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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1024

Bulletin 2021-02: Supervision and Enforcement Priorities Regarding Housing Insecurity

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this Compliance Bulletin and Policy Guidance (Bulletin) on Supervision and Enforcement priorities regarding housing insecurity in light of heightened risks to consumers needing loss mitigation assistance in the coming months as the COVID-19 foreclosure moratoriums and forbearances end. Consequently, the Bureau will be paying particular attention to how mortgage servicers respond to borrower requests for loss mitigation assistance and process loss mitigation applications. The Bureau urges servicers to dedicate sufficient resources and staff to ensure they can communicate clearly with borrowers, effectively manage borrower requests for assistance, promote loss mitigation, and ultimately reduce avoidable foreclosures and foreclosure-related costs. Accordingly, the Bureau intends to consider a servicer's overall effectiveness at achieving such goals, along with other relevant factors, in using its discretion to address violations of Federal consumer financial law in supervisory and enforcement matters. The Bureau recognizes that some homeowners will not be able to resume making payments on their mortgages and that some foreclosures are unavoidable; nonetheless, the Bureau will hold mortgage servicers accountable for complying with Regulation X with the aim of ensuring that homeowners have the opportunity to be evaluated for loss mitigation prior to the initiation of foreclosure.

DATES: This bulletin is applicable on [INSERT DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Allison Brown, Deputy Assistant Director, Office of Supervision Policy, Division of Supervision, Enforcement, and Fair Lending, at (202) 435-7107, or James Savage, Senior Counsel, Office of Enforcement, at (202) 734-2777. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Mortgage servicers play a vital role in assisting borrowers when they face challenges in paying their mortgages. The Bureau is committed to using its authorities, including its authority under Regulation X mortgage servicing requirements and under the Consumer Financial Protection Act (CFPA), to ensure that homeowners facing the ongoing economic impact of the Coronavirus Disease (COVID-19) national emergency receive the benefits of critical legal protections and that avoidable foreclosures are avoided.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.¹ Among other things, the CARES Act provides borrowers with “Federally backed mortgage loans” with access to forbearance options regardless of whether they are delinquent.²

The Bureau understands from its market monitoring that many private investors have also provided

¹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (Mar. 27, 2020).

² The CARES Act defines a “Federally backed mortgage loan” as any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one-to-four families that is insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 *et seq.*); insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20); guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a, 1715z–13b); guaranteed or insured by the Department of Veterans Affairs; guaranteed or insured by the Department of Agriculture; made by the Department of Agriculture; or purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act, Pub. L. 116-136, section 4022(a)(2).

forbearances on similar terms to those provided by servicers of Federally backed loans.

Since the CARES Act was enacted, 6.9 million borrowers have entered a forbearance program. As of January 2021, more than 2.1 million borrowers in forbearance programs were more than 90 days behind on their mortgage payments (including borrowers who have forborne three or more payments), and they could still be experiencing severe hardships when their payments are to resume.³ Black and Hispanic homeowners were more than two times as likely to be behind on housing payments as of December 2020.⁴

Of the borrowers not in forbearance programs, as of January 2021, around 242,000 were 90 days or more delinquent. Both populations of delinquent borrowers are at heightened risk of referral to foreclosure soon after the foreclosure moratoria end if they do not resolve their delinquency or reach a loss mitigation agreement with their servicer. If borrowers who are currently in an eligible forbearance program request an extension to the maximum time offered by the government agencies, those loans that were placed in a forbearance program early in the pandemic (March and April 2020) will reach the end of their forbearance period in September and October of 2021. Black Knight data suggests there could be just under 1.7 million borrowers still in forbearance in September 2021, with roughly 800,000 borrowers exiting their forbearance programs after 18 months of forborne payments in September and October of 2021.⁵

Borrowers facing more permanent hardships will likely need to apply for loss mitigation options as the end of the forbearances periods approach.⁶ Therefore, as consumers approach the

³ Bureau of Consumer Fin. Prot., *Housing insecurity and the COVID-19 pandemic* (March 2021), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

⁴ *Id.*

⁵ Black Knight Mortg. Monitor, January 2021 Report at 9 (Jan. 2021), https://cdn.blackknightinc.com/wp-content/uploads/2021/03/BKI_MM_Jan2021_Report.pdf (Black Jan. 2021 Report). It is unclear how many borrowers in a forbearance program will exit forbearance at 12 months rather than exercising any additional extensions.

⁶ Mortgage Market COVID 19 Collaborative: Forbearance and Delinquency Among Agency Mortgage Loans, Housing Finance Policy Center, Urban Institute (March 2021).

end of forbearance periods in the coming months, the Bureau expects an extraordinarily high volume of loans needing loss mitigation assistance at relatively the same time. During this period in which there may be large increases in requests for loss mitigation assistance, the Bureau is specifically concerned that some borrowers may not be receiving effective communication from servicers and that some borrowers may be at risk of not having their loss mitigation applications adequately processed.

In the wake of the COVID-19 pandemic, the Bureau has taken numerous steps to protect and assist mortgage borrowers. The Bureau has created and disseminated extensive consumer education resources in coordination with Federal agencies and State regulators. The Bureau plans to use all of its tools, including consumer and industry outreach and regulatory initiatives, to protect homeowners and assist those mortgage servicers who are also working to reduce avoidable foreclosures. The Bureau recognizes that mortgage servicers have also experienced challenges as a result of the pandemic and intends to support servicers in their efforts to provide timely assistance to mortgage borrowers.

