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Richard Cordray
Director
Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington DC 20552

Re: Docket No. CFPB-2014-0033

Dear Director Cordray:

We appreciate the opportunity to comment on the Consumer Financial Protection Bureau's (the "Bureau") Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z). Specifically, we support expanding protections to individuals who receive an interest in real property through a family transfer under 12 CFR 1024.31 (referred herein as "successors in interest" or "successors"). We also recommend several changes to the proposed amendments to clarify the process for verifying whether a homeowner qualifies as a successor in interest under 12 CFR § 1024.38(b)(1)(vi), and to expand the protections under 12 CFR § 1024.30(d) to other persons who possess an ownership interest in the property.

In providing this comment, we draw from the experiences gathered through our HomeCorps Program, through which we directly advocate on behalf of individual homeowners facing foreclosure. Through HomeCorps our office monitors the obstacles homeowners face when applying for foreclosure prevention assistance. Specifically, homeowners who experience a divorce or the loss of a spouse, parent or partner are among those most vulnerable to foreclosure. We have also observed mortgage servicers' inconsistent responses to these homeowners. We therefore wholeheartedly support the Bureau's efforts to provide greater protections to widows, divorcees, and other family transferees in order to prevent unnecessary foreclosures and other financial harm to homeowners.

1) Expanded Definition of Successor in Interest, 12 CFR 1024.31

We support the Bureau's proposal to expand the definition of successor in interest to include all persons who acquire an ownership interest in a mortgaged property through a family transfer that is exempted from a "Due-on-Sale" clause in the mortgage by the Garn-St. Germain

1) Expanded Definition of Successor in Interest, 12 CFR 1024.31

We support the Bureau's proposal to expand the definition of successor in interest to include all persons who acquire an ownership interest in a mortgaged property through a family transfer that is exempted from a "Due-on-Sale" clause in the mortgage by the Garn-St. Germain Act. Current Bureau rules define "successors" as homeowners who obtain an interest in the mortgaged property through a family transfer only as a result of the death of the borrower. Homeowners who obtain an ownership interest through other family transfers such as a divorce or legal separation are not included. As a result, servicers limit their family transfer policies to situations where the borrower has died, and often refuse to communicate with divorcees and other family transferees. Our office continues to receive complaints and often must intervene on behalf of non-borrowers who obtain an interest in the property through divorce or otherwise. Servicers fail to communicate with these homeowners even when the loans at issue are owned by Fannie Mae and Freddie Mac, both of which have long directed servicers to work with divorcees.¹ The proposed Bureau amendment provides much needed protections for this vulnerable population of homeowners.

2) Verifying Successor Status and Ownership, 12 CFR 1024.38(b)(1)(vi)

This office largely supports the Bureau's proposed amendment to 12 CFR 1024.38(b)(1)(vi) requiring mortgage servicers to promptly identify and facilitate communication with potential successors and recommend the following additions:

- a. The Regulations Should Require Servicers to Adopt State Specific Policies Relating to the Proof Necessary to Establish Ownership Interest under 12 CFR 1024.38(b)(1)(vi)(B)

Under the proposed amendment, servicers are required to accept "reasonable" proof of a homeowner's ownership interest. However, the clarification as to the type of evidence constituting reasonable proof contained in Bureau's proposed comment 38(b)(1)(vi)-1 should be expressly set forth in the proposed amendment, which takes into account the relevant jurisdiction, the successor's specific situation, and the documents already in the servicer's possession. Proposed comment 38(b)(1)(vi)-2 further sets forth what is "reasonable" in common situations. In our experience, servicers do not consider the successor's circumstances or state-specific requirements and instead impose the same requirements on all potential successors. We have encountered instances where servicers forced successors to needlessly expend time and resources to establish a successor's ownership interest in the property. Servicers should be

¹Fannie Mae guidance requires servicers "to promptly identify and communicate with the new property owner in connection with a property transfer that is an exempt transaction." Fannie Mae Lender Letter LL-2013-04. Freddie Mac guidance requires servicers to "provide loan information to transferees that the Servicer has confirmed have a legal or beneficial interest in the Mortgage as necessary to allow the transferee to continue making Mortgage payments or to process a request by the transferee to assume the Mortgage, if applicable." Freddie Mac Bulletin 2013-3.

