NEW YORKERS FOR RESPONSIBLE LENDING

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October 9, 2012

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington DC 20006

RE: CFPB Docket No. CFPB-2012-0034 “2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal”

Dear Consumer Financial Protection Bureau:

The undersigned members of the New Yorkers for Responsible Lending coalition (NYRL) are pleased to submit comments to the Consumer Financial Protection Bureau regarding its proposed amendments to Regulation X (which implements the Real Estate Settlement Procedures Act) regarding mortgage servicing practices.

NYRL is a 162-member state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL members represent community development financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, housing counselors, and community reinvestment, fair lending, labor and consumer advocacy groups. Coalition members have detailed knowledge of the array of abusive mortgage servicing practices that have caused tens of thousands of foreclosures and devastated communities across the state.

The CFPB has a unique and unprecedented opportunity to build on the Multi-State Mortgage Settlement, and promulgate strong, permanent, enforceable, and universal mortgage servicing rules that will prevent foreclosures, hold servicers accountable, and create a more equitable mortgage servicing system. While the CFPB’s proposed rules contain some provisions that will benefit homeowners and improve the process, the CFPB has missed a critical opportunity to lay out servicing standards that will require meaningful loss mitigation.

We therefore call on the CFPB to withdraw the current proposed rule on loss mitigation, and re-issue a new proposed rule based on the principles outlined below.

Our groups make the following recommendations for strengthening the CFPB’s proposed mortgage servicing rules:

1) <u>Loss Mitigation</u>

Mandate affordable modifications for qualified homeowners facing hardship, where the modification would have a positive net present value to investors

Given the servicers' dismal track record in providing modifications, and the misaligned incentives of servicers, the CFPB should issue rules making it mandatory for servicers to provide <u>affordable</u> loan modifications where it is beneficial to both homeowners and investors. The CFPB's current proposal on loss mitigation is actually a *step backwards* from the Multi-State Mortgage Settlement, which mandates that servicers offer a modification if a positive NPV value is indicated. It is critical that the CFPB build on and strengthen existing reforms, rather than weaken them.

Proposed section 1024.41, which lays out a *process* for loss mitigation decisions, will help eliminate some of the senseless delays that currently plague homeowners' loss mitigation efforts. However, servicer delay is only part of the problem.

The CFPB must also mandate *outcomes* in the loss mitigation process. Our experience as advocates on the ground has shown that servicers regularly deny loan modifications that they should approve. For example, servicers frequently deny modifications because homeowners have not submitted required documentation, when in fact that documentation has been submitted. Servicers also frequently deny a loan modification due to an "investor restriction" when no such restriction exists in the pooling and servicing agreement, mortgage loan purchase agreement, or any other governing contract.

Servicers' wrongful denial of loan modifications—in contravention of investor allowances and HAMP guidelines— has had a devastating impact on families and communities. Servicers profit from delay and denial of modifications, and they therefore make decisions against the interest of the investors in securitized mortgages. The market has not corrected this conflict of interest, and no amount of mandatory process will correct it so long as the outcomes remain at the servicer's discretion, as they are now.

The following example is all-too-typical of the barriers that homeowners continue to face due to invalid denials of modifications:

Mr. M, a Staten Island homeowner, qualifies for a HAMP modification. He submitted a HAMP application to Wells Fargo in January 2012 and has supplemented the application according to each of Wells Fargo's requests. Wells Fargo delayed reviewing his application for months, and then denied him for a modification for the false reason that it was unable to communicate with him. He then gathered, prepared, and submitted more documents in response to Wells Fargo's duplicative requests. In the middle of these negotiations, before completing a HAMP evaluation, Wells Fargo moved for a judgment of foreclosure. Mr. M's legal services lawyer then filed opposition pleadings and the court refused to grant judgment until Wells Fargo could review his HAMP application. Wells Fargo then issued two more wrongful denials of his modification application. As interest and fees continue to add to Mr. M's indebtedness due to Wells Fargo's delays and denials, Mr. M will soon become ineligible for HAMP.

<u>The CFPB should mandate that when a homeowner is facing hardship, and the NPV calculation indicates that a modification would be in the best interests of investors, that an affordable</u>

modification must be offered to the homeowner. Section 1024.41 should also require that NPV calculations be transparent, consistent and appealable. All servicers should be required to use a standardized NPV test that is freely available and accessible to homeowners and advocates. This change would add greatly needed transparency and accountability to the loan modification process, and allow the CFPB to ensure that servicers are acting in the best interests of homeowners and investors and not over-valuing foreclosure in the NPV test for their own gain.

