believes it is unlikely that the rule would result in changes in mortgage interest rates or access but acknowledges these outcomes are possible if costs to servicers increase substantially as a result of the proposal.

G. Potential Specific Impacts of the Proposed Rule on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural areas may be more likely to obtain mortgages from small local banks and credit unions that either service the loans in portfolio or sell the loans and retain the servicing rights.[128] These servicers may be small servicers that are exempt from the rule.

The CFPB will further consider the impact of the proposed rule on consumers in rural areas. The CFPB therefore asks interested parties to provide data, research results, and other factual information on the impact of the proposed rule on consumers in rural areas.

[128] *See* CFPB, *Data Point: Servicer Size in the Mortgage Market,* at 18–19 (Nov. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_2019-servicer-size-mortgage-market_report.pdf* (Servicer Size Data Point) (estimating that, as of 2018, over 23 percent of mortgages serviced by small servicers are in non-metro or completely rural counties, compared to only 13 and 9 percent of mortgages at mid-size and large servicers, respectively.)

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[129] The CFPB also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[130]

A. Application of the Proposed Rule to Small Entities

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA.[131] The analysis uses existing mortgage servicing final rules as a baseline. The CFPB has identified five categories of small entities that may be subject to the proposed rule for purposes of the RFA: Commercial banks/savings institutions[132] (NAICS 522110 and 522180), credit unions (NAICS 522130), firms providing real estate credit (NAICS 522292), firms engaged in other activities related to credit intermediation (NAICS 522390), and small non-profit organizations.[133] Commercial banks, savings institutions, and credit unions are small businesses if they have $850 million or less in assets. Firms providing real estate credit are small businesses if average annual receipts do not exceed $47.0 million, and firms engaged in other activities related to credit intermediation are small businesses if their average annual receipts do not exceed $28.5 million. A small non-profit organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The CFPB estimates that there are approximately 7,990 depositories (commercial banks, savings institutions, and credit unions) that engage in mortgage servicing and are therefore subject to the Mortgage Servicing Rules. Of these, the CFPB estimates that approximately 6,370 depositories are ''small entities'' as defined in the RFA.

[129] 5 U.S.C. 601 *et seq.*

[130] 5 U.S.C. 609.

[131] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (''NAICS'') classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5). *See also* Small Bus. Admin., *Table of small business size standards by industry, https://www.sba.gov/document/support--table-size-standards* (last visited July 1, 2024).

[132] Savings institutions include thrifts, savings banks, mutual banks, and similar institutions.

[133] These categories reference the NAICS 2022 standard.

Category	NAICS	Total entities	Small entities	Entities engaged in mortgage loan servicing	Small entities engaged in mortgage loan servicing
Commercial banks & savings institutions	522110, 522180	4,570	3,409	4,477	3,343
Credit unions	522130	4,644	4,157	3,513	3,027
Real estate credit	522292	3,311[134]	2,372-2,608[135]	1,637[136]	1,305[8]
Other activities related to credit intermediation (includes loan servicing)	522390	3,769[137]	*	*	*

For commercial banks, savings institutions, and credit unions, the number of entities and asset sizes were obtained from December 2023 Call Report data. Banks and savings institutions are counted as engaging in mortgage loan servicing if they hold closed-end loans secured by one to four family residential property or they are servicing mortgage loans for others. Credit unions are counted as engaging in mortgage loan servicing if they have closed-end one to four family mortgages in portfolio, or hold real estate loans that have been sold but remain serviced by the institution.[134] [135] [136] [137]

For firms providing real estate credit and firms engaged in other activities related to credit intermediation, the total number of entities and small entities comes from the 2017 Economic Census. For firms engaged in other activities related to credit intermediation, the number of entities engaged in mortgage servicing also comes from the 2017 Economic Census. The CFPB has not been able to separately estimate the number of these entities and small entities that are engaged in mortgage servicing. However, with the 2013 Final Rule the CFPB published analysis showing that approximately 90 percent of the estimated total entities engaged in servicing were depository institutions (DIs), while the remainder were non-depository institutions (non-DIs). The market share of non-DIs has grown considerably, with a report by the Financial Stability Oversight Committee (FSOC) showing that the share of Agency loans serviced by non-DIs rose from roughly 35 percent in 2014 to over 60 percent in 2023. Taking the assumption that the relationship between entity size and loans serviced within servicer type has remained stable over that period, this implies that the non-DI share of servicer entities has grown from roughly 10 percent to 17 percent over that decade. Using this figure, the CFPB estimates that there are currently approximately 1,637 non-DI entities engaged in servicing and 1,320 non-DI small entities engaged in servicing. The CFPB considers these the best available approximations to the current number of non-DI servicers, but also recognizes that they are rough estimates.[138]

Non-profits and small non-profits engaged in mortgage servicing would be included under real estate credit if their primary activity is originating loans and under other activities related to credit intermediation if their primary activity is servicing. The CFPB has not been able to separately estimate the number of non-profits and small non-profits engaged in mortgage loan servicing.

The large majority of small entities discussed above qualify as ‘‘small servicers’’ for the purposes of the Mortgage Servicing Rule, which exempts servicers that service 5,000 mortgage loans or less, all of which the servicer or an affiliate owns or originated, from all the provisions affected by the proposed rule.[139] The CFPB estimates that nearly all insured depositories or credit unions that meet the Small Business Administration (SBA) asset threshold for a small entity also qualify for the small servicer exemption (over 99 percent or all but 61). The methodology for this estimate is straightforward in the case of credit unions. The credit union Call Report presents the number of mortgages held in credit union portfolios and the amount of assets. This allows one to readily determine which credit union small servicers (as defined by the SBA asset threshold) serviced 5,000 mortgage loans or less.[140] In contrast, the bank and thrift Call Report does not present the number of mortgages, only the aggregate unpaid principal balance, and the amount of assets. The CFPB developed estimates of the average

[134] U.S. Census Bureau, *All Sectors: Summary Statistics for the U.S., States, and Selected Geographies 2017, https://data.census.gov/table/ECNBASIC2017.EC1700BASIC?q=522292:%20Real%20estate%20credit&y=2017* (last visited July 1, 2024).

[135] U.S. Census Bureau, *Selected Sectors: Sales, Value of Shipments, of Revenue Size of Firms for the U.S.: 2017, https://data.census.gov/table/ECNSIZE2017.EC1700SIZEREVFIRM?q=522292:%20Real%20estate%20credit&y=2017* (last visited July 1 2024) Range reflects number of firms with annual revenue less than $25 million to the number of firms with annual revenue less than $100 million.

[136] Estimate based on the share of DIs and non-DIs the CFPB estimated were engaged in servicing in the 2013 Final Rule (78 FR 10696, 10864 (Feb. 14, 2013) extrapolated for non-DI growth in market share over the next decade. *See* Fin. Stability Oversight Council (FSOC), *Report on Nonbank Mortgage Servicing—2024, https://home.treasury.gov/system/files/261/FSOC-2024-Nonbank-Mortgage-Servicing-Report.pdf* (last visited July 1, 2024).

