September 9, 2024

The Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2024-0024

Submitted electronically via regulations.gov

Dear Director Chopra:

The undersigned civil rights, legal services, and consumer advocacy organizations respectfully submit this letter in response to the Consumer Financial Protection Bureau's (CFPB) Notice of Proposed Rulemaking under the Real Estate Settlement Procedures Act (RESPA), Regulation X. We commend the diligent effort that the CFPB has undertaken to make streamlined loss mitigation reviews a permanent option, while keeping fundamental consumer protections in place. We are writing to support the proposed rule and to offer a number of suggestions for areas to refine the regulatory text.

Commencing protections with a request for assistance will help many borrowers avoid foreclosure.

The Bureau's proposal to trigger protections with a request for loss mitigation assistance rather than a complete application will protect many more borrowers from avoidable foreclosures and unnecessary fees. We applaud the CFPB's decision to commence foreclosure protections earlier. Since the original loss mitigation rule was issued, many consumers have complained of servicer delays that prevented them from submitting a complete application, or wrongful claims by servicers that an application was not complete.

The Bureau should clarify that a request for loss mitigation assistance includes any communication in which a borrower expresses an interest in a loss mitigation option and the borrower either 1) affirmatively states that they wish to be evaluated for a loss mitigation option, or 2) provides some information the servicer would use to evaluate the borrower for a loss mitigation option. The Bureau also should require servicers to send a notice telling the borrower that the servicer believes a request for assistance has been made, that the borrower is entitled to procedural protections during the loss mitigation review, and that the borrower should notify the servicer if they did not intend to make a request for assistance. Also, the Bureau should revise the rule to make it clear that forbearances and other temporary options do not exclude the borrower from the foreclosure protections as a duplicative request.

The Bureau should require servicers to exercise reasonable diligence in the loss mitigation review process.

The CFPB has proposed appropriate amendments to simplify the loss mitigation procedures. However, the Bureau should include specific requirements related to moving the evaluation process along. The requirement that a servicer show it has "regularly taken steps" to communicate with the borrower is in the proposed rule only as a precondition to starting the foreclosure process. This is not sufficient. There should be a freestanding obligation to move the review process along. The standard for this should be reasonable diligence, the same words

currently used in § 1024.41(b)(1)), not "regularly taking steps." The existing language is already an established standard and also is more likely to promote engaged mortgage servicing. The Bureau should establish minimum standards for servicers to obtain missing documents and information from the borrower, including requiring a written notice to the borrower.

Notably, the Bureau's proposed prohibition on fees during foreclosure includes a rule not allowing borrowers to be charged for foreclosure and legal fees during the loss mitigation review cycle. This rule should be finalized because it will help borrowers avoid foreclosure and carry out the consumer protection purposes of RESPA. The substantial fees assessed for foreclosure and legal services make it more difficult for a borrower to bring the loan current. Barring these fees during a loss mitigation review cycle is consistent with the ban on advancing foreclosure during such a review. However, the fee prohibition alone is not enough to promote efficient, sustainable hardship assistance reviews. As described above, the final rule also must require servicers to exercise reasonable diligence and to send written notices telling the borrower if documents are required.

The Bureau should allow protections against the dual tracking of foreclosures and loss mitigation reviews to terminate when a borrower is unresponsive to requests for documents related to a loss mitigation review, with appropriate protections.

The proposed procedural safeguards adopt the right approach, prohibiting a servicer from starting foreclosure until one of the safeguards has been satisfied. The two safeguards are appropriate: either the borrower has been reviewed for all options and none remain, or the borrower has been unresponsive. However, the Bureau should clarify the necessary steps a servicer must take before denying a borrower for an option based on the borrower's failure to respond to information or documents requested for a loss mitigation review. This should include requiring the servicer to exercise reasonable diligence in order to satisfy this safeguard. If a borrower fails to make a reasonable attempt to provide information or documents that have been requested, servicers should be required to send one additional notice before cutting off dual tracking protections. Moreover, the Bureau should clarify that a borrower performing on a forbearance agreement is not "unresponsive."

The proposed amendments to § 1024.41(i) for duplicative requests inappropriately expand the scope of the exclusion.

Limiting the application of the loss mitigation rule to a first attempt at loss mitigation reasonably balances costs and benefits *only* if such a restriction has appropriate limits. The Bureau should state explicitly that the duplicative request exclusion does *not* apply if the borrower is reviewed for only a temporary loss mitigation option such as a forbearance. This would allow someone with a forbearance to then benefit from the foreclosure protections while they seek a permanent solution, even if they dropped out of contact with the servicer during the forbearance period and returned later to apply for a permanent option.

The Bureau also should state explicitly that the duplicative request exclusion does not apply to a different servicer, such as when there has been a transfer of servicing. Servicers do not promptly transfer complete information about pending and past loss mitigation reviews, so a transferee servicer should not be able to rely on the past servicer's alleged review. The Bureau should also state explicitly that the duplicative request exclusion does not apply if the borrower is denied due to the inability to obtain documents outside of the borrower's control.

The improved early intervention notice and end-of-forbearance notice will increase the likelihood that borrowers can obtain an appropriate permanent loss mitigation option.

The CFPB's improved early intervention notice and new end-of-forbearance notice and live contact requirements will substantially benefit borrowers at risk of foreclosure. Including the identity of the investor that controls what loss mitigation options exist for the loan will make it much more likely that borrowers can ensure they are reviewed for the appropriate option. Legal services attorneys and housing counselors have raised many examples of servicing personnel communicating with the borrower about loss mitigation options in ways that do not reflect familiarity with the applicable investor rules.