Require servicers to review a homeowner for loss mitigation, beginning with a review for an affordable loan modification, prior to initiating foreclosure

Although the proposed rules outline a process for loss mitigation, they do not require servicers to offer loss mitigation options to homeowners. Again, this is a step backward from both the Multi-State Mortgage Settlement, which requires loss mitigation reviews, and from a gradual shift in industry standards toward more standardized loss mitigation.

The rules should mandate that servicers must review a homeowner for an affordable loan modification as a first step in the loss mitigation process, prior to initiating a foreclosure. It is important for the CFPB to put benchmarks for affordability in the rules, as unaffordable loan modifications only lead to re-default. The 31% debt-to-income ratio required by HAMP is a reasonable benchmark that would help ensure that homeowners get sustainable modifications that have a lower risk of re-default.

The CFPB's proposed rules should strengthen fledgling reforms, not undermine them. The requirement to engage borrowers in loss mitigation should apply to all types of home loans, regardless of who holds and services the loan. By failing to mandate that servicers offer loss mitigation options to homeowners (including a review for an affordable modification), the CFPB is missing an opportunity to standardize loss mitigation as a prerequisite to foreclosure, which would add clarity and certainty to the servicing process and reduce foreclosures.

Prohibit dual tracking

Our groups urge the CFPB to significantly strengthen the proposed rules to prevent "dual tracking." Simply preventing the actual sale of the home when the homeowner has presented a complete modification application is not sufficient. We have seen numerous cases where servicers have moved foreclosures forward, substantially increasing the loan balance with new fees, while homeowners have awaited a decision on a pending modification application. In addition to creating a great deal of confusion and anxiety for homeowners, these practices have inhibited modifications by making them more costly to homeowners.

Consider the following case example (which illustrates a myriad of typical servicing problems):

Mrs. V, a Staten Island homeowner, was offered a HAMP trial modification by Citibank in 2009. She made the three prescribed payments under the plan, but Citibank did not covert the trial to a permanent modification. She made two more monthly payments. Citi, after accepting five payments under the HAMP trial payment plan agreement, rejected Mrs. V's May 2010 payment, informing her that she had been "removed" from the HAMP program. Citi refused to provide any reason for her "removal." A Citi representative directed her to reapply for HAMP, which she did. Later that month, Citi filed a foreclosure action against her. Citi never advised Mrs. V that it required any further documents in order to evaluate her second HAMP application. However, in late June 2010, she received a letter denying her HAMP loan *modification application, alleging that she had not submitted all the required documentation. Only with the intervention of a legal services attorney and nearly 9 months of negotiation did Citi finally give Mrs. V the permanent loan modification that she should have received a year earlier.*

The rules should state that once the homeowner has presented the servicer with a complete application package, the servicer can take no action resulting in additional fees being charged to the homeowner—whether attorneys' fees, inspection fees, or similar fees, until a decision on the modification application has been rendered. Section 1024.41 should prohibit servicers from referring an account to foreclosure, or initiating a foreclosure proceeding, earlier than 90 days from the written notice under section 1024.39(b), or while a loan modification application is pending, including final resolution of any appeal. If a foreclosure proceeding is pending when a loan modification application is received, the proposed regulation should require the servicer to stay that proceeding until a final determination on the application is made. These prohibitions on dual tracking will reduce homeowner confusion, increase the number of affordable modifications, and provide servicers with an incentive to process loan modification requests in a timely fashion.

Require automatic conversion of successful trial modifications to permanent modifications

We also urge the CFPB to amend the proposed rules to require that homeowners who have qualified for a trial modification, and have made all trial payments on time, be automatically offered a permanent modification. This permanent modification should be offered within 14 days of receipt of the final payment under the trial modification plan. The offices of advocates around the state have been flooded with calls from homeowners who qualified for a trial modification, made all required payments, and then were either left in limbo without being given a permanent modification, or were denied a permanent modification despite successfully completing the trial plan.

The following case examples (as well as the example of Ms. V above) are typical:

Mr. C., a Rochester homeowner, had his mortgage serviced by Wilshire, and in February 2010 he qualified for a HAMP trial payment plan. He made 2 payments to Wilshire, but then received notice that his loan servicing rights had been sold to Bank of America. Mr. C. then received a letter from Bank of America stating that he would have to go through debt counseling in order to remain in the HAMP program. Mr. C. did so, but after making 3 payments to Bank of America he was told that he did not qualify for a permanent HAMP modification. To date, Mr. C. still has not received a loan modification, despite his case having been in the court settlement conference process for 18 months. Now that so much more time has passed, it makes it that much more difficult for him to qualify for any relief.

