

NATIONAL HOUSING RESOURCE CENTER

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Mortgage Servicing Standards

Comments by Housing Counseling Agencies

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Docket Nos. Mortgage Servicing Proposals: TILA - CFPB-2012-0033: RIN 3170-AA14 and RESPA- CFPB-2012- 0034: RIN 3170-AA14

Given the damage to homeowners, to communities, and to the American economy by the abuses of the mortgage servicing industry, it is critical that the Bureau take strong positions to protect consumers and prevent a similar crisis from occurring in the future. As organizations which work daily with distressed homeowners, we need to say that while the proposed rule has some valuable provisions, the rule does not go far enough in protecting homeowners in loss mitigation, in not preventing dual track, in providing only a narrow list of error resolution rules, and in not providing appropriate protocols for housing counselors to interact with servicers on behalf of distressed homeowners.

We recommend that the Bureau withdraw the proposed rule and reconsider the rule at a later time with substantially stronger loss mitigation, dual track, error resolution, and housing counseling provisions.

Clear Monthly Mortgage Statements: We commend the Consumer Financial Protection Bureau for requiring a clearer and simplified monthly mortgage statement. We propose that the monthly mortgage statement include information on how to access a nonprofit, HUD approved housing counseling agency through a website, which can be HUD.GOV/housing counselor or a CFPB website.

Early Information and Options for Avoiding Foreclosure: In Pennsylvania, the state has a highly effective mechanism for alerting homeowners about the availability of nonprofit housing counseling. Every servicer is required to provide a list of nonprofit housing counseling agencies to a homeowner at the time the written notification of foreclosure is sent. The law also requires a thirty day delay in proceeding with the foreclosure if the homeowner files a Homeowner Emergency Mortgage Assistance Program (HEMAP) application through a nonprofit housing counseling agency to the state. The Bureau should require servicers to provide a list of HUD approved nonprofit housing counseling agencies to the homeowner with the mailing of the foreclosure notice. The Bureau should also consider requiring a delay in foreclosure proceedings if the homeowner either on their own or through a housing counselor contacts the servicer and initiates efforts to obtain a resolution, which can include a modification, a payment agreement, a payoff, a short sale, a deed in lieu, or other resolution.

Clear Communication and Interaction Protocols for Housing Counseling Agencies Representing Homeowners: The last three years have shown the value and need for nonprofit housing counseling agencies in assisting distressed homeowners. Housing counselors working for HUD approved housing counseling agencies who have written authorization from the homeowner should have clear guidelines for interacting with the mortgage servicer. These are:

1. Servicers should be required to accept loss mitigation packages from every HUD approved housing counseling agency
2. Servicers should be required to work with housing counselors from HUD approved housing counseling agencies, when the client has provided a written authorization.
3. Servicers should provide communications about the case to both the authorized agency and the homeowner.
4. The servicer should provide the counselor with the contact information for a senior manager (an escalation contact) to allow the counselor to elevate issues where there have been case evaluation errors, procedural errors, or other problems.
5. Servicers should be required to pay HUD approved housing counseling agencies for delinquency counseling work performed by the agency on mortgages in the servicer's portfolio.
6. Payments made by servicers to HUD approved housing counseling agencies for work performed on mortgages should be reimbursable by the investor.

On force placed insurance, we support the Bureau's proposal, but the Bureau should have a solution for homeowners who do not have an escrow account.

Dual Track To properly protect homeowners, the Bureau must have strong provisions to prevent foreclosures from proceeding while the homeowner is being evaluated for an appropriate loss mitigation resolution. Dual track, where the foreclosure proceedings move on a separate track from the loss mitigation proceedings, is an area of widespread abuse where qualified homeowners lose their home unnecessarily in foreclosure while having good faith discussions with the servicer. In a recent survey of housing counselors conducted by the National Housing Resource Center, 73% of counselors rated the compliance of servicers in following the rules on dual track as fair or poor.¹ In the first report of the California Monitor of the National Mortgage Settlement, she wrote "In my

¹ Mortgage Servicing Survey, What Housing Counselors Are Reporting, September 2012. Survey conducted September, 2012; 285 housing counselors responded.

view, the Settlement’s restrictions on dual tracking are at the heart of changes that will give families who have fallen on hard times a fair chance to keep their homes. The Settlement did not change the loan modification landscape overnight, nor did it promise to do so. Under the agreement, mortgage companies had six months to change practices that were harmful to homeowners. In California, dual tracking was widespread during this time.” The report went on to state that 25% of the complaints received by her office in August, 2012, were involving dual track.² The Bureau rule should stop the dual track problems by preventing the initiation of any foreclosure proceeding if the homeowner is being evaluated for loss mitigation. If foreclosure proceedings have already started, the foreclosure should be halted until all evaluations including appeals are completed. A homeowner losing their home unnecessarily because of dual track should be unacceptable to the Bureau.

