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CFPB Issues Rule on Required COVID Relief Steps and Availability of Foreclosure for Residential Mortgage Loans

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On June 28, the Consumer Financial Protection Bureau (CFPB) issued a new rule (Rule) setting forth loss mitigation/loan modification steps residential mortgage loan servicers must take in regard to mortgage loan borrowers due to possible COVID-19 related hardship, and when servicers may or may not commence foreclosure proceedings. The Rule will take effect on August 31, 2021 and remain in place until December 31, 2021. The Rule does not replace or remove any state's or local jurisdiction's COVID related restrictions on foreclosures.

Generally, the Rule provides that:

- Servicers must work with borrowers emerging from COVID related forbearance plans to attempt to restructure their loan before starting a foreclosure process.
 - o Such a loan modification may not increase monthly payments and may not extend the loan beyond 40 years after the date of the modification.
- Servicers must accept incomplete loan modification applications.
- Servicers have specific new communications requirements with borrowers.
- Servicers may commence foreclosure without going through the attempted restructuring process only if:
 - o The property is abandoned;
 - o The borrower was delinquent on mortgage loan payments for at least 120 days prior to March 1, 2020; or
 - o The borrower fails to respond to communications from the servicer.

The Rule may be found [here](#):

The specifics of the Rule are as follows:

Commencing Foreclosure Process

Servicers may not make the first notice or filing required by applicable law for a foreclosure proceeding based on delinquent payments if:

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

(2) The statute of limitations applicable to the foreclosure action being taken expires on or after January 1, 2022; and

(3) Either:

- (a) The borrower submitted a completed loss mitigation application and 12 CFR § 1024.41(f)(2) permits the servicer to make the first notice or filing;
- (b) The property is abandoned under State or municipal law; or
- (c) The servicer has conducted specified outreach and the borrower is unresponsive.

Streamlined Loan Modification Options and Incomplete Applications

Servicers may offer certain streamlined loan modification options made available to borrowers with COVID-19 related hardships based on the evaluation of an incomplete loss mitigation application.

Streamlined Loan Modification

The requirements are:

- (1) The loan modification must be made available to borrowers experiencing a COVID-19-related hardship.
- (2) The loan modification may not cause the borrower's monthly required principal and interest payment to increase and may not extend the term of the loan by more than 480 months from the date the loan modification is effective.
- (3) 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 (FHA), the mortgage insurance terminates, those amounts must not accrue interest.
- (4) The borrower's acceptance of an offer of the loan modification must end any preexisting delinquency on the mortgage loan or the loan modification must be 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.
- (5) The servicer may not charge any fee in connection with the loan modification and must waive 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.

Avoiding Requirements of Prior Loss Mitigation Applications

- (1) Borrower Accepts Offer - If the borrower accepts an offer made pursuant to this new exception, servicers are excluded from certain requirements with regard to any loss mitigation application submitted prior to the loan modification offer, including exercising reasonable diligence to complete the loss mitigation application and sending the required acknowledgement notice.

- (2) Borrower Fails to Perform - If the borrower fails to perform under a trial loan modification plan offered pursuant to the proposed new exception or requests further assistance, servicers must immediately resume reasonable diligence with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the trial loan modification plan and to provide the borrower with the required acknowledgement notice with regard to the most recent loss mitigation application the borrower submitted prior to the offer that the servicer made under the new exception, unless the servicer has already provided that notice to the borrower.

Amended Early Intervention Obligations

Servicers must discuss specific additional COVID-19-related information during live contact with borrowers established under existing 12 CFR § 1024.39(a) in two circumstances:

- (1) If the borrower is not in a forbearance program, and
- (2) If the borrower is near the end of a forbearance program made available to borrowers experiencing a COVID-19 related hardship.

Borrower Not in a Forbearance Plan - Information Servicer Must Provide

If the borrower is not in a forbearance program at the time the servicer establishes live contact with the borrower pursuant to § 1024.39(a) and a forbearance program is available to borrowers experiencing a COVID-19-related hardship, the servicer must inform the borrower that forbearance programs are available for borrowers experiencing such a hardship.

Unless the borrower states they are not interested, the servicer must also:

- (1) List and briefly describe those forbearance programs made available at that time and the actions the borrower must take to be evaluated; and
- (2) Identify at least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

Borrower in a Forbearance Plan - Information Servicer Must Provide

If the borrower is in a forbearance program made available to borrowers experiencing a COVID-19-related hardship, then during the live contact made pursuant to § 1024.39(a) that occurs at least 10 days and no more than 45 days before the scheduled end of the forbearance program, the servicer must:

- (1) Inform the borrower of the date the borrower's current forbearance program is scheduled to end;
 - (2) Provide a list and brief description of each of the types of forbearance extension, repayment options, and other loss mitigation options available at that time, and the actions the borrower must take to be evaluated for such loss mitigation options; and
 - (3) Identify at least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.
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Servicers' Reasonable Diligence Obligations When Borrower Is in a Short-Term COVID-19 Forbearance Plan

Servicers have several specific obligations when the borrower is in a short-term payment forbearance program made available to a borrower experiencing a COVID-19-related hardship based on the evaluation of an incomplete application.

Specifically, a servicer must:

- (1) Contact the borrower no later than 30 days before the end of the forbearance period if the borrower remains delinquent to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation; and
- (2) If the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance program period.

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