Mr. and Mrs. K, Brooklyn homeowners, are now making payments on their fourth trial plan. In June of 2009, they were sent a modification agreement which they executed, returned and made payments under for six months. Wells Fargo has not honored that agreement and has since offered Mr. and Mrs. K a series of trial plans, each with higher monthly payments. Despite Mr. and Mrs. K making timely payments on every trial plan offered, Wells Fargo has refused to offer them a permanent modification. When Mr. and Mrs. K call Wells Fargo in an effort to understand why they cannot get a permanent modification, Wells Fargo representatives are *unable to provide any explanation. Instead, they have simply asked Mr. and Mrs. K to submit new modification applications and to make payments on new trial plans.*

A rule requiring servicers to automatically convert successful trial modifications into permanent ones will make the modification process more efficient, and ensure that homeowners who play by the rules are not denied a modification due to delays, miscommunication, or lost documentation by servicers.

Prohibit modification denials based on certain issues with other liens

Section 1024.41(j) of the CFPB's proposal does not address certain recurring problems involving subordinate real property liens, which often hamper modifications. The first problem is the conflict of interest inherent when a servicer is servicing a first lien loan on a property on which they themselves hold a second lien. The rules should mandate that when a first lien mortgage modification is indicated based on the NPV calculation, the servicer must also modify its own second lien on the property.

The second significant problem is the current practice of servicers requiring homeowners to secure re-subordination of other mortgages. Many servicers are taking the position that modification of a first lien with capitalization of arrears puts that first lien position in jeopardy *vis-a-vis* other mortgages. Whether this is truly the case, or rather just another servicer tactic to avoid modification, is a matter for legal interpretation and perhaps beyond the scope of CFPB regulation. However, the rules could prohibit servicers from requiring the homeowner to secure the re-subordination as a condition of the modification. For an unrepresented homeowner, securing a re-subordination with a second lien-holder is next to impossible. Even when the homeowner is represented by an attorney who pursues the re-subordination agreement, it can be very difficult to get the second lien-holder even to respond to the request. Putting the onus on the homeowner adds further delay, and can scuttle the modification altogether.

To address this problem, Section 1024.41(j) should include a requirement that if a servicer determines that re-subordination of another lien is necessary, the servicer must take commercially reasonable steps to secure that re-subordination from the other lien holder (instead of requiring the borrower to do so). In addition, Subsection (j) should prohibit the servicer from denying a trial or permanent loan modification if it is unable to secure the re-subordination from the other lien holder.

Servicers also regularly delay or deny permanent modifications due to title issues, including judgments from third party debt buyers. The proposed rules should prevent servicers from denying loan modifications due to a title issue. At the very least, the rules should require servicers to allow a homeowner to continue to make trial modification payments until the title issue can be resolved.

Mandate disclosure to homeowners of standing to foreclose

Section 1024.38 should contain an affirmative obligation on servicers to verify the foreclosing plaintiff's right to foreclose, and to affirmatively notify the homeowner, 30 days prior to initiation of the foreclosure, of the basis of the foreclosing plaintiff's right to foreclose. This verification of the right to foreclose should be accompanied by supporting documentation.

Mandate accurate, full and early disclosure of loss mitigation options

Proposed section 1024.39(b)(2)(iii) should require servicers to send homeowners a description of all loss mitigation options that the servicer offers, the specific eligibility requirements for each option, and how to apply for the loss mitigation options, including all required documentation. In addition, servicers should be prohibited from requiring additional documents after the homeowner has submitted a loss mitigation application, unless the servicers had requested such documents prior to submission.

Require electronic portal for homeowners

Section 1024.40 should require an electronic portal for communication and submission of documents, if the homeowner chooses electronic communication. Homeowners should not be limited to the electronic portal for communication, however, and must also be permitted to contact the servicer in writing or by phone.

Mandate review of additional loan modification applications when a homeowner's circumstances have materially changed

Section 1024.41(i), regarding duplicative loan modification requests, should be amended to require servicers to review an additional loan modification application, pursuant to all applicable timelines and notice requirements (and including staying or refraining from initiating a foreclosure), when the additional application shows a material change in the homeowner's circumstances that might render the homeowner eligible for a loan modification. Homeowners who fall into foreclosure because of a temporary loss of income should not needlessly lose their homes because a servicer refuses to consider a positive change in their financial circumstances.

