New CFPB Mortgage Guidance Does More for Servicers than Consumers

FOR IMMEDIATE RELEASE: April 6, 2020

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

Millions of Families Could Lose Homes from Job Loss Due to COVID-19

Washington, D.C. – Late last Friday, the Consumer Financial Protection Bureau (CFPB) issued a one-sided policy guidance providing enormous flexibility to mortgage servicers while failing to ensure that distressed consumers can get access to crucial information and foreclosure-avoidance procedures. Although styled as a response to the pandemic, the CFPB, joined by six other banking regulators, in its guidance (here and here) told servicers that the Bureau would not supervise for nor enforce violations of most of its foreclosure prevention rules "until further notice," regardless of whether the servicer's actions are related in any way to responding to the COVID-19 emergency. "The CFPB lifted deadlines for mortgage servicers to act without providing similar flexibility for homeowners struggling to avoid foreclosure and is allowing lenders to start foreclosure before homeowners even receive required notices," **said Alys Cohen, staff attorney at the National Consumer Law Center.**

The CFPB's foreclosure prevention rules were adopted in the wake of our nation's 2008 financial crisis when an estimated nine million families lost their homes to foreclosure. The rules are designed to ensure that all borrowers struggling to make their mortgage payments have a fair shot at an honest and transparent evaluation for an affordable loan modification. Servicers must take common-sense steps, such as telling the borrower in a timely way whether the servicer needs more documents to complete the evaluation and describing the terms of any loss mitigation option offered to the borrower. The CFPB's rules were designed to ensure that millions of families would not again face foreclosure without having a chance to save their homes.

"Right when it is most important to help people save their homes, the CFPB has turned its back on consumers and on the lessons of the last great financial crisis," **said Cohen**. "With 10 million jobless claims filed in the last two weeks, now is not the time to provide a free pass on common-sense rules that give homeowners a chance at avoiding foreclosure. The CFPB's actions leave homeowners facing job loss or illness due to the COVID-19 emergency without clear access to foreclosure-avoidance reviews while providing mortgage servicers with fewer incentives to assist struggling homeowners. Nothing in the CFPB's actions encourages servicers to avert unnecessary foreclosures."

The CFPB's asymmetrical announcement offers great leeway for servicers without ensuring reasonable consumer protections. While some narrow flexibility is needed to address servicer backlogs and to minimize homeowner hardships and confusion, the Bureau's actions go much further. The CFPB announced that, "until further notice," it would not expect servicers to adhere to timelines or requirements for providing complete information to struggling borrowers so long as some unspecified "good faith efforts" were made by the servicer in an undefined "reasonable time." For example, for homeowners who receive a forbearance under the federal CARES Act, servicers are excused from providing information describing the terms of the borrower's arrangement with the servicer. Instead, servicers are encouraged to use form letters, which the CFPB will deem timely so long as they are sent "before the end of the forbearance period." There is no requirement that the letters be received by the borrower *before* the end of the forbearance period or that they be provided in time for a borrower to complete a loss mitigation application *before* the servicer begins foreclosure. **As a result, homeowners may receive forbearances without receiving written notice of when it will end or what comes next and people may find themselves in foreclosure before being notified about how to obtain further assistance.**

Moreover, the CFPB's announcement loosens rules for servicers whether or not the situation relates to COVID-19, without providing similar flexibility to homeowners, even where the hardship is virus-related. The CFPB does not expect servicers to reach out to and contact borrowers who are behind in their payments within the first 45 days of delinquency, the window in which early intervention is most successful in preserving homeownership, even where a borrower has not reached out and the servicer is preparing to initiate foreclosure. Nevertheless, the CFPB left the time limits for borrowers to respond to a servicer's loss mitigation offer or appeal a denial at 14 days, even though borrowers are also surely struggling to meet the challenges of the pandemic, including stay-at-home orders that may cut them off from fax machines, printers, or photocopiers.

NCLC advocates call on the CFPB to take steps to protect consumers, including:

- Require servicers to resume reasonable diligence and provide information about what is needed to complete the loss mitigation application in time for the borrower to complete an application and be evaluated for loss mitigation before the end of the forbearance period.
- Require servicers not to initiate any foreclosure proceedings or charge borrowers any fees related to starting a foreclosure, such as appraisal fees, property inspection fees, or attorney fees, until a minimum of 30 days after the servicer has resumed reasonable diligence, in order to minimize harm to borrowers.
- Require notices to borrowers about a forbearance or other loss mitigation to be specific to the borrower's circumstances, including what loss mitigation options may be available at the end of the forbearance.
- Encourage or require servicers to offer homeowners flexibility on timelines.
- Clarify that the CFPB will supervise and enforce for violations of fair lending laws and unfair, abusive or deceptive practices to minimize the risks that servicers will use these relaxed standards to abuse consumers.

"The CFPB's actions set this country up for another foreclosure crisis," **said Cohen.** "Instead of protecting consumers and reducing systemic risk, as it was set up to do, the CFPB instead is encouraging servicers to repeat their failures from the 2008 Great Recession and foreclose on families."