

Consumer Finance Litigation



APRIL 08, 2021 • NO. 4

CFPB Proposes COVID-19 Rule to Amend Its Mortgage Servicing Rule and Provide Additional Guidance Related to the Pandemic

On April 5, 2021, the Consumer Financial Protection Bureau (“CFPB”) issued a notice of proposed rulemaking that proposes amendments to its Mortgage Servicing Rule (the “Proposed Rule”) to provide additional assistance for borrowers impacted by the COVID-19 emergency. The pandemic has resulted in nearly three million borrowers with delinquent mortgages, which is more homeowners in default than any time since the peak of the Great Recession in 2010. Nearly 1.7 million borrowers will exit forbearance programs in September and the following months upon expiration of the maximum term of 18 months in forbearance for federally backed mortgage loans. The Proposed Rule is intended to ensure that these homeowners have the opportunity to be evaluated for loss mitigation options prior to their loans being referred to foreclosure.

If finalized, the Proposed Rule would apply to all mortgages on a principal residence and amend Regulation X (12 CFR 1024) as follows:

- Add a new pre-foreclosure review period that would generally bar mortgage servicers from commencing foreclosures until after December 31, 2021. However, the CFPB indicated that it is also seriously considering exemptions to this rule for situations where the servicer has: (1) completed a loss mitigation review and determined that the borrower is not eligible for any

non-foreclosure option; or (2) made efforts to contact the borrower and the borrower has not responded to the servicer’s outreach.

The CFPB has requested comment on whether imposing a date certain for this pre-foreclosure review period would be prohibitively challenging for servicers, and whether December 31, 2021 is the appropriate date.

- Permit servicers to approve borrowers that are experiencing COVID-19-related hardship for a loan modification without reviewing a complete loss mitigation application. The loan modification must satisfy the following requirements: (1) it must not extend the loan term by more than 480 months and would not result in an increase to the borrower’s periodic principal and interest payment; (2) if the modification permits a deferral of amounts until certain triggers, such as when the loan is refinanced or the property is sold, the amounts would not accrue interest; (3) the servicer does not charge a fee associated with the loan modification, and certain existing charges, such as late fees and stop payment fees, would be waived by the servicer upon the borrower’s acceptance of the loan modification; and (4) the preexisting delinquency will be resolved by accepting the loan modification.

- Require that borrowers who were offered a short-term forbearance based on evaluation of an incomplete loss mitigation application be contacted by the servicer no later than 30 days prior to the end of the forbearance plan and, if the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance program.
- Propose temporary changes (until August 31, 2022) to servicers' "live" communications with borrowers. Specifically, for borrowers that are not yet in a forbearance plan at the time of live contact with the servicer, if forbearance options are available to the borrower, the servicer would be required to ask the borrower if they are experiencing a COVID-19-related hardship. If the borrower confirms such hardship, the servicer must list and describe available forbearance programs and the actions the borrower must take to be evaluated for such programs.

For borrowers in a forbearance plan at the time of live contact, the servicer must identify the date the forbearance program ends and list and describe loss mitigation options available to resolve any post-forbearance program delinquency. The servicer must also provide the actions the borrower must take to be evaluated for those loss mitigation options. This requirement pertains only to the last live contact required under the existing rule that occurs prior to the end of the forbearance period.

The CFPB has proposed that any final rule resulting from the Proposed Rule will take effect on August 31, 2021. Comments must be received on or before May 10, 2021.

If you have any questions regarding the Proposed Rule or wish to submit a comment, please do not hesitate to contact Blank Rome's [Consumer Financial Services](#) team.

For additional information, please contact:

Jonathan K. Moore

215.569.5714 | jmoore@blankrome.com

Scott D. Samlin

212.885.5208 | ssamlin@blankrome.com

Chenxi (CC) Jiao

212.885.5266 | cjiao@blankrome.com

Louise Bowes Marencik

215.569.5391 | lmarencik@blankrome.com