FEATURE: MORTGAGE MODIFICATION

When Regulation X Has No Teeth: How Court Mortgage Modification Programs Fill the CFPB Void

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The landscape of mortgage servicing oversight has recently undergone significant changes. While Regulation X under the Real Estate Settlement Procedures Act (RESPA) continues to mandate specific loss mitigation procedures from mortgage servicers, the practical enforcement mechanisms that borrowers have historically relied upon have become substantially weakened. This shift underscores the increasingly vital role that bankruptcy court mortgage modification programs can play in protecting debtor rights and ensuring compliance with federal servicing requirements.

THE REGULATION X FRAMEWORK AND ITS ENFORCEMENT GAP

Regulation X establishes comprehensive loss mitigation requirements for mortgage servicers when borrowers face financial distress. These include obligations to acknowledge complete loss mitigation applications within specific timeframes, conduct reasonable due diligence in evaluating borrowers for available programs, and provide clear communications throughout the process.

For the past 15 years, oversight and enforcement of Regulation X has been with the Consumer Financial Protection Bureau (CFPB). When issues arose, borrowers could file a complaint with the CFPB. The complaint would be forwarded to the mortgage servicer and because it came from and was tracked by the CFPB, the mortgage servicer would respond. In fact, CFPB reported a 99 percent response rate from mortgage servicers to complaints, with 92 percent of complaints closed with an explanation, 2 percent with monetary relief, and 3 percent with nonmonetary relief.[1] Of course, this doesn't mean that 99 percent of complaints received the desired outcome, but it does mean that borrowers had a voice and received information to help them better

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understand their situation. It also means that given a well-defined framework and some oversight, mortgage companies can and will be responsive.

In February 2025, however, the current administration effectively halted most work at CFPB, including the complaint process.[2] Given the economics of private enforcement, borrowers will now have even fewer options to get answers. Individual mortgage servicing violations rarely generate damages sufficient to support private litigation, particularly given the complexity and cost of federal court proceedings. Even when violations are clear, borrowers often lack the resources to pursue lengthy legal battles against well-funded servicers. As a result, borrowers have little to no recourse to ensure even the most basic of mortgage servicing rules are followed despite the continued existence of federal requirements.

COMPOUNDING CHALLENGES IN BANKRUPTCY PROCEEDINGS

Loan modification issues become even more pronounced when borrowers are in bankruptcy proceedings. The automatic stay creates additional communication barriers between debtors and their mortgage servicers, often making it difficult for debtors or their counsel to effectively navigate loss mitigation processes. Uncertainty about proper communication protocols, coupled with complex requirements leads to delays and incomplete processing of modification requests.

The result is a system where some of the most vulnerable borrowers—those already in financial distress sufficient to require bankruptcy protection—may experience the greatest challenges enforcing their rights and obtaining the protections that existing federal law provides. Bankruptcy courts can bridge this gap by implementing mortgage modification programs that provide for clear requirements and communications as well as some oversight. To be clear, these programs do not mandate any specific outcome. These programs offer a structured forum for parties to collaborate toward a mutually beneficial outcome—preserving the home for the debtor and restoring the loan to performing status for the creditor.

MORTGAGE MODIFICATION PROGRAMS: A COMPREHENSIVE SOLUTION

Several courts have already implemented Mortgage Modification Management programs (MMM). The MMM applies to debtors in cases filed under Chapter 7, 11, 12 or 13 of the Bankruptcy Code and covers all types of real property. A complete list of participating jurisdictions can be found at https://help.dclmwp.com/en/articles/3586804-court-website-links-by-jurisdiction.

The MMM facilitates communication between debtors and servicers within the bankruptcy framework. By creating a court-sponsored process managed through a secure online portal, the program eliminates many of the communication barriers that the automatic stay can create. Servicers have clear guidelines for interaction, and debtors receive the benefit of a managed program without the cost and complexity of traditional litigation.

The program's purpose is to facilitate communication and exchange of information in a confidential setting and encourage the parties to finalize a feasible and beneficial agreement under court supervision. This structure encourages compliance with Regulation X requirements while providing a forum for resolving disputes efficiently without litigation. The transparency of the program, together with the court's minimal oversight, ensures that all parties take the process seriously while requiring virtually no court resources to administer.

IMPLEMENTATION BENEFITS AND BROADER IMPLICATIONS

Courts that have implemented MMMs report several significant benefits. First, these programs tend to increase the rate of successful loan modifications, benefiting both debtors and creditors. Debtors know exactly what's expected of them and must provide servicers the needed documentation to complete a review. And servicers are more likely to engage meaningfully in the loss mitigation process when operating in a structured court program.

Second, the programs help ensure compliance with federal requirements without requiring individual debtors to pursue costly enforcement litigation. The court's mere presence serves as a compliance mechanism that protects both borrowers and the integrity of the federal regulatory framework.

Third, these programs can significantly improve the efficiency of bankruptcy administration. Rather than dealing with ongoing foreclosure disputes and modification-related litigation throughout the life of a Chapter 13 plan, courts can resolve these issues early in the process, creating more predictable outcomes for all parties.

MOVING FORWARD

The current environment presents both challenges and opportunities. While traditional enforcement mechanisms may be weakened, bankruptcy courts are uniquely positioned to bridge the expanding gap between regulatory requirements and practical enforcement. MMM programs represent an evolution in how bankruptcy courts can protect vulnerable borrowers while maintaining the efficiency and effectiveness of the bankruptcy process itself. The goal should be to ensure that federal protections remain meaningful for bankruptcy debtors, regardless of broader changes in the regulatory environment. ■

FOOTNOTES

1. https://www.housingwire.com/articles/cfpb-takes-a-closer-look-at-consumer-mortgage-complaints/.
2. https://www.pbs.org/newshour/politics/vought-orders-cfpb-to-stop-investigations-and-suspend-new-rules-from-taking-effect.

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