Comments of the

National Consumer Law Center

(on behalf of its low-income clients)

and

Americans for Financial Reform, National Association of Consumer Advocates, and National Fair Housing Alliance

to the

Consumer Financial Protection Bureau

Regarding the Notice of Assessment

of 2013 RESPA Servicing Rule and Request for Public Comment

(Docket No. CFPB-2017-0012)

July 10, 2017

I. Introduction

Thank you for the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") Request for Information Regarding the 2013 RESPA Servicing Rule Assessment. The National Consumer Law Center[1] submits these comments on behalf of its low-income clients and with Americans for Financial Reform,[2] National Association of Consumer Advocates,[3] and National Fair Housing Alliance[4].

The Servicing Rule has made a significant, positive impact in the lives of homeowners and has contributed to preventing avoidable foreclosures. The rule has improved transparency and accountability in the loss mitigation process and in other areas of servicing, such as force-placed insurance. While further improvements to the rule are needed, as discussed below, the 2013 rule has helped align the incentives of servicers with investors, homeowners and communities. In a survey of consumer advocates conducted by NCLC in June 2017, 85% of respondents believed the rule had benefited homeowners, and 86% believed it had helped more homeowners avoid foreclosure.[5] Moreover, the updates to the 2013 rule, set to take effect in the coming months, make crucial improvements that should be preserved and implemented as planned. The improved protections for servicing transfers, successors in interest, and borrowers in bankruptcy markedly increase the functionality of the servicing system for all participants.

We offer in these comments input on the upcoming assessment, including concerns about the availability and limits of data, the importance of broadly obtaining input from across the stakeholder community, and the importance of looking beyond data analysis to other factual information including servicing files and loan documents, as well as results from surveys. As the Bureau proceeds with the assessment, we urge the Bureau to consider the following points:

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[1] The **National Consumer Law Center, Inc.** (NCLC) is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys regularly testify in Congress and provide comprehensive comments to the federal agencies on consumer regulations. These comments were written by Alys Cohen, Sarah Bolling Mancini, John Rao, Tara Twomey, and Geoff Walsh.

[2] **Americans for Financial Reform** (AFR) is a coalition of more than 200 consumer, investor, labor, civil rights, business, faith-based, and community groups that works through policy analysis, education, advocacy, and outreach to lay the foundation for a strong, stable, and ethical financial system. AFR was formed to advocate for the passage of the legislation that became Dodd-Frank and continues to protect and advance the reforms in that legislation, including by advocating for the full implementation of the housing policy reforms. A list of AFR member organizations is available at http://ourfinancialsecurity.org/about/our-coalition/

[3] The **National Association of Consumer Advocates** (NACA) is a national nonprofit association of private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. NACA is actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

[4] **National Fair Housing Alliance** (NFHA). Founded in 1988, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights groups, and individuals from 37 states and the District of Columbia. Headquartered in Washington, DC, NFHA, through comprehensive education, advocacy and enforcement programs, provides equal access to housing for millions of people.

[5] See detailed discussion of survey results in Section III below and in the attached appendix.

- **Market changes:** We appreciate that the Bureau is mindful that many other market changes have been occurring while the servicing rule was rolled out and agree that the Bureau must seek to account for major market and regulatory developments when assessing the data and the rule.
- **Proper measurement of costs:** We also encourage the Bureau to look behind claims that the rule has increased the costs of servicing to determine how such determinations were actually made and to consider the individual and market benefits of having a servicing system that works for a greater range of market participants.
- **Stakeholder input:** We applaud the Bureau's plan to incorporate input during its data analysis from a range of stakeholders including attorneys and housing counselors who work with homeowners.
- **Documentary and field evidence:** We urge the Bureau to use resources at its disposal, including servicer policies and borrower files, to assess the rule's impact. Incorporation of surveys of homeowners and their representatives also provides essential "on the ground" information about the impact of the rule.

The Bureau has stated that it will focus its assessment on how well the rule has met four purposes: responding to borrower requests and complaints in a timely manner; maintaining and providing accurate information; helping borrowers avoid unwarranted or unnecessary costs and fees; and facilitating review for foreclosure avoidance options. These areas provide a useful lens for examining the reach and effect of the rule. We particularly applaud the Bureau for focusing its analysis on the role of the rule in helping delinquent borrowers. Our recommendations for the assessment and for further improvements to the rule recognize the central role the rule plays in improving the experience of and outcomes for delinquent borrowers.

We note that the Bureau intends to review both servicer and consumer behavior and to seek to correlate it with consumer outcomes, including fees and charges, delinquency resolution, and time to resolution. While faster resolutions limit interest and fee accrual, speed benefits homeowners only when accompanied by sustainable outcomes. Moreover, while much has been made of the longer foreclosure timelines in certain states, including those with mediation programs and judicial foreclosure protections, in our experience many of the delays in those cases are attributable to servicer representatives lacking information, documentation, or authority to proceed with loss mitigation. In many instances the foreclosure timelines in particular states did not change at all, but servicers intentionally slowed foreclosures. Servicers appeared to do this to avoid routine judicial scrutiny, to avoid flooding the market with foreclosed properties, and for other reasons that have not been clear. Any effort to measure the impact of foreclosure timelines must take into account servicers' deliberate decisions to refrain from proceeding.

We also offer the following recommendations (discussed further below in these comments) on weaknesses in the current rule, both for future use in any rulemaking and as context for the assessment analysis.

