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Fighting Together for Economic Justice

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March 12, 2021

David Uejio, Acting Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Proposed Regulation X Changes to Allow Streamlined Loan Mod Offers During and Immediately after the COVID-19 Pandemic

Dear Acting Director Uejio:

The undersigned organizations write to propose a solution to several of the Regulation X compliance problems that have arisen in the wake of the COVID-19 pandemic. Over 2.7 million borrowers are currently in a forbearance plan, and a large number of these still-struggling homeowners will exit forbearance plans soon. Recognizing this fact, the federal housing agencies and Government Sponsored Enterprises have sought to enable servicers to rapidly deploy an array of permanent "streamlined" options to bring borrowers current, without the need for servicers to collect a complete application for *all* available loss mitigation options. We support the concept of streamlined options that can be evaluated and offered to borrowers without a burdensome documentation process. At the same time, certain protections, including some that are currently required by Regulation X, are necessary as borrowers are being evaluated for fewer than all options. Therefore, we propose that the Bureau issue an interim final rule creating a category of COVID-19 Streamlined Modification Options and setting out the framework for offering these options to borrowers.

Background

The requirements of Regulation X have already required some adaptation by the Bureau in the context of this unprecedented crisis. The loss mitigation rule is designed to require that when a borrower makes an application, the servicer is obligated to help the borrower complete that application so she can be simultaneously reviewed for all available options. "Application" is broadly defined to include any communication, oral or written, in which the borrower requests loss mitigation and provides any piece of information required by a servicer for evaluation for a loss mitigation option. Servicers are not permitted to evade their obligation to review the borrower for all options by simply offering the borrower *something*. This rule was created with an understanding of the fact that borrowers are best positioned to accept the most suitable loss mitigation option when they have been evaluated for, and informed of, all available options.

During the pandemic, servicers, investors, and the Bureau quickly realized that the widespread job losses experienced by borrowers meant that many borrowers needed a short-term forbearance rather than a loan modification, short sale, or other permanent solution. A forbearance allows a borrower to temporarily reduce or suspend their monthly payment during a period of reduced income. At the end of the forbearance, the borrower needs a permanent option to bring the loan current and possibly to reduce the payment to an affordable level. The CARES Act required servicers of federally backed loans to offer forbearances of six months, subject to being renewed for an additional six months, to borrowers who reported a hardship caused directly or indirectly by COVID-19. The federal housing agencies have built their own forbearance policies based on CARES, and recently extended the available length of forbearances for some borrowers beyond the initial 12 months.

At the beginning of the pandemic, servicers began to offer forbearances to borrowers who contacted them and stated they were facing a pandemic-related hardship. These communications from borrowers were *applications* for purposes of RESPA, triggering obligations on the part of the servicer to (1) exercise reasonable diligence to help the borrower complete the application, and (2) send a notice (the "(b)(2) notice") within five business days telling the borrower how to complete the application.[1] The Bureau and other regulators notified servicers that they would not be subject to supervisory or enforcement action for suspending their compliance with RESPA's directive to diligently help borrowers complete their applications, provided servicers resumed such efforts by the end of the forbearance period.[2] RESPA does allow a servicer to offer a short-term option, such as a forbearance plan, based on an incomplete application.[3] When it does so, a servicer must promptly (within five business days) send a written notice (the "forbearance offer notice" or "(c)(2)(iii) notice") that sets out the specific terms and duration of the forbearance, the fact that it was offered based on an incomplete application, that other options may be available, and that the borrower may submit a complete application in order to be evaluated for all options.[4]

Investors then began to develop post-forbearance options that would allow borrowers to quickly cure a default and resume making payments. The GSEs announced their COVID-19 payment deferral, and FHA announced its comparable COVID-19 stand-alone partial claim. Under either option, the missed payments are deferred to the end of the loan if the borrower states that she can afford to resume the regular contractual payment. The Bureau issued its Interim Final Rule (IFR) in July 2020 to allow servicers to offer these permanent deferral options without obtaining a

