CFPB Guidance for Mortgage Servicing Transfers Lacks Crucial Consumer Protections, Especially During COVID-19 Crisis

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Washington—Last Friday, the Consumer Financial Protection Bureau (CFPB) released a document providing supervisory guidance for mortgage servicing transfers. This document, reportedly under development long before the coronavirus pandemic, sets forth best practices for servicing transfers and acknowledges that servicing transfers pose particular risk for borrowers who are behind in their mortgage payments. Yet the document provides no guidance, much less a mandate, for how to protect homeowners during the current pandemic, when both unemployment and mortgage forbearance requests are rising fast.

"What's missing is any discussion of how the CFPB will hold servicers accountable in these times, when the risks to borrowers are higher than ever," **said National Consumer Law Center attorney Alys Cohen.** "It is not clear how the standards the CFPB recommends for preventing borrower harm, including long planning periods, fit with rapidly rising unemployment and exploding mortgage forbearance and delinquency rates."

According to the CFPB guidance, servicers have continued to struggle in transferring homeowners' accounts in a timely and accurate manner, despite earlier, very similar guidance from the CFPB to servicers. Servicers sometimes lose borrower account information in transfer, including information about borrower requests for assistance or agreed-to plans for mortgage assistance. The CFPB calls out the critical importance of planning in servicing transfers and notes problems with post-transfer data validation and incompatible technology. The increase in nonbank servicers, which are not subject to the same capital requirements as bank servicers, means an increased risk for borrowers, according to the CFPB.

Nonetheless, the CFPB announced that it will take a light touch in monitoring mortgage servicing transfers ordered by a federal regulator until four months after the end of the national emergency. This relaxation of regulatory oversight, precisely when borrowers are most at risk, according to the CFPB, is an apparent nod to the statements by the Federal Housing Finance Director, Mark Calabria, at the beginning of the month, that FHFA would force servicing transfers from smaller to larger servicers as a response to any struggles by smaller servicers.

"The CFPB is sending mortgage servicers and homeowners a mixed message, at best," **said Cohen**. "Which is it? Prevention of borrower harm through well-planned and executed mortgage servicing transfers or hands-off supervision during the pandemic, when we have record numbers of homeowners out of work and three million mortgages in forbearance already? We need more clarity from both the CFPB and the FHFA as to how they will protect homeowners in the event of mortgage servicing transfers and particularly in the event that any mortgage servicers fail."

Earlier in the month, the FHFA and the CFPB announced a "Borrower Protection Program" that permits data sharing on mortgage servicing complaints between the two federal agencies, but no information has been provided to date as to how the agencies will use the shared information to protect borrowers. The CFPB in its guidance failed to mandate any specific steps servicers must take to protect borrowers, not even the adoption of uniform data terminology.