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July 22, 2013

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Submitted electronically to http://www.regulations.gov

Re: RIN 3170-AA37, Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

Dear Consumer Financial Protection Bureau:

The National Housing Resource Center (NHRC) is pleased to submit the following comments on the Bureau of Consumer Financial Protection's (the Bureau's) proposed amendments to its January 2013 mortgage rules. NHRC's mission is to advocate on behalf of the nonprofit housing counseling community and, by extension, housing consumers. While we are generally supportive of the Bureau's proposed amendments, we believe they should be strengthened to afford greater protection to housing consumers.

The Bureau Should Replace the Receipt of a Complete Application as the Event that Triggers §1024.41 Protections with the Receipt of an Initial Application

We believe the use of a servicer's receipt of a complete loss mitigation application as the event that triggers the borrower protections of this section is unwise. The Bureau itself recognizes that many of the protections of this section are triggered by the receipt by the servicer of a complete loss mitigation application, making the receipt of a complete application an enormously important event for a borrower seeking to avoid foreclosure by engaging the loss mitigation process.

Under the current standard, servicers themselves are responsible for establishing the criteria for what constitutes a complete application. The documents and information that constitute a complete application vary from servicer to servicer and, in our experience working with housing counselors, the requirements are often difficult even for experienced counselors to keep up with, let alone for borrowers who are generally unfamiliar with the loss mitigation application process. The lack of a clear, universal standard causes confusion and ultimately leads to foreclosures that

could have been prevented had the borrower's submission of an initial application triggered the protections of this section.

In place of the complete application standard, the Bureau should instead set a universal standard for when the consumer protections of the section are triggered. We suggest replacing the complete application standard with the "initial package" standard used in the HAMP program. A HAMP initial package includes a request for mortgage assistance (RMA), IRS 4506T or 4506T-EZ, income verification, and a Dodd-Frank certification. This strikes an appropriate balance between affording consumers access to loss mitigation and creating a reasonable burden that requires borrowers to have some "skin in the game."

Replacing the complete application standard with a universal "initial package" standard will further the Bureau's consumer protection objectives by promoting access to loss mitigation and will ensure that all borrowers are afforded the same opportunity to access these important protections. Creating a universal standard also has the benefit of reducing the confusion created by each servicer having its own standard for what constitutes a complete loss mitigation application and therefore what triggers these consumer protections. Finally, a universal standard would greatly reduce the incidence of servicer errors in evaluating whether or not an application is complete and would greatly reduce the occurrence of scenarios such as those that necessitated these proposed comments and new provision.

Servicer-Created Reasonable Expectation that a Loss Mitigation Application is Complete

The Bureau has requested comments on its proposed changes to the comments interpreting § 1024.41(b) and proposed new § 1024.41(c)(2)(iv) concerning situations in which a servicer has informed a borrower that his or her loss mitigation application is complete or requires certain additional documents or information that the borrower then submits and the servicer subsequently becomes aware that it requires additional documents or information in order to make a loss mitigation decision. Specifically, the Bureau has requested comments as to whether, if the additional documents or information is supplied, the application should be treated as complete as of the date the additional information is supplied or as of the date the borrower was given the reasonable belief the application was complete. As any other date would allow for borrowers to be punished for servicer mistakes, under such circumstances the application should be treated as complete as of the date the servicer received the borrower's initial application or the additional documents or information the servicer notified the borrower were necessary to complete the application.

Borrowers should not be penalized for their servicers' mistakes, which they could be if the Bureau chooses to adopt the standard that the application is complete as of the date the additional information is supplied. Imagine, for example, a borrower who is notified 105 days prior to a scheduled foreclosure sale that his or her loss mitigation application is complete and is

subsequently notified 89 days prior to the foreclosure sale that his or her application is in fact incomplete. If the servicer had correctly informed the borrower that the application was incomplete in the first instance, the borrower would have had time (more than two weeks) to complete the application in time to preserve all of his or her rights under this section, including the right to appeal an adverse decision. Under our proposal, the borrower would be able to preserve his or her rights by supplying the additional document or information within a reasonable time, as, upon doing so, the application would be treated as having been complete as of the date of the initial submission. Under the alternative proposal, however, the borrower would lose that right through no fault of his or hers, but rather due solely to the servicer's error.

