



The Bureau's Mortgage Servicing Rules FAQs related to the COVID-19 Emergency

Reviewing these questions and answers is not a substitute for reviewing Regulation X, Regulation Z, or their official interpretations (also known as the commentary). Regulation X, Regulation Z, and their official interpretations are the definitive sources of information regarding their requirements.

Short-Term Loss Mitigation Options

QUESTION 1: Congress enacted the Coronavirus Aid Relief and Economic Security Act (CARES Act), Pub. L. 116-136, which ensures that borrowers who have Federally-backed mortgages and who are experiencing financial hardships due to the COVID-19 emergency¹ have access to forbearance (CARES Act forbearance).² Can a servicer quickly offer a CARES Act

¹ CARES Act, Pub. L. 116-136, section 4022(b). The CARES Act defines “Federally-backed mortgage loans” 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 1-to-4 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).

² 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,

forbearance to a borrower and comply with the Bureau's loss mitigation rules?

ANSWER (UPDATED 4/3/2020):

Yes, the CARES Act forbearance qualifies as a "short-term repayment forbearance program" under Regulation X. The mortgage servicing rules already include an exception from certain loss mitigation procedural requirements for short-term payment forbearance programs, such as the CARES Act forbearance. This existing regulatory flexibility permits servicers to quickly offer borrowers CARES Act forbearances. FAQs # 2 through 4 under "Short-term Loss Mitigation Options" below describe this flexibility.

QUESTION 2: May a servicer offer a borrower a short-term forbearance program or a short-term repayment plan to help borrowers affected by the COVID-19 emergency?

ANSWER (UPDATED 4/3/2020):

Yes, the Bureau reminds servicers that the mortgage servicing rules already include an exception from certain loss mitigation procedural requirements for short-term options, such as certain short-term payment forbearance programs or short-term repayment plans, as defined in the rule (see below). This existing regulatory flexibility permits servicers to quickly offer relief to borrowers (whether affected by the COVID-19 emergency or not) without first having to collect a complete loss mitigation application.

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. Servicers generally may **not** offer a loss-mitigation option based upon an evaluation of any information provided in connection with an **incomplete** application. Regulation X, 12 CFR 1024.41(c)(2)(i).

However, Regulation X permits servicers to offer a short-term payment forbearance program or short-term repayment plan (as defined below) based upon an evaluation of an **incomplete** application. Regulation X, 12 CFR 1024.41(c)(2)(iii). Servicers may also offer a short-term payment forbearance program to a borrower in conjunction with a short-term repayment plan. Comment 41(c)(2)(iii)-4.

In addition, a servicer may offer any loss-mitigation options to a borrower **who has not submitted an application at all**. 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.

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 with a financial hardship caused by the COVID-19 emergency.

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. Comment 41(c)(2)(iii)-1. Servicers can also offer multiple successive short-term payment forbearance programs under the rule. (For example, at the conclusion of a 180-day forbearance, the servicer can offer the borrower another 180-day forbearance).

In addition, 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. Comment 41(c)(2)(iii)-4.

For more information about the loss mitigation requirements, review section 13 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](#).

QUESTION 3: In general, Regulation X requires servicers to provide several communications to borrowers to whom the servicer offers a short-term payment forbearance program or short-term repayment plan if the offer was based on an evaluation of a consumer's incomplete loss mitigation application. Do those correspondence requirements apply during the COVID-19 emergency crisis?

ANSWER (UPDATED 4/3/2020):

In general, yes. However, the 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 (Joint Statement) released by the Bureau, the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) ("the agencies") informs servicers of the agencies' flexible supervisory and enforcement approach during this emergency regarding certain consumer communications required by the mortgage servicing rules. In addition, the rule itself already includes some flexibility that may be useful to servicers during the current crisis.

If a servicer receives an incomplete loss mitigation application, the servicer generally still has to comply with the requirement to provide an acknowledgement notice within 5 days of receipt of the application, even if the borrower has been offered or is in a short-term payment forbearance program or short-term repayment plan. See comment 41(c)(2)(iii)-2. However, in response to the COVID-19 emergency, as of April 3, 2020 and until further notice, the agencies do not intend to cite in an examination or bring an 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 or repayment period. See April 3, 2020 Joint Statement.

