



Review & Analysis of CFPB's COVID-19 Final Mortgage Servicing Rules

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Presented by: Jason R. Bushby & Jonathan R. Kolodziej

Moderated by: Teshale Smith

Meet the Moderator & Presenters




Jason R. Bushby
Partner, Bradley

Birmingham, AL
jbushby@Bradley.com
205.521.8086



Jonathan R. Kolodziej
Partner, Bradley

Birmingham, AL
jkolodziej@Bradley.com
205.521.8235



Teshale Smith
Counsel, Regulatory Comp & Policy
American Bankers Association

tsmith@aba.com
202.663.5089

Birmingham | Charlotte | Dallas | Houston | Huntsville | Jackson | Montgomery
| Nashville | Tampa | Washington, D.C.

Introduction & Overview

01

Detailed Review & Analysis Final Rule

02

Next Steps

03

Q&A

04

Agenda

Introduction & Overview

- **Introduction:**

- Released June 28, 2021
- 200+ pages
- Substantially similar to proposed rule
 - Except with respect to foreclosure moratorium
- Effective on August 31, 2021

- **Overview of Final Rule:**

- “Temporary special COVID-19 procedural safeguards” until January 1, 2022
- New exception to the anti-evasion clause to allow for streamlined modification offers
- Clarification of what constitutes reasonable diligence for borrowers on forbearance
- Early intervention live contact changes

Temporary Special COVID-19 Procedural Safeguards

- **From August 31 through December 31, 2021, *and unless an exception applies*, servicers must ensure 1 of the 3 “procedural safeguards” are satisfied before making the first notice or filing**
 - 120-day rule still applies
 - 1024.41 scope provisions (closed-end, principal residence) still apply
 - Does not apply to small servicers
 - Record retention obligations related to satisfaction of “procedural safeguards”
- **Exceptions:**
 - Borrower was more than 120 days delinquent prior March 1, 2020
 - Applicable foreclosure statute of limitations will expire before January 1, 2022
 - First notice or filing occurs before August 31, 2021 or after January 1, 2022

Safeguard No. 1

Complete Application Evaluation

This safeguard is met if:

- The borrower submitted a complete loss mitigation application, and the servicer evaluated the application.
- The borrower remained delinquent since submission of the loss mitigation application.
- The foreclosure protection conditions in the existing Mortgage Servicing Rules are met (such that a servicer is permitted by the rules to make a foreclosure referral):
 - Servicer has sent a loss mitigation evaluation notice to the borrower denying the borrower for all options, and any applicable appeal process has been exhausted; OR
 - The borrower rejects all loss mitigation options offered by the servicer; OR
 - The borrower fails to perform under an agreement on a loss mitigation option

Safeguard No. 2

Abandoned Property

This safeguard is met if:

- Property securing the mortgage loan is considered abandoned according to the laws of the State or municipality where the property is located

Safeguard No. 3

Unresponsive Borrower

This safeguard is met if:

- The servicer must not have received any communications from the borrower in the 90 days prior to the first notice/filing AND:
 - It has complied with the early intervention live contact requirements in the Mortgage Servicing Rules during that 90-day period
 - It has provided the early intervention 45-day written notice required by the Mortgage Servicing Rules at least 10 but no more than 45 days before first notice/filing
 - It has complied with all loss mitigation notice requirements in the Mortgage Servicing Rules during that 90-day period
 - The borrower's forbearance program, if applicable, ended at least 30 days before first notice/filing.

Temporary Special COVID-19 Procedural Safeguards *Takeaways & Compliance Challenges*

- Only applies to first notice/filing – meaning foreclosures already in process can proceed (subject to GSE or other moratoriums)
- Will you take advantage of these “safeguards”? Or just generally hold off on foreclosure until year’s end?
 - Will you have enough confidence in servicing system and records to take advantage of the safeguards?
 - Safeguard No. 3 for unresponsive borrowers, in particular, is scary/challenging
 - Record-keeping will be CRITICAL
- 50-state research on definition/standard of “abandoned”?