Accordingly, under these circumstances, the Bureau should adopt a standard that treats the borrower's application as complete as of the date the servicer received the initial application or the additional documents or information the servicer notified the borrower were necessary to complete the application.

Timelines for Borrower Acceptance/Rejection and Right of Appeal

The Bureau has proposed § 1024.41(b)(3) which, for purposes of timelines and procedures that are based on the proximity of a scheduled foreclosure sale at the time of receipt of a complete application, would instruct servicers to use the date of the receipt of a complete application as the determinative date. This provision is intended to fill in a gap left by the Final Rule as to how servicers should treat situations where there is no foreclosure sale scheduled at the time of receipt of a complete application, there is no foreclosure sale scheduled at the time of receipt of a complete application but one is subsequently scheduled for fewer than 90 days, or where there is a foreclosure scheduled for less than 90 days from the date of receipt of a complete application but it is subsequently postponed for later than 90 days. The Bureau should adopt its proposed standard for the first two of these scenarios, but, in the interest of consumer protection, should adopt a different standard for the third of these scenarios.

We believe that, as a general rule, questions such as this should be resolved in favor of maximizing consumer protection. In the first two scenarios described above, where there is no foreclosure sale scheduled at the time of receipt of a complete application and where there is no foreclosure sale scheduled at the time of receipt of a complete application and one is subsequently scheduled for fewer than 90 days from the date of receipt of the complete application, adopting the date of receipt of the complete application as the determinative date for purposes of determining the borrower's rights under § 1024.41 maximizes consumer protection by affording the borrower the maximum rights available to him or her. Under the third scenario, though, where there is a foreclosure sale scheduled for fewer than 90 days before the date of receipt of the complete loss mitigation application and the foreclosure sale is subsequently postponed for at least 90 days from the date of receipt of the complete application, adopting the

date of receipt of the complete application as the determinative date for purposes of determining a borrower's rights under § 1024.41 will result in the borrower being afforded fewer rights that he or she might otherwise have been, including denying him or her the right to appeal a rejection of the loss mitigation application.

While in some circumstances other considerations will counsel in favor of adopting a rule that affords consumers less protection than they otherwise may have been, in this case the countervailing considerations are not strong enough to do so. The Bureau argues that adopting the date of receipt of a complete application as the standard in all three of the scenarios discussed here will avoid complexity, uncertainty, and confusion. The Bureau also points to undesirable incentives and disincentives that it argues could result from an alternative rule. However, we believe that a standard that provides greater consumer protection can be adopted without creating an objectionable amount of complexity, uncertainty, or confusion. Furthermore, we do not believe the undesirable incentives and disincentives the Bureau points to will come to pass should the Bureau adopt a standard that provides greater consumer protection.

Accordingly, the Bureau should adopt the date of receipt of a complete application as the determinative date for purposes of determining a borrower's rights under §1024.41. However, where a foreclosure sale is initially scheduled for fewer than 90 days from the date of receipt of the complete application and is subsequently postponed to at least 90 days after the date of receipt, the application should be treated as having been received at least 90 days before the scheduled foreclosure sale. The additional consumer protection that would be afforded by such a rule would offset the additional complexity it would create. Furthermore, any potential for uncertainty and confusion that such a rule would create would only be in the context of informing a borrower that, as a result of postponing the foreclosure sale, he or she would now have more rights than he or she had previously. Under these circumstances, we believe the borrower would welcome the news, even if he or she were somewhat confused as to exactly why he or she was receiving it.

With respect to the undesirable incentives and disincentives the Bureau is concerned could be created by a different rule, our experience leads us to believe they will not actually come to pass. Specifically, the Bureau argues that adopting a rule such as the one we are proposing could create an incentive for servicers to draw out their determination process and a disincentive for servicers to postpone scheduled foreclosure sales. In our experience, servicers will take the maximum time they are allotted to do anything, or close to it, so we are not concerned that our proposed rule will lead to servicers drawing out their determination processes. Likewise, in our experience servicers only decide to postpone a scheduled foreclosure sale when doing so is required by some other circumstance and so we do not believe that adopting our proposed rule will result in servicers deciding not to postpone foreclosure sales when they otherwise might have.

