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### Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act

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Federal Reserve System: Board of Governors

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United States: Department of the Treasury: Office of the Comptroller of the Currency (OCC)

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United States: Consumer Financial Protection Bureau (CFPB), Federal Reserve System: Board of Governors, United States: Federal Deposit Insurance Corporation (FDIC), United States: National Credit Union Administration (NCUA), United States: Department of the Treasury: Office of the Comptroller of the Currency (OCC), and Conference of State Bank Supervisors (CSBS)

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**Consumer Financial Protection Bureau  
Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation  
National Credit Union Administration  
Office of the Comptroller of the Currency  
Conference of State Bank Supervisors**

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April 3, 2020

**Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act**

The Consumer Financial Protection Bureau (Bureau), Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the State Banking Regulators (collectively, “the agencies”) recognize the serious impact the Coronavirus Disease (referred to as “COVID-19”) emergency may have on consumers and on the operations of many supervised entities, including mortgage servicers.<sup>1</sup> Mortgage servicers play a vital role in assisting consumers when they face challenges in paying their mortgages, and the agencies understand that the current crisis could pose temporary business disruptions and challenges for mortgage servicers, including staffing challenges, that could impede their ability to assist consumers at this critical time. The agencies also recognize that there is the potential for consumer confusion about how to seek help or how to respond to some of the options that mortgage servicers may be offering at this time.<sup>2</sup>

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.<sup>3</sup> As discussed in more detail below, the CARES Act provides a forbearance option (CARES Act forbearance) for borrowers with “Federally backed mortgage loans.” The

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<sup>1</sup> With respect to the mortgage servicing rules, for which the Bureau has exclusive rule writing authority, the Bureau has supervisory and enforcement authority with respect to non-bank servicers and depository institutions with assets over \$10 billion. The prudential regulators have supervisory and enforcement authority with respect to depository institutions with assets of \$10 billion or less.

<sup>2</sup> Resources for consumers facing the impacts of the coronavirus are available on the agencies’ websites at <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>, <https://www.consumerfinance.gov/coronavirus/>, <https://www.federalreserveconsumerhelp.gov/>, <https://www.fdic.gov/coronavirus/index.html>, <https://www.ncua.gov/coronavirus>, and <https://occ.gov/topics/supervision-and-examination/bank-operations/covid-19-information/convid-19-info-index.html>.

<sup>3</sup> Coronavirus Aid, Relief, and Economic Security Act, Public L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

agencies understand that over the coming weeks, mortgage servicers will offer short-term payment forbearance options, like the CARES Act forbearance, or short-term repayment plans (collectively “short-term options”) to borrowers facing hardships related to the COVID-19 emergency.

To ensure that servicers have the capacity to offer these valuable programs and continue their work to assist struggling consumers without further straining their operational capacity or potentially confusing consumers in these programs, the agencies are issuing this joint statement (Joint Statement) to inform servicers of the agencies’ flexible supervisory and enforcement approach during this emergency regarding certain consumer communications required by the mortgage servicing rules. This Joint Statement is intended to clarify the application of the Regulation X mortgage servicing rules and the agencies’ approach to supervision and enforcement related to the rules during this emergency, including those applicable to short-term options. The agencies note that small servicers (as defined by Regulation X) are not subject to many of the requirements in the Regulation X mortgage servicing rules described in this statement.<sup>4</sup>

Concurrent with releasing this Joint Statement, the Bureau, as the agency with rule writing authority for the mortgage servicing rules discussed herein, is separately issuing additional compliance guidance (The Bureau’s Mortgage Servicing Rules FAQs related to the COVID-19 Emergency, or “FAQs”) to provide mortgage servicers with enhanced clarity about existing flexibility in the mortgage servicing rules that they can use to help consumers during the current emergency. This Joint Statement and the FAQs are both critical in explaining the extent of the flexibility that servicers have during this crisis. Mortgage servicers should consider them together when developing approaches to work with borrowers. Among other things, the FAQs address flexibility around required notices from servicers that, without additional explanation, might otherwise be confusing to borrowers who were offered or placed in short-term options and address flexibility around existing requirements related to continuity of contact, payoff statements, and reasonable diligence steps required when the forbearance period ends.

