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National Consumer Law Center's Comments to Conference of State Bank Supervisors ("CSBS") Proposed Regulatory Prudential Standards for Nonbank Mortgage Servicers (September 2020)

The National Consumer Law Center (on behalf of its low income clients), submits these comments on the Conference of State Bank Supervisors ("CSBS") Proposed Regulatory Prudential Standards for Nonbank Mortgage Servicers.

Risk Management

The CSBS' proposed standards include a requirement that servicers develop a risk management program. pp. 18-19. Such a program should measure, monitor, and mitigate financial threats to the "risk profile" of the servicer and to the serviced assets. p. 19. CSBS explains that the servicer's duties are defined by laws creating protections for borrowers and guidelines set by investors in mortgage debt:

The role of a servicer is controlled by borrower protections established by law on the side of the consumer and by contract and investor protections on the side of the beneficial owner of the mortgage-backed security. Between these two legal anchors, management is responsible for operating the institution in a safe and sound manner. p. 19

Consistent with this framework, an examination of a servicer's "risk profile" must consider how effectively the servicer complies with consumer protection laws and with servicing guidelines set by the owners, guarantors, and insurers of loans. Servicers face significant compliance risks when they disregard either set of obligations. The 2007-08 foreclosure crisis demonstrated that safety and soundness oversight that overlooks consumer protection will fail. The current COVID-19 crisis is another watershed moment where we risk substantial safety and soundness problems if we fail to take proactive action. For example, 800,000 borrowers are currently in default and not involved in a forbearance program. If servicers do not approve these borrowers for loss mitigation options over the next several months, they are headed for foreclosures. In addition, millions of borrowers now in forbearance will have to make the transition from forbearance to reinstatement and other post-forbearance options over the

coming months. If servicers mishandle these transitions, foreclosures will skyrocket.

The COVID-19 pandemic and its aftermath present not only compliance risks for servicers, but safety and soundness threats as well. In discussing liquidity standards the CSBS notes that state examiners should consider, *inter alia*, the “[r]isk and delinquency profile of servicing book of business”. p. 26. In speaking to this risk from mounting delinquencies, the CSBS’s Servicing Risk Matrix acknowledges that “when a servicer is required to remit payment of principal and interest as scheduled regardless of the borrower’s timely payment, a significant servicing liquidity need exists.” p. 9. We know that this delinquency and liquidity risk will soon be at its height. Millions of borrowers now in forbearance must move to reinstatement through loan modifications or similar options that allow for the affordable repayment of accrued arrearages. These arrangements must include the resumption of timely payments so that servicers no longer need to advance missed payments to investors. State regulators can best address both compliance risks and liquidity needs by ensuring that servicers implement COVID-19 relief measures for borrowers in a timely and effective way.

The CSBS has taken encouraging first steps in responding to the COVID pandemic. The CSBS’s Consumer Guide for COVID mortgage relief published with the CFPB in May 2020 was a good example of how federal and state regulators can work together to maximize application of a common consumer protection standards.¹ Similarly, we support efforts by the CSBS to promote uniform interpretation of national consumer protection standards. It is critically important that actors at the federal level hear from state regulators about the need to clarify important federal requirements, such as the deadline for forbearance applications under the CARES Act.²

During the last foreclosure crisis, federal regulators relied heavily on the prior work of state officials to develop national servicing standards, such as those embodied in the current RESPA rules. Unfortunately, the federal activity came several years after the 2007-08 crisis began. Prompt early action from the state level can prevent significant loss of homeownership and other consumer harm from the consequences of the pandemic.

There are several areas where prudential standards set by state regulators can improve compliance with both consumer protection laws and industry servicing guidelines in order to mitigate the compliance risks of the servicers they regulate.

Relief for borrowers facing COVID-19 related hardships. Servicers face significant compliance risks from consequences of the COVID-19 pandemic. The

¹ [CFPB, CSBS Consumer Relief Guide](#), May 15, 2020.