[137] U.S. Census Bureau, *Selected Sectors: Sales, Value of Shipments, of Revenue Size of Firms for the U.S.: 2017, https://data.census.gov/table/ECNSIZE2017.EC1700SIZEREVFIRM?y=2017&n=522390* (last visited July 2, 2024).

[138] As discussed below, the estimate of the number of small entities potentially affected by the rule is very small. As a result, even if the share of non-DI's engaged in servicing has grown significantly, it is unlikely to affect the overall conclusion.

[139] *See* 12 CFR 1024.30(b)(1); 12 CFR 1026.41(e)(4).

[140] We assume that mortgages held by banks and credit unions are also serviced by them as the CFPB does not have data on servicing rights institutions sell off.

unpaid principal balance at banks and thrifts of different sizes and used this with the information on aggregate unpaid principal balance to derive loan counts at each bank and thrift [141] to determine which bank and thrift small servicers (as defined by the SBA asset threshold), together with affiliates, serviced 5,000 mortgage loans or less.

It is not possible to observe in the data whether the loans that servicers are servicing for others were originated by those servicers or their affiliates. However, all insured depositories and credit unions that meet both the SBA asset threshold and the loan count threshold likely qualify for the exception. In principle, these entities may not qualify for the exception because they service loans that they did not originate and do not own and that their affiliates did not originate and do not own; however, this situation is extremely unlikely. First, most entities servicing loans they did not originate and do not own most likely view servicing as a stand-alone line of business. In this case they would most likely choose to service substantially more than 5,000 loans in order to obtain a profitable return on their investment in servicing.[142] Taking this into account, the CFPB determines that essentially all insured depositories and credit unions that meet the SBA threshold and the loan count condition likely qualify for the exception.

The CFPB does not have the data necessary to precisely estimate the number of small entity non-DIs that would be covered by the exemption. To obtain a rough estimate, the CFPB draws on prior CFPB analysis in the preamble to the 2013 Mortgage Servicing Final Rule estimating that all but 4 percent of non-depository servicers would service, together with affiliates, 5,000 loans or less. This estimate implies that 1,253 (all but 4 percent of 1,305, or 52) non-DI servicers would service 5,000 loans or less. The CFPB determines this to be the best available approximation to the number of non-DI servicers that would not qualify for the exemption, but also recognizes that these figures are rough.

The CFPB estimates that out of 7,675 small entities engaged in servicing, approximately 1 percent (or 113 entities) are not small servicers and would therefore be affected by the rule. While these estimates are somewhat uncertain, the estimate that roughly 1 percent of small entities would be affected implies that it is unlikely that a substantial number of small entities would be affected.

B. Certification

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The CFPB requests comment on the analysis above and requests any relevant data.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[143] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for data collection, disclosure, and recordkeeping requirements (collectively, information collection requirements) prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB. As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the information collection requirements in accordance with the PRA. This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, information collection instruments are clearly understood, and the Bureau can properly assess the impact of information collection requirements on respondents.

This proposed rule would amend 12 CFR part 1024 (Regulation X). The Bureau's OMB control number for Regulation X is 3170–0016 which currently expires on December 31, 2026. As described below, the proposed rule would revise existing information collections and create the following new information collection requirements in Regulation X:

- The proposed rule would require that a servicer provide a delinquent borrower who is performing pursuant to the terms of a forbearance agreement with a written notice containing certain information relating to loss mitigation and the borrower's forbearance when the forbearance is nearing its scheduled end.
- The proposed rule would require that a servicer provide certain additional information to delinquent borrowers in early intervention notices, such as the name of the investor on the borrower's loan, a brief description of each type of loss mitigation option that is generally available from that owner or assignee, as well as a website and telephone number where the borrower can obtain information about all of the loss mitigation options that may be available from that investor.
- The proposed rule would require that a servicer send loss mitigation determination notices to borrowers when a servicer offers a borrower a loss mitigation option and when a servicer denies the borrower for any loss mitigation option. Currently, servicers are required to send detailed determination notices only for denials of loan modifications. The proposed rule would (a) require more detail in the notices specifying the borrower-provided inputs that served as the basis for the determination, (b) provide contact information that the borrower can use to access a list of non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination, (c) require certain disclosures regarding loss mitigation options that may remain available to the borrower, and (d) require that the servicer inform the borrower as to whether an offer will still be available if the borrower requests to be reviewed for other loss mitigation options.
- The proposed rule would expand the information that is currently required to be disclosed when a servicer denies a borrower for a loss mitigation option due to missing documents and information not in the borrower's control, to include, for example, a list of loss mitigation options that are still available to the borrower.
- The proposed rule would require that certain written early intervention and loss mitigation communications contain statements making a borrower aware of the availability of translation of the notices into non-English languages, that all such communications be made available to borrowers in both English and Spanish, and that servicers make available additional translations and oral interpretations under certain other circumstances.

The collections of information contained in this proposed rule, and

[141] For banks and thrifts with under $10 billion in assets, the CFPB calculated the average unpaid principal balance of portfolio mortgages by state for credit unions with less than $1 billion in assets and applied the state specific figures to these banks and thrifts. For banks and thrifts with over $10 billion in assets, the CFPB applied the OCC's mortgage metrics estimate of $233,000.

[142] 86 FR 34848, 34898 (June 30, 2021). For example, one industry participant estimated that most servicers would need a portfolio of 175,000 to 200,000 loans to be profitable. Bonnie Sinnock, *Servicers Search for 'Goldilocks' Size for Max Profits,* Am. Banker (Sept. 10, 2015), *https://www.americanbanker.com/news/servicers-search-for-goldilocks-size-for-max-profits.*

[143] 44 U.S.C. 3501 *et seq.*

identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements (including the burden estimate methods) is provided in the supporting statement accompanying the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Consumer Financial Protection Bureau. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to 202–395–6974. If you wish to share your comments with the Bureau, please send a copy of these comments as described in the **ADDRESSES** section above. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as on OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: Regulation X: Real Estate Settlement Procedure Act.

OMB Control Number: 3170–0016.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector.

Estimated Number of Respondents: 9,627.

Estimated Total Annual Burden Hours: 1,155,284.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notification will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

If applicable, the final rule will inform the public of OMB's approval of the new information collection requirements proposed herein and adopted in the final rule. If OMB has not approved the new information collection requirements prior to publication of the final rule in the **Federal Register**, the Bureau will publish a separate notification in the **Federal Register** announcing OMB's approval prior to the effective date of the final rule.

IX. Request for Comments

The CFPB seeks comment on all aspects of this proposed rule. Additionally, the CFPB specifically requests comments or information on the following:

Are there ways in which the early intervention and loss mitigation provisions in Regulation X could be further simplified or streamlined?

Are there different or additional policy and procedure requirements that might be needed in § 1024.38 in light of the proposed changes?