prohibited from forcing homeowners to undertake superfluous efforts not required by state law in order to convey property.

b. Successor Status under Proposed Should be Confirmed in Writing under 12 CFR 1024.38(b)(1)(vi)(C)

While servicers must notify a person once his or her status as a successor in interest is confirmed, the proposed amendment does not require written notification. A written confirmation avoids miscommunications, misunderstandings and the potential for human error if the servicer's single point of contact (SPOC) provides inaccurate information. Indeed, despite improvements in loan servicing, HomeCorps regularly mediates situations where SPOCs provide inaccurate information. Should a dispute arise as to conversations relating to a homeowner's successor status, a written notice will protect both the servicer and homeowner by providing a clear record. In addition, the written confirmation protects the homeowner should the loan be transferred to a subsequent servicer. We have worked with homeowners who were forced to reestablish their successor in interest status after a service transfer. Where a homeowner has a written confirmation of his successor status from the previous servicer, he is less likely to have to repeat the successor identification process with the new servicer.

3) Expanding Definition of "Borrower" to Include Successors, 12 CFR § 1024.30(d)

This office supports the Bureau's proposed §1024.30(d), which provides that upon confirmation of a homeowner's successor status, a successor shall be treated as a "borrower" for the purpose of Regulation X's mortgage servicing rules. This change will ensure successors can access information and address issues that may arise concerning the mortgage loan, and receive loss mitigation protections. We recommend, however, that the Bureau extend these protections to persons who hold an ownership interest in the property through a transfer or conveyance other than a family transfer.

a. The Mortgage Servicing Rules Should Apply to Successors

We particularly support the proposed amendment because it will ensure that servicers do not condition the review and evaluation of a loss mitigation application on the successor's assumption of the mortgage obligation. Assuming a mortgage is a major financial decision, and successors who are behind on payments cannot know whether it is in their financial interest to assume the loan without knowing whether they qualify for a modification. The initial loss mitigation review required by the proposed rule will allow successors to make a more informed decision regarding whether to assume the mortgage loan obligation after a servicer has completed its review of a loss mitigation application. By adopting these rules, the Bureau will address a longstanding dilemma faced by successors, namely, whether or not to assume a delinquent mortgage loan without knowing the terms of a prospective loan modification or even whether a modification is possible.

We also agree with the Bureau that extending the mortgage servicing rules to confirmed successors does not raise privacy concerns.² Servicers often cite privacy laws as the basis for denying successors access to the mortgage loan account information. However, we agree with the Bureau's assessment that a successor's interest in the mortgaged property justifies access to loan information, including account statements, payoff balances and other information relating to the mortgage loan at issue.

In addition, we support the clarification in proposed comment 30(d)-1, requiring servicers to evaluate modification applications from successors within 30 days. We also support comment 30(d)-2's clarification that a prior borrower remains entitled to the protections of Regulation X unless the borrower has died or has been released from the obligations under the mortgage loan. Any additional cost to servicers arising from the need to send statements to different addresses does not outweigh the interest of borrowers in receiving or accessing loan information.

b. The Protections Under the Mortgage Servicing Rules Should be Further Expanded to Other Persons with an Ownership Interest in the Property

We recommend the Bureau further extend the borrower protections under the mortgage servicing rules to include all persons who possess an ownership interest in the property. These situations include properties where more than one person holds title to the property, but only one of the owners is a borrower and mortgagee. This scenario may arise in the context of unmarried partners who purchase property together. We have assisted such individuals who later discovered that they were not listed as a borrower on the mortgage note and, as a result, could not communicate with the servicers. As owners of record, these individuals lived in the home and shared in the maintenance and financial obligations of homeownership. In some cases, these homeowners thought they were legally responsible for the loan, but the decision to exclude them from the loan was made by a mortgage broker or loan officer. Further protections are needed to ensure that these individuals are able to access information about the mortgage loan.

² Nor do we believe that privacy concerns are implicated in relation to others with an ownership interest in the property.

We are optimistic that the proposed amendments will better protect successors in interest from burdensome administrative and legal processes, as well as unnecessary defaults and foreclosures. We hope you will consider our additional recommendations. Please contact us if you have any questions or concerns relating to our recommended changes to the proposed amendments.

Sincerely,



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