

# ACI's 3<sup>rd</sup> Bank & Non-Bank Forum on Mortgage Servicing Compliance

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## Best Practices and Procedures for Complying with CFPB Loss Mitigation and Loan Modification; and Navigating the Inconsistencies Amongst the CFPB Rules, HAMP Guidelines and State-Level Initiatives Regarding Loss Mitigation

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# Topics of Discussion

- What is included within the definition of loss mitigation?
- Overview of the CFPB loss mitigation rules
- Overview of state loss mitigation rules
- HAMP and investor loss mitigation programs
- Regulators' continued focus on loss mitigation



# CFPB Loss Mitigation Rules

- A servicer's responsibilities upon receipt of a *complete* loss mit application depend on when the complete application is received:
- **90+ days prior to foreclosure sale** – borrower must receive acknowledgement notice; decision on loss mit app within 30 days; 14 days to accept or reject; right to appeal decision
- **45-89 days prior to foreclosure sale**- borrower must receive acknowledgement notice; decision on loss mit app within 30 days; 7 days to accept or reject; no right to appeal decision
- **38-44 days prior to foreclosure sale** –no right to acknowledgement; decision on loss mit app within 30 days; 7 days to accept or reject offer; no right to appeal decision
- **37 days or less prior to foreclosure sale**- CFPB loss mit rules are silent, [note that applicable investor or state rules may be in effect]
- Private right of action available.



# State Loss Mitigation Rules

- Federal rules are the floor.
- State mandated foreclosure alternatives can take a variety of forms:
  - Stay of foreclosure/Payment restructuring
  - Mediation
  - Stay of foreclosure proceeding pending application for assistance.
- Interaction between state and federal law.



# Home Affordable Modification Program (“HAMP”)

- Where there is overlap between HAMP, CFPB, and state rules, there is potential for inconsistencies:
  - Foreclosure referral/proceeding with next legal action
  - Right of appeal on trial period plan evaluation
- HAMP program rules also require compliance with all applicable law, including CFPB rules on loss mitigation.



# Loss Mit Remains in the Spotlight

- Loss mitigation continues to be a focus of enforcement actions
  - NY DFS
  - Flagstar enforcement action
  - Regulator remedies now include:
    - Prohibition on acquiring addition default servicing rights
- CFPB Bulletin 2014-01: Mortgage Servicing Transfers
- Office of Mortgage Settlement Oversight Report
- CFPB Supervisory Highlights

