

RULES AND REGULATIONS

Title 10—BANKING AND SECURITIES

DEPARTMENT OF BANKING AND SECURITIES

[10 PA. CODE CH. 59]

Amendment of Mortgage Servicer Regulations

The Department of Banking and Securities (Department) amends the mortgage servicer regulations in Chapter 59 (relating to mortgage servicing) to read as set forth in Annex A. The regulations are published under 7 Pa.C.S. Chapter 61 (relating to mortgage loan industry licensing and consumer protection). Section 6141 of 7 Pa.C.S. (relating to mortgage servicers) specifically provides that, to effectively incorporate the Consumer Financial Protection Bureau's (Bureau) mortgage servicer regulations at 12 CFR Part 1024, Subpart C (relating to mortgage servicing), the Department shall promulgate regulations that are not subject to sections 201—205 of the act of July 31 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law (CDL), sections 204(b) and 301(10) of the Commonwealth Attorneys Act (CAA) (71 P.S. §§ 732-204(b) and 732-301(10)) and the Regulatory Review Act (RRA) (71 P.S. §§ 745.1—745.14).

To comply with 7 Pa.C.S. § 6141, the Department is publishing these amendments which incorporate the Federal requirements and standards in 12 CFR Part 1024, Subpart C in effect as of August 31, 2021, as most recently issued by the Bureau.

Statutory Authority

The Department is publishing these amendments under the authority provided in 7 Pa.C.S. § 6141(a)(2), to incorporate alterations to the Federal regulations at 12 CFR Part 1024, Subpart C.

Omission of Proposed Rulemaking

Public notice of intention to amend the mortgage servicer regulations at Chapter 59 under the procedures set forth in sections 201 and 202 of the CDL has been omitted because the regulations are not subject to those sections of the CDL under 7 Pa.C.S. § 6141(a)(3).

Purpose

These amendments are required by 7 Pa.C.S. § 6141(a)(2), to incorporate the appropriate alterations made to the Federal mortgage servicer regulations at 12 CFR Part 1024, Subpart C.

Summary of the Amendments

To comply with 7 Pa.C.S. § 6141, the Department is publishing these regulations which incorporate the Federal requirements and standards in effect as of August 31, 2021, as most recently issued by the Bureau. These are the current standards that the Department is obligated to incorporate under 7 Pa.C.S. § 6141. The amendments reflect and incorporate changes to the Bureau's regulations related to the outbreak of the novel coronavirus (COVID-19) pandemic.

Persons Likely to be Affected

The amendments to the regulations will affect mortgage servicers that are licensed under 7 Pa.C.S. Chapter 61.

Fiscal Impact

There will be no fiscal impact because the amendments incorporate alterations made to the Federal regulations at 12 CFR Part 1024, Subpart C.

Effective Date

The amendments to the regulations will be effective upon publication in the *Pennsylvania Bulletin*.

Public Comment Period

Public notice of intention to repeal or amend the regulations under the procedures set forth in sections 201 and 202 of the CDL is omitted because the regulations are not subject to those sections of the CDL, under 7 Pa.C.S. § 6141(a)(3).

Contact Person

Individuals interested in further information may contact Stefanie Hamilton, Chief Counsel, Department of Banking and Securities, 17 North Second Street, Suite 1300, Harrisburg, PA 17101, (717) 787-1471, e-mail at shamilton@pa.gov.

Findings

The Department finds that:

(1) Public notice of the Department's promulgation or amendment of regulations is not subject to sections 201—205 of the CDL, sections 204(b) and 301(10) of the CAA and the RRA because the Department finds that these procedures are, under the circumstances, unnecessary.

(2) The promulgation or amendment of the Department's regulations in the manner provided in this order is necessary and appropriate.

Order

The Department, acting under its authorizing statutes, orders that:

(a) The regulations of the Department, 10 Pa. Code Chapter 59, are amended by amending §§ 59.3, 59.4, 59.11 and 59.13 to read as set forth in Annex A...referring to the existing text of the regulations.

