<u>Mortgage Borrowers Amidst the COVID-19 Pandemic 2021 and Onward</u>

In the beginning of the year, a statement by Acting Director Dave Ujieo of the Consumer Financial Protection Bureau (CFPB) indicated the agency's shift to a more assertive role in the enforcement of regulations protecting consumers. One of the chief enforcement priorities because of this shift is to emphasize protection and compliance with regulations for borrowers impacted by the COVID-19 pandemic. Now that we are in the middle of 2021, the CFPB has published a report analyzing data on mortgage borrowers most affected by the pandemic and proposed a collection of rules extending protections at least until the middle of next year. Because of these publications, banks should be prepared for a larger regulatory emphasis on COVID-19 protections and fair lending practices.

The COVID-19 pandemic's financial impact on banks and mortgage customers has not been this vast and deep since the Great Recession of 2010 according to the CFPB's Special Issue brief titled Characteristics of Mortgage Borrowers During the COVID-19 pandemic released May of this year. Because of the pandemic's economic reach, we have seen an increase in the availability of forbearance programs that temporarily allow borrowers to stop making payments even when delinquent. The CFPB analyzed the data and found that Black and Hispanic borrowers who make up a significant percentage of all mortgage borrowers at 18% make up an even larger percentage of borrowers in forbearance at 33% or delinquent at 27%. The CFPB also found that loans with a loan-to-value (LTV) ratio above 60% was more common for borrowers in forbearance or delinquent than those current with their mortgages. Those with an LTV ratio above 95% were found to be most susceptible to defaulting on their mortgage.

The data shows that loans in forbearance or delinquent were more likely to be single-borrower loans with a sizable amount being delinquent for at least 30 days or at least 60 days. In crystallizing all these findings put together, forbearance and delinquency are more common for borrowers who are Black or Hispanic, have a higher LTV, or have difficulty in paying other obligations. Acting Director Uejio stated that, "Communities of color have been hit hard by the pandemic, and the latest data show that many borrowers are still hurting. The CFPB will continue to seek and actively respond to developments int eh market, doing everything in our power to help families stay in their homes." This runs true with the CFPB's priorities earlier this year in taking a more assertive role in enforcing consumer protections due to COVID-19 as well as taking steps to ensure racial equality in financial services.

In response to the hardships mortgage borrowers are experiencing due to the financial implications of this pandemic, the CFPB has issued several proposed amendments to the Mortgage Servicing Rules with a tentative effective date of August 31, 2021. The notice of proposed rulemaking (NPRM) adds a general definition for "COVID-19-related hardship" that matches the CARES Act. The proposition in the context of early intervention requires servicers to ask whether a borrower not in forbearance at the time of live contact is experiencing a COVID-19 related hardship. If the borrower indicates in the affirmative, the servicer would be required to list and describe available forbearance programs and give information as to how the borrower can apply for them.

Loss Mitigation

The NPRM also contains amendments to the loss mitigation procedures. Current rules require servicers to take reasonable due diligence in obtaining a complete application for loss mitigation. This rule specifically focuses on what would constitute due diligence for borrowers in short-term forbearance due to a COVID-19-related hardship. If the program was offered in an applicable circumstance and was based on an incomplete application, the servicer must contact and determine if the borrower wants to complete their application and proceed with a full loss mitigation evaluation at least 30 days before the short-term program ends. When evaluating an application, the proposed rule would now allow servicers to offer certain modifications based on an incomplete application if certain criteria are met. This criterion includes the loan modification extending the length of the loan by no more than 40 years and the borrower's preexisting delinquency would be resolved by acceptance of the loan modification.

Foreclosure Implications

Another facet of the loss mitigation procedures impacted by the CFPB's NPRM is foreclosures. While certain agencies and Government-Sponsored Enterprises (GSEs) have all placed their own moratoria on foreclosure, the NPRM's effect on foreclosures is not limited only to secondary market or federally backed loans. The NPRM adds a temporary COVID-19 pre-foreclosure review period in which a servicer cannot make the first notice or filing for foreclosure. The current rule states a servicer is prohibited from making this notice or filing unless the borrower is more than 120 days delinquent. This new rule is proposing to add an overarching prohibition against making the notice or filing for foreclosure because of any delinquency until after December 31, 2021. This would mean, if this rule does become final, foreclosures may not be able to occur until after the year is over; providing extra protection for borrowers impacted by the pandemic.

Banks should now if they have not already done so, take steps in preparing to provide customers impacted by COVID-19 more protections as well as comply with any regulations requiring them to do so. Further, true to the CFPB's direction, banks should also be prepared from an examination scrutiny standpoint during the pandemic for an emphasis on fair lending. The year is already over halfway over, and it is readily apparent that the financial impact and consumer relief may carry on to the next.

About the Author

Tim Dominguez serves as Associate General Counsel for Compliance Alliance, joining C/A after graduating from the University of Houston Law Center. During law school, he worked as an intern within the legal department of Frost Bank in San Antonio, TX. He also holds a Bachelor of Science in Communication Studies from The University of Texas at Austin. Before law school, Tim worked various jobs within the Texas state government, including the Texas Senate and the Texas Legislative Council. As one of our hotline advisors, Tim provides guidance to C/A members on a wide variety of regulatory and compliance issues, in addition to writing articles for our publications.