

Fast Facts: Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties (Regulation X)

Background: The Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties Notice of Proposed Rulemaking (proposed rule) would amend various sections of Regulation X, 12 CFR Part 1024. In general, the proposed rule would streamline existing loss mitigation requirements to provide borrowers with quicker loss mitigation solutions, add foreclosure procedural safeguards that begin as soon as a borrower requests loss mitigation assistance, revise certain early intervention requirements, and provide borrowers with access to certain mortgage servicing communication in languages other than English. The proposal also requests comment on various servicing issues, including comment on servicer furnishing practices for consumer reporting. None of the proposed new requirements would apply to small servicers. See [12 CFR § 1026.41\(e\)\(4\)\(ii\)](#) and Section 3 of the [Mortgage Servicing Small Entity Compliance Guide](#) for more information about the small servicer exemption.

Proposed effective date: Generally, 12 months after publication of the final rule in the *Federal Register*, except for the proposed language access requirements, which would become effective 18 months after publication in the *Federal Register*. The CFPB also seeks comment on early compliance.

Comments due: September 9, 2024.

Available at: www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/streamlining-mortgage-servicing-for-borrowers-experiencing-payment-difficulties-regulation-x/.

About this document: This document generally provides a high-level overview of the topics covered in the proposed rule.

Definitions

Topic	Description of provision in proposed rule	Location in proposed rule
Loss Mitigation Review Cycle	The CFPB proposes to add a new defined term, “loss mitigation review cycle,” which generally would describe the effective period for the foreclosure procedural safeguards described below. Under the proposal, a loss mitigation review cycle would begin if a borrower made a request for loss mitigation assistance more than 37 days before a foreclosure sale. A loss mitigation review cycle would end either when the borrower became current or when the borrower had exhausted the foreclosure procedural safeguards described below.	§ 1024.31
Request for Loss Mitigation Assistance	The CFPB proposes to add a new defined term “request for loss mitigation assistance” which generally would describe the action a borrower must take to initiate a loss mitigation review cycle. Under the proposal, a request for loss mitigation assistance would 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.	§ 1024.31

Loss Mitigation Procedures

The CFPB proposes to remove most of the existing application-based loss mitigation framework from § 1024.41 and replace it with a new framework based on foreclosure procedural safeguards. The proposed rule would amend the loss mitigation framework as follows:

Topic	Description in proposed rule	Location in proposed rule
Foreclosure Procedural Safeguards	Under the proposed rule, once a loss mitigation review cycle begins, a servicer must ensure that one of the following procedural safeguards is met before beginning or 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	§ 1024.41(f)(2)

Topic	Description in proposed rule	Location in proposed rule
	<p>notices required by proposed § 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</p> <p>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 and, if applicable, the servicer’s loss mitigation determination.</p>	
Prohibition on Advancing Foreclosure	<p>The CFPB proposes to limit actions that advance the foreclosure process as part of the foreclosure procedural safeguards. The proposed rule would prohibit foreclosure initiation or advancement (including sale scheduling or completion) if a borrower requests loss mitigation assistance more than 37 days before a foreclosure sale unless one of the foreclosure procedural safeguards are met.</p>	§ 1024.41(f)(2)
Sequential Loss Mitigation Review	<p>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 to offer a loss mitigation option to a borrower. As a result, a servicer may, but is not required to, review a borrower for loss mitigation options sequentially rather than simultaneously.</p>	§ 1024.41
Fee Prohibition	<p>The CFPB proposes to prohibit a servicer from charging fees to a borrower 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 during a loss mitigation review cycle.</p>	§ 1024.41(f)(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) as follows:

Topic	Description of provision in proposed rule	Location in proposed rule
Determination Notice Coverage	The CFPB proposes to expand the loss mitigation determination notice provisions to require that servicers provide determination notices for all types of loss mitigation offers and denials, which include forbearances, deferrals, and partial claims.	§ 1024.41(c)
Expanded Information Included on the Determination Notice	<p>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 proposes to require that servicers include the following on a loss mitigation determination notice:</p> <ol style="list-style-type: none"> 1. Information about key borrower-provided inputs that served as the basis for the loss mitigation determination; 2. A telephone number, mailing address, and website address, where the borrower can access a list of non-borrower provided inputs used by the servicer in making the loss mitigation determination; 3. Information that would enable a borrower to access a list of all loss mitigation options that may be available from the investor; and 4. Information about all other loss mitigation options that may remain available, previously offered options that the borrower did not accept, and whether any offered option will remain available if the borrower requests review for additional options prior to accepting or rejecting the offer. 	§ 1024.41(c)(1)
Denial Due to Missing Documents or Information Not in the Borrower's Control	The CFPB proposes to relocate from § 1024.41(c)(4) to § 1024.41(c)(2) the current requirements relating to when a servicer may deny a loss mitigation application due solely to missing information not in the borrower's or servicer's control. The proposed rule would also amend the requirements to align with other proposed changes.	§ 1024.41(c)(2)

Topic	Description of provision in proposed rule	Location in proposed rule
Unsolicited Loss Mitigation Offers	The CFPB proposes to require that a servicer provide the borrower with a notice when it offers a loss mitigation option based solely on information that the servicer already has instead of based on new 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 all other loss mitigation options that may remain available and investor information.	§ 1024.41(c)(3)

Early Intervention

The CFPB proposes to make the following changes to the early intervention requirements in existing § 1024.39:

Topic	Description in proposed rule	Location in proposed rule
Written Early Intervention Notice Requirements	<p>Under the proposed rule, the written early intervention notice requirements would need to include the following additional information:</p> <ol style="list-style-type: none"> 1. 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. 2. A website address and 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. 3. If applicable, a statement informing the borrower how to make a request for loss mitigation assistance. 	§ 1024.39(b)(2)
Alternative Early Intervention Requirements for Borrowers Performing Pursuant to the	The CFPB proposes to partially exempt servicers from the live contact and written early intervention notice requirements of § 1024.39(a) and (b) while a borrower is performing pursuant to the terms of a forbearance.	§ 1024.39(e)

Topic	Description in proposed rule	Location in proposed rule
Terms of a Forbearance	<p>At least 30 days, but no more than 45 days, before the scheduled end of the forbearance, the proposed rule would require that the servicer establish, or make good faith efforts to establish, live contact with the borrower. During this contact, the servicer would be required to inform the borrower of the date the borrower's current forbearance is scheduled to end and of the availability of loss mitigation options, if appropriate. In addition, at least 30 days, but no more than 45 days, before the scheduled end of the forbearance, the proposal also would require the servicer to provide a written notice that discloses the date the borrower's current forbearance is scheduled to end as well as the information required by the proposed written early intervention notice.</p> <p>The proposed rule also would require that, when a forbearance ends for any reason, a servicer must resume compliance with the early intervention and live contact requirements in § 1024.39(a) and (b) on the next payment due date following the forbearance end date.</p>	
Removal of Model Clauses in Appendix MS-4	The CFPB proposes to remove model clauses MS-4(A) and MS-4(B) in appendix MS-4, as well as the regulatory text in § 1024.39(b)(3) that currently allows servicers to use those model clauses to comply with the requirements of § 1024.39(b).	§ 1024.39(b)(3); Appendix MS-4

Loss Mitigation Error Resolution and Appeals

The CFPB proposes to make the following changes to the error resolution and appeals provisions:

Topic	Description in proposed rule	Location in proposed rule
Error Resolution	The CFPB proposes to clarify that inaccurate loss mitigation determinations are a covered error under the existing error resolution provisions in § 1024.35.	§ 1024.35(b)(11)

Topic	Description in proposed rule	Location in proposed rule
Appeals	The CFPB proposes to amend the current loss mitigation appeal 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.	§ 1024.41(h)

Language Access

The CFPB proposes to require servicers to provide borrowers with access to mortgage servicing communications in languages other than English in the following manner:

Topic	Proposed rule provisions	Location in proposed rule
Spanish Language Translations of Specified Written Communications for All Borrowers	The CFPB proposes to require that servicers accurately translate each of the specified written communications (identified in the proposal) into Spanish, and provide those Spanish versions along with the English versions to all borrowers.	Preamble Part IV.D
Translations of Specified Written Communications and Interpretations of Specified Oral Communications Upon Borrower Request	<p>The CFPB proposes to require that servicers provide accurate translations of the specified written communications to borrowers upon request in certain servicer-selected languages. The proposed rule would also require servicers, upon borrower request, to 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 (identified in the proposal) in certain servicer-selected languages.</p> <p>Generally, the proposed rule would allow the servicer discretion to select languages for compliance, so long as collectively the languages 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).</p>	Preamble Part IV.D

Topic	Proposed rule provisions	Location in proposed rule
<p>Statements Indicating Language Translation and Interpretation Services are Available</p>	<p>The CFPB proposes to require that servicers include in the English version of the specified written communications five brief in-language statements identifying the availability of translated versions of those written communications and the availability of interpretation services for the specified oral communications in the applicable language. The brief statements would also identify how the borrower can request those translations or interpretation services.</p> <p>The proposed rule would require that the five languages selected by the servicer be the five most frequently used languages of those spoken by a significant majority of their borrowers with limited English proficiency, other than English or Spanish.</p>	<p>Preamble Part IV.D</p>
<p>Translation and Interpretation Services Based on In-Language Pre-Origination Marketing</p>	<p>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 proposed rule would require that the servicer make available translations or interpretations for that language even if it is not a language selected by the servicer for the above requirements.</p>	<p>Preamble Part IV.D</p>

Other Servicing Issues

Topic	Proposed rule provisions	Location in proposed rule
<p>Record Retention Requirements</p>	<p>The proposed rule would clarify that the current requirement that servicers 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 proposed rule would add an example of compliant record creation and retention for the proposed loss mitigation requirements.</p>	<p>§ 1024.38(c)(1)</p>
<p>Credit Reporting</p>	<p>The CFPB requests comment about possible approaches it could take to ensure servicers are furnishing accurate and</p>	<p>Preamble Part IV.E</p>

Topic	Proposed rule provisions	Location in proposed rule
	consistent credit reporting information for borrowers undergoing loss mitigation review.	
Zombie Mortgages	The CFPB seeks data and information on the prevalence of collection activity on long-dormant second mortgages and whether there are actions it could take, including amending existing rules, to better protect borrowers from harm caused by collection activity on these types of mortgages.	Preamble Part IV.I.1
Disclosure of Deferred Amounts	The CFPB 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.	Preamble Part IV.I.2
Successors in Interest	The CFPB requests comment on whether there are 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.	Preamble Part IV.I.3
Servicing Practices Related to State Laws	The CFPB requests comment on whether there may be overlap between the proposal and State law and on the burdens or costs that may result from those potential overlaps if the rule were finalized.	§ 1024.5(c)(1)

Additional Resources

Find more implementation information and sign up for updates about the proposed rule at www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/mortserv/.