Require transferee servicer to evaluate loan modification application pending when loan servicing transferred

Homeowners who have spent months pursuing a loan modification with one servicer often are forced to start the process over again when the servicing rights on the loan are transferred. Sections 1024.33 and 1024.38 should require the transferee servicer to evaluate any pending loan modification application and to honor any existing trial modification (including automatic conversion to a permanent modification).

2) Error Resolution & Information Request Procedures

Historically, homeowners have held very few consumer protections against abusive mortgage loan servicing; the right to seek information and account corrections through Qualified Written Requests has been one of the few avenues of relief for homeowners seeking information about their loans and corrections to their accounts. Unfortunately, the proposed regulations would have the effect of rolling back homeowner rights to information relating to the servicing of their loan under RESPA. The CFPB should strengthen the proposed rules related to error resolution and information requests in several key areas.

Section 1024.35(b) should include a catch-all provision

A catch-all provision should be included in the list of covered errors in Section 1024.35(b), using language from section 1463(a) of the Dodd-Frank Act that requires a servicer to "correct errors relating to…[a] standard servicer's duties." The inclusion of a catch-all is cost-benefit justified; promotes fairness; places the costs of correcting an error on the party best able to mitigate those costs; and, would bring the regulations more closely in line with the Dodd-Frank Act's RESPA amendments.

The benefits from including a catch-all provision outweigh the costs. The RESPA error resolution procedure provides homeowners with a low-cost, non-litigious mechanism for relief. The nine proposed errors represent a fairly comprehensive accounting of servicer errors, particularly if a tenth error is added—namely, those arising out of improper loss mitigation evaluations. As a result, it is unlikely that the suggested catch-all provision would substantially increase the number of errors, and thus would not impose significant additional costs on the servicer. In fact, its exclusion would create much greater costs. Should the servicer error not fall within the proposed enumerated errors, an affected homeowner's only avenue for relief would be through the courts. A catch-all provision would give homeowners a greater chance to resolve errors outside of litigation, and would therefore reduce the need for litigation and reduce costs for all parties.

Including a catch-all provision would make the regulations fairer. With a set list of errors, the homeowner is forced to bear the risk of a non-covered servicer error. If a servicer refuses to address a non-covered error, the cost of initiating litigation to secure relief would fall on the homeowner. Given that many homeowners cannot afford to litigate, errors would go uncorrected. This would create a dynamic in which the homeowners least able to afford to suffer the consequences of a servicer error, would be the very same homeowners least able to take the action necessary to correct the mistake. This is a deeply unjust result.

A catch-all provision would promote efficiency by shifting more of the costs associated with resolving a servicer error on the servicer, instead of the homeowner. Assigning the costs associated with all error resolution to the servicer creates an incentive for the servicer not to commit errors. By contrast, the proposed regulations allow for certain servicer errors to fall outside of the scope of RESPA, which imposes the costs of error resolution on society—our courts and homeowners—under-incentivizing servicers to act responsibly.

Finally, in its amendment of RESPA, the Dodd-Frank Act itself uses a catch-all provision. The proposed regulations at issue seek to implement what will be 12 U.S.C. § 2605(k)(1)(c), which requires a servicer to "take timely action to respond to a homeowner's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or *other standard servicer's duties*." (Emphasis added.) By narrowing the scope of covered errors, the CFPB runs the risk of interpreting the amendment in a way that may exclude from coverage errors arising out of a violation of a servicer's duties, in direct contravention of the Dodd-Frank Act.

Section 1024.35(b) should include a covered error relating to loss mitigation

In addition to a catch-all provision, the categories of covered servicer errors must include a category relating to the evaluation of a homeowner for a loan modification or other loss mitigation option. As discussed above, servicer errors relating to loan modifications are pervasive and can lead to foreclosure.

The proposed rules would permit a homeowner to assert errors related to the failure to suspend a foreclosure sale, but would not permit a homeowner to assert errors that otherwise involve the avoidance of foreclosure, such as those involving loss mitigation. Dodd-Frank requires servicers to "take timely action to respond to a homeowner's requests to correct errors relating to…avoiding foreclosure..." Under the plain meaning of Dodd-Frank and RESPA, homeowners should be able to assert errors related to loss mitigation *before they get to the point of a foreclosure sale*.