(b) The amendments to the regulations in 10 Pa. Code Chapter 59 shall take effect upon publication in the *Pennsylvania Bulletin*.

RICHARD VAGUE,
Secretary

Fiscal Note: 3-58. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 10. BANKING AND SECURITIES PART IV. BUREAU OF CONSUMER CREDIT AGENCIES CHAPTER 59. MORTGAGE SERVICING

§ 59.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Confirmed successor in interest—A successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to this chapter.

Consumer reporting agency—has the meaning set forth in section 603 of the Fair Credit Reporting Act [(15 U.S.C.A. § 1681a)] (15 U.S.C. § 1681a).

COVID-19-related hardship—A financial hardship due, directly or indirectly, to the National emergency for the COVID-19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. § 1622(d)).

Day—Calendar day.

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§ 59.4. General disclosure requirements.

(a) *Disclosure requirements.*

(1) *Form of disclosures.* Except as otherwise provided in this chapter, disclosures required under this chapter must be clear and conspicuous, in writing and in a form that a recipient may keep. The disclosures required by this chapter may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the [**E-Sign Act**] **Electronic Signatures in Global and National Commerce Act** (15 U.S.C. §§ 7001—7031), as set forth in 12 CFR 1024.3 (relating to E-Sign applicability). A servicer may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this chapter.

(2) *Foreign language disclosures.* Disclosures required under this chapter may be made in a language other than English, provided that the disclosures are made available in English upon a recipient's request.

(b) *Additional information; disclosures required by other laws.* Unless expressly prohibited in this chapter, by other applicable law, such as the Truth in Lending Act [(15 U.S.C.A. §§ 1601—1667f)] (15 U.S.C. §§ 1601—1667f) or the Truth in Savings Act [(12 U.S.C.A. §§ 4301—4313)] (12 U.S.C. §§ 4301—4313), or by the terms of an agreement with a Federal regulatory agency or the Department, a servicer may include additional information in a disclosure required under this chapter or combine any disclosure required under this chapter with any disclosure required by such other law.

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§ 59.11. Early intervention requirements for certain borrowers.

(a) *Live contact.* Except as otherwise provided in this section, a servicer shall establish or make good faith efforts to establish a live single point of contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate, **and take the actions described in subsection (e), if applicable.**

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(d) *Fair Debt Collection Practices Act—partial exemption.* With regard to a mortgage loan for which any borrower has provided a notification pursuant to section 805(c) of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C.A. § 1692c(c)), a servicer subject to the FDCPA with respect to that borrower's loan:

(1) Is exempt from the requirements of paragraph (a) of this section;

(2) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or while any borrower on that mortgage loan is a debtor in bankruptcy under title 11 of the *United States Code* as referenced in paragraph (c) of this section; and

(3) If the conditions of paragraph (d)(2) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (d)(3):

(i) In addition to the information required pursuant to paragraph (b)(2) of this section, the written notice must include a statement that the servicer may or intends to invoke its specified remedy of foreclosure. Model clause MS-4(D) in appendix MS-4 12 CFR Part 1024, Subpart C may be used to comply with this requirement.

(ii) The written notice may not contain a request for payment.

(iii) A servicer is prohibited from providing the written notice more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later.

(e) **Temporary COVID-19-related live contact.** Until October 1, 2022, in complying with the requirements described in subsection (a), promptly after establishing live contact with a borrower the servicer shall take the following actions:

(1) **Borrowers not in forbearance programs at the time of live contact.** At the time the servicer establishes live contact under subsection (a), if the borrower is not in a forbearance program and the owner or assignee of the borrower's mortgage loan makes a forbearance program available to borrowers experiencing a COVID-19-related hardship, the servicer shall inform the borrower of all of the following information:

(i) That forbearance programs are available for borrowers experiencing a COVID-19-related hardship and, unless the borrower states that they are not interested in receiving information about these programs, the servicer shall list and briefly describe to the borrower any of these forbearance programs made available at that time and the actions the borrower must take to be evaluated for these forbearance programs.