The agencies believe that the flexibility provided in this Joint Statement and the FAQs will enable servicers to provide borrowers with timely assistance, ensure that all borrowers are treated

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<sup>4</sup> “Small servicers” as defined in Regulation Z, 12 CFR 1026.41(e)(4), do not have to comply with the early intervention or the loss mitigation requirements described in this Joint Statement. Regulation X, 12 CFR 1024.30(b)(1). However, small servicers must comply with the foreclosure restrictions included in Regulation X, 12 CFR 1024.41(j) and the escrow requirements in Regulation X, 12 CFR 1024.17, subject to the special permission for small servicers related to force-placed insurance in Regulation X, 12 CFR 1024.17(k)(5)(iii). For more information about small servicers, see section 3 of the Bureau’s [Real Estate Settlement Procedures Act \(Regulation X\) and Truth in Lending Act \(Regulation Z\) Mortgage Servicing Rules Small Entity Compliance Guide](#). In addition, the CARES Act does not provide an exemption for small servicers to the extent that they service federally backed mortgage loans.

fairly and get the assistance they need, and focus on placing consumers in short-term forbearance programs voluntarily offered by the servicer or otherwise required by the CARES Act.

## Background on the CARES Act

Among other things, the CARES Act ensures that borrowers who have “Federally backed mortgage loans” have access to forbearance programs, regardless of whether they are delinquent.<sup>5</sup> Under the CARES Act, such borrowers experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency, may request a forbearance by submitting a request to their mortgage servicer and affirming that they are experiencing a financial hardship during the COVID-19 emergency.<sup>6</sup> In response, under the CARES Act, servicers must provide a forbearance that allows borrowers to defer their mortgage payments for up to 180 days and possibly longer (a “CARES Act forbearance”).<sup>7</sup> Servicers **must** provide a CARES Act forbearance if the borrower makes this request and affirms that the borrower is experiencing a financial hardship during the COVID-19 emergency. Servicers **may not** require any additional information from the borrower before granting a CARES Act forbearance. The agencies also

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<sup>5</sup> The CARES Act defines a “Federally backed mortgage loan” as any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one-to-four families that is insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 et seq.); insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20); guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a, 1715z–13b); guaranteed or insured by the Department of Veterans Affairs; guaranteed or insured by the Department of Agriculture; made by the Department of Agriculture; or purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act, Pub. L. 116-136, section 4022(a)(2).

<sup>6</sup> See CARES Act, Pub. L. 116-136, section 4022(b).

<sup>7</sup> Upon receiving the borrower’s request for forbearance, the servicer must provide a forbearance for up to 180 days with no additional documentation required other than the borrower’s attestation to a financial hardship caused by the COVID-19 emergency and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance. The servicer must extend the forbearance for up to an additional 180 days at the request of the borrower, provided that the request for an extension is made during the covered period. Note that the borrower may request that either the initial or extended forbearance period be less than 180 days. See CARES Act, Pub. L. 116-136, section 4022(b) and (c)(1). In addition, under the CARES Act, except with respect to a vacant or abandoned property, a servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020. See CARES Act, Pub. L. 116-136, section 4022(c)(2). This provision is not limited to borrowers experiencing a financial hardship during the COVID-19 emergency.

understand that servicers of other mortgages that are not “Federally backed mortgage loans” under the Act may be offering similar short-term forbearance programs to their borrowers.<sup>8</sup>

## Background on Regulation X

As described in more detail below, mortgage servicers may provide borrowers a CARES Act forbearance under the existing Regulation X mortgage servicing rules without having to comply with all of the otherwise applicable rules.<sup>9</sup> Regulation X already contemplates that some borrowers may need this type of fast short-term help and provides flexibility for servicers when they offer certain short-term options, such as short-term payment forbearance programs.<sup>10</sup> A CARES Act forbearance qualifies as a short-term payment forbearance program under Regulation X, so it is excluded from some of the otherwise applicable loss mitigation requirements. In addition, servicers can provide multiple sequential short-term payment forbearance programs under the Regulation X mortgage servicing rules. For example, under the CARES Act, the borrower may request another forbearance of up to 180 days in addition to the initial forbearance and the servicer **must** extend the forbearance.

