

Advocates Push for Increased Enforcement and Later Rule Sunset to Prevent Improper Foreclosures as the CFPB Issues Final Servicing Rule

Washington, D.C. – Today, the Consumer Financial Protection Bureau (Bureau) released its final rule under the Real Estate Settlement Procedures Act (RESPA) related to helping homeowners impacted by the COVID-19 pandemic. The rule contains important consumer protections to help stave off unnecessary foreclosures, but the time period for the rule's foreclosure protections should be extended and the Bureau should vigorously enforce it to ensure homeowners receive the intended protections.

"The COVID-19 pandemic has led to record numbers of homeowners struggling to pay their mortgages, especially in communities of color," said National Consumer Law Center Staff Attorney Sarah Mancini. "The Bureau's final rule has the potential to significantly impact mortgage servicer behavior, making it more likely that these borrowers can obtain loan modifications and save their homes."

As the economic impact of the pandemic continues to be felt around the nation, over two million homeowners remain in payment forbearances that will end soon. Servicers will need to communicate with record numbers of homeowners in order to process them for permanent loan modifications at the conclusion of the forbearance plans. Many of these borrowers will exit forbearances between September and December 2021.

The Bureau's decision to sunset the foreclosure safeguards on December 31, 2021, however, will leave the hundreds of thousands of borrowers who exit forbearances after that date or are unable to obtain a loan modification option by that date without protection. Based on projected forbearance end dates and expected servicer backlogs, many borrowers will still be addressing their COVID hardships well into 2022. The Bureau should extend the compliance period in order to provide protection into 2022 for borrowers who are attempting to communicate with their servicer about loss mitigation options.

"Important protections in the CFPB's final rule increase the likelihood that homeowners will be able to keep their homes as they get back on their feet after forbearance. However, many borrowers will still need these safeguards after December 31, 2021," said Linda Jun, senior policy counsel at Americans for Financial Reform Education Fund. "The CFPB should extend the protections so they apply to borrowers with forbearances coming to an end in 2022."

The final rule does the following:

- Requires servicers to follow common sense safeguards prior to initiating foreclosure during the compliance period, including sending required loss mitigation notices;
- Requires servicers to wait at least 30 days after a forbearance plan ends before initiating foreclosure, and potentially longer if the borrower is in communication with the servicer;

- Facilitates streamlined loan modifications (modifications approved without the need for a full application) that are consistent with the federal housing agencies' rules; and
- Clarifies that escrow shortages may be included in a deferral or loan modification.

"At this point, the Bureau must effectively enforce the rules, comprehensively supervise servicers, and help borrowers address servicer non-compliance," commented National Consumer Law Center Staff Attorney Steve Sharpe. "Servicers will be more likely to ensure that qualified homeowners can avoid foreclosure in response to vigorous oversight. The CFPB's supervision and enforcement activity over the next six months will be just as important as its regulatory actions. This need is especially pronounced for private market loans that are not bound by the rigorous protocols of government-backed loans."

It is important for the federal agencies to extend their foreclosure moratoria through the effective date of the rule, to avoid incentivizing aggressive foreclosure filings before the rule takes effect. The White House recently announced an extension of the moratoria to July 31, 2021. That end date still leaves a gap before the new rule's effective date.

The final rule will take effect August 31, 2021.

Related Resources

Coalition comments on the proposed rule, May 10, 2021

https://nclc-old.ogosense.net/images/pdf/foreclosure_mortgage/mortgage_servicing/RESPA_NPRM_Comments.pdf

Mortgage Relief for Homeowners Affected By COVID-19

<https://library.nclc.org/mortgage-relief-homeowners-affected-covid-19>.

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