What additional information or clarification, if any, should the CFPB consider for the continuity of contact provisions in § 1024.40?

X. Severability

The CFPB preliminarily intends that, if any provision of the final rule, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue to be in effect.

List of Subjects in 12 CFR Part 1024

Banks, banking, Condominiums, Consumer protection, Credit unions, Housing, Mortgage insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For reasons set forth in the preamble, the CFPB proposes to amend 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 1024.31 is amended by removing the definitions for *COVID–19 related hardship* and *Loss mitigation application,* and adding, in alphabetical order, definitions for *Loss mitigation review cycle* and *Request for loss mitigation assistance* to read as follows:

§ 1024.31 Definitions.

* * * * *

Loss mitigation review cycle means a continuous period of time beginning when the borrower makes a request for loss mitigation assistance, provided the request is made more than 37 days before a foreclosure sale, and ending when the loan is brought current or the procedural safeguards in § 1024.41(f)(2)(i) or (ii) are met. A loss mitigation review cycle continues while a borrower is in a temporary or trial loss mitigation period, such as a forbearance or modification trial payment plan, and the loan has not yet been brought current.

* * * * *

Request for loss mitigation assistance means any oral or written communication, occurring through any usual and customary channel for mortgage servicing communications, whereby a borrower asks a servicer for mortgage relief. A request for loss mitigation assistance should be construed broadly and includes, but is not limited to, any communication whereby:

(1) A borrower expresses an interest in pursuing a loss mitigation option;

(2) A borrower indicates that they have experienced a hardship and asks the servicer for assistance with making payments, retaining their home, or avoiding foreclosure; or

(3) In response to a servicer's unsolicited offer of a loss mitigation option, a borrower expresses an interest in pursuing either the loss mitigation option offered or any other loss mitigation option.

* * * * *

■ 3. Section 1024.35 is amended by revising paragraphs (b)(9) through (11) to read as follows:

§ 1024.35 Error resolution procedures.

* * * * *

(b) * * *

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or advancing the foreclosure process, in violation of § 1024.41(f) or (j).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(f) or (j).

(11) Any other error relating to the servicing of a borrower's mortgage loan, including failure to make an accurate loss mitigation determination on a borrower's mortgage loan.

* * * * *

■ 4. Section 1024.38 is amended by revising paragraph (b)(2) introductory text, and paragraphs (b)(2)(iv) through (vi), (b)(3)(iii), and (c)(1) to read as follows:

§ 1024.38 General servicing policies, procedures, and requirements.

* * * * *

(b) * * *

(2) *Properly evaluating requests for loss mitigation assistance.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

* * * * *

(iv) Identify documents and information, if any, that a borrower is required to submit for the servicer to make a loss mitigation determination;

(v) Properly evaluate a borrower who makes a request for loss mitigation assistance for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of § 1024.41; and

(vi) Promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower.

(3) * * *

(iii) Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's request for loss mitigation assistance and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower's mortgage loan account as described in § 1024.40, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

* * * * *

(c) * * *

(1) *Record retention.* A servicer shall retain records that document actions taken with respect to a borrower's mortgage loan account, including records evidencing compliance with this part, until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.

* * * * *

■ 5. Section 1024.39 is amended by revising paragraphs (a), (b)(2)(ii) through (iv), (b)(3), and (e) to read as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

(a) *Live contact.* Except as otherwise provided in this section, a servicer shall 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 shall inform the borrower about the availability of loss mitigation options, if appropriate.

(b) * * *

(2) * * *

(ii) The telephone number to access servicer personnel assigned pursuant to § 1024.40(a), the telephone number where the borrower can obtain a list of all loss mitigation options that may be available from the owner or assignees of the borrower's loan, the servicer's mailing address, and a website to access a list of all loss mitigation options that may be available from the owner or assignee of the borrower's mortgage loan;

(iii) The name of the owner or assignee of the borrower's mortgage loan, and a statement providing a brief description of each type of loss mitigation option that is generally available from the owner or assignee of the borrower's mortgage loan;

(iv) If applicable, a statement informing the borrower how to make a request for loss mitigation assistance; and

(v) * * *

(3) Model clauses. Model clause MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of this paragraph (b).

* * * * *

(e) *Borrowers in a forbearance*—(1) *Partial exemption.* While a borrower is performing pursuant to the terms of a forbearance, a servicer is exempt from the requirements of paragraphs (a) and (b) of this section as to that mortgage loan.

(2) *Contact and notice requirements for forbearances nearing their scheduled end.* If a delinquent borrower is performing pursuant to the terms of a forbearance, the servicer shall, at least 30 days, but no more than 45 days, before the scheduled end of the forbearance:

(i) Establish or make good faith efforts to establish live contact with the borrower. During such live contact, the servicer shall inform the borrower of the following information:

(A) The date the borrower's current forbearance is scheduled to end; and

(B) The availability of loss mitigation options, if appropriate, as set forth in paragraph (a) of this section.

(ii) Shall send the borrower a written notice with the following information:

(A) The date the borrower's current forbearance is scheduled to end; and

(B) The content of the written notice as set forth in paragraphs (b)(2)(i)–(v) of this section.

(3) *Resuming compliance with early intervention requirements.* When a forbearance ends for any reason, including, but not limited to, the borrower's successful completion of the forbearance or the borrower's nonperformance under the terms of the forbearance, a servicer that was exempt from paragraphs (a) and (b) of this section pursuant to paragraph (e)(1) of this section must resume compliance with paragraphs (a) and (b) of this section after the next payment due date following the forbearance end date. For purposes of providing written notice under paragraph (b) after resuming compliance, the 180-day period referenced in paragraph (b) begins with the date the servicer provided the last written notice to the borrower under either paragraphs (b) or (e)(2)(ii), whichever is later.

■ 6. Section 1024.40 is amended by revising paragraphs (b)(1)(ii) through (iv), and (b)(2)(ii) to read as follows:

§ 1024.40 Continuity of contact.

* * * * *

(b) * * *

(1) * * *

(ii) Any actions the borrower must take to be evaluated for such loss mitigation options, and whether the borrower has the right to appeal the loss mitigation determination as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section;

(iii) The status of the servicer's review of any request for loss mitigation assistance from the borrower to the servicer;

(iv) The circumstances under which the servicer may make a referral to foreclosure or advance the foreclosure process; and

* * * * *

(2) * * *

(ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a request for loss mitigation assistance;

* * * * *

■ 7. Revise § 1024.41 to read as follows:

§ 1024.41 Loss mitigation procedures.

