

CFPB Provides Clarification and Relief on Offering Certain COVID-19 Related Loss Mitigation Options

June 30, 2020

The Consumer Financial Protection Bureau (the “CFPB”) has amended the loss mitigation provisions of Regulation X, the regulation implementing the Real Estate Settlement Procedures Act, to provide mortgage servicers with greater flexibility in implementing loss mitigation options to borrowers suffering financial hardship due to COVID-19. The amendments temporarily permit mortgage servicers to offer certain eligible loss mitigation options based on the evaluation of an incomplete loss mitigation application. If the borrower accepts an offer for an eligible loss mitigation option, servicers no longer need to meet the following two requirements that would normally apply after a borrower submits an incomplete application: (1) reasonable diligence in obtaining documents to complete an application, and (2) issuance of an acknowledgement notice within prescribed time period after receipt of an application.

These changes to the federal loss mitigation requirements will help mortgage servicers (especially those who do not qualify for the small servicer exemption^[1]) to better assist those consumers who suffered financial hardship caused by the COVID-19 pandemic. However, please note that the relief is only available under federal requirements. Part 419 of the regulations of the New York Superintendent of Financial Services does not provide similar relief for mortgage servicers. For detailed information regarding the New York State mortgage servicing requirements under Part 419, please see our prior advisory [here](#).

The CFPB’s amendments are in an Interim Final Rule effective July 1, 2020. Comments will be accepted for 45 days following Federal Register publication.

Background

Regulation X generally requires servicers to obtain a complete loss-mitigation application before evaluating a mortgage borrower for a loss-mitigation option^[2]. Servicers must exercise reasonable diligence in obtaining documents and information to complete a loss-mitigation application. Evaluating an incomplete application is generally prohibited except for certain short-term loss mitigation options or a borrower’s significant delay in completing the application. Additionally, servicers must provide an acknowledgement notice containing certain required information within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving a loss mitigation application. Small servicers^[3] are exempt from these requirements.

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) requires servicers to grant CARES Act

forbearances to certain borrowers experiencing a financial hardship due to the COVID-19 pandemic who have a federally-backed mortgage. Though the CARES Act does not specify how borrowers receiving CARES Act forbearances must repay the forborne payments, the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Company (Freddie Mac), Federal Housing Administration (“FHA”), and other owners or insurers of mortgage loans have announced programs to assist borrowers in repayment of the forborne amounts. The CFPB has acknowledged that the requirement of mandating a servicer to collect a complete application from a borrower before offering a relief program may not serve the particular needs of borrowers and servicers during the COVID-19 pandemic.

Offer of Certain Loss Mitigation Options Based on Evaluation of an Incomplete Application

The Interim Final Rule adds a new exception to the general requirement of evaluating a complete application. Specifically, mortgage servicers can offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application provided that the loss mitigation option meets all of the following three criteria:

1. 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^[4], or, for a mortgage insured by FHA, the mortgage insurance terminates.
 - These amounts include, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID-19 pandemic, including one made pursuant to section 4022 of the Coronavirus Economic Stabilization Act (found within the CARES Act).
 - These amounts also include, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing financial hardship due, directly or indirectly, to the COVID-19 pandemic.
2. Any amounts that the borrower may delay paying through the loss mitigation option 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.
3. The borrower’s acceptance of the loss mitigation offer ends any preexisting delinquency on the mortgage loan.

Relief for Servicers

If a borrower accepts an option offered pursuant to the new exception, the servicer is not required to continue the reasonable diligence efforts in obtaining a complete application or send the acknowledgement notice.

Possible Further Revision

The Interim Final Rule states that the amendments are appropriate during the COVID-19 pandemic and that the CFPB will evaluate comments received during the comment period to determine whether it is appropriate to revise the amendments.

More Information

The Interim Final Rule is available [here](#). If you have any questions regarding the Interim Final Rule, Regulation X, Part 419 or mortgage servicing questions in general, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Please note that this is a general overview of the issues addressed and does not constitute legal advice.

Footnotes

[1] Subject to limited exceptions, a small servicer is generally exempt from the loss mitigation requirements. A small servicer generally means a servicer that services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee. 12 CFR § 1026.41(e)(4).

[2] Loss mitigation option means an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower. Loss mitigation options include temporary and long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation programs sponsored by a locality, a State, or the Federal government. 12 CFR § 1024.31.

[3] Please refer to footnote 1 for small servicer's definition.

[4] The term of the mortgage loan means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option.

Practices

- Regulatory and Compliance

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