

CFPB Summary re: Proposed Rule/Request for Information on Protections for Borrowers Affected by the COVID-19 Emergency under RESPA

12 CFR Part 1024

Prepared by the Legislative & Regulatory Affairs Division

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The Consumer Financial Protection Bureau (Bureau) seeks comment on proposed amendments to Regulation X, to assist borrowers affected by the COVID-19 emergency. The Bureau is taking this action to help ensure that borrowers affected by the COVID-19 pandemic have an opportunity to be evaluated for loss mitigation before the initiation of foreclosure. The proposed amendments would establish a temporary COVID-19 emergency pre-foreclosure review period until December 31, 2021, for principal residences. The proposed amendments would temporarily permit mortgage servicers to offer certain loan modifications made available to borrowers experiencing a COVID-19 related hardship based on the evaluation of an incomplete application. The proposal also contains certain amendments to the early intervention and reasonable diligence obligations that Regulation X imposes on mortgage servicers.

Comments are due to the Bureau by May 10, 2021.

Summary

- The Bureau is proposing amendments to Regulation X to assist mortgage borrowers affected by the COVID-19 emergency. The proposal is focused on both the population of borrowers who are currently delinquent and not in either an active forbearance or an alternative loss mitigation option, and on the large population of borrowers, who will be exiting forbearance programs in the next several months.
- The proposed amendments to Regulation X would establish a temporary COVID-19 emergency pre-foreclosure review period that would generally prohibit servicers from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after December 31, 2021. This restriction would be in addition to existing Section 1024.41(f)(1)(i), which prohibits a servicer from making the first notice or filing required by applicable law until a borrower's mortgage loan obligation is more than 120 days delinquent. The Bureau is also considering (and therefore seeking comment on) exemptions from this proposed restriction that would permit servicers to make the first notice or filing before December 31, 2021, if the servicer (i) has completed a loss mitigation review of the borrower and the borrower is not eligible for any non-foreclosure option or (ii) has made certain efforts to contact the borrower and the borrower has not responded to the servicer's outreach.
- Second, the Bureau proposes to permit servicers to offer certain streamlined loan modification options made available to borrowers with COVID-19 related hardships

based on the evaluation of an incomplete application. Eligible loan modifications must satisfy certain criteria:

- First, to be eligible, the loan modification must be made available to a borrower experiencing a COVID-19 related hardship.
 - Second, 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.
 - Third, any amounts that the borrower may delay paying until the mortgage loan is refinanced, the mortgaged property is sold, or the loan modification matures, must not accrue interest.
 - Fourth, 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 promptly upon the borrower's acceptance of the loan modification.
 - Finally, 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. If the borrower accepts an offer made pursuant to this new exception, the proposal would exclude servicers from certain requirements regarding any loss mitigation application submitted prior to the loan modification offer, including exercising reasonable diligence to complete the loss mitigation application and sending acknowledgment notice required by Section 1024.41(b)(2). However, the proposal would require servicers to 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 offered pursuant to the proposed new exception or requests further assistance.
- Third, the Bureau proposes amendments to the early intervention and reasonable diligence obligations to ensure that servicers are communicating timely and accurate information to borrowers about their loss mitigation options during the current crisis.
 - Specifically, the Bureau is proposing to amend the early intervention requirements to require servicers to discuss specific additional COVID-19 related information during live contact with borrowers established under existing Section 1024.39(a) in two specific circumstances.
 - First, if the borrower is not in a forbearance program at the time the servicer establishes live contact with the borrower pursuant to Section 1024.39(a) and the

owner or assignee of the borrower's mortgage loan makes a forbearance program available to borrowers experiencing a COVID-19 related hardship, the servicer must ask the borrower whether the borrower is experiencing a COVID-19 related hardship. If the borrower indicates that the borrower is experiencing a COVID-19 related hardship, the servicer must list and briefly describe to the borrower any such payment forbearance made available and the actions the borrower must take to be evaluated for such forbearance programs.

- Second, if the borrower is in a forbearance program made available to borrowers experiencing a COVID-19 related hardship, during the last live contact made pursuant to Section 1024.39(a) that occurs prior to the end of the forbearance period, the servicer must provide certain information to the borrower. The servicer must inform the borrower of the date the borrower's current forbearance program ends. In addition, the servicer must provide a list and brief description of each of the types of forbearance extension, repayment options, and other loss mitigation options made available by the owner or assignee of the borrower's mortgage loan to resolve the borrower's delinquency at the end of the forbearance program. Finally, the servicer must inform the borrower of the actions the borrower must take to be evaluated for such loss mitigation options. The Bureau proposes to include an August 31, 2022 sunset date for the proposed amendments to the early intervention requirements.
- In addition, the Bureau proposes to clarify servicers' reasonable diligence 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.
- Finally, the Bureau is also proposing to define COVID-19 related emergency to mean a financial hardship due, directly or indirectly, to the COVID-19 emergency as defined in the Coronavirus Economic Stabilization Act.

Request for Comments

- The Bureau solicits comment on all aspects of this proposed rule. The Bureau is particularly interested in:
 - whether the proposed amendments facilitate efficient and timely pre-foreclosure loss mitigation review without interfering with the housing market in a way that is not proportional to the level of potential borrower harm, including by permitting foreclosure for the disposition of abandoned properties and in other instances where loss mitigation is not possible.
 - receiving comments on operational challenges mortgage servicers may experience in implementing the proposal or whether the proposal adequately addresses the risks to borrowers the Bureau has identified.
 - receiving comments generally on whether the proposal would successfully prevent avoidable foreclosures or might lead to other borrower harms. The Bureau has accurately identified the risks of borrower harm.

