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Mortgage Payment Deferral Responsibilities of Small Servicers during the Coronavirus Declared Emergency

Much discussion has been had during the past weeks with regards to assisting mortgage borrowers by allowing payment deferrals during the COVID-19 pandemic. Requirements and responsibilities to provide mortgage payment relief for those impacted by COVID-19 may differ on whether the organization is a small servicer as defined by Truth In Lending Regulation Z, 12 CFR 1026.41(e)(4), and whether the mortgage loan is a federally backed mortgage loan as defined by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

To aid our community bank clients, this article focuses on their particular concerns in their role as a servicer of consumer mortgage loans and the regulatory expectations for the community banks' forbearance programs during the COVID-19 emergency.

Many community banks are small servicers of consumer mortgage loans. In 2014, the Consumer Financial Protection Bureau (CFPB) formalized an exemption from certain regulation for smaller volume servicers. The rules regarding small servicers were updated and clarified by the CFPB in 2016. The CFPB generally allows servicers to operate under the "Small Servicer" exemption so long as it, together with affiliates, services 5,000 or fewer mortgage loans, and is the creditor or assignee. A servicer, or affiliate, is considered a creditor if it currently owns or originated the loan. The Small Servicer exemption was a recognition that community banks rely on their local market reputation and are consequentially motivated to provide higher quality servicing and to build strong relationships with their customers.

The Small Servicer exemption applies to the loss mitigation procedures of the Real Estate Settlement Procedures Act (RESPA). A Small Servicer is exempt from RESPA's notice requirements

regarding short-term loss mitigation options^[1]. A short-term loss mitigation proposal, among other permitted options, can be one in which a servicer allows a borrower to forgo making certain payments or portions of payments for a period, not to exceed six months, which many community banks have implemented, or are now in the process of considering.

Regardless of whether a servicer is exempt from the short-term loss mitigation notices of RESPA, a servicer is required to grant forbearance to a borrower experiencing a financial hardship due to the COVID-19 pandemic on a federally backed mortgage loan. A federally backed mortgage loan is a 1 – 4 family dwelling secured by a first or subordinate lien, insured by the Federal Housing Administration, or under section 255 of the National Housing Act, guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992, guaranteed or insured by the Department of Veterans Affairs, guaranteed, insured or made by the Department of Agriculture, purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

A small servicer of mortgage of loans held in their own portfolio (a/k/a “portfolio loans”) is not required by RESPA to provide a borrower any specific loss mitigation options, nor must it provide the loss mitigation notices of RESPA. The small servicer of loans, which are not federally backed mortgage loans, is not required to grant a CARES Act forbearance.

The small servicer of portfolio loans should refer to the *Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus*, issued April 15, 2020. The Interagency Statement asks servicers of mortgage loans to offer payment accommodations, such as skipping payments or extending due dates to avoid delinquencies and adverse credit reporting.

The Interagency Statement does not mandate forbearance options such as those stated in the CARES Act for a specific period for federally backed mortgage loans. The Interagency Statement requests lenders accommodate borrowers in a safe and prudent manner. Small servicers are reminded that any payment

accommodations should be fully and accurately disclosed to avoid any misunderstandings relative to the change in terms.

For questions about this article or any other mortgage servicing related questions, contact [Nancy Presnell](#), [Bill Repasky](#), or any member of Frost Brown Todd's [Financial Services](#) Industry team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

[\[1\]](#) See 12 CFR § 1024.41 – Loss mitigation procedures.

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