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[1] 12 C.F.R. 1024.41(b)(1) and (b)(2), respectively, set out these requirements.
[2] Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act (Apr. 3, 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf.
[3] 12 C.F.R. 1024.41(c)(2)(iii).
[4] 12 C.F.R. 1024.41(c)(2)(iii).

complete application and reviewing the borrower for all available options. The IFR was necessary to allow servicers to offer this single option based on an incomplete application rather than obtaining a complete application and reviewing for all options.[5]

As the pandemic has lengthened, it has become apparent that many borrowers will experience long-lasting reductions in income, rather than quickly (within 12 or even 18 months) being able to resume their contractual mortgage payment. These borrowers will need permanent payment-reduction options in the form of a loan modification. The agencies and GSEs have announced that borrowers who cannot afford to resume their contractual payment should be considered for loan modification options.[6] However, they have directed servicers to offer borrowers one or more "streamlined" loan modification options without collecting proof of income. If borrowers state that they cannot afford the streamlined modification payment, then servicers are to invite them to submit proof of income to be reviewed for any other available options.

FHA offers two COVID streamlined loan modification options. The first (option "B" in the FHA COVID waterfall, after A, the stand-alone partial claim) involves capitalizing arrears, reducing the interest rate to the current market rate (if lower than the current rate), and extending to a new 30-year term. The second (option "C") involves putting arrears into a partial claim, up to the maximum partial claim (if it has not already been exhausted in prior loss mitigation), reducing to the market interest rate, and extending to a new 30-year term. HUD's recent Mortgagee Letter provides that a borrower is eligible for Option B only if they cannot afford to resume the regular contractual payment, and is eligible for Option C if they cannot afford Option B.[7] HUD also provides for one other COVID modification (option "D,") a light-documentation version of FHA-HAMP, in which the partial claim may be utilized for both arrearage and principal forbearance, but only as necessary to reach a target payment based on affordability. If the borrower wishes to be considered for option D, she must submit proof of income (which is not required for options B or C).

GSE rules allow for one streamlined loan modification option: the streamlined Flex Mod. This modification involves capitalizing arrears, providing principal forbearance (depending on the loan-to-value ratio and the target payment reduction), and extending to a new 40-year term. For borrowers above 80% LTV, the interest rate is reduced to the market rate. The modification may involve principal forbearance resulting in an 80% LTV if necessary to reduce the principal and interest payment by 20%.[8] Servicers are directed to offer the streamlined Flex Mod if the borrower states she cannot afford to resume the contractual payment and if the Flex Mod

[5] There is already an exception for "blind offers" under RESPA, but the deferral and partial claim options are not typically "blind" because servicers are required to attempt to make quality right party contact (QRPC) and ask the borrower whether she can afford to resume the contractual payment.
[6] *See* Mortgagee Letter 2020-22, 2021-05; Fannie Mae Lender Letter 2020-07.
[7] Mortgagee Letter 2021-05 (Feb. 26, 2021).
[8] Fannie Mae Servicing Guide F-1-27.

calculations do not result in an increased monthly payment. For some borrowers, submitting proof of income could result in additional principal forbearance and deeper payment reduction.[9]

Risks and Benefits of Allowing Streamlined Modification during the Pandemic

There are good reasons to allow servicers to make a streamlined loan modification offer without collecting a complete application and reviewing the borrower simultaneously for all available options. Given the number of borrowers likely to need loan modifications within a very short window of time, the burden of collecting income documentation may become unmanageable for servicers. Because of the economics of mortgage servicing, servicers are unlikely to staff up to a level that would be necessary to process such a large number of full-documentation applications effectively. Borrowers could give up and fail to complete the process, especially if the experience of attempting to submit documentation is marked by the typical problems of an over-burdened, under-staffed servicing system.

Regulation X permits servicers to offer streamlined modifications so long as the offer is not in response to information supplied by the borrower. Thus, servicers could, in theory, wait until borrowers exiting forbearance become delinquent on their mortgages and then offer a streamlined modification based upon the status of the loan. That alternative obviously is not in the best interest of borrowers.