² [CSBS Letter: Borrower Protections Under Sec. 4022 of the CARES Act](#), Dec. 9, 2020.

risks come from potential non-compliance with both consumer protection laws and investor servicing guidelines. The major investors in residential mortgage debt, particularly the government agency insurers and guarantors, have developed loss mitigation protocols specifically designed to respond to the pandemic. There is a general consensus both from industry players and consumer advocates that these targeted new programs can be effective in preventing another foreclosure crisis. However, foreclosures will be avoided only if mortgage servicers implement these programs effectively. Nonbank servicers in particular are responsible for implementing the important forbearance and post-forbearance programs now available for federally-backed loans, including those for the GSEs and FHA.

Based on past experience, there is a real risk that servicers will not implement a large-scale crisis-driven loss mitigation program effectively. Both consumers and investors stand to lose if this happens again.

State regulators must take an active part in ensuring that servicers comply with established industry standards for COVID-19 related loss mitigation. These standards have been put in place to avoid unnecessary foreclosures in the aftermath of the pandemic. Mortgage foreclosures are an area of law traditionally committed to the states. State agencies are particularly suited for oversight of servicers' compliance with the state's requirements for participation in the foreclosure process. Because a sound uniform industry response to the pandemic has emerged at the federal level, state agencies should focus on ensuring that all servicers comply with these standards before they proceed to foreclose on a borrower impacted by the pandemic. Compliance with national servicing standards should be treated as an essential component of state agencies' safety and soundness oversight.

Through rulemaking or emergency orders, state regulators can exert critically needed controls over servicers. Emergency state agency rules should incorporate the following requirements for regulated servicers: (1) require that by a short-term fixed date servicers notify each borrower in their portfolios of the COVID-19 forbearance and post-forbearance reinstatement options available for the type of loan each borrower has; (2) require that servicers notify borrowers and the State Agency of the procedures a borrower should follow to request these options; (3) define as an unsound and unsafe practice a servicer's refusal to approve an eligible borrower for a COVID-19 loss mitigation option available for the borrower's loan; (4) establish a complaint procedure for borrowers to resolve disputes over COVID-19 relief requests; (5) require that servicers keep data on all borrower requests for COVID-19 relief and maintain the data for at least seven years; (6) unless a servicer can show a specific contractual, regulatory, or safety and soundness barrier, require that servicers offer the forbearance and post-forbearance COVID-19 relief options developed by the

GSEs for all non-federally backed loans they service; and (7) require that servicers certify to the State Agency that they have complied with the preceding requirements for the loan before initiating a foreclosure. In addition, state regulators need to ensure through their examinations that CARES Act and other federal forbearance programs are being implemented correctly and in a nondiscriminatory way.

Data Standards

Incorporation and enhancement of RESPA standards. In addressing data standards the CSBS focuses on implementation of the CFPB’s mortgage servicing rules. Beginning in 2014, the CFPB issued mortgage servicing rules under its authority to implement the Real Estate Settlement Procedure Act (“RESPA”) and the Truth-in-Lending Act (“TILA”). For purposes of state oversight and enforcement, the CSBS proposes to make all nonbank mortgage servicers and all serviced loans subject to the CFPB’s mortgage servicing rules. As discussed below, this outcome will be helpful for consumers. However, the CSBS can enhance certain aspects of the RESPA mortgage servicing rules in order to maximize their benefit for homeowners in each state.³

As an initial point, we note that the reference to federal mortgage servicing rules at pages 19-20 of the proposed standards needs clarification. The text refers to data and documentation standards under RESPA and TILA regulations, but does not refer to any specific regulations. Particularly with respect to TILA, it is not clear what data and documentation standards the CSBS is referring to. The bullet points at the bottom of page 19 paraphrase subpart (c)(2) of the RESPA regulation at 12 C.F.R. § 1024.38. The totality of § 1024.38 sets standards for “General Servicing Policies, Procedures, and Requirements for Servicers.” Section 1024.38 establishes a broad range of requirements, including for borrower access to information, error correction, loss mitigation reviews, and oversight and compliance. 12 C.F.R. § 1024.38(a),(b). It is not clear why the CSBS refers only to items in subpart (c) of § 1024.38 as setting standards for data and information. CSBS should not imply that it is omitting the requirements of subsections (a) and (b) of § 1024.38 from the scope of state regulation. CSBS should similarly identify by specific section all provisions of RESPA and TILA that it intends to incorporate into broad state regulatory authority through its standards.