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in § 1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in § 1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(b) [RESERVED]

(c) *Loss mitigation determination notices*—(1) *General notice and content requirements.* Except as provided in paragraphs (c)(2) and (3) of this section, if a servicer receives a request for loss mitigation assistance more than 37 days before a foreclosure sale and makes a determination to offer or deny any loss mitigation assistance, the servicer shall promptly provide the borrower with a notice in writing stating that determination. The servicer shall include in this notice:

(i) The amount of time the borrower has to accept or reject an offer of a loss mitigation option as provided for in paragraph (e) of this section, if applicable;

(ii) A notification, if applicable, that the borrower has the right to appeal the loss mitigation determination as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(iii) The specific reason or reasons for the servicer's determination to offer or deny each such loss mitigation option;

(iv) The key borrower-provided inputs, if any, that served as the basis for the determination;

(v) A telephone number, mailing address, and website, where the borrower can access a list of the non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination;

(vi) A list of all other loss mitigation options that may remain available to the borrower, if any, including a clear statement describing the next steps the borrower must take to be reviewed for those loss mitigation options or, if applicable, a statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain;

(vii) A list of any loss mitigation options that the servicer previously offered to the borrower that remain available but that the borrower did not accept;

(viii) A telephone number where the borrower can obtain a list of all loss mitigation options that may be available from the owner or assignee of the borrower's loan, pursuant to § 1024.39(b)(2)(ii), and a website to access a list of all loss mitigation options that may be available from the owner or assignee of the borrower's mortgage loan, pursuant to § 1024.39(b)(2)(ii);

(ix) The name of the owner or assignee of the borrower's mortgage loan;

(x) If there is a loss mitigation offer, a statement informing the borrower whether the offered option will still be available if the borrower requests to be reviewed for other loss mitigation options prior to accepting or rejecting the offer; and

(xi) If there is a loss mitigation offer of a forbearance, a statement informing the borrower of the specific payment terms and duration of the forbearance.

(2) *Denial due to missing documents or information not in the borrower's control*—(i) If a servicer receives a request for loss mitigation assistance more than 37 days before a foreclosure sale, except as provided in paragraph (c)(2)(ii) of this section, a servicer must not deny a request for loss mitigation assistance solely because the servicer lacks required documents or information not in the borrower's control.

(ii) If the servicer has regularly taken steps to obtain required documents or information from a party other than the borrower or the servicer, but the servicer has been unable to obtain such documents or information for at least 90 days and the servicer, in accordance with applicable requirements established by the owner or assignee of the borrower's mortgage loan, is unable to determine which loss mitigation options, if any, it will offer the borrower without such documents or information, the servicer may deny the request for loss mitigation assistance and provide the borrower with a written notice in accordance with § 1024.41(c)(2)(iii).

(iii) The servicer shall provide the borrower a written notice, informing the borrower:

(*1*) That the servicer has not received documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage;

(*2*) Of the specific documents or information that the servicer lacks;

(*3*) That the servicer has requested such documents or information; and

(*4*) That, if the servicer receives the documents or information within 14 days of providing the written notice to the borrower, the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

(*5)* Of the information required by paragraphs (c)(1)(vi) through (xi) of this section.

(3) *Unsolicited loss mitigation offers.* If a servicer makes an unsolicited offer of a loss mitigation option to a borrower based solely on information in the servicer's possession, the servicer shall provide the borrower with a notice in writing stating that determination. The servicer shall include in this notice:

(i) The amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section; and

(ii) The information required by paragraphs (c)(1)(vi) and (ix).

(d) [RESERVED]

(e) *Borrower response*—(1) *In general.* Subject to paragraphs (e)(2)(ii) and (iii) of this section, if a request for loss mitigation assistance is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a request for loss mitigation assistance is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(2) *Rejection*—(i) *In general.* Except as set forth in paragraphs (e)(2)(ii) and (iii) of this section, a servicer may deem a borrower that has not accepted an offer of a loss mitigation option within the deadline established pursuant to paragraph (e)(1) of this section to have rejected the offer of a loss mitigation option.

(ii) *Trial Loan Modification Plan.* A borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.

(iii*) Interaction with appeal process.* If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower's deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1) or (3) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.

(f) *Prohibition on foreclosure referral*—(1) *Pre-foreclosure review* *period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a superior or subordinate lienholder.

(2) *Foreclosure process procedural safeguards during a loss mitigation review cycle.* A loss mitigation review cycle begins when a borrower makes a request for loss mitigation assistance more than 37 days before a foreclosure sale. Once a loss mitigation review cycle begins, the servicer must ensure that one of the following procedural safeguards is met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process:

(i) *No remaining loss mitigation options.* The servicer has reviewed the borrower for loss mitigation and no available loss mitigation options remain, the servicer has sent the borrower all notices required by paragraph (c) of this section, if applicable, and the borrower has not requested any appeal within the applicable time period or, if applicable, all of the borrower's appeals have been denied; or

(ii) *Unresponsive borrower.* The servicer has regularly taken steps to identify and obtain any information and documents necessary from the borrower to determine which loss mitigation options, if any, it will offer to the borrower, and, if the servicer has made a loss mitigation determination, has regularly taken steps to reach the borrower regarding that determination, but the borrower has not communicated with the servicer for at least 90 days.

(3) *Fee protections.* During a loss mitigation review cycle, no fees 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 shall accrue on the borrower's account.

(g) [RESERVED]

(h) *Appeal process*—(1) *Appeal process required for loss mitigation determinations.* A servicer shall permit a borrower to appeal the servicer's determination regarding any loss mitigation option available to the borrower.

(2) *Deadlines.* A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides a loss mitigation determination to the borrower pursuant to paragraph (c) of this section. An appeal that meets the procedural requirements of section 1024.35 and is submitted within 14 days after the servicer provides a loss mitigation determination to the borrower pursuant to paragraph (c) of this section shall be treated as both an appeal and an error assertion for purposes of paragraph (h) of this section.

(3) *Independent evaluation.* An appeal shall be reviewed by different personnel than those responsible for making the loss mitigation determination that is the subject of the appeal.

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. If a borrower has asserted an error under § 1024.35(b)(11) that meets the procedural requirements of § 1024.35 and is submitted within 14 days after the servicer provides a loss mitigation determination to the borrower pursuant to paragraph (c) of this section, a servicer may not make this appeal determination until it has either corrected the error or conducted a reasonable investigation and determined that no error occurred, as required in § 1024.35. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

(i) *Duplicative requests.* A servicer must comply with the requirements of this section for a borrower's request for loss mitigation assistance during the same loss mitigation review cycle, unless the procedural safeguards in paragraph (f)(2)(i) and (ii) have been met.

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

(k) *Servicing transfers*—(1) *In general*—(i) *Timing of compliance.* Except as provided in paragraphs (k)(3) and (4) of this section, if a transferee servicer acquires the servicing of a mortgage loan for which a request for loss mitigation assistance is pending as of the transfer date, the transferee servicer must comply with the requirements of this section for that request within the timeframes that were applicable to the transferor servicer based on the date the transferor servicer received the request for loss mitigation assistance. All rights and protections under this section to which a borrower was entitled before a transfer continue to apply notwithstanding the transfer.

(ii) *Transfer date defined.* For purposes of this paragraph (k), the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).

