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REG X MORTGAGE SERVICING RULES - COVID-19

The federal banking agencies have issued a Joint Statement (Statement) to clarify the application of the Regulation X mortgage servicing rules during the COVID-19 emergency and to describe the agencies' flexible approach to supervision and enforcement of the rules, including those applicable to short-term options and in light of the passage of the CARES Act.

The Statement sets forth supervisory and enforcement flexibility meant to ensure that servicers have the capacity to offer valuable financial relief programs and continue their assistance to struggling consumers, but "does not impose any new regulatory requirements on servicers working with borrowers."

I. ACKNOWLEDGEMENT NOTICES

Currently, the mortgage servicing rules contain an exception from certain loss mitigation procedural requirements for short-term options. The Statement clarifies that as they apply to new to CARES Act forbearance provisions, servicers can offer a 180-day forbearance or other short-term repayment option (collectively, short-term options) based on an evaluation of an incomplete application (or no application at all).

Description: Where there is an incomplete application, Regulation X requires servicers to provide an acknowledgement notice within five days of receipt of that incomplete application, even if the borrower has been offered or is in a short-term option. The Statement explains that a request for CARES Act forbearance with the attestation that the borrower is experiencing a financial hardship as a result of the COVID-19 emergency constitute an incomplete loss mitigation application for purposes of Regulation X, so servicers must provide an acknowledgment notice. To accommodate servicers during the COVID-19 emergency period, if a mortgage servicer offers or provides a borrower a short-term option, including a CARES Act forbearance, the agencies do not intend to take supervisory or enforcement action for failing to provide the acknowledgment notice required within five days of the receipt of an incomplete application, provided the servicer sends the acknowledgment notice before the end of the forbearance period.

II. LOSS MITIGATION AND EARLY INTERVENTION:

Currently, Regulation X, requires mortgage servicers to follow certain procedures when a borrower applies for loss mitigation, including providing several different notices to borrowers on specific timelines. In addition, for delinquent borrowers, the rules require servicers to provide certain live contact and written early intervention communications on a specific timeline. The

Statement clarifies that the agencies will relax supervisory and enforcement actions regarding these provisions.

Description: To accommodate servicers in the emergency period, beginning on April 3, 2020 and continuing until further notice, the agencies do not intend to take supervisory or enforcement action against servicers for:

- delays in sending the loss mitigation-related notices and taking the actions described in Regulation X, 12 CFR 1024.41(b)-(d), (h)(4), and (k), which, among other things, include the five-day acknowledgement notice, the 30-day evaluation and notice, and the appeals notice, provided that servicers are making good faith efforts to provide these notices and take the related actions within a reasonable time;
- delays in establishing or making good faith efforts to establish live contact with delinquent borrowers as required by Regulation X, 12 CFR 1024.39(a), provided that servicers are making good faith efforts to establish live contact within a reasonable time; and
- delays in sending the written early intervention notice to delinquent borrowers required by Regulation X, 12 CFR 1024.39(b) (the 45-day letter), provided that servicers are making good faith efforts to provide this notice within a reasonable time.

The flexible supervisory and enforcement approach described in the three bullets above applies regardless of whether a borrower is experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency.

III. ANNUAL ESCROW STATEMENTS

Currently, servicers must comply with annual escrow statements as required by Regulation X. The Statement clarifies that the agencies will relax supervisory and enforcement actions regarding these provisions.

Description: To accommodate servicers in the emergency period beginning on of April 3, 2020, and continuing until further notice, the agencies do not intend to take supervisory or enforcement action against servicers for delays in sending the annual escrow statement required by Regulation X, 12 CFR 1024.17(i), provided that servicers are making good faith efforts to provide these statements within a reasonable time. The flexible supervisory and enforcement approach applies regardless of whether a borrower is experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency. Servicers must, however, continue to comply with Regulation X, 12 CFR 1024.17(k)'s requirements concerning timely disbursements from escrow accounts.

IV. FAQs

In addition, the agencies note that there is existing flexibility in the rules that servicers may want to utilize at this time. Such flexibilities are described in the CFPB's FAQs (https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf) on other regulatory flexibility, which the CFPB is releasing concurrently with this Joint Statement.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.