(ii) At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

(2) **Borrowers in forbearance programs at the time of live contact.** If the borrower is in a forbearance program made available to borrowers experiencing a COVID-19-related hardship, during the live contact established under subsection (a) that occurs at least 10 days and no more than 45 days before the scheduled end of the forbearance program or, if the

scheduled end date of the forbearance program occurs between August 31, 2021, and September 10, 2021, during the first live contact made under subsection (a) after August 31, 2021, the servicer shall inform the borrower of all of the following information:

(i) The date the borrower's current forbearance program is scheduled to end.

(ii) A list and brief description of each of the types of forbearance extension, repayment options and other loss mitigation options made available to the borrower by the owner or assignee of the borrower's mortgage loan at the time of the live contact, and the actions the borrower must take to be evaluated for those loss mitigation options.

(iii) At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

§ 59.13. Loss mitigation procedures.

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(c) Evaluation of loss mitigation applications.

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(2) Incomplete loss mitigation application evaluation.

(i) In general. Except as set forth in paragraphs (c)(2)(ii) [and], (iii), (v) and (vi) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

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(iv) Facially complete application. A loss mitigation application shall be considered facially complete when a borrower submits all the missing documents and information as stated in the notice required under paragraph (b)(2)(i)(B) of this section, when no additional information is requested in such notice, or once the servicer is required to provide the borrower a written notice pursuant to paragraph (c)(3)(i) of this section. If the servicer later discovers that additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it first became facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of this paragraph (c). A servicer that complies with this paragraph (c)(2)(iv) will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B) of this section.

(v) Certain COVID-19-related loss mitigation options.

(A) Notwithstanding subparagraph (i), a servicer may offer a borrower a loss mitigation option based upon evaluation of an incomplete application, provided that all of the following criteria are met:

(I) The loss mitigation option permits the borrower to delay paying covered amounts until the

mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends or for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates. For purposes of this subclause, "covered amounts" includes, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a COVID-19-related hardship, including a payment forbearance program made under section 4022 of the Coronavirus Economic Stabilization Act (15 U.S.C. § 9056); the term also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing a COVID-19-related hardship. For purposes of this subclause, "the term of the mortgage loan" means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option.

(II) Any amounts that the borrower may delay paying as described in subclause (I) do not accrue interest; the servicer does not charge any fee in connection with the loss mitigation option; and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option.

(III) The borrower's acceptance of an offer made under this clause ends any pre-existing delinquency on the mortgage loan.

(B) Once the borrower accepts an offer made under clause (A), the servicer is not required to comply with subsection (b)(1) or (2) with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option described in clause (A).

(vi) Certain COVID-19-related loan modification options.

(A) Notwithstanding subparagraph (i), a servicer may offer a borrower a loan modification based upon evaluation of an incomplete application, provided that all of the following criteria are met:

(I) The loan modification extends the term of the loan by no more than 480 months from the date the loan modification is effective and, for the entire modified term, does not cause the borrower's monthly required principal and interest payment to increase beyond the monthly principal and interest payment required prior to the loan modification.

(II) If the loan modification permits the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the loan modification matures or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates, those amounts do not accrue interest.

(III) The loan modification is made available to borrowers experiencing a COVID-19-related hardship.

(IV) Either the borrower's acceptance of an offer under this clause ends any preexisting delinquency on the mortgage loan or the loan modification offered under this clause is designed to end any preexisting delinquency on the mortgage loan upon the borrower satisfying the servicer's requirements

for completing a trial loan modification plan and accepting a permanent loan modification.

(V) The servicer does not charge any fee in connection with the loan modification, and the servicer waives all existing late charges, penalties, stop payment fees or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower's acceptance of the loan modification.