(2) [RESERVED]

(3) *Requests for loss mitigation assistance pending at transfer.* If a transferee servicer acquires the servicing of a mortgage loan for which a request for loss mitigation assistance is pending as of the transfer date, the transferee servicer must comply with the applicable requirements of this section, including the procedural safeguards referenced in paragraph (f)(2).

(4) *Determinations subject to appeal process.* If a transferee servicer acquires the servicing of a mortgage loan for which an appeal of a transferor servicer's determination pursuant to paragraph (h) of this section has not been resolved by the transferor servicer as of the transfer date or is timely filed after the transfer date, the transferee servicer must make a determination on the appeal if it is able to do so or, if it is unable to do so, must treat the appeal as a pending request for loss mitigation assistance.

(i) *Determining appeal.* If a transferee servicer is required under this paragraph (k)(4) to make a determination on an appeal, the transferee servicer must complete the determination and provide the notice required by paragraph (h)(4) of this section within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later.

(ii) *Servicer unable to determine appeal.* A transferee servicer that is required to treat a borrower's appeal as a pending request for loss mitigation assistance under this paragraph (k)(4) must comply with the requirements of this section for such request.

(5) *Pending loss mitigation offers.* A transfer does not affect a borrower's ability to accept or reject a loss mitigation option offered under this section. If a transferee servicer acquires the servicing of a mortgage loan for which the borrower's time period under paragraph (e) or (h) of this section for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

Appendix MS–4 to Part 1024 [Amended]

■ 8. In Appendix MS–4 to Part 1024, remove and reserve MS–4(A) and MS–4(B).

■ 9. In Supplement I to part 1024:

■ a. Revise § 1024.31—Definitions;

■ b. Under Section 1024.38—General servicing policies, procedures, and requirements:

■ i. Revise *Paragraph 38(b)(1)(iv)* and *Paragraph 38(b)(1)(vi);*

■ ii. Revise the paragraph heading of *38(b)(2) Properly evaluating loss mitigation applications;*

■ iii. Revise *Paragraph 38(b)(2)(v), Paragraph 38(b)(3)(iii), 38(b)(5) Informing borrowers of written error resolution and information request procedures,* and *38(c)(1)Record retention.*

■ c. Under *§ 1024.39—Early intervention requirements for certain borrowers:*

■ i. Revise *39(a) Live Contact, Paragraph 39(b)(2)(iii),* and *Paragraph 39(b)(2)(iv).*

■ d. Revise *§ 1024.41—Loss mitigation procedures.*

■ e. Under *Appendix MS to Part 1024—Mortgage Servicing Model Forms and Clauses:*

■ i. Revise *Appendix MS–4—Model Clauses for the Written Early Intervention Notice.*

The revisions read as follows:

Supplement I to Part 1024—Official Bureau Interpretations

* * * * *

1024.31—Definitions

Delinquency

1. *Length of delinquency.* A borrower's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and, if applicable, escrow becomes due and unpaid, and lasts until such time as no periodic payment is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

2. *Application of funds.* If a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent borrower advances the date the borrower's delinquency began. For example, assume a borrower's mortgage loan obligation provides that a periodic payment sufficient to cover principal, interest, and escrow is due on the first of each month. The borrower fails to make a payment on January 1 or on any day in January, and on January 31 the borrower is 30 days delinquent. On February 3, the borrower makes a periodic payment. The servicer applies the payment it received on February 3 to the outstanding January payment. On February 4, the borrower is three days delinquent.

3. *Payment tolerance.* For any given billing cycle for which a borrower's payment is less than the periodic payment due, if a servicer chooses not to treat a borrower as delinquent for purposes of any section of this subpart, that borrower is not delinquent as defined in § 1024.31.

4. *Creditor's contract rights.* This subpart does not prevent a creditor from exercising a right provided by a mortgage loan contract to accelerate payment for a breach of that contract. Failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency.

Loss Mitigation Option

1. *Types of loss mitigation options.* Loss mitigation options include temporary and long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation programs sponsored by a locality, a State, or the Federal government.

2. *Available through the servicer.* A loss mitigation option available through the servicer refers to an option for which a borrower may request to be evaluated, even if the borrower ultimately does not qualify for such option.

Request for Loss Mitigation Assistance

1. *Borrower's representative.* A request for loss mitigation assistance is deemed to be submitted by a borrower if the request is submitted by an agent of the borrower. Servicers may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf.

Qualified Written Request

1. A qualified written request is a written notice a borrower provides to request a servicer either correct an error relating to the servicing of a mortgage loan or to request information relating to the servicing of the mortgage loan. A qualified written request is not required to include both types of requests. For example, a qualified written request may request information relating to the servicing of a mortgage loan but not assert that an error relating to the servicing of a loan has occurred.

2. A qualified written request is just one form that a written notice of error or information request may take. Thus, the error resolution and information request requirements in §§ 1024.35 and 1024.36 apply as set forth in those sections irrespective of whether the servicer receives a qualified written request.

Service Provider

1. Service providers may include attorneys retained to represent a servicer or an owner or assignee of a mortgage loan in a foreclosure proceeding, as well as other professionals retained to provide appraisals or inspections of properties.

Successor in Interest

1. *Joint tenants and tenants by the entirety.* If a borrower who has an ownership interest as a joint tenant or tenant by the entirety in a property securing a mortgage loan subject to this subpart dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in § 1024.31.

2. *Beneficiaries of* inter vivos *trusts.* In the event of a transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, the beneficiaries of the *inter vivos* trust rather than the *inter vivos* trust itself are considered to be the successors in interest for purposes of § 1024.31. For example, assume Borrower A transfers her home into such an *inter vivos* trust for the benefit of her spouse and herself. As of the transfer date, Borrower A and her spouse would be considered successors in interest and, upon confirmation, would be borrowers for purposes of certain provisions of Regulation X. If the lender has not released Borrower A from the loan obligation, Borrower A would also remain a borrower more generally for purposes of Regulation X.

* * * * *

Section 1024.38—General Servicing Policies, Procedures, and Requirements.

* * * * *

Paragraph 38(b)(1)(iv)

1. *Accurate and current information for owners or assignees of mortgage loans relating to loss mitigation.* The relevant current information to owners or assignees of mortgage loans includes, among other things, information about a servicer's evaluation of borrowers for loss mitigation options and a servicer's agreements with borrowers on loss mitigation options, including loan modifications. Such information includes, for example, information regarding the date, terms, and features of loss mitigation options, the components of any capitalized arrears, the amount of any servicer advances, and any assumptions regarding the value of a property used in evaluating any loss mitigation options.

Paragraph 38(b)(1)(vi)

1. *Identification of potential successors in interest.* A servicer may be notified of the existence of a potential successor in interest in a variety of ways. For example, a person could indicate that there has been a transfer of ownership or of an ownership interest in

the property or that a borrower has been divorced, legally separated, or died, or a person other than a borrower could make a request for loss mitigation assistance. A servicer must maintain policies and procedures reasonably designed to ensure that the servicer can retain this information and promptly facilitate communication with potential successors in interest when a servicer is notified of their existence. A servicer is not required to conduct a search for potential successors in interest if the servicer has not received actual notice of their existence.