The appeals process provided for in the proposed section 1024.41(h) does not sufficiently protect homeowners from servicer abuses related to loan modifications. While the establishment of an internal appeals process may be helpful to resolve some loss mitigation-related errors, homeowners must have a means to hold the servicer accountable for errors that go uncorrected. In addition, the CFPB should make errors relating to loss mitigation options a covered servicer error so that homeowners have a statutory remedy in the event that loss mitigation errors go uncorrected and cause harm. Any additional costs servicers would incur in being required to respond to loss mitigation related error requests would be far outweighed by the benefits to homeowners in having a process to correct such critical errors.

For all the above reasons, we strongly recommend that the CFPB permit homeowners to contest errors related to loan modifications, including failure to comply with statutes, regulations, government contracts, and other legal obligations relating to a request for a loan modification or other loss mitigation option, and failure to comply with the loss mitigation procedures set forth in section 1024.41.

Sections 1024.35(c) and 1024.36(b) should require servicers to make contact information for error notices and requests for information easily accessible to homeowners

The provision requiring a servicer to designate a phone number and address for the submission of a notice of error must be amended to ensure that any such designated phone number and address can be easily ascertained by the homeowner. As written, the proposed regulation would permit a servicer to provide a homeowner with contact information for notices of error once—for example, at the inception of loan servicing—and then never again. Most homeowners are unlikely to recognize the significance of such a notice. As a result, homeowners will have inadequate notice of the notice of error address, which could significantly undermine the notice of error procedure.

The CFPB should require that if a servicer designates a phone number and address that a homeowner must use to submit a notice of error, then the servicer must provide the homeowner with such information on every statement and notice, and also make this information available in a conspicuous manner on the servicer's website and through the servicer's voice messaging system. Requiring the servicer to publicize the number and address for notice of error submissions will not be costly or burdensome for loan servicers, and will ensure that homeowners have meaningful access to the notice of error procedure. We have the same comment with respect to the provision which mandates servicers to designate a phone number and address for requests for information.

We support the CFPB's proposal in Sections 1024.35 and 1024.36 to require recognition of oral notices of error and oral requests for information. This represents an important protection for homeowners. As the CFPB correctly notes, error notices and information requests are most often communicated to servicers orally. Requiring servicers to respond to an oral notice or request in the same manner as a written notice or request will increase the efficiency by which errors are resolved and information requests fulfilled.

Homeowners should be able to send notice of an error to their servicer at any time, regardless of whether the error was made by the current or previous servicer

We interpret the proposed regulation in Section 1024.35(g)(1)(iii) to say that a homeowner's notice of error is untimely if it is delivered to a prior servicer more than a year after servicing has been transferred from that servicer or after a loan has been paid in full. Further, our understanding is that a homeowner may send a notice of an error to her current servicer whenever evidence of an error is learned, regardless of when that error was made and regardless of whether the error was made by the current or previous servicer. Given that errors often come to light long after they were made, and given that the transferee servicer steps fully into the shoes of the transferor, we believe it is appropriate for a homeowner to be able to address any error made on an existing account with the current servicer. The CFPB should amend the rules to clarify that homeowners may send notice of an error to their current servicer regardless of whether the error was made by the current or previous servicer.

Servicer communications must be provided in writing upon homeowner request

If requested, servicers should be required to provide a *written* response to a request for information. Proposed section 1024.36(d)(1)(i) allows servicers to comply with an information request orally. It may be true that allowing servicers to respond orally will facilitate the transmission of information to homeowners, and reduce costs to servicers. A homeowner, however, may need a record of his or her correspondence with the servicer. It is not enough that a servicer can demonstrate compliance to the CFPB through retaining tapes of its calls. Homeowners need to have access to servicer communications as well.

Our groups have encountered numerous homeowners who have received inconsistent and incorrect information from servicers over the phone. In fact, we have worked with homeowners who have been led to default on their mortgages, having relied on information communicated to them orally by servicer representatives. In order to correct problems arising out of incorrect or unclear information, it is essential that homeowners have access to a paper record. Written records also may foster accuracy in servicer communications. For these reasons, a homeowner should always have the option to receive his or her response to a request for information in writing.

The CFPB must not reduce homeowners' access to information from servicers

Dodd-Frank strengthened homeowners' Qualified Written Request rights by shortening the time periods for servicer responses; increasing the damages available for inadequate servicer responses; and clarifying that servicers have an obligation under RESPA to timely correct errors relating to, among other things, the avoidance of foreclosure and standard servicer duties. 12 U.S.C. 2605(k)(1)(C).

