

CFPB Issues Rules to Assist Borrowers and Mortgage Servicers Following Expiration of Federal Foreclosure Moratoria

A Practical Guidance® Article by

Jonathan K. Moore and Louise Bowes Marencik, Blank Rome LLP



Jonathan K. Moore
Blank Rome LLP



Louise Bowes Marencik
Blank Rome LLP

On June 28, 2021, the Consumer Financial Protection Bureau (“CFPB”) issued a final rule (the [“2021 Mortgage Servicing COVID-19 Rule”](#)) amending Regulation X to protect borrowers from financial distress upon expiration of forbearance plans and ease the strain on mortgage servicers, who are likely to be inundated with requests for loss mitigation assistance in the coming months. The new rules, which apply to loans on principal residences, will become effective on August 31, 2021.

The CFPB estimates that over two million homeowners are currently in COVID-19 hardship forbearance programs, with at least 900,000 homeowners expected to come off these programs between now and the end of the year. The 2021 Mortgage Servicing COVID-19 Rule aims to prevent what the CFPB considers to be avoidable foreclosures by establishing procedural safeguards to ensure that most borrowers who became seriously delinquent during the COVID-19 pandemic will have the opportunity to be considered for all loss mitigation options before being

referred to foreclosure. This rule also allows mortgage servicers to provide faster assistance to borrowers by offering them streamlined loan modifications without requiring complete loss mitigation applications. Mortgage servicers will also be required to perform increased borrower outreach before initiating foreclosure to provide borrowers important information about repayment or other loss mitigation options.

Temporary Procedural Safeguards

The 2021 Mortgage Servicing COVID-19 Rule establishes temporary procedural safeguards to ensure that certain borrowers have an opportunity to apply for loss mitigation assistance before their loan is referred to foreclosure following the expiration of applicable foreclosure moratoria. These procedural safeguards apply only to loans where the borrower became more than 120 days delinquent on or after March 1, 2020, and where the applicable statute of limitations does not expire until January 1, 2022, or later. For the loans that are subject to these procedural safeguards, servicers may not refer such loan to foreclosure any time prior to January 1, 2022, without first ensuring that at least one of the following three procedural safeguards is met: 1) the borrower has abandoned the property; 2) the borrower is more than 120 days behind on their mortgage and has not responded to the required servicer outreach for 90 days; or 3) the borrower submitted a complete loss mitigation application, was evaluated for all available loss mitigation options based on that application, and remained delinquent since submitting the loss mitigation application.

If the procedural safeguards do not apply, or if the servicer has met one of the procedural safeguards, the servicer may proceed with the foreclosure referral prior to January 1, 2022, provided that such referral is otherwise permitted by the existing mortgage servicing rules and other applicable law.

Streamlined Loan Modification Reviews

The mortgage servicing rules previously prohibited servicers from conducting a loss mitigation review based on an incomplete loss mitigation package, except in certain circumstances, such as in the case of a short-term forbearance or in connection with certain COVID-19-related loss mitigation options discussed in the CFPB's [June 2020 Interim Final Rule](#). The 2021 Mortgage Servicing COVID-19 Rule has added another exception to this general rule. To qualify for this exception, the loan modification program at issue must be available to borrowers experiencing COVID-19-related hardship (though it need not only be available to those borrowers). The modification must also end or be designed to end any pre-existing delinquency, and must not (i) extend the loan term more than 40 years from the effective date of the modification, (ii) increase the borrower's monthly payment above the amount that was required prior to the modification, (iii) result in the accrual of interest on deferred amounts, or (iv) include fees related to the loan modification. The resulting modification must also waive any fees, penalties, and similar charges incurred on or after March 1, 2020.

The rule also provides that if a borrower becomes delinquent again following the acceptance of a loan modification based on an incomplete loss mitigation application, the servicer must provide the borrower with the incomplete application notice (if it previously failed to do so) and must immediately resume reasonable diligence efforts to obtain a complete application.

Outreach Requirements

The mortgage servicing rules currently require servicers to make live contact with delinquent borrowers no later than the borrower's 36th day of delinquency, and make additional contact no later than 36 days after each payment due date, as long as the borrower remains delinquent. The 2021 Mortgage Servicing COVID-19 Rule requires that servicers provide certain additional information beginning on August 31, 2021, and continuing through October 1, 2022. For borrowers who are not in forbearance at the time live contact is established, servicers must provide a statement regarding the availability of COVID-19-related forbearance options, and a list of any such programs, if applicable. The servicer must also inform the borrower of at least one way to find contact information for homeownership counseling services, such as referring the borrower to information available on their periodic billing statement.

Alternatively, for borrowers who are in a forbearance program at the time live contact is established, a servicer must provide additional information during live contact that occurs 10 to 45 days before the scheduled end of the forbearance program. Specifically, the servicer must inform the borrower of the scheduled end date of the program, provide a list of available loss mitigation options, and inform the borrower of at least one way to find contact information for homeownership counseling services, as required for borrowers not in forbearance.

Mortgage servicers should act quickly to update their borrower outreach and loss mitigation policies and procedures to ensure that they will be able to comply with these new rules beginning on August 31, 2021.

Jonathan K. Moore, Partner, Blank Rome LLP

Jonathan Moore concentrates his practice in the area of consumer financial services, representing lenders, servicers, and other financial institutions on a wide array of federal and state regulatory issues. As a member of the Blank Rome's consumer financial services team, Jonathan regularly advises clients on issues involving compliance with the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Fair Debt Collection Practices Act, the Equal Credit Opportunity Act, state unfair and deceptive acts and practices laws, and various other federal and state consumer protection laws and regulations.

Jonathan's practice also involves preparing responses to requests for information, notices of error, rescission requests and various complaints directed to financial institutions by their customers and regulators, as well as reviewing and editing notices, disclosures, and other form documents utilized by clients to ensure they are compliant with all applicable laws and regulations. Jonathan also has significant experience defending against repurchase demands by government-sponsored enterprises and private investors, pursuing title claims on behalf of consumer mortgage lenders and servicers, resolving chain of title and other vesting issues, and negotiating and obtaining releases and subordination of prior mortgages, judgments, and other liens.

Louise Bowes Marencik, Associate, Blank Rome LLP

Louise Marencik concentrates her practice in consumer financial services matters. As a member of Blank Rome's consumer financial services team, Louise regularly advises financial lending institutions on a variety of regulatory and litigation matters, including disputes under the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), the Fair Credit Reporting Act ("FCRA"), the Fair Debt Collection Practices Act ("FDCPA"), and the Equal Credit Opportunity Act ("ECOA"). Louise has also advised clients regarding various mortgage servicing activities to ensure compliance with state and federal laws, including loss mitigation policies and procedures.

Louise also represents mortgage servicers and lenders in connection with title insurance claims and title curative matters, involving a variety of complicated title issues, such as unrecorded mortgages and lien priority disputes, and matters involving fraud and identity theft.

This document from Practical Guidance[®], a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis[®]. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.