However, there are also downsides to allowing servicers to conduct a sequential review of a limited set of options rather than the full array of available options. Borrowers are being asked whether they can afford a certain payment without sufficient information about the other available options. Both the deferral/partial claim and the streamlined loan mod options are based on asking the borrower whether the proposed payment is affordable. Homeowners don't always know what they can afford, especially if they have not had the benefit of budget counseling and have been triaging expenses during a period of reduced wages. Moreover, even if they know a payment will be difficult or impossible to afford, borrowers are likely to say they can afford the payment if they believe their only other options are to (a) pay the arrearage in full, or (b) lose the home to foreclosure. Even though the GSEs gave servicers a sample deferral offer letter and guidance for such letters that clearly requires servicers to notify borrowers that payment-reduction options may be available, servicers are sending deferral offer letters that convey the misimpression that the only options are deferral, lump sum payment, or foreclosure.[10] Servicers' phone scripts cannot be much better.

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[9] For borrowers who submit a borrower response package before the loan becomes 90 days past-due, the servicer is directed to forbear principal up to 80% LTV if necessary to both reduce the P&I payment by 20% and result in a housing-to-income ratio of no more than 40%.

[10] *See* Fannie Mae Lender Letter 2020-07 at 6 and Appendix (Updated Nov. 18, 2020); Exhibit A, Example of Deferral Offer Letter sent to a Fannie Mae borrower on Feb. 3, 2021 (letter mentions loan modification on the cover page, but in the specific deferral offer letter, gives the impression that if the borrower does not accept the deferral, they should prepare to pay the lump sum of $13,027.67).

Borrowers can make the best decision about which loss mitigation option is most suitable when they are informed of all available options. This is the logic that led the Bureau to require a simultaneous review for all options, rather than a sequential review for one option at a time, when it issued the RESPA loss mitigation rule.[11] The Bureau recognized that borrowers should not be expected to identify the most appropriate loss mitigation option blind, and that servicers should not be permitted to steer borrowers to apply for one particular loss mitigation option when the borrower will lack full information.[12]

The pandemic post-forbearance options are being determined and communicated almost entirely through phone communication. Servicers are directed to make right party contact in order to determine (a) whether the forbearance should be extended, and if not, (b) whether the borrower can afford a certain monthly payment. While some level of reliance on phone conversations is necessary, written notices play an important role in clarifying the borrowers' rights and options and the terms of any option being offered.

Legal services attorneys and housing counselors report that phone conversations with servicers often are not providing borrowers with complete or accurate information regarding available loss mitigation options. When asked if they can resume their regular payments, borrowers often believe that is their only alternative to foreclosure. Some borrowers have been told that the servicer could not discuss post-forbearance options with them while they were in forbearance. Other borrowers exit forbearance without ever being informed that they were eligible to extend the forbearance or that there were cure options available. Both over the phone and in deferral offer letters, some servicers create the misimpression that the streamlined option being offered is the only option other than immediate lump-sum repayment or foreclosure.[13]

Recommendations

In light of these risks and problems with the current system, we believe the following proposal would best protect the interests of borrowers while also allowing servicers and investors to benefit from a tiered or sequential approach to pandemic loss mitigation.

1. **Preserve the IFR for Deferral Offers, but Require Simultaneous Notice of Other Options**

We propose that the Bureau leave the IFR rules for deferral offers fundamentally unchanged, with one new requirement: that the servicer *notify the borrower at the time a deferral is offered that other options may be available that result in a lower payment*, so that borrowers who cannot afford the current payment do not accept a deferral simply because they believe there are no other options. This information should be included in a written notice offering the deferral and in

[11] Section-by-Section Analysis, § 1024.41, 78 Fed. Reg. 10,696, 10,859 (Feb. 14, 2013).
[12] 78 Fed. Reg. 10,696, 10,828 ("The Bureau simply does not believe that permitting servicers to steer borrowers to apply for particular loss mitigation options, when the servicer has a far superior capacity to make the relevant determination, reasonably protects the borrower's interest.")
[13] Exhibit A, Example of Deferral Offer Letter sent to a Fannie Mae borrower on Feb. 3, 2021.

any communications (live contact and recorded phone message) with the borrower about deferral.