The rule also requires servicers to provide two separate communications in connection with short-term payment forbearance programs and short-term repayment plans offered based on an evaluation of an incomplete application.

A servicer provides the first communication promptly after offering any short-term payment forbearance program or short-term repayment plan. Unless the borrower has rejected the offer, servicers must provide a written notice stating (1) the specific payment terms, (2) the duration of the program or plan, (3) that the servicer offered the program or plan based on an evaluation of an incomplete application, (4) that other loss mitigation options may be available, and (5) that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all available options regardless of whether the borrower accepts the short-term program or plan. Regulation X, 12 CFR 1024.41(c)(2)(iii).

A servicer provides the second communication if the borrower remains delinquent near the end of the forbearance program or repayment plan, the servicer must contact the borrower prior to the end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. Regulation X, Comment 41-(b)(1)-4.iii. Servicers have flexibility about how to make this contact. For example, the servicer could share this information orally to a consumer on a telephone call or include a note on a consumer's regular periodic statement.

The Bureau permits servicers to include additional language in either the first or second communication discussed above to clarify why they are offering the short-term option. Servicers offering the CARES Act forbearance or other short-term options due to concerns about the COVID-19 emergency, for example, could include language explaining as much to avoid borrower confusion.

Additionally, servicers do not have to tailor either the first or second communications described above to individual borrowers' circumstances. In general, servicers may use similar content when corresponding with all affected borrowers if they offer multiple borrowers the same short-term option terms and duration. Being able to use similar content in these circumstances may help servicers conserve resources. For example, servicers could develop a form letter that they send to all borrowers enrolled in the same short-term forbearance programs as a result of hardships related to COVID-19.

For more information about the loss mitigation requirements, see section 13 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](#).

QUESTION 4: Do servicers have to exercise reasonable diligence to complete an application submitted by a borrower to whom the servicer offered a short-term payment forbearance program or short-term repayment plan based on a consumer's incomplete loss mitigation application?

ANSWER (UPDATED 4/3/2020):

Not immediately. In general, if a borrower submits an incomplete loss mitigation application 45 days or more before a foreclosure sale, servicers generally must exercise reasonable diligence

to obtain documents and information to complete the borrower's loss mitigation application. Regulation X, 12 CFR 1024.41. However, servicers may suspend reasonable diligence efforts to complete a borrower's loss mitigation application while the borrower is performing under a short-term payment forbearance program until near the end of the program, unless the borrower requests additional assistance (e.g., longer term relief, such as a loan modification). Regulation X, Comment 41(b)(1)-4.iii. In the case of a 180-day CARES Act forbearance, for example, a servicer could suspend these efforts until near the end of the 180 days. If, for example a servicer extended the CARES Act forbearance an additional 180 days, the servicer could suspend these efforts until near the end of the second 180 days.

For more information about the loss mitigation requirements, see section 13 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](#).

Early Intervention Requirements

QUESTION 1:

During the COVID-19 emergency, are servicers required to comply with live contact requirements and associated timelines in Regulation X, 12 CFR 1024.39(a) for delinquent borrowers?

ANSWER (UPDATED 4/3/2020):

In general, yes. However, in response to the COVID-19 emergency, as of April 3, 2020 and until further notice, the agencies do not intend to cite in an examination or bring an enforcement action against servicers for 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. See April 3, 2020 Joint Statement.

In addition, the rule itself already includes some flexibility that may be useful to servicers during the current crisis: First, the rule generally requires servicers to “establish **or make good faith efforts** to establish” live contact with delinquent borrowers within certain timeframes. Regulation X, 12 CFR 1024.39(a)(1) (emphasis added). “Good faith efforts” consist of reasonable steps, under the circumstances. Those steps may include calling the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer. In determining what constitute good faith efforts, the servicer should consider the length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication. For example, while “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 in the periodic statement or the electronic communication a sentence requesting that the borrower contact the servicer with regard to the delinquencies. Regulation X, Comment 39(a)-3. These provisions are intended to permit servicers to engage in a wide variety of methods of contacting borrowers who may be difficult to reach by telephone.