State enforcement of all RESPA standards found in 12 C.F.R. § 1024.38 is particularly important for consumers. While other sections of the RESPA mortgage servicing rules are privately enforceable by aggrieved borrowers, the provisions of § 1024.38 are not. Therefore, state enforcement takes on a significant role in ensuring that servicers comply with all of the data and information requirements described in the

³The RESPA statute is clear in allowing states to supplement and give greater protections to consumers in areas covered by RESPA, including mortgage servicing. 12 U.S.C. § 2616; 12 C.F.R. § 1024.13(a); Official Bureau Interpretations to Reg. X, ¶ 5(c)(1).

section. We reference below specific areas where state oversight and enforcement can promote safe and sound servicing practices for the benefit of homeowners.

RESPA coverage and state agency coverage. As part of its proposal to make the RESPA and TILA mortgage servicing rules subject to state agency enforcement and oversight, CSBS intends to expand the scope of servicers and loans subject to these standards. CSBS states that the RESPA and TILA mortgage servicing rules will be incorporated into its Baseline Standards and that these standards will “apply to all nonbank mortgage servicers and all serviced loans.” p. 20.

We support the intent to expand application of the standards contained in federal mortgage servicing rules. The RESPA requirements are not onerous and small servicers can easily comply. They may be less familiar with national standards and need encouragement to comply. However, CSBS’s statement that the RESPA data and documentation rules apply to “all entities that service more than 5,000 loans” (p. 19) may confuse readers. The applicability of the RESPA standards for data and documentation is currently not limited to entities that service more than 5,000 loans. The “small servicer” exemption from 12 C.F.R. § 1024.38 excludes entities that service fewer than 5,000 loans if the entity owns all the loans it services. 12 C.F.R. § 1024.30(b), 1024.41(e)(4)(ii)(A). If a servicer services any loans owned by a different entity, the servicer is not exempt from §1024.38. The impact of removing the small servicer exclusion is therefore not as extensive as the language of the CSBS proposal suggests.

Responding to borrower complaints

Processing borrower complaints. The CSBS standards make the requirements of the RESPA regulations at subpart (c) of 24 C.F.R. § 1024.38 broadly applicable to servicers. pp. 19-20. Subpart (c) of § 1024.38 includes standards for data retention. As noted above, state agency adoption of the §1024.38 standards is important for consumers because the provisions of the section are not privately enforceable by individual borrowers. State agency oversight and enforcement is therefore essential. In addition to specifically referencing subsection (c) of § 1024.38, the CSBS standards should expressly reference subparts (a) and (b) of § 1024.38. In particular, state agencies need to enforce the provisions of subparts (a) and (b). These two subparts direct servicers to adopt policies and procedures to respond appropriately to borrowers’ requests to correct servicer errors and provide information about borrower accounts. The RESPA rule states in relevant part that a servicer must have “policies and procedures” that are “reasonably designed to ensure that the servicer can . . . Investigate, respond to, and, as appropriate, make corrections in response to complaints asserted by a borrower [and] Provide a borrower with accurate and timely information and documents in response to the borrower’s request for information with respect to the borrowers mortgage loan” 12 C.F.R. § 1024.38(b)(1)(ii) and (iii).

The right to request that a servicer investigate and, when appropriate, correct a servicing error is essential because this right implicates all other consumer protections available to a borrower. Many servicers, including some of the largest nonbank servicers, have not developed reasonable policies and procedures for responding to borrower complaints. For example, in its complaint filed against Ocwen the CFPB described its investigations into the servicer's practices. The investigations revealed practices that routinely thwarted borrowers' efforts to resolve complaints.⁴ Instead of following reasonable policies and practices, servicer staff relied on rigid scripting, often merely parroting information in the servicing records and not addressing the borrower's complaints at all. Staff lacked guidance on how to document investigations or determine when correction was appropriate. Staff were not trained to identify remediation that was appropriate to correct the downstream effects of an error. Ultimately, in October 2020 the Florida Attorney General and Florida Office of Financial Regulation entered into a settlement decree with Ocwen.⁵ Part of the settlement required Ocwen to implement a "Borrower Complaint Resolution Plan." These are the types of enforcement actions that can have a lasting and broad impact on servicer practices affecting millions of consumers.