The Bureau should review servicer scripts to ensure that these live communications are not conveying the misimpression that the deferral is the only alternative to immediate lump-sum repayment or foreclosure. *See* 12 C.F.R. § 1024.38(b)(2)(i) (requiring servicers to provide accurate information regarding available loss mitigation options).[14]

2. Create a New Category of COVID-19 Streamlined Mod Offers

The Bureau should designate and define a new category of streamlined home retention loss mitigation options that may be offered at the end of a COVID forbearance or to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency. These "COVID Streamlined Options" would be limited to loss mitigation options that would 1) apply only if the borrower does not accept or is not found eligible for a COVID deferral/partial claim and 2) require only minimal information from the borrower to determine eligibility, such as whether the borrower is able to continue making the full monthly contractual payment or needs a payment reduction.[15] We recommend that the Bureau set forth the following requirements for this new category of streamlined home retention loss mitigation options.

Treatment of Application for COVID Streamlined Option. Once the borrower has submitted all the information required by the servicer to review the borrower for a COVID Streamlined Option,[16] the application should be deemed complete for purposes of the borrower protections in § 1024.41, including the dual tracking protections (assuming it is more than 37 days before a foreclosure sale), requirement for a written offer or denial letter, and appeal rights. These rights are all essential to ensure that the borrower has an opportunity to consider their loss mitigation options, appeal any denial, and do so without the pressure and confusion of juggling a foreclosure. However, the review of a complete COVID Streamlined Option application should not trigger the duplicative request exclusion, making it a specific exception under § 1024.41(i).

Servicers would not be required to evaluate the borrower for "all available options," provided that they review the borrower simultaneously for all available COVID Streamlined Options[17]

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[14] Additionally, as was discussed in prior comments related to the IFR, the Bureau should clarify in the rule that deferrals may still be offered pursuant to the IFR if they involve a period of repayment beyond the existing loan term. *See* Comments to the CFPB regarding the IFR at 14-15 (Aug. 14, 2020), available at https://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/nclc-nhlp-ifr-comments-2020.pdf.

[15] This is intended to cover the current FHA streamlined loan modifications (Options B and C explained on page 3) in addition to the GSE Streamlined Flex Modification, as well as similar options for federally insured or non-federally backed loans.

[16] Under FHA and GSE rules, this information is limited to the fact that the borrower is occupying the home and cannot afford to resume the contractual payment, and does not have to be provided in writing.

[17] FHA's Mortgagee Letter 2021-05 seems to direct servicers to first offer only option B, and not offer the borrower option C unless the borrower attests that they cannot afford option B. This kind of sequential

and, when either offering a COVID Streamlined Option or denying an application for such an Option, notify the borrower in writing of the availability of other options that might result in greater payment reduction, provide a general description of those other options, and inform that borrower that she may submit additional documentation to be considered for them.

Once an application for a COVID Streamlined Option is complete (typically during live contact with the borrower), a servicer should be required to provide a notice of complete application under § 1024.41(c)(3) within 5 business days unless it sends a written notice offering the COVID Streamlined Option(s) within that time period. In all instances the servicer should be required to make a decision on the application for COVID Streamlined Option within 10 business days (rather than 30) and send a written offer letter that complies with § 1024.41(c)(1)(ii) and (e)(1) and with the requirements set forth above.[18] The Bureau should require the servicer to give the borrower written notice of its decision to deny any trial or permanent COVID Streamlined Options available to the borrower in accordance with § 1024.41(d), and provide notice of any applicable appeal rights.

Multiple COVID Streamlined Options. If the servicer offers more than one COVID Streamlined Option, the Bureau should require the borrower to be reviewed for all such options simultaneously. The servicer may not offer only one COVID Streamlined Option to the exclusion of others that might be available from an investor if the only question relevant to eligibility for the other option(s) is whether the borrower states she can afford the first COVID Streamlined Option. Before a binding acceptance of any particular option, the servicer should be required to give the borrower a written description of the terms for each streamlined option for which the borrower qualifies, including at least the following:

- Monthly payment (including principal, interest, and escrow,[19] and stating whether there is an escrow shortage that will not be included in the principal balance and if so, indicating the number of monthly payments the borrower will be required to make to pay the escrow shortage);
- Effective date and date of first payment;
- Interest rate;
- Term (including if there is an option for a shorter repayment term);
- New interest-bearing principal balance; and
- The amount of any partial claim or non-interest bearing principal deferral.

review is precisely what RESPA was designed to prevent. RESPA permits servicers to implement an investor "waterfall," but does not permit a servicer to stop evaluating for a particular option based solely upon a borrower's preference. *See* Section-by-Section Analysis, Amendments to the 2013 Mortgage Rules, 81 Fed. Reg. 72,160, 72,239-42 (Oct. 19, 2016). An unsupported statement from the borrower regarding what they can afford is tantamount to stating a preference. For the same reasons considered by the Bureau in 2016, including concerns about steering by servicers and imperfect information on the part of borrowers, the Bureau should make clear that RESPA does not permit a servicer to stop evaluating borrowers for other streamlined options based merely on a statement about what the borrower can afford.

[18] These provisions of RESPA require a written offer letter with certain information, including any applicable appeal rights (§1024.41(c)(1)(ii)), and a minimum borrower response period (§1024.41(e)(1)).

[19] Servicers should provide an estimate of the escrow payment based on an escrow analysis.

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The servicer should have to give the borrower written notice of its evaluation of the borrower's application for COVID Streamlined Options, indicating that the borrower may choose one of the options the borrower has been found eligible for. The Bureau should require this notice to comply with § 1024.41(d) for the denial of any options.

Borrower Response to Offer of COVID Streamlined Option. If the borrower accepts a COVID Streamlined Option offer, any preexisting delinquency on their account must end (at the conclusion of any required trial plan, if applicable).[20] If borrowers either 1) indicate that they wish to submit an application for non-streamlined options, 2) reject all COVID Streamlined Options, or 3) receive a denial notice from the servicer for all COVID Streamlined Options, the Bureau should require the servicer to begin reasonable diligence efforts immediately under § 1024.41(b)(1) and send an acknowledgement notice under section 1024.41(b)(2) with respect to all available loss mitigation options. This information may be sent simultaneously with, or as part of, a denial notice. The borrower's complete application for the COVID Streamlined Option will then become treated as a facially complete application for all available non-streamlined options, as under § 1024.41(c)(2)(iv), thereby treating the application as complete for purposes of the dual tracking protections in § 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application. Finally, a borrower that was found eligible for a COVID Streamlined Option should not become ineligible for that option based on asking to be reviewed for non-Streamlined Options. If the complete application results in a denial for non-Streamlined Options, the servicer should be required to renew the offer of a COVID Streamlined Option. This protects the borrower from being harmed by the sequential review servicers and investors are seeking to conduct, rather than reviewing simultaneously for **all** available options. In short, a borrower *should not lose the opportunity for a Streamlined Option merely because she seeks a review for all available options*.

3. Recommendations for Interplay with Other RESPA Rules

Preventing Dual Tracking by Imposing a 120-day Cushion at Conclusion of Forbearance during the COVID-19 Pandemic

The Bureau should ensure that borrowers are not dual-tracked at the conclusion of the forbearance period by imposing a 120-day cushion after the end of forbearance and prior to the initiation of foreclosure. As part of any action in response to the pandemic, the Bureau should adapt the dual tracking rule to provide that for borrowers in forbearance due to a COVID-related hardship, the servicer shall not initiate, proceed with, or complete a judicial or non-judicial foreclosure for a minimum of 120 days after the expiration of the forbearance period and such

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[20] The GSEs require a trial plan for the Flex Mod. FHA does not require a trial plan for its COVID streamlined loan modification options.

additional time as is necessary to evaluate a complete loss mitigation application submitted during the 120-day period.

Required Notices: Background

Since the pandemic began, the CFPB has been allowing servicers to send the notice required by § 1024.41(b)(2), regarding what is needed to complete an application, by the end of the forbearance period. Under the current system, this may be the only written notice sent to the borrower near the end of forbearance. Yet the loss mitigation framework adapted in response to the pandemic is not designed to hinge around a "complete application," and having the borrower attempt to send a complete application without a review for streamlined options is not, in most cases, the desired outcome. Borrowers need a clear written notice regarding their available options, and how to pursue them, before the forbearance period ends.