Second, servicers are considered in compliance with the early intervention live contact requirements and need not otherwise establish or make good faith efforts to establish live contact if the servicer has established and is maintaining ongoing contact with a borrower under the loss mitigation procedures in Regulation X, 12 CFR 1024.41. Ongoing contact includes contact during the borrower's completion of a loss mitigation application, the servicer's evaluation of a complete loss mitigation application, or after the servicer has provided the borrower a notice stating that the borrower is not eligible for any loss mitigation options pursuant to the rule.

However, the servicer must resume compliance with the live contact requirements for a borrower who becomes delinquent again after curing a prior delinquency. Regulation X, Comment 39(a)-6.

To assist borrowers during the COVID-19 emergency, servicers may decide to offer borrowers a short-term payment forbearance program or short-term repayment plan based on the evaluation of an incomplete application. In that case, if a servicer has established and is maintaining ongoing contact with a borrower under the loss mitigation procedures in Regulation X, 12 CFR 1024.41(c)(2)(iii) related to offering a borrower a short-term payment forbearance program or short-term repayment plan based on the evaluation of an incomplete application, the servicer does not need to comply with the live contact requirements. For a description of the communication requirements in that circumstance, see FAQ # 3 under "Short-term Loss Mitigation Options" above.

Third, the live contact requirements do not apply when a borrower is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment. In this circumstance, the borrower is not considered delinquent for purposes of the live contact requirements, and the live contact requirements apply only to delinquent borrowers. Regulation X, Comment 39(a)-1.ii.

For more information about the early intervention requirements, see section 11 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](#).

QUESTION 2:

During the COVID-19 emergency, are servicers required to comply with the early intervention written notice requirements and associated timelines in Regulation X, 12 CFR 1024.39(b) for delinquent borrowers?

ANSWER (UPDATED 4/3/2020):

In general, yes. However, in response, to the COVID-19 emergency, as of April 3, 2020 and until further notice, the agencies do not intend to cite in an examination or bring an enforcement action against servicers for against servicers for 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. See April 3, 2020 Joint Statement.

In addition, the rule itself already includes some flexibility: First, the rule generally requires servicers to provide a written notice to delinquent borrowers within certain timeframes. But a

servicer is not required to provide the written notice more than once during any 180-day period. Regulation X, 12 CFR 1024.39(b)(1).

Second, the early intervention written notice requirements do not apply when a borrower is performing as agreed under a loss mitigation option that is designed to bring the borrower current on a previously missed payment. In this circumstance, the borrower is not considered delinquent for purposes of the early intervention written notice requirements, and those requirements apply only to delinquent borrowers. Regulation X, Comment 39(a)-1.ii.

Finally, servicers may provide additional information in the required written notice that the servicer determines would be helpful. Regulation X, Comment 39(b)(2)-1. Servicers offering short-term options due to concerns about the COVID-19 emergency, for example, could include language explaining as much to avoid borrower confusion.

For more information about the early intervention requirements, see section 11 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](#).

QUESTION 3: Congress enacted the Coronavirus Aid Relief and Economic Security Act (CARES Act), Pub. L. 116-136, which ensures borrowers who have federally-backed mortgages,³ as that term is defined in the statute, have access to forbearance programs with certain terms (CARES Act forbearance). Does a servicer have to comply with the early intervention requirements if the borrower is in a CARES Act forbearance?

ANSWER (UPDATED 4/3/2020):

It depends. Borrowers can request a CARES Act forbearance regardless of their delinquency status. If the borrower is not delinquent, the early intervention requirements do not apply. If the borrower is delinquent, the servicer must comply with the early intervention requirements as discussed more below.

The CARES Act forbearance qualifies as a short-term repayment forbearance program under Regulation X. FAQ # 4 under “Early Intervention Requirements” below describes the early intervention requirements for delinquent borrowers in short-term payment forbearance programs

³ CARES Act, Pub. L. 116-136, section 4022(b). The CARES Act defines federally-backed mortgages 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 1-to-4 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).

and FAQ # 3 under “Short-term Loss Mitigation Programs” above describes the communication requirements for such programs under Regulation X, 12 CFR 1024.41.