The CFPB's proposed rules, however, impose several new limitations on the information a homeowner can seek from a servicer. Specifically, a servicer is not required to respond to a request that seeks "confidential, proprietary, or general corporate information" or that is overbroad or unduly burdensome. These exceptions provide servicers with considerable discretion and may increase servicer non-responsiveness to homeowner inquiries. The exception for confidential, proprietary, and general corporate information could prevent homeowners from obtaining relevant information relating to the servicing of their loans to which they are entitled under the statute.

The Official Bureau Interpretation indicates that the terms of pooling and servicing and purchase agreements would be concealed from homeowners under this provision, even though PSAs and purchase agreements are most often not confidential, proprietary, or general. In fact, these agreements directly relate to and govern the servicing of an individual homeowner's loan. Moreover, homeowners have a great need for this information because servicers sometimes claim—erroneously—that they do not have the authority to modify loan terms according to the PSA. Under those circumstances, homeowners should be able to gain access to the PSA and assess the accuracy of the representations that are being made to them.

The following case example illustrates the importance of a homeowner being able to access information about her servicer's authority under the PSA:

Ms. N, a Brooklyn homeowner, defaulted on her loan in late 2009 when she was injured on the job and has submitted countless applications to GMAC for a HAMP modification. GMAC has taken the firm position for several years that Ms. N's mortgage could not be modified, but has given various reasons as to why. In 2010, GMAC claimed that there was an investor restriction on the mortgage. In September 2012, at the insistence of the court, GMAC finally produced the PSA for the trust that purported to own Ms. N's mortgage. Ms. N's legal services lawyer subsequently investigated the trust prospectus on-line and found that Ms. N's mortgage was in fact not assigned to this trust. Ms. N is now being re-reviewed for a HAMP modification. With earlier access to the PSA, Ms. N's default could have been resolved years ago.

According to the Bureau interpretation, the "confidential, proprietary, or general corporate information" exception to information requests also prohibits a homeowner from learning information about investor instructions and requirements relating to loss mitigation options for homeowners. For the same reasons articulated above, this information plainly relates to the servicing of a homeowner's loan and should be accessible to homeowners. In the interests of transparency and fairness, homeowners should be able to access guidelines and policies that impact the way their loan is serviced and the loss mitigation and loan remediation programs for which they may qualify.

Eliminate safe harbor for servicer information management and communication errors

We strongly support the information management policies and procedures in Section 1024.38 of the proposed rules. However, the safe-harbor provisions of sections 1024.38(a)(2) and 1024.40(b)(2) should be removed. There should be no safe harbor for non-compliant information management or communication with homeowners. Homeowners rely on their mortgage servicer to provide accurate information in response to questions, and the CFPB should hold servicers accountable for the quality of information that they provide to borrowers; this is particularly true because homeowners have no ability to choose their own mortgage servicer.

In addition, Section 1024.40 should provide homeowners with access to a supervisor or appeal process if the homeowner is unable to reach the single point of contact assigned to their account, if that contact does not return phone calls; is unable to respond to the homeowner's questions; or provides inaccurate or incorrect information.

3) Force Placed Insurance

The CFPB should significantly strengthen proposed Sections 1024.17 and 1024.37 to protect homeowners from the high cost and serious consequences of force placed insurance, and to prevent mortgage servicers from enriching themselves at the expense of struggling homeowners. In addition to addressing the issues raised in this letter, the CFPB should also adopt the recommendations presented in The Center for Economic Justice and Consumer Federation of America's more detailed comments on force placed insurance.

Mortgage servicers have charged New York State homeowners more than $700 million in over-priced force placed insurance premiums since 2004. Many of these homeowners have gone into foreclosure or have been pushed deeper into mortgage arrears as a result of abusive force placed insurance practices. The CFPB's proposed rules fail to protect the homeowners most vulnerable to force placed insurance abuses and do not remove servicers' incentive to purchase the most expensive force placed insurance policies possible. To address these shortcomings, the CFPB should make the following changes:

Require servicers to advance payment for property insurance for all homeowners, not just those with escrow accounts

The CFPB should require mortgage servicers to continue payments of homeowners' existing insurance policies or reestablish the policies if homeowners miss payments of hazard, homeowners, wind, excess wind, flood or excess flood insurance premiums. The CFPB has taken a first step in this direction by requiring servicers to advance homeowners insurance premiums for borrowers with escrow accounts. Many homeowners who have force placed insurance imposed, however, do not have escrow accounts.