2. *Documents reasonably required.* The documents a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property must be reasonable in light of the laws of the relevant jurisdiction, the specific situation of the potential successor in interest, and the documents already in the servicer's possession. The required documents may, where appropriate, include, for example, a death certificate, an executed will, or a court order. The required documents may also include documents that the servicer reasonably believes are necessary to prevent fraud or other criminal activity (for example, if a servicer has reason to believe that documents presented are forged).

3. *Examples of reasonable requirements.* Because the relevant law governing each situation may vary from State to State, the following examples are illustrative only. The examples illustrate what documents it would generally be reasonable for a servicer to require to confirm a potential successor in interest's identity and ownership interest in the property under the specific circumstances described.

i. *Tenancy by the entirety or joint tenancy.* Assume that a servicer knows that the potential successor in interest and the transferor borrower owned the property as tenants by the entirety or joint tenants and that the transferor borrower has died. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has sole interest in the property but requires only that there be a prior recorded deed listing both the potential successor in interest and the transferor borrower as tenants by the entirety (*e.g.,* married grantees) or joint tenants. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the recorded instrument, if the servicer does not already have it, and the death certificate of the transferor borrower. Because in this situation a probate proceeding is not required under the applicable law of the relevant jurisdiction, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

ii. *Affidavits of heirship.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest upon the death of the transferor borrower through intestate succession and offers an affidavit of heirship as confirmation. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has an interest in the property but requires only an appropriate affidavit of heirship. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the affidavit of heirship and the death certificate of the transferor borrower. Because a probate proceeding is not required under the applicable law of the relevant jurisdiction to recognize the transfer of title, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

iii. *Divorce or legal separation.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a spouse who is a borrower as a result of a property agreement incident to a divorce proceeding. Assume further that the applicable law of the relevant jurisdiction does not require a deed conveying the interest in the property but accepts a final divorce decree and accompanying separation agreement executed by both spouses to evidence transfer of title. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the final divorce decree and an executed separation agreement. Because the applicable law of the relevant jurisdiction does not require a deed, it generally would not be reasonable for the servicer to require a deed.

iv. *Living spouses or parents.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a living spouse or parent who is a borrower by quitclaim deed or act of donation. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the quitclaim deed or act of donation. It generally would not be reasonable, however, for the servicer to require additional documents.

4. *Additional documentation required for confirmation determination.* Section 1024.38(b)(1)(vi)(C) requires a servicer to maintain policies and procedures reasonably designed to ensure that, upon receipt of the documents identified by the servicer, the servicer promptly notifies a potential successor in interest that, as applicable, the servicer has confirmed the potential successor in interest's status, has determined that additional documents are required, or has determined that the potential successor in interest is not a successor in interest. If a servicer reasonably determines that it cannot make a determination of the potential successor in interest's status based on the documentation provided, it must specify what additional documentation is required. For example, if there is pending litigation involving the potential successor in interest and other claimants regarding who has title to the property at issue, a servicer may specify that documentation of a court determination or other resolution of the litigation is required.

5. *Prompt confirmation and loss mitigation.* A servicer's policies and procedures must be reasonably designed to ensure that the servicer can promptly notify the potential successor in interest that the servicer has confirmed the potential successor in interest's status. Notification is not prompt for purposes of this requirement if it unreasonably interferes with a successor in interest's ability to make a request loss mitigation assistance.

8(b)(2) Properly Evaluating Requests for Loss Mitigation Assistance.

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Paragraph 38(b)(2)(v)

1. *Owner or assignee requirements.* A servicer must have policies and procedures reasonably designed to evaluate a borrower for a loss mitigation option consistent with any owner or assignee requirements, even where the requirements of § 1024.41 may be inapplicable. For example, an owner or assignee may require that a servicer implement certain procedures to review a borrower who makes a request for loss mitigation assistance less than 37 days before a foreclosure sale. Further, an owner or assignee may require that a servicer implement certain procedures to re-evaluate a borrower who has demonstrated a material change in the borrower's financial circumstances for a loss mitigation option after the servicer's initial evaluation. A servicer must have policies and procedures reasonably designed to implement these requirements even if such loss mitigation evaluations may not be required pursuant to § 1024.41.

38(b)(3) Facilitating Oversight of, and Compliance by, Service Providers.

Paragraph 38(b)(3)(iii)

1. *Sharing information with service provider personnel handling foreclosure proceedings.* A servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a request for loss mitigation assistance and promptly instruct foreclosure counsel to take any step required by § 1024.41(f) sufficiently timely to avoid violating the prohibition against making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or before advancing the foreclosure process.

* * * * *

38(b)(5) Informing Borrowers of Written Error Resolution and Information Request Procedures

1. *Manner of informing borrowers.* A servicer may comply with the requirement to maintain policies and procedures reasonably designed to inform borrowers of the procedures for submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36 by informing borrowers, through a notice (mailed or delivered electronically) or a website. For example, a servicer may comply with § 1024.38(b)(5) by including in the periodic statement required pursuant to 12

CFR 1026.41 a brief statement informing borrowers that borrowers have certain rights under Federal law related to resolving errors and requesting information about their account, and that they may learn more about their rights by contacting the servicer, and a statement directing borrowers to a website that provides a description of the procedures set forth in §§ 1024.35 and 1024.36. Alternatively, a servicer may also comply with § 1024.38(b)(5) by including a description of the procedures set forth in §§ 1024.35 and 1024.36 in the written notice required by §§ 1024.35(c) and 1024.36(b).

2. *Oral complaints and requests.* A servicer's policies and procedures must be reasonably designed to provide information to borrowers who are not satisfied with the resolution of a complaint or request for information submitted orally about the procedures for submitting written notices of error set forth in § 1024.35 and for submitting written requests for information set forth in § 1024.36.

3. *Notices of error incorrectly sent to addresses associated with submission of requests for loss mitigation assistance or the continuity of contact.* A servicer's policies and procedures must be reasonably designed to ensure that if a borrower incorrectly submits an assertion of an error to any address given to the borrower in connection with a request for loss mitigation assistance, the continuity of contact pursuant to § 1024.40, or a loss mitigation determination, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in § 1024.35, including the correct address. Alternatively, the servicer could redirect such notices to the correct address.

38(c) Standard Requirements

38(c)(1)Record Retention

1. *Methods of retaining records.* Retaining records that document actions taken with respect to a borrower's mortgage loan account, including records evidencing compliance with this part, does not necessarily mean actual paper copies of documents. The records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the servicer can easily access the records (including a contractual right to access records possessed by another entity). For example, a servicer may use a computer program to create and retain records of the date a borrower makes a request for loss mitigation assistance, so long as the servicer ensures it can easily access those records.

* * * * *

1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Live Contact

1. *Delinquency.* Section 1024.39 requires a servicer to establish or attempt to establish live contact no later than the 36th day of a borrower's delinquency. This provision is illustrated as follows:

i. Assume a mortgage loan obligation with a monthly billing cycle and monthly payments of $2,000 representing principal, interest, and escrow due on the first of each month.