Incomplete Loss Mitigation Application and Offer of Short-Term Forbearance

The Bureau has proposed modifying its prohibition on servicers evaluating incomplete loss mitigation applications to allow servicers to offer short-term forbearances of up to two-months based on an incomplete application. We generally agree with this proposed change but believe that, because of the potential for borrower confusion that could result, that the Bureau should require additional and more specific information in the notice it proposes to require servicers to send to the borrower when offering a short-term forbearance based on an incomplete loss mitigation application. Specifically, we believe the required notice should include the following information:

- The servicer has received an incomplete loss mitigation application;
- Because the loss mitigation application is incomplete, the only loss mitigation option for which the servicer was able to evaluate the borrower was a short-term forbearance, which the borrower has been approved for;
- A short-term forbearance is generally a good loss mitigation option for borrowers facing a short-term difficulty but may not be the best loss mitigation option if the borrower is facing a longer-term difficulty in paying his or her mortgage;
- If the borrower would like to be considered for other loss mitigation options, he or she must submit the missing documents and information required to complete the loss mitigation application;
- A plain language explanation of the other loss mitigation applications for which the borrower will be considered if he or she completes the application;
- An explanation that absent further action by the borrower, the servicer will not be reviewing the incomplete application for other loss mitigation options; and
- A list of housing counseling agencies operating in the borrower's community, such as is required to be included in the periodic statement sent from the servicer to the borrower.

While the above scenario creates the opportunity for borrower confusion, requiring this additional information will minimize borrower confusion as much as is practicable.

The time period for this exception should be extended to include short-term forbearance of up to six-months.

Pre-Foreclosure Review Period Ban on Foreclosure Referral

The Bureau has proposed limiting the ban on foreclosure referral during the pre-foreclosure review period (i.e. the first 120 days of a borrower's delinquency). Specifically, the Bureau has proposed lifting the ban when the foreclosure is based on a borrower's violation of a due on sale clause or when the servicer is joining the foreclosure action of a subordinate lienholder. The

Bureau has specifically requested comments on whether there are other scenarios in which the ban on referral to foreclosure sale during the pre-foreclosure review period should be lifted.

While we understand the Bureau's reasoning for proposing to lift the ban in the two scenarios described above, we urge the Bureau to be extremely cautious in limiting the ban any further. As the Bureau correctly points out, the 120-day pre-foreclosure review period is critical to ensuring that borrowers have an adequate opportunity to submit a complete loss mitigation application and that servicers can consider complete applications without the competing interest of a pending foreclosure sale. The Bureau should be very reluctant to undo this important consumer protection in other scenarios.

Exceptions to the High Cost Mortgage Rule for Certain Balloon Payment Loans and Servicer Establishment of Escrow Accounts for First-Liens Higher-Priced Mortgage Loans

The Bureau has proposed extending the exception to the high-cost mortgage rule prohibition on balloon-payment loans. Generally, balloon payment loans are not eligible for qualified mortgage status. However, apparently because of a concern about restricting access to credit in rural and underserved communities, there is an exception to this prohibition which allows small creditors operating in rural or underserved areas to make balloon payment loans that are eligible for qualified mortgage status. The Bureau is now proposing to extend the exception to all small creditors for a two-year period while it studies how to define "rural" and "underserved." While we share Congress' concerns over access to credit, we do not believe that expanding the universe of servicers that are permitted to make high-risk loans that are still considered qualified mortgages is a desirable way to address the need for consumers' to have access to credit.

Our concern and reasoning over expanding the scope of creditors that are permitted to make balloon payment qualified mortgages also applies to the Bureau's proposal to expand the scope of creditors not required to establish an escrow account for first-lien higher-priced mortgage loans. There are better ways to expand access to credit than by removing important consumer protections. We do not believe more creditors should be subject to the exception from the general requirement that a creditor establish an escrow account for first-lien higher-priced mortgage loans.

We appreciate your consideration on this matter. If there are questions or comments that the Bureau would like to share with the National Housing Resource Center, please contact Bruce Dorpalen (bdorpalen@hsgcenter.org, 215 765-0048).