Summary re: CFPB Bulletin 2021-02: Supervision and Enforcement Priorities Regarding Housing Insecurity

12 CFR Part 1024

Prepared by the Legislative & Regulatory Affairs Division

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The Consumer Financial Protection Bureau (CFPB) is issuing this Compliance Bulletin on Supervision and Enforcement priorities regarding housing insecurity in light of heightened risks to consumers needing loss mitigation assistance in the coming months as the COVID-19 foreclosure moratoriums and forbearances end. The Bureau will be paying particular attention to how mortgage servicers respond to borrower requests for loss mitigation assistance and process loss mitigation applications. The Bureau issued this policy statement to highlight supervisory and enforcement priorities with respect to mortgage servicing and to confirm that the Bureau will hold servicers accountable if they are unable to manage an expected increase in borrowers needing loss mitigation assistance.

The Bulletin became effective on April 7, 2021. The Bulletin can be found here.

Summary

In 2020, the CARES (Coronavirus Aid, Relief and Economic Security) Act was signed into law. The Act provides borrowers with Federally backed mortgage loans access to forbearance options regardless of whether they are delinquent. Since the CARES Act was enacted, 6.9 million borrowers have entered into a forbearance program. As of January 2021, more than 2.1 million borrowers in forbearance programs were more than 90 days behind on their mortgage payments. These delinquent borrowers are at heightened risk of referral to foreclosure soon after the foreclosure moratoria end. Borrowers facing more permanent hardship will likely need to apply for loss mitigation options as the end of the forbearance periods approach. As such, the Bureau expects an extraordinarily high volume of loans needing loss mitigation assistance at relatively the same time.

As a result, the Bureau plans to monitor servicers' engagement with borrowers at all stages in the process in the coming months and prioritize mortgage servicing oversight work in deploying its enforcement and supervision resources in the coming year. The Bureau expects servicers to plan for the expected increase in loans exiting forbearance programs and related loss mitigation applications, as well as application by borrowers who are delinquent but not in forbearance. The Bureau expects servicers to resource those activities appropriately and urges servicers to dedicate sufficient resources and staff to ensure they can communicate effectively with borrowers.

The Bureau intends to look at a servicer's overall effectiveness at helping consumers manage loss mitigation, along with other relevant factors, when using its discretion to address violations of Federal consumer financial law in supervisory and enforcement matters. The Bureau plans to pay particular attention to the following:

- Whether servicers are providing clear and readily understandable information to borrowers about their options for payment assistance;

- Whether servicers are complying with the outreach requirements in Regulation X to ensure that borrowers are getting needed information about loss mitigation options, including:

  - For borrowers who request further assistance, whether servicers are promptly resuming reasonable diligence in obtaining documents and information to complete loss mitigation applications;
  - For borrowers in forbearance, whether servicers are contacting borrowers before the end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation application;

- Whether servicers are complying with the Equal Credit Opportunity Act's (ECOA) prohibition against discriminating against any applicant, with respect to any aspect of a credit transaction, including:

  - Whether servicers are managing communications with limited English proficiency borrowers while maintaining compliance with applicable laws;
  - For applicants who are recipients of income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance, whether servicers evaluate such income in accordance with the ECOA and Regulation B when determining eligibility for loss mitigation options, to the extent the servicer is otherwise required to use income in determining eligibility for loss mitigation options;

- Whether servicers promptly handle loss mitigation inquiries and avoid unreasonably long hold times on phone lines;

- Whether servicers maintain policies and procedures that are reasonably designed to achieve the continuity of contact objectives to ensure that delinquent borrowers receive accurate information about their loss mitigation options;

- For borrowers who submit complete loss mitigation applications, whether services evaluate the applications consistent with the Regulation X requirements to promote timely and consistent evaluations;

- Whether servicers comply with foreclosure restrictions in Regulation X and other Federal or State foreclosure restrictions; and

- Whether servicers are complying with the Fair Credit Reporting Act's requirements to report the credit obligation or account appropriately.