A. The borrower fails to make a payment of $2,000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—*i.e.,* on or before February 6.

B. The borrower makes no payments during the period January 1 through April 1, although payments of $2,000 each on January 1, February 1, and March 1 are due. Assuming it is not a leap year; the borrower is 90 days delinquent as of April 1. The servicer may time its attempts to establish live contact such that a single attempt will meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5 and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of § 1024.39(a) for the March 1 missed payment.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of § 1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of § 1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly. *See* § 1024.33(c)(1) and comment 33(c)(1)–2.

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. *Establishing live contact.* Live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency. Live contact with a borrower includes speaking on the telephone or conducting an in-person meeting with the borrower but not leaving a recorded phone message. A servicer may rely on live contact established at the borrower's initiative to satisfy the live contact requirement in § 1024.39(a). Servicers may also combine contacts made pursuant to § 1024.39(a) with contacts made with borrowers for other reasons, for instance, by telling borrowers on collection calls that loss mitigation options may be available.

3. *Good faith efforts.* Good faith efforts to establish live contact consist of reasonable steps, under the circumstances, to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer. The length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to § 1024.39(a), are relevant circumstances to consider. For example, whereas "good faith efforts" to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, "good faith efforts" to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication. Comment 39(a)–6 discusses the relationship between live contact and the loss mitigation procedures set forth in § 1024.41.

4. *Promptly inform if appropriate.*

i. *Servicer's determination.* It is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a hardship for which a loss mitigation option may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. *Promptly inform.* If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in § 1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by § 1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

5. *Borrower's representative.* Section 1024.39 does not prohibit a servicer from satisfying its requirements by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower to provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

6. *Relationship between live contact and loss mitigation procedures.* If the servicer has established and is maintaining regular contact with the borrower during a loss mitigation review cycle under § 1024.41, the servicer complies with § 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. A servicer must resume compliance with the requirements of § 1024.39(a) for a borrower who becomes delinquent again after curing a prior delinquency.

* * * * *

Paragraph 39(b)(2)(iii)

1. *Types of loss mitigation options that are generally available.* The servicer must list each type of loss mitigation option that is generally available from the owner or assignee of the borrower's loan. The servicer may include a statement that not all borrowers will qualify for the listed options. A type of loss mitigation option may be described in one or more sentences. If the owner or assignee of the borrower's mortgage loan offers a type of loss mitigation option comprising several loss mitigation programs, the servicer may provide a generic description of the option without providing detailed descriptions of each program. For example, if the owner or assignee of the borrower's mortgage loan offers several loan modification programs, the servicer may provide a generic description of ''loan modification.''

Paragraph 39(b)(2)(iv)

1. *Explanation of how the borrower may obtain more information about how to make a request for loss mitigation assistance.* A servicer may comply with § 1024.39(b)(2)(iv) by directing the borrower to contact the servicer for more detailed information on how to make a request for loss mitigation assistance. For example, a general statement such as, ''contact us for instructions on how to request assistance'' would satisfy the requirement to inform the borrower how to obtain more information about how to make a request for loss mitigation assistance. However, to expedite the borrower's timely request for loss mitigation assistance, servicers may provide more detailed instructions, such as by listing representative documents, if any, the borrower should make available to the servicer (such as tax filings or income statements), and an estimate of how quickly the servicer expects to evaluate the request for loss mitigation assistance and make a decision on loss mitigation options.

* * * * *

1024.41—Loss Mitigation Procedures

41(c) Evaluation of Loss Mitigation Applications

41(c)(1) General Notice and Content Requirements

1. *Investor requirements.* Except as pursuant to § 1024.41(c)(3), if a loss mitigation option is offered or denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in the notice provided to the borrower must identify the requirement that is the basis of the determination. A statement that the offer or denial of a loss mitigation option is based on an investor requirement, without additional information specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient.

2. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the determination.

3. *Loss mitigation options available to a borrower.* The loss mitigation options available to a borrower are those options offered by an owner or assignee of the borrower's mortgage loan. Loss mitigation options administered by a servicer for an owner or assignee of a mortgage loan other than the owner or assignee of the borrower's mortgage loan are not available to the borrower solely because such options are administered by the servicer. For example:

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

4. *Offer of a non-home retention option.* A servicer's offer of a non-home retention option may be conditional upon receipt of further information not in the borrower's possession and necessary to establish the parameters of a servicer's offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

5. *Other notices.* A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B, 12 CFR part 1002, or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to § 1024.41(c)(1), unless otherwise prohibited by applicable law.

41(f) Prohibition on Foreclosure Referral

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined on the basis of foreclosure procedure under the applicable State law.

i. Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (*e.g.,* a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

41(f)(2) Foreclosure Process Procedural Safeguards During a Loss Mitigation Review Cycle

1. *Dispositive motion.* The prohibition on a servicer advancing the foreclosure process includes moving for judgment or order of sale by, for example, making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. A servicer has not moved for a foreclosure judgment or order of sale and is not advancing the foreclosure process if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order, notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.

2. *Interaction with foreclosure counsel.* The prohibitions in § 1024.41(f)(2) against advancing the foreclosure process (including moving for judgment or sale) may require a servicer to act through foreclosure counsel retained by the servicer in a foreclosure proceeding. If a servicer has received a request for loss mitigation assistance, the servicer must instruct counsel promptly not to advance the foreclosure process or make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, unless one of the procedural safeguards in § 1024.41(f)(2) is met, if applicable. A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation.

3. *Requests for loss mitigation assistance submitted 37 days or less before foreclosure sale.* Although a servicer is not required to

comply with the requirements in § 1024.41 with respect to a borrower's request for loss mitigation assistance submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(2)(v) to properly evaluate a borrower who makes a request for loss mitigation assistance pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to a review of a request for loss mitigation assistance submitted by a borrower 37 days or less before a foreclosure sale.

4. *Advancing the foreclosure process prohibited.* Section 1024.41(f)(2) prohibits a servicer from advancing the foreclosure process if a borrower submits a request for loss mitigation assistance more than 37 days before a foreclosure sale unless one of the procedural safeguards in § 1024.41(f)(2) is met. For example, advancing the foreclosure process includes conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings. Where § 1024.41(f)(2) is applicable but none of the procedural safeguards under § 1024.41(f)(2) have been met, scheduling a sale date or conducting a sale violates § 1024.41(f)(2).

5. *Short sale listing period.* An agreement for a short sale transaction, or other similar loss mitigation option, typically includes marketing or listing periods during which a servicer will allow a borrower to market a short sale transaction. A borrower is deemed to be performing under an agreement on a short sale, or other similar loss mitigation option, during the term of a marketing or listing period.

