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CFPB's Foreclosure Limitations Apply Only to Large Servicers

The CFPB issued a final rule on June 28, 2021 that amended the early intervention and loss mitigation requirements in Regulation X's mortgage servicing rules (specifically, Sections 1024.39 and 1024.41). Arguably, the biggest change this final rule makes is its addition of temporary foreclosure limitations that are in effect until January 1, 2022. In short, these limitations apply only to mortgages that became more than 120 days delinquent on or after March 1, 2020 and, of particular relevance to most BCG members, do not apply to small servicers. In fact, none of the June 28th rulemaking applies to small servicers. For large servicers, these changes will be effective on August 31, 2021.

The CFPB explains that the final rule (i) establishes temporary procedural safeguards to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages; (ii) temporarily permits mortgage servicers to offer certain loan modifications made available to borrowers experiencing a COVID-19-related hardship based on the evaluation of an incomplete application; and (iii) finalizes certain temporary amendments to the early intervention and reasonable diligence obligations that Regulation X imposes on large mortgage servicers.

A quick reminder that a small servicer is generally a servicer that services no more than 5,000 mortgage loans, consisting only of loans that the servicer or an affiliate owns or originated. The general prohibition on foreclosure referrals in Section 1024.41(f)(1) continues to apply to small servicers. That prohibition generally imposes a 120-day waiting period unless the foreclosure is based on a borrower's violation of a due-on-sale clause or the servicer is joining in the foreclosure of a superior or a subordinate lienholder. For more information, refer to Section I.I. of BCG Standard Procedures Manual #8, *Mortgage Lending Compliance*.

Although the CFPB's foreclosure limitations may not apply to a particular financial institution, there may be other foreclosure limitations that could apply at the local level, for example. Thus, all creditors should proceed with sharp caution (and engage experienced counsel) prior to initiating a residential foreclosure. Contact Stephanie Shea (SShea@ABLAWYERS.COM) for specific guidance.

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