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August 24, 2020

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau (CFPB)
1700 G Street, NW
Washington, DC 20552

Re: Consumer Reporting FAQs Related to the CARES Act

Dear Director Kraninger:

Thank you and the CFPB staff for your steadfast efforts to address the important policy challenges facing the country during this national health emergency. We appreciate the Bureau's dissemination of critical information to assist affected households as well as the level of responsiveness and collaboration with the industry and advocacy community. That said, the CFPB's June 16th issuance of the CARES Act Consumer Reporting FAQs, specifically FAQ 10¹, has generated conflicting interpretations. FAQ 10 describes a specific aspect of CARES Act Section 4021 Credit Protections that is not applicable to all borrower scenarios. With this letter, we are seeking affirmation that the scenarios we describe in this letter are not covered by FAQ 10 and therefore are subject to standard Fair Credit Reporting Act (FCRA) rules.

FAQ 10's answer suggests that all borrowers are covered by a single accommodation that will resolve the missed payments and any resulting delinquency. However, most borrowers affected by COVID-19 are offered not one, but two mortgage accommodations – an initial accommodation and a subsequent accommodation discussed in more detail below. In addition, some minimal number of borrowers who receive the initial accommodation will not transition into a post-forbearance accommodation that brings (or will bring) the loan current. In these cases, consumers will not resolve the missed payments and resulting delinquency and therefore, the credit reporting needs to follow standard FCRA requirements to accurately reflect that status, a scenario not addressed in FAQ 10.

¹ QUESTION 10: What must furnishers do in reporting the status of an account after a CARES Act accommodation ends?

ANSWER (UPDATED 6/16/2020): The consumer reporting protections of the CARES Act continue to apply to the time period that was covered by the accommodation after the accommodation ends. Assuming payments were not required or the consumer met any payment requirements of the accommodation, a furnisher cannot report a consumer that was reported as current pursuant to the CARES Act as delinquent based on the time period covered by the accommodation after the accommodation ends. A furnisher also cannot advance the delinquency of a consumer that was maintained pursuant to the CARES Act based on the time period covered by the accommodation after the accommodation ends.

Distinction Between Initial and Subsequent Accommodations

Most borrowers receiving payment relief, such as forbearance covered by the CARES Act or a proprietary forbearance plan, benefit not only from the initial forbearance accommodation, but also from a post-forbearance accommodation, such as a deferral, loan modification, or a second lien program (e.g., Fannie Mae / Freddie Mac Deferral or Flex Mod programs and the FHA Stand-Partial Claim or COVID-19 Loan Modification programs). These borrowers receive initial payment relief through the forbearance plan and later, the delayed/missed payments are resolved through a subsequent loss mitigation repayment accommodation. These two distinct forms of accommodation are acknowledged by the Bureau in issuances regarding Regulation X, but not in Consumer Reporting FAQ 10. This distinction matters because a borrower will have their status reported as current or at the level of delinquency accrued prior to forbearance (per CARES) during the initial forbearance accommodation. However, if the borrower does not transition to a post-forbearance accommodation that brings the loan current or makes up the missed/delayed payments, the CARES Act 4021 reporting protection ends with the initial accommodation.

Not All Borrowers Will Resolve Delinquency with a Subsequent Post-Forbearance Accommodation

While most borrowers receiving payment relief through a forbearance (initial accommodation) will engage with their servicers and accept the offer of a subsequent post-forbearance accommodation, some customers will choose not to do so, may be unresponsive, or may not qualify for the programs available. In these less common, yet real, instances where the borrower does not transition from the initial forbearance accommodation into a post-forbearance accommodation that brings the loan current and makes up the missed/delayed payments to resolve the outstanding delinquency, FAQ 10 is no longer applicable. In these cases, the servicer must revert to standard FCRA, which will recognize the missed/delayed monthly mortgage obligations that remain unpaid.

Examples of Borrower Scenarios:

1. Borrower receives 12 months COVID-19 forbearance. Servicer reports the borrower as current during the forbearance period. At the end of the forbearance plan and during the “covered period” (as defined under the CARES Act), the borrower enters into a deferral that resolves the delinquency by deferring all past due payments to the end of the loan. The borrower continues to be reported as current at the beginning of the deferral, and reporting for the forbearance period remains unchanged (current under the forbearance accommodation). Scenario is covered by FAQ10.
2. Borrower is 1 month delinquent prior to entering into a COVID-19 forbearance. Borrower enters into a 12 month forbearance plan. Borrower makes no payments during the forbearance period. Borrower makes one payment after the forbearance period ends which is applied to the oldest outstanding payment. Borrower subsequently declines all post forbearance options. Standard credit reporting then

applies. The borrower is contractually due for 12 months and is reported as such, in accordance with the FCRA. Scenario is not covered by FAQ10.

3. Borrower is current and enters into a 6 month forbearance plan. Borrower is reported as current during the forbearance. After being on a forbearance for 2 months, the borrower cancels the forbearance plan. Furthermore, the borrower has made no payments and declines any other accommodations. Upon cancellation of the forbearance plan, the borrower is 2 months delinquent. At this point, standard credit reporting would apply. The borrower is contractually due for 2 months and will be reported as 2 months delinquent to the credit reporting bureaus, in accordance with the FCRA. Scenario is not covered by FAQ10.

Request and Conclusion

As noted above, it is our view that FAQ 10 does not address the customary approach to assisting customers using two separate accommodations and does not acknowledge that a borrower who received payment relief may not transition into a subsequent accommodation designed to make up the delayed/missed payments. Therefore, we are requesting affirmation that the answer to FAQ 10 is not applicable to these situations and, in those cases, the servicer must resume standard FCRA credit reporting requirements, which will report the true contractual delinquency status for the borrower.

We understand that the Bureau may not want to add a question to the FAQs to address this scenario where the borrower does not resolve the missed payments with a post-forbearance accommodation. If that is the case, we transmit this letter with the request that your response affirm or correct our interpretation of FAQ 10's limited scope and affirm that standard FCRA will apply when borrowers do not bring their loans current with a subsequent post-forbearance accommodation after the initial forbearance accommodation. The absence of a response will be understood as confirmation of this position.

Again, thank you for the work that you and the CFPB team are doing to support the nation through this difficult time. Should you or anyone on your staff have any questions, please do not hesitate to call Meg Burns, EVP, at 202-589-1926.

Yours truly,



Edward J. DeMarco
President
Housing Policy Council