Other state agencies, such as New York's Department of Financial Services, conducted similar enforcement actions focused on servicers' policies and practices in handling borrower complaints. These investigations reveal that servicer staff often act without guidance and with unfettered discretion in handling complaints. State agencies are in a unique position to follow up directly with state residents, who often complain both to state officials and to the servicer. State oversight can go beyond resolution of an individual case and determine whether the servicer in fact has a formal policy for responding to borrower complaints and whether that policy includes reasonable and effective directives for the staff who process the complaints. The CSBS standards should specifically reference the borrower complaint and information request provisions of 24 C.F.R. 1024.28(a), (b) and state that these are critically important aspects of state oversight and enforcement. As the substantial penalties assessed against servicers in several of these enforcement actions indicate, non-compliance undermines the safety and soundness of a servicer.

Servicing Transfers

Many servicing problems occur at or near the time of a transfer of servicing, often caused by servicers' inability to communicate with each other and reconcile account records. Borrower payments made during the transition period may not be properly credited, and information about pending loss mitigation applications or offers may not be

⁴ [Consumer Financial Protection Bureau v. Ocwen](#), Case No. 9:17-cv-80495 (S.D. Fla.).

⁵ Proposed Final Consent Judgment in [Office of Attorney General of State of Florida and Office of Financial Regulation of State of Florida v. Ocwen](#), Case No. 9:17-cv-80495 (S.D. Fla. Oct. 15, 2020).

timely and accurately communicated to the transferee servicer. Errors involving even just one or two payments can spiral into a threatened foreclosure despite borrower efforts to prove that the payments were in fact made or that no default exists because the borrower was in a trial or permanent loan modification.

Before the RESPA Servicing Rule took effect, the CFPB issued two compliance and policy bulletins on servicing transfers.⁶ At the time the second bulletin was released, former Director Richard Cordray stated: “We will not tolerate consumers getting the runaround when mortgage servicers transfer loans.”⁷ In a special edition of its Supervision Highlights, the CFPB highlighted a number of servicing transfer problems, including the inability of some transferee servicers to honor the terms of existing trial and permanent loan modifications, caused in part by “incompatibilities between servicer platforms.”⁸ The CFPB noted that for some servicers “delays in honoring in-flight modifications were caused by their dependence on the information technology department to manually override data fields whenever the servicing platform rejected transferor data.”⁹

In an enforcement action against one of the largest national servicers, the CFPB alleged that the servicer failed to promptly verify that loan data was complete and accurate as part of the loan boarding process.¹⁰ Rather than complete the loan verification process within 60 days of boarding the loan, the CFPB alleged that the servicer “relied on unverified loan information for months - and often for more than a year - to service hundreds of thousands of loans.” At one point the servicer had a “backlog of more than 400,000 transferred loans that remained unverified.” The enforcement proceeding also revealed the importance of the verification process, as the servicer reported that at different time periods anywhere from 72 to 90 percent of the verified loans contained errors or incomplete information that needed corrections.

The CSBS standards for servicing transfers attempt to align with the CFPB’s *Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers*.¹¹ Again, the CFPB Policy Guidance was issued before the RESPA Servicing Rule took effect. To better align with RESPA’s servicing transfer requirements, the CSBS standards should specifically reference the CFPB regulations and official commentary, including amendments to those regulations that address servicing transfers and were adopted after issuance of the 2014 CFPB Policy Guidance. In addition, the CSBS standards should reference the recent 2020 CFPB Policy Guidance on servicing transfers that is discussed below.

⁶ See CFPB Bulletin 2013-11, *Mortgage Servicing Transfers*, Feb. 11, 2013 and Bulletin 2014-01, *Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers*, Aug. 19, 2014.

⁷ See [CFPB Issues Bulletin to Prevent Runarounds in Mortgage Servicing Transfers](#), Aug. 19, 2014.

⁸ [Supervisory Highlights Mortgage Servicing Special Edition](#), Issue 1, p. 17, June, 2016.

⁹ *Id.* at 18.

¹⁰ [Consumer Financial Protection Bureau v. Ocwen Financial Corporation](#), Case No. 9:17-CV-80495 (S.D. Fla.).

¹¹ “Bulletin 2014-01. Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers.” Consumer Financial Protection Bureau, August 2014.

Transfer of borrower information.

The CSBS standards refer to the general principle that servicers shall maintain policies and procedures that “facilitate the transfer of information during mortgage servicing transfers” and “ensure that the transferee servicer uses any transferred information before seeking information from borrowers.” p.22.