QUESTION 4:

Are servicers required to comply with the live contact and written notice early intervention requirements in Regulation X, 12 CFR 1024.39, for delinquent borrowers in short-term payment forbearance programs?

ANSWER (UPDATED 4/3/2020):

It depends. The rule generally requires servicers to establish or make good faith efforts to establish live contact with delinquent borrowers within certain timeframes and to send a written early intervention notice. Regulation X, 12 CFR 1024.39(a) and (b). However, in response to the COVID-19 emergency, as of April 3, 2020 and until further notice, the agencies do not intend to cite in an examination or bring an enforcement action against servicers for delays in 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. Likewise, the agencies do not intend to cite in an examination or bring an enforcement action against servicers for 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. See April 3, 2020 Joint Statement.

In addition, the rule itself already includes some flexibility that may be useful to servicers during the current crisis. First, the early intervention requirements do not apply when a borrower is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment. The early intervention requirements apply only to delinquent borrowers, and, in this circumstance, the borrower is not considered delinquent for purposes of the rule. Regulation X, Comment 39(a)-1.ii.

Second, servicers are considered in compliance with the early intervention live contact requirements and need not otherwise establish or make good faith efforts to establish live contact if the servicer has established and is maintaining ongoing contact with a borrower under the loss mitigation procedures in Regulation X, 12 CFR 1024.41.

To assist borrowers during the COVID-19 emergency, servicers may decide to offer borrowers a short-term payment forbearance program, such a CARES Act forbearance, or short-term repayment plan (short-term options) based on the evaluation of an incomplete application. In that case, if a servicer has established and is maintaining ongoing contact with a borrower under the loss mitigation procedures in Regulation X, 12 CFR 1024.41(c)(2)(iii) related to offering a borrower a short-term option based on the evaluation of an incomplete application, the servicer does not need to comply with the live contact requirements. For a description of the communication requirements in that circumstance, see FAQ # 3 under “Short-term Loss Mitigation Programs” above. The servicer must resume compliance with the live contact requirements for a borrower who becomes delinquent again after curing a prior delinquency. Regulation X, Comment 39(a)-6. In addition, the servicer may be required to provide the early intervention written notice described in Regulation X, 1024.39(b).

Finally, servicers may provide additional information in the required written notice that the servicer determines would be helpful. Regulation X, Comment 39(b)(2)-1. Servicers may use this flexibility to add information relevant to the COVID-19 emergency if they think it would be helpful to avoid confusing consumers.

For more information about the early intervention requirements, see section 11 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](#).

Continuity of Contact Requirements

QUESTION 1:

Servicers may have difficulties staffing customer service call centers due to the COVID-19 emergency. Do servicers have to assign a “single point of contact” to each delinquent borrower?

ANSWER (UPDATED 4/3/2020):

No. In general, servicers must maintain policies and procedures reasonably designed to assign personnel to a delinquent borrower that can assist the borrower with loss mitigation options. Regulation X, 12 CFR 1024.40. A servicer has discretion to determine whether to assign a single person or a team of personnel. The personnel may be single-purpose or multi-purpose. Single-purpose personnel's primary responsibility is to respond to a delinquent borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options. Multi-purpose personnel do not have primary responsibility for responding to a delinquent borrower's inquiries, and as applicable, assisting the borrower with available loss mitigation options. Regulation X, Comment 40(a)-2.

For more information about the continuity of contact requirements, see section 12 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](#).

Annual Escrow Statement

QUESTION 1:

Servicers may have difficulties staffing customer service call centers due to the COVID-19 emergency. Annual escrow statements may generate high call volumes. In addition, these statements may be troubling to borrowers facing financial difficulties at this time, especially if they have escrow shortages. During the COVID-19 emergency, must a servicer conduct the annual escrow analysis and send annual escrow statements required by the Bureau's Regulation X?

