

CLIENT ALERT

Attorneys General Turn their Focus to Consumer Credit and Mortgages

May.04.2020

State Attorneys General are continuing their consumer protection activities during the COVID-19 crisis with an emerging focus on the financial services industry. Recent letters by over 20 Attorneys General (and related announcements) indicate that the States expect mortgage lenders and servicers to create plans to protect consumers in their current and post-COVID-19 lending programs. The Attorneys General also expect the three Consumer Reporting Agencies (“CRAs”), Experian Information Solutions, Inc.; Equifax Information Services, LLC; and TransUnion LLC, and furnishers reporting to them, to ensure they protect consumer credit.

On April 28, 2020, Pennsylvania Attorney General Shapiro led a group of 22 Attorneys General in a [letter](#) cautioning the CRAs that they will continue to enforce Fair Credit Reporting Act (“FCRA”) safeguards to protect consumer credit. This letter was in response to the United States government’s announcement that it will not enforce the FCRA’s deadline (30 to 45 days) by which consumer disputes must be investigated. The Attorneys General are hoping to protect consumers’ rights under the CARES Act, which Congress recently passed to provide economic relief in light of the COVID-19 crisis. In part, the CARES Act allows economic assistance to protect consumer credit, including amendments to the FCRA to require “furnishers to report a credit obligation as ‘current’ if the obligation was current prior to the grant of a CARES Act accommodation.” This provision is intended to give consumers more time to pay back their credit obligations and thus protect individuals’ credit scores during this time of economic difficulty. The signatory Attorneys General state their opinion that it is important that the 30 to 45-day deadline to investigate consumer disputes be honored so that they can ensure companies are not reporting negative credit information in violation of the CARES Act.

The Attorneys General warn in their letter that they will actively monitor furnishers “to ensure that they do not improperly report negative credit information” as well as CRAs to guarantee that they investigate disputes that arise from faulty reporting in a timely manner. The letter also states that the Attorneys General expect CRAs to comply with all of the FCRA’s provisions, including the deadline for investigations of consumer disputes, and they will “hold CRAs accountable” if they fail to do so.

The Attorneys General are also carefully monitoring the mortgage industry. For example, on April 22, 2020, Attorney General James of New York sent [letters](#) to 35 of the primary mortgage servicers in the state, asking them to provide relief to New York homeowners who are having trouble paying their mortgages during the COVID-19 crisis. Though mortgage lenders have begun taking steps to help struggling homeowners, the letters set forth additional steps servicers must take to avoid foreclosure once New York’s mandated mortgage forbearance agreements, which allow consumers to temporarily postpone their mortgage payments, come to an end. According to her [press release](#), Attorney General James asks mortgage servicers to:

- Stop charging any late fees (waive them all) and if homeowners miss payments, automatically place their accounts into a three-month forbearance;

- Let homeowners renew their three-month forbearance for up to a year if homeowners state (either verbally or in writing) that they cannot make a payment given the hardship caused by the current pandemic, and without making the homeowner submit any other documentation to get a renewal of their forbearance period;
- Give homeowners a detailed description of their post-forbearance options based on placing them into forbearance or when responding to homeowner requests;
- Employ sufficient personnel to answer questions and address all requests from homeowners; and
- Work on creating and implementing long-term solutions to help homeowners easily resume making their payments after their forbearance periods expire.

Similarly, a bipartisan coalition of Attorneys General also recently sent [letters](#) to the [Federal Housing Finance Administration \(FHFA\)](#) and the [Department of Housing and Urban Development \(HUD\)](#) asking FHFA and HUD to help protect consumers by:

- Revising their forbearance programs to automatically place missed payments at the end of the loan's term (recognizing that many borrowers will need assistance at the same time and attempting to limit strain on the mortgage-servicing industry);
- Expanding "eligibility for disaster relief loss mitigation programs;" and
- Making clear that the moratorium on evictions and foreclosures applies to all steps of the eviction and foreclosure process, including "issuing pre-foreclosure and acceleration notices, posting or publishing any notices, filing or proceeding with motions beyond continuances, or taking any other foreclosure or eviction action during the moratorium."

All of these letters demonstrate Attorneys General are pushing mortgage lenders and other related entities to carefully adopt policies that protect consumers who are unable to pay their mortgages at this time in order to help avoid a foreclosure crisis.

These recent actions put companies in the financial services sector on notice that Attorneys General are seeking to protect consumers as much as possible in this area. In particular, they are expecting companies to create plans and take actions that allow consumers to avoid foreclosure and protect their credit. All companies reporting to CRAs should also keep this heightened focus by State Attorneys General in mind and carefully review their reporting processes, and any changes to those processes, in order to mitigate their potential exposure to any State investigations.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Clayton S. Friedman

Partner – Orange County

Phone: +1 949.798.1316

Email: cfriedman@crowell.com

Michael Yaghi

Partner – Orange County

Phone: +1 949.798.1396

Email: myaghi@crowell.com

Joselle Albracht

Senior Counsel

Phone: +1 949.798.1332

Email: jalbracht@crowell.com

Suzanne Trivette

Associate – New York

Phone: +1 212.895.4312

Email: strivette@crowell.com