Banking and Finance Law Daily Wrap Up,TOP STORY—CFPB proposes to substantially broaden mortgage borrower consumer protections,(Nov. 20, 2014)

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The Consumer Financial Protection Bureau is going to propose significant amendments to its rules on mortgage servicing and protections for mortgage borrowers who are in financial distress or in danger of losing their homes through foreclosure. The proposal would amend Reg. X—Real Estate Settlement Procedures (12 CFR Part 1024) and Reg. Z—Truth in Lending (12 CFR Part 1026) and, according to a CFPB summary, would address nine major mortgage-related topics.

Early intervention. When a borrower becomes delinquent, the rules require the servicer to attempt to make live contact to begin a discussion of available remediation possibilities or foreclosure alternatives. The servicer also must send specific written notices.

Under the proposal, the live contact duty would become a repeated duty. Rather than making live contact no later than 36 days after the delinquency begins, the servicer would be required to make live contact and begin the borrower assistance process no later than 36 days after *each* delinquency begins. According to the CFPB, this means that a borrower would not be restricted to receiving the foreclosure protections only once during the life of the loan. Instead, the protections would be revived if a borrower had brought the loan current since a prior loss mitigation application was completed.

The rules now in effect also excuse servicers from providing early intervention notices to borrowers who either have filed for bankruptcy or have invoked the Fair Debt Collection Practices Act right to tell the servicer to cease communication. While there would be no need to make live contact, some written notices would be required that currently are not necessary.

Loss mitigation processes. Significant changes would be made to the detailed process of accepting and analyzing borrowers' applications for loss mitigation assistance.

First, a servicer would be required to notify a borrower when it considers a loss mitigation application to be complete. Under the current rule, a servicer must tell a borrower when an application is incomplete and what additional information is needed, but is not required to tell the borrower when the application is complete. This means the borrower does not know the precise status of the application or what the relevant deadlines are, the bureau says.

As is the case with the early intervention process, a borrower who brings a loan current after a delinquency is entitled to be considered for assistance if a subsequent delinquency occurs.

Second, the proposal would attempt to put some teeth in the prohibition of dual-tracking—simultaneously considering a loan for assistance and moving forward with a foreclosure. If a servicer did not take all reasonable steps to delay a foreclosure once a timely assistance application was received, any pending foreclosure process would need to be dismissed in order to prevent a wrongful sale.

Servicers would receive one bit of relief. A subordinate-lien servicer would be allowed to join a senior lien servicer's foreclosure suit even if the subordinate-lien servicer could not foreclose independently because the borrower was not yet 120 days delinquent on the second mortgage.

Third, the bureau would attempt to protect distressed borrowers when servicing rights were transferred. This would start with making clear that loss mitigation rights and foreclosure protections are not affected by a servicing transfer. If an application for assistance was complete before the transfer, the new servicer would be obligated to complete the evaluation within 30 days of when the application was received by the prior servicer.

Successors in interest. One part of the proposal would build on the bureau's previous efforts to help successors in interest—for example, individuals who gain an interest in a home through inheritance, the end of a marriage, or a transfer from a spouse or parent. The bureau previously told servicers that they are not required to perform an ability-to-repay analysis before transferring a mortgage to a successor in interest (see *Banking and Finance Law Daily*, July 8, 2014).

The current proposal would give successors in interest further protections. To begin with, if a servicer received a written request for information from an individual claiming to be a successor in interest and identifying the prior owner and the prior owner's loan, the servicer would be required to tell the individual what documents it needed to receive to confirm his status.

Once a servicer confirmed that the person was a successor in interest, the person would be entitled to all of the protections of the bureau's rules on mortgage servicing.

Timing. Many of the bureau's rules on foreclosures have timelines that begin when a borrower becomes delinquent; however, delinquency is not defined. The proposal would provide that a borrower becomes delinquent on the date a full payment is due and not made. The delinquency would continue until the payment was made.

GSEs. The servicing rules give borrowers the ability to ask the servicer for the name and contact information of the owner and assignee of the loan. Under the proposal, if a loan were in a trust for which Fannie Mae or Freddie Mac was the trustee, an investor, or a guarantor, the servicer would be permitted to provide the GSE's contact information, unless the borrower asked specifically for the name and number of the trust.

Force-placed insurance. The servicer rules establish specific, detailed notice and time requirements when a servicer intends to buy hazard insurance because the borrower has not done so. Currently, the rules apply when the borrower's insurance has expired or is set to expire. The

proposal would broaden the rule to apply when a borrower has furnished insurance, but the coverage is inadequate.

Prompt payment crediting. The proposal would specify how payments made under modification programs should be treated. If the borrower is in a temporary loss mitigation program, payments would be treated according to the original loan contract, meaning they could be credited as partial payments. On the other hand, after a permanent loan modification, payments could not be treated as partial payments because they would be governed by the modification.

Periodic statements. Several changes to servicers' periodic statement duties would be made:

- If a servicer would accept a reduced amount to reinstate a loan that had been accelerated due to delinquency, the "amount due" specified on the periodic statement would be that lesser amount, not the full accelerated balance.
- If there were a temporary loss mitigation program in place, the amount due could be either the reduced payment or the amount due under the loan contract.
- If a permanent modification had been agreed to, the amount due would be the payment due under that modification.
- Servicers generally would be required to continue to send periodic statements or payment books to borrowers who had filed for bankruptcy.
- A servicer would not be required to send statement or payment books if it had provided a final charge-off notice and would not charge any additional fees or interest.

Small servicers. The rules offer some preferential treatment to small servicers—those who service no more than 5,000 loans as either creditor or assignee. The proposal would exempt some seller-financed transactions from being counted toward the 5,000 loan limit.

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