

Fast Facts: 2021 Mortgage Servicing COVID-19 Proposed Rule

Proposed Rule: Would amend Regulation X, 12 CFR 1024, and the existing Mortgage Servicing Rule provisions, to add additional borrower protections related to the COVID-19 emergency.

Proposed effective date: August 31, 2021

Comments due: May 10, 2021

Available at: www.consumerfinance.gov/rules-policy/rules-under-development/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement-procedures-act-regulation-x/

About this document: The proposal seeks public comment on the proposed amendments in the 2021 Mortgage Servicing COVID-19 Proposed Rule. The Bureau has issued a proposal to amend Regulation X to add or revise existing Mortgage Servicing Rule provisions and provide additional assistance for borrowers experiencing a COVID-19-related hardship. The proposed rule, if finalized, would not change coverage of the Mortgage Servicing Rule, and thus, small servicers, as defined in Regulation Z, 12 CFR 1026.41(e)(4), would not be subject to these requirements. Additionally, the provisions in the proposal, if finalized, would still only be applicable to a mortgage loan that is secured by a property that is a borrower's principal residence. 12 CFR 1024.30(c)(2).

This document generally provides a high-level overview of the topics covered in the proposal.

Proposed amendments

Current rule provision	Description of proposed amendment or addition	Location in proposed rule
Definitions	The proposed rule would add a definition for “COVID-19-related hardship” to generally mean a financial hardship related to the COVID-19 emergency, as defined in the CARES Act.	1024.31
Early Intervention: Live Contact	<p>During live contacts established under the existing Mortgage Servicing Rule requirements, the proposed rule would require servicers to take additional actions with certain borrowers.</p> <p>For borrowers not yet in a forbearance plan at the time of live contact, if forbearance options are available to the borrower through the servicer, the servicer would be required to ask the borrower if they are experiencing a COVID-19-related hardship (as defined in the proposal). If the borrower indicates they are, the servicer would be required to list and describe forbearance programs made available to that borrower. The servicer would also be required to provide the actions the borrower must take to be evaluated for such forbearance programs.</p> <p>For borrowers in a forbearance plan at the time of live contact, the servicer would be required to identify the date the borrower’s forbearance program ends and list and describe loss mitigation options made available to the borrower to resolve any delinquency the borrower will have at the end of the forbearance program. The servicer would also be required to provide the actions the borrower must take to be evaluated for such loss mitigation options, information the servicer has under existing continuity of contact requirements. The servicer would only need to provide this information in the last live contact required under the existing Rule that occurs prior to the end of the forbearance period.</p> <p>This proposed provision is temporary. If finalized, it would only apply until August 31, 2022, one year after the proposed effective date.</p>	1024.39(e)
Loss Mitigation Procedures: Reasonable Diligence	Under the existing Rule’s reasonable diligence obligations for servicers in obtaining a complete loss mitigation application, the proposed rule would clarify when the servicer must perform reasonable diligence requirements for borrowers in a short-term	1024.41(b); Comment 41(b)-4.iv

Current rule provision	Description of proposed amendment or addition	Location in proposed rule
	<p>payment forbearance program made available to borrowers experiencing a COVID-19-related hardship.</p> <p>For those borrowers, if the short-term payment forbearance program was offered based on the evaluation of an incomplete application, then, no later than 30 days before the end of the short-term payment forbearance program, the servicer would be required to contact the borrower and determine if the borrower wants to complete their loss mitigation application and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer would be required to exercise reasonable diligence to complete the application before the end of the forbearance program.</p>	
Loss Mitigation Procedures: Evaluation of a Loss Mitigation Application	<p>The proposed rule would add another exception to the existing Rule's prohibition on offering a loss mitigation option based on an evaluation of an incomplete loss mitigation application.</p> <p>A servicer would be allowed to offer certain loan modifications based on the evaluation of an incomplete application if certain criteria are met. Those criteria include:</p> <ul style="list-style-type: none"> ▪ The loan modification would extend the term of the loan by no more than 480 months and would not result in an increase to the borrower's periodic principal and interest payment. ▪ If the loan modification allows a deferral of amounts until certain points, such when the loan is refinanced or the property is sold, the amounts would not accrue interest; the servicer would not charge a fee connected to the loan modification; and certain existing charges owed by the borrower, such as late fees and stop payment fees, would be waived by the servicer upon acceptance of the loan modification. ▪ The loan modification must be made available to borrowers experiencing a COVID-19-related hardship, as that term is defined in the proposal. 	1024.41(c)(2)(vi)

Current rule provision	Description of proposed amendment or addition	Location in proposed rule
	<ul style="list-style-type: none"> ▪ The borrower's preexisting delinquency would be resolved by acceptance of the loan modification (and potential completion of a trial loan modification first, if required by the servicer). <p>If the borrower accepts a loan modification as described in the proposal, the acceptance would terminate the servicer's obligation to exercise reasonable diligence to complete any loss mitigation application the borrower submitted prior to the borrower's acceptance of an offer made under the proposed exception. It would also terminate the servicer's obligation to review such an application under the existing Rule requirements. The obligation to exercise reasonable diligence to complete any loss mitigation application the borrower submitted prior to the borrower's acceptance of an offer made under the proposed exception would restart if the borrower fails to perform under any required trial loan modification or if the borrower requests further assistance.</p>	
Loss Mitigation Procedures: Prohibition on Foreclosure Referral	The proposal would add a temporary COVID-19 pre-foreclosure review period where a servicer is not permitted to make the first notice or filing for foreclosure. In addition to the existing Rule that generally prohibits a servicer from making the first notice or filing unless the borrower is more than 120 days delinquent, the proposal would add a temporary blanket prohibition on making the first notice or filing for foreclosure because of a delinquency until after December 31, 2021.	1024.41(f)(1); 1024.41(f)(3)

Additional resources

Find more implementation information and sign up for updates about the mortgage servicing rule implementation at www.consumerfinance.gov/rules-policy/rules-under-development/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement-procedures-act-regulation-x/.