This does not adequately address the persistent problem of servicers demanding that borrowers effectively start over with a new loss mitigation application upon transfer. Transferee servicers routinely make duplicative and burdensome requests of borrowers for information and documents that have been previously provided to a transferor servicer. In a survey of consumer advocates conducted by NCLC in June 2017, 81% of respondents (188 advocates) said that in the past two years they had seen problems with transferee servicers telling borrowers they needed to submit a new loss mitigation application to the transferee despite a pending application that was submitted to the prior servicer.¹² Half of respondents had experience with transferee servicers initiating a foreclosure despite a pending loss mitigation application that was submitted to a prior servicer.

For loans transferred with a loss mitigation application pending or when a borrower is in a loss mitigation program, the CSBS standard should clearly specify the obligations of both the transferor servicer and the transferee servicer to ensure that there is a seamless transfer of information from one to the other. At a minimum, the CFPB standard should refer specifically to the separate requirements imposed under 24 C.F.R. § 1024.38(b)(4) for transferor and transferee servicers.

Section 1024.38(b)(4)(i) requires a transferor servicer to have policies and procedures reasonably designed to provide for timely transfer of all information and documents in its possession or control to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred. A transferor servicer’s policies and procedures must be reasonably designed to ensure that the transfer includes information about the current status of discussions with a borrower regarding loss mitigation options and any loss mitigation agreements entered into with a borrower.¹³

Section 1024.38(b)(4)(ii) requires a transferee servicer to identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer. This must include information about any loss mitigation discussions with a borrower and copies of any loss mitigation agreements.¹⁴ The CSBS standards should refer specifically to these requirements, as well as the statement in Official Interpretations § 38(b)(4)(ii)-1 that: “the transferee servicer's policies and procedures must address obtaining any such missing information

¹² See Appendix to NCLC [Comments to the CFPB regarding the Notice of Assessment of 2013 RESPA Servicing Rule and Request for Public Comment](#), Docket No. CFPB-2017-0012, July 10, 2017.

¹³ See Official Interpretations of Reg. X § 1024.38(b)(4)(i)-2.

¹⁴ See Official Interpretations of Reg. X § 1024.38(b)(4)(ii)-1.

or documents from a transferor servicer before attempting to obtain such information from a borrower.”

Transfer problems have continued to persist even after the requirements in § 1024.38(b)(4) took effect in 2014, particularly with respect to the transfer of information relating to pending loss mitigation applications. In a recent Policy Guidance, the CFPB reported that in supervisory examinations conducted since 2014, the CFPB has continued to “find weaknesses in compliance management systems and violations of Regulation X related to mortgage servicing transfers” and “has seen inadequacies in servicers’ policies and procedures for transferring all the loan information and documents to the new servicer in a timely and accurate manner.”¹⁵ This 2020 policy guidance stressed the importance of servicers engaging in pre-transfer stress testing, quality control, and post-transfer monitoring around the standards in the bulletin.

Servicer non-compliance with § 1024.38(b)(4) may be attributed in part to the lack of a private right of action to enforce it. As noted above, enforcement by state regulators of the RESPA standards found in 12 C.F.R. § 1024.38(b)(4), as incorporated into the CSBS standards, would benefit consumers by encouraging compliance by servicers of the transfer requirements.

Moreover, the CSBS standards should expand upon the transfer provisions in the CFPB regulation. The following heightened production requirements would ensure that transferor servicers communicate essential information with respect to certain loans that are delinquent at the time of transfer and that transferee servicers review and evaluate this information before seeking additional information from borrowers:

- The transferor servicer should be required to provide a report to the transferee servicer identifying the status of all loans that are in default, foreclosure and bankruptcy as of the effective transfer date. The report should be accompanied by documentation of loss mitigation activity for each loan, including all written notices sent to borrowers intended to comply with 12 C.F.R. § 1024.41, any notes from the servicer’s communication log concerning any discussions with borrowers about loss mitigation, and copies of all loss mitigation applications and agreements with borrowers.
- The transferee servicer should be required to not only “obtain” information and documents from a transferor servicer, but to also review this information immediately upon boarding to determine if the transferred information and documents may be used and are sufficient to process the loss mitigation application. Before requesting missing or additional documents and information from a borrower, the standard should require that the transferee servicer (1) first verify that the information has not already been transmitted and (2) then check

¹⁵ “CFPB Bulletin 2020-02 - Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers,” April, 2020.

with the transferor servicer to determine if the needed documents are available and can be transferred to the transferee servicer. The standard should explain that requesting additional documents from the borrower and requiring borrowers to resubmit loss mitigation application materials following a transfer should be the exception rather than the rule.