6. *Short sale agreement.* If a borrower has not obtained an approved short sale transaction at the end of any marketing or listing period, a servicer may deny the short sale option. An approved short sale transaction is a short sale transaction that has been approved by all relevant parties, including the servicer, other affected lienholders, or insurers, if applicable, and the servicer has received proof of funds or financing, unless circumstances otherwise indicate that an approved short sale transaction is not likely to occur.

7. *Successors in interest*—i. If a servicer receives a request for loss mitigation assistance from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but need not, comply with the foreclosure process procedural safeguards in § 1024.41(f)(2) with respect to that person. If a servicer complies with the requirements of § 1024.41(f)(2) before confirming a person's successor in interest status, § 1024.41(i)'s limitation on duplicative requests applies to that person, provided the servicer's evaluation of loss mitigation options available to the person would not have resulted in a different determination due to the person's confirmation as a successor in interest if it had been conducted after the servicer confirmed the person's status as a successor in interest.

ii. If a servicer receives a request for loss mitigation assistance from a potential successor in interest and elects not to comply with the foreclosure process procedural safeguards in § 1024.41(f)(2) with respect to that person before confirming that person's identity and ownership interest in the property, the servicer must comply with those foreclosure process procedural safeguards with respect to that person as soon as that person becomes a confirmed successor in interest and must treat the request for loss mitigation assistance as if it had been received on the date that the servicer confirmed the successor in interest's status.

41(f)(2)(ii) Unresponsive Borrower

1. *Communication.* For purposes of § 1024.41(f)(2)(ii), a servicer has not received a communication from the borrower if the servicer has not received any written or electronic communication from the borrower about the mortgage loan obligation, has not received a telephone call from the borrower about the mortgage loan obligation, and has not received a payment on the mortgage loan obligation.

2. *Borrower's representative.* A servicer has received a communication from the borrower if the communication is from an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the communication as having been submitted by the borrower.

3. *Regular contact.* Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation review, throughout the loss mitigation review cycle the servicer must regularly communicate the status of the loss mitigation review to the borrower, which includes requesting documentation and information that the servicer requires from the borrower and communicating available loss mitigation options.

41(h) Appeal Process

Paragraph 41(h)(3)

1. *Supervisory personnel.* The appeal may be evaluated by supervisory personnel that are responsible for oversight of the personnel that conducted the initial evaluation, as long as the supervisory personnel were not directly involved in the loss mitigation evaluation that is the subject of the appeal.

41(k) Servicing Transfers

1. *Pending request for loss mitigation assistance.* For purposes of § 1024.41(k), a request for loss mitigation assistance is pending if it was subject to § 1024.41. For example, the borrower is still in a loss mitigation review cycle, or the transferor servicer denied the request for loss mitigation pursuant to § 1024.41(c)(2)(ii) but the 14 days referenced in § 1024.41(c)(2)(iii) has not elapsed as of the transfer date.

41(k)(1) In General

41(k)(1)(i) Timing of Compliance

1. *Obtaining loss mitigation documents and information.* i. In connection with a transfer, a transferor servicer must timely transfer, and a transferee servicer must obtain from the transferor servicer, documents and information submitted by a borrower in connection with a request for loss mitigation assistance, consistent with policies and procedures adopted pursuant to § 1024.38(b)(4). A transferee servicer must comply with the applicable requirements of § 1024.41 with respect to a request for loss mitigation assistance received as a result of a transfer, even if the transferor servicer was not required to comply with § 1024.41 with respect to that request.

ii. A transferee servicer must, in accordance with § 1024.41(f)(2)(ii), regularly take steps to identify and obtain any information and documents necessary from the borrower to determine which loss mitigation options, if any, it will offer to the borrower. In the transfer context, a transferee servicer must ensure that a borrower is informed of any changes to the loss mitigation determination process, such as a change in the address to which the borrower should submit documents and information, as well as ensuring that the borrower is informed about which documents and information are needed by the transferee servicer to determine which loss mitigation options, if any, it will offer to the borrower.

iii. A borrower may provide documents and information to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, such documents and information.

2. *Determination of rights and protections.* For purposes of § 1024.41, a transferee servicer must consider documents and information that constitute a request for loss mitigation assistance for the transferee servicer to have been received as of the date such documents and information were received by the transferor servicer, even if such documents and information were received by the transferor servicer after the transfer date. *See* comment 41(k)(1)(i)–1.iii.

3. *Duplicative notices not required.* A transferee servicer is not required to provide notices under § 1024.41 with respect to a particular loss mitigation assistance request that the transferor servicer provided prior to the transfer.

41(k)(1)(ii) Transfer Date Defined

1. *Transfer date.* Section 1024.41(k)(1)(ii) provides that the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv). The transfer date is the same date as that on which the transfer of the servicing responsibilities from the transferor servicer to the transferee servicer occurs. The transfer date is not necessarily the same date as either the effective date of the transfer of servicing as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(i) or the

sale date identified in a servicing transfer agreement.

41(k)(4) Determinations Subject to Appeal Process

1. *Obtaining appeal.* A borrower may submit an appeal of a transferor servicer's determination pursuant to § 1024.41(h) to the transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such appeals.

2. *Servicer unable to determine appeal.* A transferee servicer may be unable to make a determination on an appeal when, for example, the transferor servicer denied a borrower for a loss mitigation option that the transferee servicer does not offer or when the transferee servicer receives the mortgage loan through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer lacks sufficient information to review the appeal. In that circumstance, the transferee servicer is required to treat the appeal as a pending request for loss mitigation assistance, and it must permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer, even if it does not offer the loss mitigation options offered by the transferor servicer, in addition to the loss mitigation options, if any, that the transferee servicer determines to offer the borrower based on its own review of a borrower who makes a request for loss mitigation assistance. For example, assume a transferor servicer denied a borrower for all loan modification options but offered the borrower a short sale option, and assume that the borrower's appeal of the loan modification denial was pending as of the transfer date. If the transferee servicer is unable to determine the borrower's appeal, the transferee servicer must review the borrower's request for loss mitigation assistance in accordance with § 1024.41. At the conclusion of such review, the transferee servicer must permit the borrower to accept the short sale option offered by the transferor servicer, even if the transferee servicer does not offer the short sale option, in addition to any loss mitigation options the transferee servicer determines to offer the borrower based upon its own review.

41(k)(5) Pending Loss Mitigation Offers

1. *Obtaining evidence of borrower acceptance.* A borrower may provide an acceptance or rejection of a pending loss mitigation offer to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such acceptances and rejections, and the transferee servicer must provide the borrower with any timely accepted loss mitigation option, even if the borrower submitted the acceptance to the transferor servicer.

Appendix MS to Part 1024—Mortgage Servicing Model Forms and Clauses

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Appendix MS–4—Model Clauses for the Written Early Intervention Notice

1. [RESERVED]
2. [RESERVED]
3. *Model MS–4(C).* These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by § 1024.39(b)(2)(v). A servicer may, at its option, provide the website and telephone number for either the Bureau's or the Department of Housing and Urban Development's housing counselors list, as provided by paragraphs § 1024.39(b)(2)(v).

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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