Reports from legal services attorneys and housing counselors in the field indicate that borrowers are currently exiting forbearance with no communication from servicers about either the possibility of extending the forbearance or the available (streamlined or full-documentation) post-forbearance options. The notices described below are intended to address this systemic failure of communication, while also continuing to postpone the required sending of a (b)(2) notice.

Establish and Clarify Required Notices During a Forbearance Period

Existing Forbearance Offer Letter
RESPA already requires that when a forbearance plan is offered, the servicer must promptly (within 5 business days) send a written notice that complies with § 1024.41(c)(2)(iii), setting out the term of the forbearance and explaining that the forbearance was offered based on an incomplete application. During the COVID-19 emergency, the Bureau should require that all letters related to short-term loss mitigation offers must notify the borrower that they may be able to obtain a permanent loss mitigation option (deferral or COVID Streamlined Mod) without the submission of a complete application, and identify how and when a borrower may be reviewed for such options. For example, the letter should state if a borrower needs to make live contact with the servicer (and the phone number, if so), when a borrower would need to take certain steps in order to have an option in place prior to the end of the forbearance, and any deadline after which an option may not be available.

Forbearance Extension Notice.
Arguably this is already required under RESPA, but the CFPB should clarify the requirement. If the forbearance period is renewed or extended, the Bureau should require the servicer to promptly (within 5 business days) send another written notice that complies with § 1024.41(c)(2)(iii) and contains the COVID-19 specific information about post-forbearance options set out above.

End of Forbearance Notice.
This is a new notice, not currently required by RESPA, which is necessary in lieu of sending the 5-day 1024.41(b)(2) notice by the end of the forbearance period. Since servicers are not going to

send a notice explaining how to achieve a complete application before the end of the forbearance period, they need to provide written notice of the various options that exist and how to be considered. While GSE policy, for example, requires efforts to establish QRPC toward the end of forbearance, the RESPA rules apply more universally, are privately enforceable and, under this proposal, would require specific notices that are essential to borrowers making informed choices about a forbearance extension, deferral or loan mod.

The Bureau should require the servicer to send a written notice to the borrower at least 30 days prior to the end of a forbearance period. This notice should (a) inform the borrower whether further extensions of the forbearance period may be available and what they must do if they need an extension, (b) provide a brief description of the options that may be available to the borrower to reinstate the loan, and (c) inform the borrower of the steps necessary to be considered for these reinstatement options, when a borrower would need to take certain steps in order to have an option in place prior to the end of the forbearance, and any deadline after which an option may become unavailable. If a servicer has communicated with the borrower and agreed to extend a forbearance by the date when an end-of-forbearance notice would be required, the servicer could instead send a forbearance extension notice.[21]

Incomplete Application/5-day Notice (1024.41(b)(2) notice):
RESPA currently requires the (b)(2) notice to be sent within five business days after any application for loss mitigation (including an incomplete application). When the pandemic began, the CFPB informed servicers that it would not take supervisory or enforcement action based on failure to send the (b)(2) notice within five business days, provided the servicer sent it before the end of the forbearance period. We propose continuing with the delayed sending of the (b)(2) notice ***only if*** *certain new protections apply.*

Note: the delay of sending the (b)(2) notice described here is an acceptable solution **only** if the 120-day cushion **and** the End of Forbearance Notice, described above on pages 8 and 9 respectively, are adopted. Without those protections, borrowers would be insufficiently protected by this proposal.

We propose that, for borrowers who accept a COVID-19-related forbearance offer, the Bureau should **not** require servicers to send the (b)(2) notice (also known as the 5-day notice) **until the later of**:

- 15 days after the end of the forbearance unless a deferral or COVID Streamlined Option has been offered and not yet rejected;
- 5 business days after the borrower rejects or is found ineligible for a Deferral, unless the borrower is being reviewed for COVID Streamlined Options; or
- 5 business days after the borrower rejects or is found ineligible for the COVID Streamlined Options (required content of the 5-day notice under § 1024.41(b)(2) may be provided within the COVID Streamlined Mod denial notice).