Regardless of whether a servicer provides a CARES Act forbearance, servicers still must provide certain Regulation X notices if they receive any “incomplete loss mitigation application” from a borrower, but generally servicers do not have to exercise reasonable diligence to complete the application until near the end of the forbearance period.<sup>11</sup> This approach allows servicers and borrowers to address temporary hardships while making sure borrowers are aware of their rights to the full loss mitigation procedures under the rules if they might need longer-term solutions later. As noted above, the CARES Act only requires borrowers to make a request to the servicer for a forbearance and affirm that the borrower is experiencing a financial hardship during the COVID-19 emergency; the servicer is prohibited from requiring any additional documentation. However, when the borrower makes this request and affirms the hardship, it still constitutes an “incomplete loss mitigation application” for purposes of Regulation X, so servicers still must provide the required loss mitigation notices and comply with the other applicable regulatory

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<sup>8</sup> Such programs may be based on servicers’ own programs or policy initiative or may be required by state or local laws.

<sup>9</sup> For example, as described more below, under Regulation X, 12 CFR 1024.41(c)(2)(iii), servicers do not have to obtain a complete loss mitigation application from a borrower before offering a short-term loss mitigation option as defined in the rules, such as the CARES Act forbearance.

<sup>10</sup> The CARES Act requires servicers to offer certain forbearances to certain borrowers as described above. Regulation X does not require servicers to offer borrowers any specific loss mitigation option. Nor does it mandate any particular eligibility criteria.

<sup>11</sup> See Regulation X, 12 CFR 1024.41(c)(2)(iii); comments 41(b)(1)-4.iii; 41(c)(2)(i)-1; 41(c)(2)(iii)-1 through -6.

requirements as applicable to a short-term option being offered based on an evaluation of an incomplete loss mitigation application.

See the FAQs for additional information about the flexibility in Regulation X for short-term options.

**CARES Act Forbearance and Other Short-Term Options – Acknowledgement Notice:** As noted above, the agencies understand that over the coming weeks, mortgage servicers will offer consumers short-term options, like the CARES Act forbearance. The agencies intend to facilitate these efforts by adopting a flexible supervisory and enforcement approach relating to Regulation X.

As noted above, the agencies remind servicers that the mortgage servicing rules currently include an exception from certain loss mitigation procedural requirements for short-term options.<sup>12</sup> Specifically, the rules provide that servicers need not obtain a complete application before offering short-term options, such as a CARES Act forbearance. They can offer a CARES Act forbearance or other short-term options based on an evaluation of an incomplete application (or no application at all).

However, if there is an incomplete application, the rules still require servicers to provide an acknowledgement notice within five days of receipt of that incomplete application, even if the borrower has been offered or is in a short-term option. See comment 41(c)(2)(iii)-2. As noted above, the CARES Act requires borrowers to make a request to the servicer for a forbearance and affirm that they are experiencing a financial hardship during the COVID-19 emergency. This request and affirmation constitute an incomplete loss mitigation application for purposes of Regulation X, so servicers must provide this required notice.

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<sup>12</sup> See, e.g., [https://files.consumerfinance.gov/f/documents/bcftp\\_statement-on-supervisory-practices\\_disaster-emergency.pdf](https://files.consumerfinance.gov/f/documents/bcftp_statement-on-supervisory-practices_disaster-emergency.pdf). Regulation X generally requires servicers to obtain a complete loss-mitigation application before evaluating a mortgage borrower for a loss-mitigation option, such as a loan modification or short sale. However, Regulation X permits servicers to offer certain short-term options based upon an evaluation of an incomplete application. In addition, a servicer may offer loss-mitigation options to a borrower who has not submitted an application. A servicer also may offer loss mitigation options to a borrower when the offer is not based on any evaluation of information submitted by the borrower in connection with a loss-mitigation application. For purposes of the rule, a payment forbearance program generally is a loss mitigation option pursuant to which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. It allows forbearance of payments due over periods of no more than six months, but it is considered short-term regardless of the amount of time the servicer allows the borrower to make up the missing payments. Regulation X, Comment 41(c)(2)(iii)-1. For purposes of the rule, a short-term repayment plan generally is a loss mitigation option under which a borrower would repay all past due payments over a specified period of time to bring the mortgage loan account current. A short-term repayment plan allows for the repayment of no more than three months of past due payments and allows a borrower to repay the arrearage over a period lasting no more than six months. Regulation X, Comment 41(c)(2)(iii)-4.

The agencies recognize that meeting the five-day deadline may pose challenges for servicers at this time, and that the notice, without further explanation, might be confusing to borrowers in those programs.

