

Insights

CFPB Proposes Two Measures to Address Ongoing COVID-19 Pandemic Concerns

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Proposed Rule to Postpone Implementation of Debt Collection Final Rules to January 29, 2022

In late 2020, the United States Consumer Financial Protection Bureau ("CFPB") issued final rules to revise Regulation F, 12 C.F.R., part 1006, which implements the federal Fair Debt Collection Practices Act ("FDCPA") rules.

The first rule, issued October 30, 2020, clarified what is considered harassment, false representations and unfair debt collection practices by debt collectors. The second rule, issued December 18, 2020, focused on required debt collection disclosures debt collectors must provide consumers at the start of collections communications. Both rules have an effective date of November 30, 2021.

The CFPB is proposing to postpone the effective date of the rules by 60 days, i.e., to January 29, 2022, due to ongoing effects of the COVID-19 pandemic. This is intended to provide additional time for review and implementation of the rules. The rules are not applicable until the effective date; however, debt collectors may choose to comply with the new requirements and prohibitions prior to the effective date. In such cases, any safe harbors from liability for certain conduct will not take effect until the effective date.

While these rules generally do not apply to first-party debt collectors, the rules may have an indirect impact on bank and credit unions, which often oversee the activities of third-party debt collectors. Public comments regarding these rules suggested an increased cost to third-party debt collectors to implement these rules, which may have downstream effects on the first-party debt collectors who employ them.

The proposal currently is in its comment period, which is set to expire May 19, 2021.

Proposed Rule to Prohibit Consumer Residential Foreclosure Notices Until December 31, 2021

The CFPB has issued proposed amendments to Regulation X, 12 C.F.R., part 1024, which provides certain consumer protections under the federal Real Estate Settlement Procedures Act ("RESPA"). The proposed amendments are intended to address the CFPB's concerns about the potentially unprecedented number of borrowers who may reach the maximum term of forbearance on their mortgages as a result of the COVID-19 pandemic. This high volume of borrowers all exiting forbearance at the same time could have significant impacts on servicer capacity, causing delays or potential errors in processing loss mitigation requests before the initiation of foreclosure.

The proposed amendments would establish a temporary COVID-19 emergency pre-foreclosure review period for principal residences until December 31, 2021, in addition to any existing borrower protections in place. This review generally would prohibit servicers from making the first notice or filing required by applicable law for any judicial or non-judicial residential foreclosure process until after December 31, 2021.

Additionally, mortgage servicers temporarily would be permitted to offer certain loan modifications for consumer borrowers experiencing COVID-19 related hardships. The loan modifications must satisfy certain criteria, which



protect consumer borrowers from harm if a consumer borrower chooses to accept an eligible loan modification.

The proposed amendments would not be applicable to small servicers, which (together with affiliates) service 5,000 or few mortgage loans, for all of which such servicer (or an affiliate) is the creditor or assignee.

The proposed effective date of the temporary rule is August 31, 2021, and if finalized, the temporary rule would apply until August 31, 2022.

Please contact any member of the Krieg DeVault **Financial Institutions** or **Creditors' Rights and Bankruptcy** practice groups with any questions you may have about this Alert.