COVID-19 Streamlined Modification

- Final Rule creates a new exception to the “anti-evasion clause” for certain COVID-19-related loan modifications
- To qualify, a loan modification must meet the following criteria:
 - Must be made available to borrowers experiencing a COVID-19-related hardship
 - Term cannot extend beyond 480 months from effective date of modification;
 - Principal and interest payment cannot increase (for entire modified term);
 - Amounts that the borrower may delay paying until the mortgage loan is refinanced, the property is sold, the loan matures, or mortgage insurance terminates (for FHA loans) cannot accrue interest;
 - No fees can be charged in connection with the loan modification
 - Must waive all existing late charges, penalties, stop payment fees, or similar charges **incurred on or after March 1, 2020**
 - Acceptance must bring the account current

COVID-19 Streamlined Modification

- Once a borrower accepts COVID-19 streamlined modification based on an incomplete application, the servicer is not required to satisfy the acknowledgment letter or reasonable diligence requirements **UNLESS:**
 - Borrower fails to perform on trial plan; OR
 - Borrower requests further assistance

COVID-19 Streamlined Modification *Takeaways & Compliance Challenges*

- Verify that your modification options meet the criteria if you intend to offer without a complete application
- Review acknowledgment letter process in connection with streamlined offers
- Exception does not cover all streamlined programs / emphasizes importance of the anti-evasion requirement
- CFPB committed to not take supervisory or enforcement action for offers made prior to the effective date
 - What about private right of action?

Reasonable Diligence

- Final Rule clarifies a servicer’s “reasonable diligence” obligation for many borrowers on COVID-19 short-term forbearance plans
- **If:**
 - A borrower was offered a “short-term forbearance” program based on an evaluation of an incomplete application
 - The program is available to borrowers experiencing a COVID-19-related hardship, and
 - The borrower remains delinquent
- **Then** a servicer must do the following to satisfy its “reasonable diligence” obligations:
 - Servicer must contact the borrower no later than 30 days before the scheduled end of the forbearance period
 - Servicer must determine if the borrower wishes to complete the application, and
 - If so, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance plan

Reasonable Diligence

Takeaways & Compliance Challenges

- Rule applies to any forbearance program that is *available* to borrowers experiencing a COVID-19-related hardship
 - This does not necessarily mean that the borrower is/was impacted by COVID
- Should you use the new 30-day standard for all short-term forbearances?
 - Forbearance programs that are not available to borrowers experiencing a COVID-19-related hardship are still subject to the old standard
 - “Near the end . . . and prior to the end of the forbearance period”
- Will your contact be made via phone or written notice?
 - “a servicer *must* contact the borrower no later than 30 days before the scheduled end of the forbearance period”

Early Intervention Live Contact

- **Beginning on August 31, 2021 and until October 1, 2022**, servicers will be subject to new, more specific early intervention live contact requirements.
 - Specific timing and content requirements depend upon whether borrower is in forbearance at time of live contact
- **If a borrower is not in forbearance** at the time of live contact and forbearance is available based on a COVID-19-related hardship, then the servicer must explain to the borrower:
 - That forbearance programs are available;
 - Information about what forbearance options are available and how to apply (unless the borrower is not interested in receiving information about forbearance); and
 - At least one way that the borrower can find contact information for homeownership counseling services.

Early Intervention Live Contact

- **If a borrower is on forbearance**, then the servicer must explain to the borrower:
 - The date the forbearance plan is scheduled to end;
 - “A list and brief description” of each loss mitigation option that is available and how to apply; and
 - At least one way that the borrower can find contact information for homeownership counseling services.

- **Special Timing Requirements for Borrowers on Forbearance:**
 - Applies to the live contact that occurs between 10 and 45 days before the scheduled end date of the borrower’s forbearance plan
 - For any plan that is scheduled to end between August 31, 2021 and September 10, 2021, applies to the first live contact that is made after August 31, 2021.

Early Intervention Live Contact

- CFPB added new commentary that clarifies live contact obligations in certain circumstances
- So long as the new, more specific requirements apply:
 - “providing no more than a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication” is insufficient
- With respect to short-term forbearance programs made available to borrowers experiencing a COVID-19-related hardship, the exception to the live contact requirements is not met if:
 - “if the servicer has only sent the [acknowledgment and short-term offer letter] and has had no further ongoing contact with the borrower concerning the borrower’s loss mitigation application.”

Early Intervention Live Contact

Takeaways & Compliance Challenges

- Compliance with the live contact requirements will be challenging, particularly as it relates to communicating accurate information about available loss mitigation options
 - Conversations will have to be tailored to the borrower’s circumstances
 - Scripting and training will be critical
- Timing:
 - For borrowers on forbearance, the timing applies to the “scheduled end date”
 - Live contact can be satisfied via outbound or inbound calls
- The requirement in 1024.39(a) to provide information about loss mitigation options if appropriate still applies
- Do you need to institute live contact efforts for a borrower on forbearance?

Next Steps

- Assess impact of final rule
- Prepare for short implementation time
 - Effective August 31, 2021
- Assess early implementation, if possible
- Begin developing new/revised documents:
 - Revised policies and procedures
 - Pre-foreclosure checklists
 - Call scripts
 - Training materials

Questions?




Jason R. Bushby
Partner, Bradley

Birmingham, AL
jbushby@Bradley.com
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