To protect homeowners who do not have escrow accounts, the CFPB should adopt the approach taken in Fannie Mae's Servicing Guide Announcement SVC-2012-04 *Updates to Lender-Placed Property Insurance and Hazard Insurance Claims Processing* and require that, if a homeowner falls behind on their insurance payment, the servicer must advance its own funds to pay past due premiums and reinstate the homeowner's insurance coverage. If the homeowner does not have an existing escrow account, the servicer must establish an escrow account to pay future premiums. The CFPB should make clear that servicers must exhaust all options to keep homeowners' existing homeowners insurance policies in force before resorting to force placed insurance.

Ban all forms of kickbacks and non-monetary compensation for force placed insurance

The CFPB must ensure that when force placed insurance is necessary, the cost is reasonable and that all premiums paid are applied exclusively to the actual cost of the force placed insurance coverage and not diverted to cover routine servicing costs or to enrich servicers. The proposed rules do require that charges for force placed insurance are bona fide and reasonable, but they leave substantial room for evasion and do not address the role reinsurance deals play in servicers' business decisions about force placed insurance.

Currently, many mortgage servicers receive commissions, reinsurance contracts, free insurance tracking and other kickbacks when they purchase force placed insurance. Affiliates of mortgage servicers often unnecessarily reinsure force placed insurance policies to share in potential underwriting profits. Since the loss ratios for force placed insurance are extremely low, averaging just 22.1% in New York State over the past eight years, using affiliates to reinsure force placed insurance policies is a low-risk way for the banks that own mortgage servicing companies to further gouge homeowners by claiming a portion of the exorbitant premiums charged for force placed insurance. JPMorgan Chase, for example, reinsures 75% of the force placed insurance premiums it collects from homeowners through its subsidiary Banc One.[1]

The CFPB's proposed rule would ban some of the forms of compensation servicers receive from force placed insurers, like direct kickbacks, but some of the income streams, such as reinsurance deals, that incentivize servicers to unnecessarily impose force placed insurance would still be permitted under the proposed rule. If banks are permitted to reinsure force placed insurance premiums collected from the homeowners whose loans they service, they will continue to have a strong incentive to choose the most expensive, and therefore most harmful, force placed insurance policies, despite the proposed rule. It is also unclear if commissions, which force placed insurers pay to banks as a reward for acting as "insurance brokers" when they purchase force placed insurance policies on behalf of their servicing subsidiaries, will be permitted under the proposed rule.

The CFPB should make clear that no mortgage servicers or affiliated entities are permitted to receive any fee, commission, kickback, reinsurance contract, service such as insurance tracking or administration, or other thing of value in exchange for purchasing force placed insurance.

Strengthen notice requirements and limit retroactive charges

The proposed notice requirements and good faith estimate of the cost of force placed insurance will help homeowners avoid unnecessary force placed insurance. The CFPB should strengthen these notice requirements by requiring servicers to provide the first required notice within 15 days of a force placed insurance policy coming into effect, and should not allow servicers to retroactively charge homeowners for more than 60 days of force placed insurance coverage.

Mortgage servicers are responsible for tracking insurance coverage on the loans they service. When there is a lapse in a homeowner's insurance coverage, the servicer, typically through an insurance tracking vendor, notifies the force placed insurer. It is reasonable to expect that servicers (or their vendors) may fail to identify a lapse in insurance at the instant the lapse occurs or even for a short period of time following the lapse. It is unreasonable, however, to allow a servicer to retroactively charge a borrower for a lengthy period of force placed insurance coverage, since it is the servicer's responsibility to identify lapses in insurance and notify homeowners of these lapses in a timely fashion.

[1] See testimony of Banc One and Select Portfolio Servicing at 5/17/12 NYS Department of Financial Services hearing on force placed insurance Available: http://www.dfs.ny.gov/insurance/hearing/fp_052012_trans_err.htm

Servicers often delay notifying homeowners about force placed insurance for months, unfairly piling thousands of dollars of debt onto homeowners who are unaware that their homeowners insurance policies have been canceled. For example, Mr. W, a Bronx homeowner, was forced into foreclosure because he did not receive timely notice of force placed insurance:

