



441 G St. N.W.
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July 15, 2020

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Bureau of Consumer Financial Protection: Treatment of Certain COVID-19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA) (Regulation X)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Bureau of Consumer Financial Protection (Bureau) entitled “Treatment of Certain COVID-19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA) (Regulation X)” (CFPB-2020-0022). We received the rule on June 29, 2020. It was published in the *Federal Register* as an interim final rule with request for public comment on June 30, 2020. 85 Fed. Reg. 39055. The effective date of the rule is July 1, 2020.

According to the Bureau, the interim final rule amends Regulation X. According to the Bureau, the amendments temporarily permit mortgage servicers to offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application. The Bureau states that eligible loss mitigation options, among other things, must permit borrowers to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by the Federal Housing Administration, the mortgage insurance terminates. The Bureau notes that these amounts include, without limitation, all principal and interest payments forborne through payment forbearance programs made available to borrowers experiencing financial hardships due, directly or indirectly, to the COVID-19 emergency, including a payment forbearance program offered pursuant to section 4022 of the Coronavirus Aid, Relief, and Economic Security Act. Pub. L. 116-136, 134 Stat 281 (May 27, 2020). The Bureau further notes that these amounts also include principal and interest payments that are due and unpaid by borrowers experiencing financial hardships due, directly or indirectly, to the COVID-19 emergency.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress,

whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). The Bureau states that prior notice and public comment are impracticable because there is insufficient time to solicit comment and finalize amendments between the Federal Housing Finance Agency's announcement of its COVID-19 payment deferral program on May 13, 2020, and its effective date of July 1, 2020. The Bureau states that the economic effects of the COVID-19 emergency make it critical that the Bureau's temporary revision to Regulation X be in effect when these forbearance programs take effect to ensure that borrowers and mortgage servicers can take advantage of these programs. The Bureau further finds that delaying this rulemaking to allow for prior public comment would be contrary to the public interest because the amendments are necessary to avoid the harm to borrowers and to the housing market that would result if the amendments did not take effect on July 1, 2020.

Enclosed is our assessment of the Bureau's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Kathleen L. Kraninger
Director, Bureau of Consumer
Financial Protection

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
BUREAU OF CONSUMER FINANCIAL PROTECTION
ENTITLED
“TREATMENT OF CERTAIN COVID-19 RELATED LOSS
MITIGATION OPTIONS UNDER THE REAL ESTATE
SETTLEMENT PROCEDURES ACT (RESPA) (REGULATION X)”
(CFPB-2020-0022)

(i) Cost-benefit analysis

The Bureau of Consumer Financial Protection (Bureau) conducted an economic analysis of this interim final rule. This analysis included the establishment of a baseline against which the changes imposed by this final rule were compared against the Bureau taking no action. The Bureau states that the baseline under this approach includes the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the forbearances that have already been granted under the CARES Act and substantially similar programs. The Bureau states that the interim final rule’s provisions generally would decrease burden incurred by industry participants and benefit consumers by providing a limited exception to the general requirement under § 1024.41 for borrowers to submit a complete loss mitigation application before servicers may offer any loss mitigation option based on the evaluation of an incomplete application. Overall, the Bureau does not believe that these changes would restrict consumer access to consumer financial products and services relative to what would occur under the baseline. The Bureau believes that its consideration of benefits and costs of covered persons provides a largely accurate analysis of the impacts of the final rule on depository institutions and credit unions with \$10 billion or less in total assets that are engaged in servicing mortgage loans.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Bureau states that the Regulatory Flexibility Act (RFA) does not apply to a rulemaking where general notice of proposed rulemaking is not required.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Bureau is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The Bureau waived notice and comment proceedings. The Bureau states it had good cause because there is insufficient time to solicit comment and finalize amendments between the Federal Housing Finance Agency’s announcement of its COVID-19 payment deferral program on May 13, 2020, and its effective date of July 1, 2020. The Bureau states that the economic effects of the COVID-19 emergency make it critical that the Bureau’s temporary revision to Regulation X be in effect when these forbearance programs take effect to ensure that borrowers

and mortgage servicers can take advantage of these programs. The Bureau further finds that delaying this rulemaking to allow for prior public comment would be contrary to the public interest because the amendments are necessary to avoid the harm to borrowers and to the housing market that would result if the amendments did not take effect on July 1, 2020.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Bureau has determined that the interim final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements subject to the Act.

Statutory authorization for the rule

The Bureau promulgated this final rule pursuant to sections 2603–2605, 2607, 2609, 2617, 5512, 5532, and 5581 of title 12, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Bureau is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Bureau is not subject to the Order.