

Chevron Isn't Slowing CFPB Down, As They Issue a New Proposed Rule on Mortgage Servicing

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On July 24th, the Consumer Financial Protection Bureau (CFPB) [issued a new proposed rule “Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties”](#), with a comment period ending on September 9, 2024. Recognizing that many of the prescriptions put into place in 2013 by the CFPB to address loss mitigation controls, the CFPB is issuing this proposed rule to remove some “prescriptive rules” because “more flexibility is needed in order to respond to future changes in the macroeconomic environment.” And, never fear, while one hand giveth, the other hand taketh away, with the CFPB “proposing certain new procedural safeguards designed to protect borrowers from [servicing] harms while creating strong incentives for servicers to review borrowers for loss mitigation assistance quickly and accurately.”

The rule addresses four areas of servicing. The first proposed change should be welcome to the industry, and involves rolling back the need to conduct simultaneous review of all loss mitigation options available to a borrower, which can occur only after a loss mitigation application is deemed to be “complete.” Instead, the loss mitigation application need not be complete before the servicer determines that certain loss mitigation options will not be applicable or available to the borrower. But, this is where the procedural safeguards come into play, which still should be a better process for the industry than presently – chiefly, the loss mitigation review process “continues until either the borrower’s loan is brought current or one of the following foreclosure procedural safeguards is met: 1) the servicer reviews the borrower for all available loss mitigation options and no available options remain, or 2) the borrower remains unresponsive for a specified period of time despite the servicer regularly taking steps to reach the borrower.” While this means that foreclosure proceedings may not begin until the loss mitigation process is completed, at least now servicers will have a time certain by which they will know that foreclosure processes may begin.

The second area imposes new obligations regarding servicing notices aimed at intervening early in the loss mitigation cycle. So, while the industry will no longer be required to send notices regarding whether a loss mitigation application is complete or incomplete, these new “early intervention” notices will be required.

Additionally, the third area of focus imposes new obligations to send notices regarding “loss mitigation determination notices and appeal rights to borrowers regarding all types of loss mitigation options, instead of just loan modifications, and for offers as well as denials.”

The fourth area addresses “proposing several requirements to provide borrowers with limited English proficiency greater access to certain early intervention and loss mitigation communications in languages other than English” and requiring all notices to be provided in Spanish, as well as in English.

There are some additional points for which the CFPB wants to collect information.

- While the CFPB did not make proposals on this topic, they ask for comment on “possible approaches it could take to ensure mortgage servicers are furnishing accurate and consistent credit reporting information for borrowers undergoing loss mitigation review. In particular . . . (i) What servicer practices may result in the furnishing of inaccurate or inconsistent information about mortgages undergoing loss mitigation review? (ii) What protocols or practices do servicers currently use to ensure that mortgages are being reported accurately and consistently? Are there specific protocols or practices for ensuring loans in forbearance or borrowers affected by a natural disaster are reported accurately and consistently? (iii) Would it be helpful to have a special code that would be used to flag all mortgages undergoing loss mitigation review in tradeline data? [and] (iv) What steps should the CFPB take to ensure servicers furnish accurate and consistent tradeline data?”

- The CFPB requests information on the prevalence of and problems that arise as a result of “zombie mortgage” collection (i.e., when a long-dormant second mortgage is being collected upon).
- Sometimes an effective loss mitigation process includes deferring the overdue amounts to the end of the mortgage, such that those payments become due when the consumer refinances, sells or otherwise terminates their mortgages. The CFPB requests information regarding whether additional notices should be prescribed to remind these borrowers of those deferred amounts being due.
- The CFPB has requested additional information regarding problems affecting “successors in interest” to property such that such consumers are unable to obtain information regarding mortgages from servicers, in an attempt to forestall loss mitigation processes from occurring after the death of the borrower.

Due to some of the changes the CFPB proposes in the rule, certain state laws may conflict, so the CFPB requests comment on whether providing clarity on preemption of some of those laws would be useful.