Loss Mitigation All servicers should offer the full range of loss mitigation options. The Bureau should not limit requirements to “servicers that offer mitigation options in the ordinary course of business.” For mission driven nonprofits which provide some servicing activities, such as Habitat for Humanity, we support a specific waiver. The Bureau should provide clear rules for servicers in the following areas:

1. Home saving strategies should be required with an affordable loan modification ranked first.
2. Servicers should be required to evaluate homeowners for all loss mitigation options before initiating or continuing with foreclosure.
3. Homeowners seeking assistance after a foreclosure has started should have their foreclosures paused while their files are reviewed, and if needed, appealed, in a timely fashion.
4. All servicers must be required to offer affordable loan modifications to qualified homeowners.
5. Successful trial modifications must be automatically converted to permanent modifications by the mortgage servicer. Homeowners should not have to carry the costs from delays in converting to a permanent modification.
6. The homeowner and their authorized representatives should receive notifications in writing of the homeowner’s status in the loss mitigation process.
7. In the list of reasons the Bureau provides for engaging in the error resolution process, the Bureau should include failure to meet loss mitigation requirements and a general “catch-all” category to allow homeowners and their representatives to raise new issues as they emerge.

Requirement of Modification Offer The best outcome for most homeowners with income reduction is an affordable modification. Servicing standards should facilitate modifications for qualified homeowners. The terms of the modification should lead to an affordable and sustainable house payment. Affordability can be based on the homeowner’s house payment to income ratio, total debt to income ratio, hardship, or

² Waiting for Change, Dual Tracking and Home Foreclosure, Office of California Monitor, October 2, 2012

some combination of the three. Many consider servicers also consider net present value (NPV) or some equivalent procedure to compare the cost to the investor of foreclosure and of loss mitigation. Not all loss mitigation uses NPV values and we recommend that this be an optional consideration and not a requirement for determining a modification.

Single Point of Contact The Single Point of Contact (SPOC) is only useful if you can make contact. Counselors report that SPOCs are not available when the counselor is calling, the SPOC voice mail is full, and when a message is left call backs are not consistent. Furthermore, some SPOCs lack knowledge of details pertinent to the homeowner files and/or no decision making power on the case. Some SPOCs are not able to reach across organizational lines and are not aware of what other departments, such as the foreclosure unit are doing. It is critical to have a SPOC that can both communicate with the homeowner and counselor. The SPOC should be accessible during standard office hours. The standard office hours should also factor in varying time zones. The SPOC should return calls within a 24 hour period. The SPOC should be intimately familiar with the details of the homeowner file. The SPOC should be able to halt any foreclosure proceedings unit a case is fully evaluated.

Addressing Discrimination All borrowers should be treated with respect by servicers, regardless of payment history. Housing counselors have had clients whose immigration status was questioned, whose ethnicity was insulted, whose work status was disrespected, or whose family status was denigrated. Some of this problem is rooted in a history of aggressive and abusive collections practices used by the servicing industry in the past. The Bureau should have a clear statement in servicing standards prohibiting abusive and discriminatory activities and a way to report these abuses.

Language Barriers For homeowners who are not fluent in English, the servicer should provide services in their native language. This includes verbal interaction with the servicer and the required forms. People who are not fluent in English should be able to submit letters of explanation and hardship letters in their native language

Enforcement and Accountability: Housing counselors report that mortgage servicers continue to make mistakes when assessing homeowners for a loan modification. In the recent survey of housing counselors:

- The majority, 80 percent of housing counselors surveyed reported that mortgage servicing staff usually or sometimes committed errors with calculations of a homeowner's income. Income calculation is the most critical element of loan modification.
- Three out of four counselors stated that mortgage servicing staff usually or sometimes committed errors with calculations of their Net Present Value (NPV) calculations.

- When asked how often mortgage servicers did not provide an explanation for delays or denials, nearly 15 percent of counselors reported that this was a problem always.³

The Bureau must establish strong mortgage servicing rules and must enforce these rules through regular audits of servicers and by taking complaints from homeowners and housing counselors. Communities of color have been hit the hardest by the foreclosure crisis, scam artists are rampant in our communities, information about foreclosure prevention programs are not reaching our families, and mortgage servicers are not required to provide the public with data about loss mitigation based on race and ethnicity. The Bureau should collect data by race and ethnicity and publicly disclose the data.

Beyond Housing, St. Louis, MO
Cambridge Credit Counseling Corporation
Community Housing Council of Fresno
HomeFree-USA
Housing Action Illinois
Housing and Community Development Network of New Jersey
Housing Partnership Network
Mission of Peace National Corporation
National Coalition for Asian Pacific American Community Development (CAPACD)
National Community Reinvestment Coalition
National Council of La Raza
National Foundation for Credit Counseling
National Housing Resource Center
National Urban League
Neighborhood Nonprofit Housing Corporation
Neighborhood Housing Services of New Orleans
Neighborhood Nonprofit Housing Corporation, Logan, Utah
Northern Circle Indian Housing Authority, Ukiah, California
Urban League of Hampton Roads, Inc., Virginia

³ Mortgage Servicing Survey, Op cit.