Post-transfer process for validating data

The CSBS standards refer to the general principle that servicers shall “implement a post-transfer process for validating data to ensure it is transferred correctly and is functional, as well as develop procedures for identifying and addressing data errors for inbound loans.” p.22. Without further action by federal and state regulators (and the CSBS), however, this standard will not improve servicer performance or result in better outcomes for borrowers or servicers. Regulators must define industry-wide standards and protocols to ensure the compatibility of transferred data as between servicers. In addition, the CSBS standards should require that borrowers have sufficient post-transfer information to verify that critical data about their loan that has been received by the transferee servicer is accurate and that borrowers are informed about their rights for disputing errors related to the transfer of incorrect data.

Post-transfer loan status. RESPA provides that if a borrower mistakenly sends a payment during the sixty-day period following the effective date of transfer to the transferor servicer, which it receives on or before the due date under the terms of the note, the payment may not be treated as late for any purpose.¹⁶ This sixty-day payment grace period provides some protection to the borrower not only when a payment is incorrectly sent to the transferor servicer but also in the event that the transferor servicer fails to send the payment in a timely way to the transferee servicer. To ensure that all payments have been properly received and credited during the post-transfer period, the CSBS standards should require a transferee servicer to notify the borrower if it believes the borrower’s account is delinquent after the 60-day grace period expires.

In addition, the most pressing concern for borrowers who are mid-stream in the loss mitigation process at the time of transfer is knowing whether the transferee servicer is aware of the pending loss mitigation application and will continue with the evaluation process. While the notice requirements under 12 C.F.R. § 1024.41(k) help address this concern, the regulation does not require that this essential information be provided in all situations. For example, § 1024.41(k)(2) does not require the transferee servicer to send the acknowledgement notice under § 1024.41(b)(2)(i)(B) if the transferor servicer was required to send the notice but failed to do so prior to the transfer date.

All borrowers in loss mitigation should get some written confirmation of where they stand with the transferee servicer. The CSBS standards should require the transferee servicer to 1) review the transferred documents to determine whether any § 1024.41(b)(2)(i)(B) acknowledgement notices were sent to the borrower by the

¹⁶ 12 U.S.C. § 2605(d); 12 C.F.R. § 1024.33(c)(1).

transferor servicer, and 2) send to the borrower within a specified time period either an acknowledgement notice identifying the information and documents the transferee servicer believes are needed to complete the application and the deadline for the borrower to respond or a notice of complete application under § 1024.41(c)(3).

Information about borrower error resolution rights. Before the RESPA Servicing Rule went into effect, servicers were required to provide a statement on the transfer of servicing notice of the borrower's rights under the error resolution process in 12 U.S.C. § 2605(e).¹⁷ The CFPB eliminated this requirement from the transfer notice when § 1024.33(b)(4) was finalized. The reasons given by the Bureau for this deletion were not compelling at the time, and have proven to be even less convincing in light of mounting problems with servicing transfers.

The CFPB stated that “detailed information about the error resolution and information request process may not always be optimally located in the transfer notice” and that borrowers should be informed of this process “through mechanisms that do not necessarily depend on the transfer of servicing.”¹⁸ The CFPB suggested that servicers would inform borrowers of dispute rights as part of their compliance with the requirement being added in § 1024.38(b)(5), that servicers maintain policies and procedures reasonably designed to ensure that servicers “inform borrowers of procedures for submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36.”

However, the CFPB did not mandate any process or method that servicers must use to inform borrowers of dispute or information rights. In fact, none of the mandatory contacts with borrowers require disclosure of these rights. For example, periodic billing statements sent under § 1026.41, early intervention written notices sent under § 1024.39, and loss mitigation notices sent under § 1024.41 (notice of acknowledgment of receipt of borrower's loss mitigation application, notice of decision on evaluation of borrower's complete loss mitigation application, notice of decision on appeal) do not require the servicer to inform the borrower of the right to send a notice of error or request for information.