Mr. W, who lives in the Bronx with his wife and two children, fell behind on his mortgage after his monthly payments suddenly increased by over $1,400 because his servicer, Suntrust Mortgage Inc, charged him for two over-priced force placed insurance policies at once. Although Mr. W paid his annual homeowners insurance premium at closing and made timely mortgage and escrow payments, his insurance was canceled for non-payment shortly after he purchased his house. Mr. W was not notified of the cancellation and continued paying his loan and escrow payments, but the servicer imposed a force placed insurance policy anyway without notice, and failed to bill Mr. W for the cost of the policy. About a year later, the force placed policy was renewed and he was suddenly billed for two years' worth of force placed insurance premiums, costing more than $13,000. Suntrust increased his payments by $1,400 per month, and Mr. W was no longer able to pay his mortgage. To make matters worse, Mr. W. was not immediately informed that he had the option to purchase his own insurance at a lower cost even after numerous phone calls to his servicer to inquire about the increase in his mortgage payments. When he realized that he could do so, he searched and found a far less expensive policy. Mr. W is now in foreclosure as a direct result of the force placed insurance.

Mr. W's experience with force placed insurance illustrates the pressing need for timely notice and strict limits on retroactive billing.

Limit the amount of force placed insurance coverage purchased

The CFPB's proposed rules fail to address a common abusive practice in the force placed insurance market. Servicers routinely purchase more coverage for covered properties than is required by mortgage contracts or investors' requirements, unfairly inflating the costs to homeowners for their own gain. The CFPB should ensure that any force placed insurance obtained be the last known amount of the homeowner's coverage that was compliant with the requirements of the mortgage loan. In no circumstances should the amount of force placed insurance exceed the replacement cost of the improvements on the mortgaged property.

Conclusion

The Dodd-Frank Act has given the CFPB a unique opportunity to issue strong, permanent, enforceable, and universal mortgage servicing rules that could greatly reduce foreclosures and stabilize neighborhoods. Unfortunately, the CFPB's proposed rules on loss mitigation fall far short of what is needed to ensure that servicers systematically do loan modifications.

For this reason, we request that the CFPB withdraw the proposed rule on loss mitigation and re-issue loss mitigation rules based on the principles discussed above. Unlike many of the other proposed rules included in this rulemaking, the CFPB is not required to issue a final rule on loss mitigation by January 21, 2013, so there is ample time to develop a new rule that would protect homeowners and investors from widespread servicing abuses. The CFPB should also significantly strengthen the rules on error resolution, information request procedures and force placed insurance as recommended above to ensure more equitable servicing practices.

Thank you for the opportunity to comment.

Sincerely,

Albany County Rural Housing Alliance, Inc.
ANHD, Inc.
Arbor Housing & Development
Better Neighborhoods, Inc.
Bridge Street Development Corporation
Brooklyn Cooperative Federal Credit Union
Brooklyn Housing and Family Services
BWICA Educational Fund, Inc.
Central New York Citizens In Action, Inc.
CHANGER
Chhaya CDC
Community Housing Innovations, Inc.
Consumer Justice for the Elderly: Litigation Clinic at St. John's University School of Law
Cypress Hills Local Development Corporation
District Council 37 Municipal Employees Legal Services
Ellicott District Community Development, Inc.
Empire Justice Center
Fair Housing Council of Central New York State, Inc.
Fifth Avenue Committee
Genesee Cooperative Federal Credit Union
Greater Rochester Community Reinvestment Coalition
Grow Brooklyn
Housing Court Answers, Inc.
Housing Help Inc.
JASA/Legal Services for the Elderly in Queens
Legal Services for the Elderly, Disabled or Disadvantaged of WNY, Inc.
Legal Services NYC
Legal Services NYC - Bronx
Long Island Housing Services, Inc.
Lower East Side People's Federal Credit Union
Margert Community Corporation
MFY Legal Services, Inc.
MHANY Management, Inc.
Nassau/Suffolk Law Services
NEDAP
Neighborhood Housing Services of NYC
Neighborhood Preservation Coalition of NYS, Inc.
Neighbors Helping Neighbors
NeighborWorks Alliance of NYS
New York Public Interest Research Group

New York StateWide Senior Action Council, Inc.
PathStone
Pratt Area Community Council
Queens Legal Services
South Brooklyn Legal Services
Staten Island Legal Services
Syracuse University Securities Arbitration and Consumer Law Clinic
The Health & Welfare Council of Long Island
The Legal Aid Society
Teamsters Local 237
Troy Rehabilitation and Improvement Program (TRIP), Inc.
University Neighborhood Housing Program
Westchester Residential Opportunities Inc.
Western New York Law Center