ANSWER (UPDATED 4/3/2020):

Yes, servicers must still conduct the analysis and send the statement within 30 days of the completion of the escrow account computation year. Regulation X, 12 CFR 1024.17(i). However, in response, to the COVID-19 emergency, as of April 3, 2020 and until further notice, the agencies do not intend to cite in an examination or bring an enforcement action against mortgage 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. See April 3, 2020 Joint Statement.

However, while Regulation X, 12 CFR 1024.17(i)(1)(vii) requires servicers to include an explanation of how the consumer will pay any shortage or deficiency, it does not require servicers to collect it. Servicers could, for example, inform borrowers that they are forgoing collection for several months. They could also send an explanatory letter. Regulation X, 12 CFR 1024.17(i)(3). In addition, there is an exemption from providing an annual escrow account statement under Regulation X, 12 CFR 1024.17(i)(2) when the borrower is more than 30 days overdue. If the servicer does not issue the annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer must provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current. Regulation X, 12 CFR 1024.17(i)(2).

Electronic Communications with Borrowers

QUESTION 1:

May a servicer send electronically the servicing notices required by the Bureau's Regulation X?

ANSWER (UPDATED 4/3/2020):

Yes. Disclosures may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Regulation X, 12 CFR 1024.3.

Payoff Statements

QUESTION 1:

Does a servicer have flexibility to take more than 7 business days to provide a payoff statement if the servicer has operational challenges due to the COVID-19 emergency?

ANSWER (UPDATED 4/3/2020):

Yes. Generally, when a servicer receives a written request for a payoff statement from a consumer or person acting on behalf of the consumer, the servicer must send the statement within a reasonable time, but in no case more than 7 business days. However, when a servicer is not able to provide the statement within 7 business days of the request because of natural

disasters or other similar circumstances, the servicer does not need to provide the statement within 7 business days but must provide it within a reasonable time. Regulation Z, 12 CFR 1026.36(c)(3). Servicers can provide payoff notices in a reasonable time rather than within 7 business days if they cannot provide it within 7 business days due to the COVID-19 emergency.

For more information about payoff statements, review section 7 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](#).

Exemptions for Small Servicers

QUESTION 1:

Small servicers may have staffing challenges due to the COVID-19 emergency. Are small servicers subject to the requirements discussed above?

ANSWER (UPDATED 4/3/2020):

It depends. Small servicers do not have to comply with the early intervention and continuity of contact requirements described above because the rule exempts small servicers from those requirements. See Regulation X, 12 CFR 1024.30(b)(1).

In addition, small servicers do not have to comply with the majority of the loss mitigation requirements in the Bureau's mortgage servicing rules, including those described above. Regulation X, 12 CFR 1024.30(b)(1). However, three prohibitions apply to small servicers. See Regulation X, 12 CFR 1024.41(j). Small servicers shall not:

- Make the first notice or filing required to foreclose unless a borrower's mortgage loan obligation is more than 120 days delinquent, the foreclosure is based on a borrower's violation of a due-on-sale clause, or the servicer is joining the foreclosure action of a superior or subordinate lienholder,
- Make the first notice or filing required to foreclose if a borrower is performing pursuant to the terms of a loss mitigation agreement, and
- Move for foreclosure judgment or order of sale, or conduct a foreclosure sale if a borrower is performing pursuant to the terms of a loss mitigation agreement.

Small servicers also must comply with the payoff statement provisions in Regulation Z, 12 CFR 1026.36(c)(3).

A servicer is a small servicer if it:

- Together with any affiliates, services 5,000 or fewer mortgage loans, and the servicer (or an affiliate) is the creditor or assignee for all of them;
- Is a nonprofit entity, meaning it is designated as a nonprofit under section 501(c)(3) of the Internal Revenue Code of 1986, that services 5,000 or fewer mortgage loans (including any mortgage loans serviced on behalf of associated nonprofit entities), for all of which it (or an associated nonprofit entity) is the creditor; or
- Is a Housing Finance Agency, as defined in 24 CFR § 266.5.

Regulation Z, 12 CFR 1026.41(e)(4); Regulation X, 12 CFR 1024.30(b)(1).

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](#).