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Practice Update

CFPB Issues Interim Final Rule on Loss Mitigation Options for Homeowners Impacted by the Pandemic

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By Eric I. Goldberg, William P. Heller, Thomas J. Kearney, and Mario O. Marin

On June 23, 2020, the Consumer Financial Protection Bureau (CFPB) issued an interim final rule permitting mortgage servicers to offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application. The rule amends existing loss mitigation requirements under Regulation X. (12 CFR § 1024.41(c)(2)(v)(A)). The interim final rule is effective July 1st. Comments on it are due 45 days after publication in the Federal Register.

Regulation X Loss Mitigation Requirements and Prior Guidance

Regulation X, which implements the Real Estate Settlement Procedures Act, typically requires servicers to obtain a complete loss mitigation application before evaluating a mortgage borrower for loss mitigation options. 12 C.F.R. § 1024.41(b)(1). Regulation X contains an exception to the complete application requirement for certain short-term loss mitigation options. 12 C.F.R. § 1024.41(c)(2)(iii).

Previously, on April 3, 2020, the CFPB, Federal Reserve, FDIC, NCUA, OCC, and the Conference of State Bank Supervisors issued a joint statement recognizing the serious impact of the COVID-19 pandemic on consumers and mortgage servicers.

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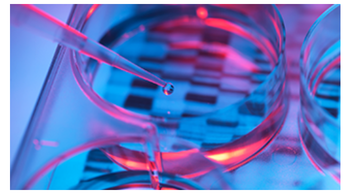
The joint statement explained that a request for forbearance and affirmation of COVID-19-related hardship constitutes an incomplete loss mitigation application. When a servicer receives an incomplete application, Regulation X generally requires an acknowledgement notice within five days, even if the borrower has been offered a short-term option. The joint statement informed servicers of the agencies' flexible supervisory and enforcement approach during the COVID-19 pandemic regarding loss mitigation-related notices and taking the actions described in Regulation X. Our alert on the joint statement is available here.



Interim Final Rule Amending Regulation X

In response to the COVID-19 pandemic, the CFPB is amending Regulation X to include an exception temporarily permitting mortgage servicers to offer certain loss mitigation options without obtaining a complete loss mitigation application from the borrower. Servicers may offer eligible loss mitigation options to borrowers participating in a payment forbearance program for COVID-19 hardships, including forbearance programs offered pursuant to the CARES Act; or have had other unpaid principal and interest payments after experiencing financial hardship due to the COVID-19 pandemic.

The amendment (12 C.F.R. § 1024.41(c)(2)(v)(A)) conditions eligibility for the new exception on the satisfaction of three criteria:

- The loss mitigation option must permit the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by FHA, the mortgage insurance terminates. These amounts include but are not limited to all principal and interest payments forborne under a payment forbearance program designed for COVID-19 hardships. 12 C.F.R. § 1024.41(c)(2)(v)(A)(1).

- Any delayed amounts 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. 12 C.F.R. § 1024.41(c)(2)(v)(A)(2).
- The borrower's acceptance of the loss mitigation offer must resolve any prior delinquency. 12 C.F.R. § 1024.41(c)(2)(v)(A)(3).

The interim final rule also excludes servicers from certain regulatory requirements if a borrower accepts an option offered pursuant to this new exception. For instance, servicers are not required to comply with sections 1024.41(b)(1) or (2) regarding loss mitigation applications borrowers submit prior to the servicer's offer of the loss mitigation option described above. However, servicers must comply with these provisions if the borrower submits a new application after accepting a loss mitigation option under the new exception. Servicers must also comply with early intervention obligations if a borrower's mortgage loan account becomes delinquent after a loss mitigation option takes effect. Early intervention obligations include live contact and written notification obligations informing borrowers of the availability of additional loss mitigation options and how they can apply.

Request for Comment

The CFPB is seeking public comment on the interim final rule. The CFPB is particularly interested in comment on: (1) whether the amendment appropriately balances flexibility to servicers offering relief quickly during the COVID-19 pandemic while providing important protections for borrowers submitting loss mitigation applications; (2) whether to require written disclosures for exceptions pursuant to the interim final rule, or any similar exceptions the CFPB may authorize in the future; and (3) whether the CFPB should extend the new exception to other post-forbearance loss mitigation options available to borrowers affected by other types of disasters and emergencies.