(B) Once the borrower accepts an offer made under clause (A), the servicer is not required to comply with subsection (b)(1) or (2) with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loan modification described in clause (A). However, if the borrower fails to perform under a trial loan modification plan offered under clause (A) or requests further assistance, the servicer must immediately resume reasonable diligence efforts as required under subsection (b)(1) with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the trial loan modification plan and must provide the borrower with the notice required under this clause with regard to the most recent loss mitigation application the borrower submitted prior to the servicer's offer of the loan modification described in clause (A), unless the servicer has already provided such notice to the borrower.

(3) Notice of complete application.

(i) Except as provided in paragraph (c)(3)(ii) of this section, within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving a borrower's complete loss mitigation application, a servicer shall provide the borrower a written notice that sets forth the following information:

(A) That the loss mitigation application is complete;

(B) The date the servicer received the complete application;

(C) That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;

(D) That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:

(1) If the servicer has not made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer cannot make the first notice or filing required to commence or initiate the foreclosure process under applicable law before evaluating the borrower's complete application; or

(2) If the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer has begun the foreclosure process, and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application;

(E) That the servicer may need additional information at a later date to evaluate the application, in which case the servicer will request that information from the borrower and give the borrower a reasonable opportunity to submit it, the evaluation process may take longer, and the foreclosure protections could end if the servicer does not receive the information as requested; and

(F) That the borrower may be entitled to additional protections under State or Federal law.

(ii) A servicer is not required to provide a notice pursuant to paragraph (c)(3)(i) of this section if:

(A) The servicer has already provided the borrower a notice under paragraph (b)(2)(i)(B) of this section informing the borrower that the application is complete and the servicer has not subsequently requested additional information or a corrected version of a previously submitted document from the borrower pursuant to paragraph (c)(2)(iv) of this section;

(B) The application was not complete or facially complete more than 37 days before a foreclosure sale; or

(C) The servicer has already provided the borrower a notice regarding the application under paragraph (c)(1)(ii) of this section.

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(f) Prohibition on foreclosure referral.

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(2) Application received before foreclosure referral. If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

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(iii) The borrower fails to perform under an agreement on a loss mitigation option.

(3) Temporary Special COVID-19 Loss Mitigation Procedural Safeguards.

(i) In general. To give a borrower a meaningful opportunity to pursue loss mitigation options, a servicer must ensure that one of the procedural safeguards described in subparagraph (ii) has been met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process because of a delinquency under paragraph (1)(i) if:

(A) the borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020; and

(B) the statute of limitations applicable to the foreclosure action being taken in the laws of the state where the property securing the mortgage loan is located expires on or after January 1, 2022.

(ii) Procedural safeguards. A procedural safeguard is met if any of the following apply:

(A) Complete loss mitigation application evaluated. The borrower submitted a complete loss mitigation application, remained delinquent at all times since submitting the application and paragraph (2) permitted the servicer to make the first notice or filing required for foreclosure.

(B) Abandoned property. The property securing the mortgage loan is abandoned according to the laws of the state or municipality where the property is located when the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

(C) Unresponsive borrower. The servicer did not receive any communications from the borrower for at least 90 days before the servicer makes the first notice or filing required by applicable law for any

judicial or non-judicial foreclosure process and all of the following conditions are met:

(I) The servicer made good faith efforts to establish live contact with the borrower after each payment due date, as required by 12 CFR 1024.39(a) (relating to Real Estate Settlement Procedures Act (Regulation X)), during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

(II) The servicer sent the written notice required by 12 CFR 1024.39(b) at least 10 days and no more than 45 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

(III) The servicer sent all notices required by this section, as applicable, during the 90-day period before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

(IV) The borrower's forbearance program, if applicable, ended at least 30 days before the servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

(iii) *Sunset date.* This subparagraph does not apply if a servicer makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process on or after January 1, 2022.

(g) Prohibition on foreclosure sale. If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer; or

(3) The borrower fails to perform under an agreement on a loss mitigation option.

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