Left to their own devices to develop “policies and procedures,” servicers have been ineffective in communicating this critical information to borrowers. The CSBS should not assume that borrowers are generally aware of their RESPA dispute rights (and comparable dispute rights under state law) or that they will know how to validly exercise these rights by a limited disclosure on a periodic statement of a toll-free number telephone number or electronic mailing address they can use to obtain account information (or if they have “questions”). In fact, such disclosures can actually mislead borrowers by making them believe that oral inquiries will trigger rights under § 1024.35 and § 1024.36.

¹⁷ See former 12 C.F.R. § 1024.21(d)(3)(vii).

¹⁸ 78 Fed. Reg. 10730 (Feb. 14, 2013).

While the CSBS cannot restore the requirement that transfer notices include disclosure of borrower rights under 12 U.S.C. § 2605(e),¹⁹ the CSBS standards can require servicers to comply with § 1024.38(b)(5). Servicers should be required to provide state regulators with a written policy that identifies the specific written notices it provides to borrowers to ensure that borrowers are informed of procedures for submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36.

Uniform Data Standard. The CFPB's supervisory and enforcement proceedings have highlighted serious problems in the boarding of loans from one servicer to another, based in part on the incompatibility of servicer systems of record. One cause of these problems is that the servicing market has relied upon outdated and deficient servicing technology. Regulators can no longer rely upon individual servicers to voluntarily develop policies, procedures and technology systems for the timely and accurate transfer of data.

Although not exhaustive, the CFPB has prepared a list of the information and data, compiled as Exhibit A to its April, 2020 Policy Guidance, that should be transferred or received in a servicing transfer.²⁰ Regulators should reach agreement on an industry standard for this transfer information and data in which each data point has a standardized name, definition, value and format. This uniform data standard, similar to the Mortgage Industry Standards Maintenance Organization (MISMO) standard, should be transparent and widely available, and its use required by all servicers.

The CSBS should work with the CFPB, HUD, FHFA, and other regulators to define industry-wide standards and protocols to ensure the compatibility of transferred data as between servicers. Standards should be developed that permit this loan-level information in the form of the uniform data points to travel with borrowers in a uniform format from servicer to servicer, using a unique identifier for each loan, not unlike the universal system of electronic medical records (EMR) used in the medical field. Such standards would ensure that all servicers speak the same language when transferring information.

The development of uniform data standards for servicing transfers can have a huge impact in advancing both consumer protection and bank safety and soundness. We urge the CSBS to focus its efforts on this issue and to work with other regulators in finding a solution to this serious problem.

Inclusion of Reverse Mortgages

We support the coverage of reverse mortgages under the CSBS proposals. CSBS has not provided any grounds for excluding these transactions, and there are

¹⁹ 12 C.F.R. § 1024.33(d).

²⁰ "CFPB Bulletin 2020-02 - Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers," Appendix A, pp. 12-18, April, 2020.

significant reasons why inclusion is appropriate. First, reverse mortgages are subject to foreclosure under state law procedures. State regulators should use their familiarity with their states' foreclosure laws to ensure that consumer protections apply when reverse mortgage borrowers face delinquencies. Second, in recent years the protections available to borrowers with reverse mortgages have improved significantly. These include HUD-sponsored loss mitigation options specifically designed to assist reverse mortgage borrowers, as well as state laws.²¹ As was true for other loss mitigation programs and standards, states can play an important role in oversight and enforcement. A reverse mortgage borrower should not face foreclosure under state laws when a servicer has not afforded the borrower the relief available under the federal and state standards. Significant compliance and safety and soundness concerns arise when servicers conduct unnecessary foreclosures of reverse mortgages.

Please direct any questions regarding National Consumer Law Center's comments to Geoff Walsh gwalsh@nclc.org (617) 542-8010 or John Rao jrao@nclc.org (617) 542-8010.

²¹ For example, HUD Mortgagee Letter 2015-15 (June 12, 2015) and HUD regulations at 24 C.F.R. § 206.125; N.Y. Assembly Bill 3008-C, N.Y. Senate Bill 2008-C enacted in 2017.