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Practice Update

CFPB Finalizes COVID-19 Amendments Regarding Foreclosure Protections for Borrowers

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On June 28, 2021, the Consumer Financial Protection Bureau (CFPB) issued a final rule to amend the mortgage servicing rules in Regulation X, which implements the Real Estate Settlement Procedures Act, to provide additional assistance for borrowers experiencing a COVID-19-related hardship (2021 Rule, which can be located here). The 2021 Rule provides four key amendments to Regulation X which take effect on August 31, 2021.

1. Further Procedural Safeguards Prior to a Foreclosure Referral

Unless an exception applies, a servicer must make sure one of these temporary procedural safeguards is met prior to making a foreclosure referral: **(i)** the borrower was evaluated based on a complete loss mitigation application and existing pre-2021 Rule foreclosure protection conditions are met, **(ii)** the property is abandoned, or **(iii)** the borrower is unresponsive to servicer outreach. If the foreclosure is not in one of these three categories, or no exception applies, the servicer must refrain from making the foreclosure referral. This temporary safeguard is in place from August 31, 2021 to December 31, 2021.

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2. Permits Additional Exception to Streamlined Loan Modifications

The 2021 Rule permits servicers to offer certain COVID-19-related loan modifications without a complete loss mitigation application if the loan modification program: **(i)** does not extend the loan term more than 40 years from the date the modification is effective, **(ii)** must not increase the borrower's monthly principal and interest payment, **(iii)** prohibit interest accrual on delayed amounts, **(iv)** be available (but not necessarily limited) to all borrowers with COVID-19-related hardships, **(v)** end preexisting delinquency, and **(vi)** not include certain fees.

3. New Guidance on "Reasonable Diligence"

Prior to the 2021 Rule, a servicer is permitted to suspend reasonable diligence in obtaining a complete loss mitigation application from a borrower in forbearance. Under the 2021 Rule, if a borrower is in a short-term payment forbearance program made available because of a COVID-19-related hardship and that program was offered based on an evaluation of an incomplete application, the 2021 Rule delineates precisely when the servicer must resume reasonable diligence efforts. For example, under the 2021 Rule, the servicer is required to contact the borrower no later than 30 days before the forbearance period ends to determine whether the borrower wishes to complete the loss mitigation application.

4. Early Intervention: Additional Temporary COVID-related Disclosures

The current rules provide a servicer must make good faith efforts to establish live contact with delinquent borrowers, and upon live contact, provide the borrowers with loss mitigation options. Now, promptly after establishing contact under the existing rules, the 2021 Rule temporarily require a servicer to provide certain delinquent borrowers with additional, specific information. This requirement expires October 1, 2022.