II. Supervision and Enforcement Priorities

The Bureau plans to monitor servicers' engagement with borrowers at all stages in the process in the coming months and prioritize mortgage servicing oversight work in deploying its enforcement and supervision resources in the coming year. The Bureau expects servicers to plan for the expected increase in loans exiting forbearance programs and related loss mitigation applications, as well as applications by borrowers who are delinquent but not in forbearance. The Bureau expects servicers to resource those activities appropriately and urges servicers to dedicate sufficient resources and staff to ensure they can communicate clearly with borrowers, effectively manage borrower requests for assistance, and thereby reduce foreclosures. Accordingly, the Bureau intends to look at a servicer's overall effectiveness at helping

consumers manage loss mitigation, along with other relevant factors, when using its discretion to address violations of Federal consumer financial law in supervisory and enforcement matters.

On the other hand, consistent with the flexibilities announced in the April 3, 2020 joint statement, companies that are unable to adequately manage loss mitigation can expect the Bureau to take enforcement or supervisory action to address violations under its Regulation X, CFPB, or other authorities.⁷

In its oversight work, the Bureau plans to pay particular attention to:

1. Whether servicers are providing clear and readily understandable information to borrowers about their options for payment assistance;
2. Whether servicers are complying with the outreach requirements in Regulation X to ensure that borrowers are getting needed information about loss mitigation options, including:
 - For borrowers who request further assistance, whether servicers are promptly resuming reasonable diligence in obtaining documents and information to complete loss mitigation applications;⁷
 - For borrowers in forbearance, whether servicers are contacting borrowers before the end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation application;⁸

⁷ See Bureau of Consumer Fin. Prot., Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act, *available at* https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf.

⁷ See Regulation X, 12 CFR 1024.41(c)(2)(iii); comments 41(b)(1)-4.iii; 41(c)(2)(i)-1; 41(c)(2)(iii)-1 through -6.

⁸ See Regulation X, comment 41(b)(1)-4.iii.

3. Whether servicers are complying with the Equal Credit Opportunity Act's (ECOA's) prohibition against discriminating against any applicant, with respect to any aspect of a credit transaction, including:⁹
- Whether servicers are managing communications with limited English proficiency borrowers while maintaining compliance with applicable laws;¹⁰
 - For applicants who are recipients of income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance, whether servicers evaluate such income in accordance with the ECOA and Regulation B when determining eligibility for loss mitigation options, to the extent the servicer is otherwise required to use income in determining eligibility for loss mitigation options;¹¹
4. Whether servicers promptly handle loss mitigation inquiries and avoid unreasonably long hold times on phone lines; for example, the Bureau plans to scrutinize servicer conduct where hold times are significantly longer than industry averages;

⁹ 15 U.S.C. 1691(a). The ECOA prohibits discrimination based on race or color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, and because the applicant has in good faith exercised any right under the Consumer Credit Protection Act (Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*).

¹⁰ See Bureau of Consumer Financial Protection, "Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency," 86 FR 6306 (Jan. 21, 2021) (encouraging financial institutions to better serve LEP consumers in languages other than English and providing key considerations and guidelines financial institutions can use to develop related compliance solutions).

¹¹ For example, the ECOA and Regulation B prohibit creditors from automatically discounting or excluding from consideration the public assistance income of an applicant or the spouse of an applicant. See 15 U.S.C. 1691(b)(2), 12 CFR 1002.6(b)(5); 12 CFR part 1002, Supp. I, ¶ 6(b)(5)-(3)(ii); see *id.* at 6(b)(5)-(1) ("A creditor must evaluate income derived from . . . public assistance on an individual basis . . ."); see also Consumer Financial Protection Bureau, *Supervisory Highlights*, Summer 2020, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf.

5. Whether servicers maintain policies and procedures that are reasonably designed to achieve the continuity of contact objectives to ensure that delinquent borrowers receive accurate information about their loss mitigation options;¹²
6. For borrowers who submit complete loss mitigation applications, whether servicers evaluate the applications consistent with the Regulation X requirements to promote timely and consistent evaluations;¹³
7. Whether servicers comply with foreclosure restrictions in Regulation X and other Federal or State foreclosure restrictions;¹⁴ and
8. Whether servicers are complying with the Fair Credit Reporting Act's requirements to report the credit obligation or account appropriately.¹⁵

IV. Conclusion

The Bureau issues this policy statement to highlight supervisory and enforcement priorities with respect to mortgage servicing and to confirm that the Bureau will hold servicers accountable if they are unable to manage an expected increase in borrowers needing loss mitigation assistance.

V. Regulatory Requirements

The Bulletin constitutes a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It is intended to

¹² See Regulation X, 12 CFR 1024.40; *see also* 12 CFR 1024.38(b)(2)(i) (requiring policies and procedures reasonably designed to ensure that the servicer can provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan); 12 CFR 1024.38(b)(2)(ii) (requiring policies and procedures reasonably designed to ensure that the servicer can identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan).

¹³ See Regulation X, 12 CFR 1024.41.

¹⁴ See Regulation X, 12 CFR 1024.41(f) and (g).

¹⁵ CARES Act, Pub. L. 116-136, sec. 4021 (2020) (amending section 623(a)(1) of the FCRA).

provide information regarding the Bureau's general plans to exercise its supervisory and enforcement discretion for institutions under its jurisdiction and does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing the Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. The Bureau has also determined that the issuance of the Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Dated: March 31, 2021.

/s/ David Uejio

David Uejio,
Acting Director, Bureau of Consumer Financial Protection.