We request that the CFPB make minor adjustments to the early intervention rule. First, the Bureau should require *specific* information about options available from the investor to be stated in the notice and on the servicer-hosted web site, including any limitations and the relevant evaluation criteria. Specific information will be much more helpful than the general fact that this investor allows a "loan modification." When a borrower receives the investor information in the notice, they will be able to find out meaningful information about their options. In addition, the end of forbearance notice should be sent to the borrower farther in advance than the proposed 30 days. We suggest 60 days prior to the end of forbearance, or both 30 and 60 days prior.

The proposed determination notice contains information borrowers need in order to correct errors and ensure that they obtain the most appropriate loss mitigation option.

The Bureau's proposed determination notice, to be sent after a review, includes very important information that borrowers need, and appropriately balances the benefits and risks of a streamlined loss mitigation approach. It is crucial that the notice informs the borrower of whether other options may be available, and how to request review for those other options. The fact that the notice includes borrower-provided inputs that affected the determination will help to catch potential errors and miscommunications early. We know of many instances of a servicer using the wrong figure for the borrower's income, for example.

The CFPB should require servicers to disclose the relevant non-borrower-provided inputs in the determination notice as well, rather than putting them on a website. The non-borrower-provided input of the property value makes a substantial difference in the GSE waterfall, for example, and we have heard of many times when correcting a mistaken valuation has led to substantially different loan modification terms.

The CFPB should clarify that if multiple options are reviewed simultaneously, they all must be captured in the same determination notice. Moreover, if a determination notice lists other options that may be available from this investor, it should also include specific information about the limits of their availability for *this borrower*. Requiring the determination notice to refer the borrower to the same web site referenced in the early intervention notice, which references the loss mitigation options generally available from this investor, is also helpful as a supplement to the borrower-specific information in the determination notice. In addition to citing the amount of time a borrower has to appeal a determination, the notice should state the amount of time a borrower has to ask to be reviewed for other options and the fact that procedural protections (explained in plain language) will end if the borrower does not act within these time limits.

The proposed rule would make loss mitigation appeals substantially more likely to result in correction of an improper loss mitigation determination.

The CFPB's proposed text related to treating appeals like a Notice of Error (NOE) will make it significantly more likely that erroneous loss mitigation decisions get corrected. The existing rule has not led to a meaningful appeal process, since there was no clear requirement for a reasonable investigation. Adopting the NOE standard, which requires such an investigation, is appropriate here. The Bureau should require, however, that servicers provide the designated NOE address in the determination notice as the address to send appeals, and should extend the 14 day appeal period to 30 days.

The Bureau should lengthen any minimum response periods to at least 21 days to account for persistent mailing delays.

The proposed rule includes certain response windows that are 14, or even 7, days. We have heard of numerous examples of a servicer's letter taking 7 to 10 days to get to the borrower. This is true in part because of delays in delivery by the U.S. postal service, which are well-documented, and also because servicers use third-party vendors that do not deposit letters in the mail on the date the letter was purportedly sent. In addition to ensuring that no response window is shorter than 21 days from the date mailed, the CFPB should require servicers to date the top of each correspondence and to send mail by a means that involves a postmark date.

We support the CFPB's very important proposal to increase language access in the loss mitigation process.

Meaningful language access helps consumers avoid preventable foreclosures. Translations of essential written communications allow borrowers in need to take action quickly. Bilingual essential documents in English and Spanish will provide immediate access to the majority of LEP mortgage borrowers. We support requiring servicers to choose the remaining languages for translated written notices, so long as the languages are chosen according to the language needs of their borrower population. Oral interpretation access should be expanded because it is a tool that can efficiently provide access in a broader range of languages than translated forms. Moreover, if the Bureau considers modifying the number of languages for which a servicer must provide written translations, the languages for which oral interpretation is provided should not be decreased.

The CFPB should protect successors in interest beginning with the request for assistance, just like other borrowers.

To protect successors in interest from unnecessary foreclosures and foreclosure-related fees, the CFPB should require, not permit, servicers to treat a request for assistance from a potential successor in interest as a request for assistance that triggers dual tracking protections. These protections should continue until the servicer determines the person is not a successor, provides the potential successor a reasonable deadline to send reasonable proof of ownership that the successor does not meet and that deadline has passed, or until the procedural safeguards are otherwise satisfied for a confirmed successor.

The CFPB should ensure that borrowers with zombie second mortgages have a reasonable opportunity to apply for loss mitigation and avoid unnecessary foreclosures.

In order to address persistent problems with zombie second mortgages, the Bureau should

repeal the exemption for Home Equity Lines of Credit (HELOCs) from Regulation X's Subpart C. The HELOC exemption is not warranted based on the way these mortgage loans were made and how they are serviced. HELOC borrowers need protections similar to those for borrowers with closed-end mortgages, especially for the significant number of HELOCs that are left unserviced for many years until there is equity in the home.

Thank you for your attention to these important issues. If you have any questions about this letter, please contact Alys Cohen, Senior Attorney at the National Consumer Law Center, at acohen@nclc.org.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
National Housing Law Project
Americans for Financial Reform Education Fund
Atlanta Legal Aid Society, Inc. (GA)
Community Legal Services of Philadelphia (PA)
Connecticut Fair Housing Center
Consumer Action
Disability Rights Advocates
Housing and Economic Rights Advocates (CA)
Jacksonville Area Legal Aid, Inc. (FL)
Legal Aid Society of Southwest Ohio, LLC
Long Island Housing Services, Inc.
National Association for Latino Community Asset Builders (NALCAB)
National Association of Social Workers
National Fair Housing Alliance
National Housing Resource Center
NHS Brooklyn CDC, Inc. (NY)
North Carolina Justice Center
Pine Tree Legal Assistance, Inc. (ME)
Public Counsel (CA)
UnidosUS
Vermont Legal Aid
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