[21] Attached as Exhibit B is a proposed template for the End of Forbearance Notice.

The Bureau should also require the servicer to send the (b)(2) notice within 5 business days of the borrower expressing a desire, orally or in writing, to be reviewed for all available loss mitigation options.

Early Intervention and Live Contact Requirements

Questions have been raised about whether servicers should be required to send the Early Intervention notice (or "45-day notice") to borrowers who are performing under a COVID forbearance plan. RESPA currently requires the notice to be sent when the borrower becomes 45 days delinquent (and sent once per 180 days), even if the borrower is performing under a forbearance agreement.[22]

To comply with the requirements of 12 C.F.R. § 1024.39(b)(2), a notice need simply include:

- A statement encouraging the borrower to contact the servicer;
- The telephone number to reach the borrower's point of contact pursuant to continuity of contact requirements;
- A brief description of examples of loss mitigation options that may be available;
- A statement informing the borrower of how to obtain more information or apply for the loss mitigation options; and
- The website to access either the CFPB or HUD list of housing counseling agencies and the HUD housing counseling 1-800 number.

The information required under this section is extremely important for borrowers to have, including borrowers who are in an active forbearance. Information about how to contact a housing counselor is especially important. Moreover, the Bureau has model language for this notice which it has the ability to translate, and should translate, into the top eight languages spoken by limited English proficient people in the U.S.[23]

If the borrower has sent a cease-communication letter pursuant to the FDCPA to a servicer that is subject to the FDCPA as a debt collector, the servicer must include an additional provision that the servicer may or intends to invoke its remedy of foreclosure. This applies to an extremely narrow set of circumstances. Nonetheless, to remove any possible confusion, the Bureau may state that if any such borrower is performing under a payment forbearance that was granted to a borrower experiencing financial hardship due, directly or indirectly, to the COVID-19 emergency, and if the letter includes the FDCPA language, servicers may include an additional phrase, along the lines of: "You are in an approved forbearance. Contact us 30 days prior to the end of the forbearance period to discuss your options."

[22] The notice is not required if the borrower is performing under a loss mitigation offer that would cure the arrearage. However, forbearance plans do not fall into that category.
[23] See model language in Appendix MS-4 to Part 1024, https://www.consumerfinance.gov/rules-policy/regulations/1024/MS4/#48315e1c41fb760418c22763bd054ad5b4bdae31e26557d8842b2f52.

Regulation X already gives servicers flexibility to adapt the language of the notice, and it can be included with another required notice. The Bureau could specifically state that the notice required by § 1024.39 can be combined with a forbearance offer, forbearance extension, or end-of-forbearance notice. The best practice would be for servicers to include the 45-day notice information in all of these forbearance-related notices. This information would be helpful and timely for borrowers in connection with information about their forbearance and post-forbearance options.

Servicers should also maintain live contact attempts as required by § 1024.39 while a borrower is in a forbearance. The Bureau's Commentary already provides that if the servicer has established and is maintaining ongoing contact with the borrower pursuant to the loss mitigation process, this complies with § 1024.39(a).

Inclusion of Applications under the Homeowner Assistance Fund and Similar Programs

The Bureau should also prevent dual tracking while a borrower is in the application process for any federal or state-based homeowner assistance program (such as the Homeowner Assistance Fund passed by Congress in March), by clarifying that an application to the state housing finance agency or other entity operating such a program is an "application" under RESPA for purpose of Regulation X's dual tracking rules. Once a borrower notifies a servicer that she has applied for the state assistance program, it should be treated for dual-tracking purposes as identical to an application made directly to a servicer.

Thank you for your attention to this extremely important issue. The Bureau's action in this area is crucial to prevent unnecessary foreclosures and preserve home equity, especially in communities of color. We look forward to discussing these issues with you. For further information, please contact Alys Cohen, acohen@nclc.org.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform Education Fund
Center for Responsible Lending
National Community Stabilization Trust
National Housing Law Project