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## **National Consumer Law Center Statement Regarding CFPB Mortgage Servicing Rules**

**WASHINGTON—** “We commend the Consumer Financial Protection Bureau for seeking to address broad problems in the mortgage servicing industry and for extending some sensible, enforceable, guidelines to the entire market,” said National Consumer Law Center (NCLC) attorney Alys Cohen. “However, the CFPB’s final rules fail to implement the key lesson of the foreclosure crisis, that a loan modification requirement is essential to protect qualified homeowners from unnecessary foreclosures. While the establishment of industry-wide standards is important, the failure to require meaningful loan modification protections is a retreat from current safeguards under the soon-to-expire HAMP loan modification program.”

Earlier this week, NCLC published [\*At a Crossroads: Lessons from the Home Affordable Modification Program \(HAMP\)\*](#), which details key principles for national loan modification standards. Measured against those principles, the CFPB’s rules fail to ensure access to sustainable loan modifications for all qualified homeowners. Investors and homeowners stand to lose from the lack of a loan modification mandate.

The CFPB’s new rules partially address the persistent “dual-tracking” problem, the simultaneous processing of a foreclosure and a loan modification. According to Cohen, “the CFPB rules require servicers who choose to do loan modifications to finish a review before starting a foreclosure. These provisions will help homeowners who respond to initial outreach by mortgage servicers. The rules also restrict a servicer from moving for a foreclosure judgment or order of sale, or from conducting a foreclosure sale, where the borrower submits a complete application for a loss mitigation option after the foreclosure process has commenced but more than 37 days before a foreclosure sale. While providing some additional protections to borrowers in judicial foreclosure states, this requirement provides significantly less protection to homeowners facing non-judicial foreclosure procedures. Moreover, because many homeowners will not know the sale date until after the 37-day mark, and will generally face difficulties knowing when the 37<sup>th</sup> day falls (because many sales are scheduled with less than 37 days’ advance notice), the rules give servicers an opportunity to manipulate the system. All homeowners need protection during the foreclosure process, with rules that recognize the real timelines they face. The rules also appear to deny homeowners an appeal of a loan modification review where that application has not been submitted 90 days prior to the sale. Every homeowner deserves a fair hearing and the rule does not provide for that.”

The CFPB’s new rules also implement the error resolution provisions of the Dodd-Frank Act. “We appreciate the CFPB incorporating a provision in the error resolution requirement so that homeowners have an opportunity to address *all* servicer errors, not just a select list,” said Cohen.

The federal banking agencies are currently drafting a guidance document on mortgage servicing, which, along with the Bureau’s own rulemaking process offers an opportunity to address the shortcomings in the CFPB’s rules. “We hope the agencies and the CFPB will take steps to completely end dual tracking, and to ensure that qualified homeowners have enforceable access to affordable loan modifications where the modification also provides a benefit to investors over foreclosure,” said Cohen. “Servicers must not be permitted to continue wrongful foreclosures.”

## Related Material

### **Issue Brief on CFPB proposed mortgage servicing rules, August 2012**

[http://www.nclc.org/images/pdf/foreclosure\\_mortgage/mortgage\\_servicing/ibcfpbservicingrule\\_aug2012.pdf](http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/ibcfpbservicingrule_aug2012.pdf)

The recommendations cover the following topics: loss mitigation procedures; error resolution and information requests; information management policies and procedures; early intervention with delinquent borrowers; continuity of contact with delinquent borrowers; periodic billing statements; adjustable-rate mortgage interest-rate adjustment notices; prompt payment crediting and payoff payments; and force-placed insurance.

### **Comments to the CFPB on proposed mortgage servicing rules, October 9, 2012**

- Re: 2012 Truth in Lending Act (Regulation Z) Mortgage Servicing Proposal  
[http://www.nclc.org/images/pdf/foreclosure\\_mortgage/mortgage\\_servicing/comments-cfpb-servicing-tila.pdf](http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/comments-cfpb-servicing-tila.pdf)
- Re: 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal  
[http://www.nclc.org/images/pdf/foreclosure\\_mortgage/mortgage\\_servicing/comments-cfpb-servicing-respa.pdf](http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/comments-cfpb-servicing-respa.pdf)

### **Report: *At a Crossroads: Lessons from the Home Affordable Modification Program (HAMP)*, January 2013**

<http://www.nclc.org/issues/at-a-crossroads.html>

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