Thus, as of April 3, 2020, and until further notice, in evaluating compliance with Regulation X, 12 CFR 1024, if a mortgage servicer offers or provides a borrower a short-term option, including a CARES Act forbearance, the agencies do not intend to take supervisory or enforcement action against servicers for:

- failing to provide the acknowledgment notice described in Regulation X, 12 CFR 1024.41(b) within five days of the receipt of an incomplete application (whether the servicer receives the incomplete application before or during the forbearance or repayment plan period), provided the servicer sends the acknowledgment notice before the end of the forbearance period, for a short-term payment forbearance program (or the end of the repayment period, for a short-term repayment plan).

As noted in the FAQs issued today, there is existing flexibility in the rules around how servicers can adjust the content of these notices to try to avoid consumer confusion.

**Loss Mitigation and Early Intervention:** Except as otherwise provided above regarding flexibility around the CARES Act forbearance and other short-term options, under the mortgage servicing rules in Regulation X, 12 CFR 1024, mortgage servicers must follow certain procedures when a borrower applies for loss mitigation, including providing several different notices to borrowers on specific timelines.<sup>13</sup> See Regulation X, 12 CFR 1024.41. In addition, if a borrower is delinquent, the rules require mortgage servicers to provide certain live contact and written early intervention communications on a specific timeline. See Regulation X, 12 CFR 1024.39.

As of April 3, 2020, and until further notice, the agencies do not intend to take supervisory or enforcement action against servicers for:

- delays in sending the loss mitigation-related notices and taking the actions described in Regulation X, 12 CFR 1024.41(b)-(d), (h)(4), and (k), which, among other things, include the five-day acknowledgement notice, the 30-day evaluation and notice, and the appeals notice, provided that servicers are making good faith efforts to provide these notices and take the related actions within a reasonable time;<sup>14</sup>

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<sup>13</sup> Regulation X does not require a servicer or owner of a mortgage loan to offer any specific loss mitigation option. Nor does it mandate any particular eligibility criteria. See Regulation X, Comment 41(c)(1)-2.

<sup>14</sup> For borrowers offered a short-term option, the agencies intend to take the approach discussed above under the heading “CARES Act Forbearance and Other Short-Term Options – Acknowledgement Notice” for evaluating compliance with the deadlines for sending the five-day acknowledge notice required by Regulation X, 12 CFR 1024.41(b)(2).



- delays in establishing or making good faith efforts to establish live contact with delinquent borrowers as required by Regulation X, 12 CFR 1024.39(a), provided that servicers are making good faith efforts to establish live contact within a reasonable time; and
- delays in sending the written early intervention notice to delinquent borrowers required by Regulation X, 12 CFR 1024.39(b) (the 45-day letter), provided that servicers are making good faith efforts to provide this notice within a reasonable time.

The flexible supervisory and enforcement approach described in the three bullets above applies regardless of whether a borrower is experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency. This supervisory and enforcement flexibility does not impose any new regulatory requirements on servicers working with borrowers, whether in a CARES Act forbearance or otherwise. It simply provides additional flexibility if a servicer would otherwise be subject to the loss mitigation or early intervention requirements of the rules for a particular borrower. For example, a servicer does not need to comply with the early intervention requirements described above if a borrower is not considered delinquent for purposes of those requirements. The Bureau is releasing FAQs on other regulatory flexibility concurrently with this Joint Statement, which clarifies the scope of these requirements.

**Annual Escrow Statements:** The agencies understand that over the coming weeks, mortgage servicers will experience high call volumes as consumers reach out to servicers to seek help. The agencies also understand that annual escrow statements typically generate a high volume of calls. The agencies recognize that this may cause challenges for servicers' call center operations. Thus, as of April 3, 2020 and until further notice, the agencies do not intend to take supervisory or enforcement action against servicers for:

- delays in sending the annual escrow statement required by Regulation X, 12 CFR 1024.17(i), provided that servicers are making good faith efforts to provide these statements within a reasonable time.<sup>15</sup>

The flexible supervisory and enforcement approach described in the bullet above applies regardless of whether a borrower is experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency.

In addition, the agencies note that there is existing flexibility in the rules that servicers may want to utilize at this time. See the Bureau's FAQs on other regulatory flexibility, which the Bureau is releasing concurrently with this Joint Statement.

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<sup>15</sup> Servicers must continue to comply with Regulation X, 12 CFR 1024.17(k)'s requirements concerning timely disbursements from escrow accounts.