- **Servicing Transfers:** Explicitly mandate conversion of trial modifications and honoring of permanent modifications from the transferor; Require notification to the homeowner upon transfer of the status of loss mitigation and borrower dispute rights; Prevent borrowers from getting the runaround when servicing is transferred and a loss mitigation request is pending by prohibiting servicers from making duplicative and burdensome requests for information and documents.

- **Streamlined Modification Programs:** Require denial letters after unilateral reviews; Provide dual tracking and appeal rights for streamlined non-application modification reviews.

- **Complete Application Rule:** Provide that the date of an initial application triggers dual tracking and appeal rights.

- **Force-Placed Insurance:** Require servicers to advance property insurance premiums for all homeowners regardless of the existence of an escrow account; require the advance of funds for all flood insurance.

- **Loss Mitigation Timing and Correspondence:** Require mailing by First Class Mail or comparable; Allow protections to arise based on rescheduled foreclosure date; Address issues arising after a trial plan offer.

- **Duplicative Request Rule:** Remove the "duplicative" request exemption; Require written notice that a loss mitigation request is considered duplicative; Create an exception for changed circumstances or a time limitation.

- **Error Resolution Rights:** Stay foreclosure before a servicer reasonably responds to a notice of error relating to a foreclosure; Mandate reasonable third-party authorization procedures; Treat Notices of Error (NOEs) and Requests for Information (RFIs) from agents as valid upon receipt even without accompanying authorization; Require servicers to respond to NOEs and RFIs even if not sent to the designated address.

- **Coverage:** Eliminate the HELOC exemption; Create a registry of servicers claiming the small servicer exemption; Extend protections to reverse mortgages.

- **Long-dormant mortgages:** Preserve the rule prohibiting interest charges when periodic statements are not sent and require a renewed 120-day period prior to initiation of foreclosure after resuming collection on a dormant loan.

- **Successors in Interest:** Provide a private right of action for successors seeking to be confirmed.

- **LEP Borrowers:** Require measures that promote access to the servicing market for LEP borrowers.

- **Mandate Affordable Loan Modifications:** Require servicers to provide NPV-positive, affordable loan modifications to qualified homeowners facing hardship.

As the press of the Great Recession moves further behind us, and HAMP is replaced by the Flex Modification protocol ("Flex Mod") in the GSE space, it is crucial for the CFPB and other federal agencies to revisit two central issues: the overall lack of alignment between incentives of servicers and other market participants and the lack of any overall mandate for investors or servicers to provide affordable loan modifications to eligible borrowers facing hardship. As a result of these two gaping omissions, avoidable foreclosures persist and may rise as HAMP further recedes, particularly when there are market downturns or other regional challenges. Accordingly, the Bureau should mandate affordable loan modifications consistent with investor interests for qualified borrowers facing hardship. While it remains to be seen whether the Flex Mod protocol can provide sustainable solutions to the range of GSE borrowers, the PLS market has no uniform or transparent loan modification standards and some servicers have offered[6] unsustainable modifications. We believe a loan modification mandate can be implemented within the Bureau's authority and urge the Bureau to take on this important mission.

Moreover, we urge the Bureau to work with other federal agencies, including FHFA, to renew the work of reconceiving servicer compensation. Default servicing incentives must be realigned so the market can move away from the race to the bottom caused by current compensation mechanisms.[7] While the recent foreclosure crisis is fading from the public conversation, many communities are still struggling to recover and every day homeowners facing economic hardship encounter significant hurdles in obtaining affordable solutions, even where such outcomes would benefit a range of market participants. While the Bureau's procedural rules have vastly improved the functionality of the servicing market, substantive protections for loss mitigation and reform of servicer compensation must be addressed.

II. Existing Data on Loan Servicing and Loss Mitigation Have Significant Shortcomings.

We appreciate the Bureau's data driven approach to analyzing consumer-related issues. We applaud its efforts to gather information about activities and outcomes that servicers have undertaken to comply with the rule, including responses to loss mitigation applications, responses to notices of error, and consumer behavior. When it comes to evaluating the servicing rules, we are concerned, however, with conflation of correlative and causative effects, with the robustness of servicers' data, and with the lack of qualitative data to supplement the quantitative data. We do not believe that these methodological and data limitations preclude a thorough assessment of the servicing rules, but the Bureau should keep these limitations in mind when considering changes to the existing rules.

A. Methodological Challenges Limit the Ability to Identify True Causal Effects.

We agree with the Bureau's observation that conducting quantitative comparisons of "servicer and consumer activities and outcomes to a baseline that would exist if the 2013 RESPA

[6] Matthew Goldstein and Rachel Abrams, "New York Attorney General Examining Private Equity Firm's Mortgage Business" (Oct. 6, 2015) (discussing Caliber's 5-year temporary modifications), *available at* https://www.nytimes.com/2015/10/07/business/dealbook/new-york-attorney-general-examining-private-equity-firms-mortgage-business.html.

[7] *See* National Consumer Law Center, Comments to FHFA on The Alternative Mortgage Servicing Compensation Discussion Paper (Dec. 26, 2011), *available at* https://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/NCLC_FHFA%20Serv%20Compensation%20Disc%20Paper%20Comments_Dec2011.pdf.

Servicing Rule's requirements were not in effect . . . is challenging because the Bureau cannot observe the activities and outcomes of an unregulated 'control' group . . . ."[8] The proposed use of the period before the Servicing Rule's implementation would not obviate this concern because of the many extrinsic changes to mortgage servicing practices since the Rule went into effect. In addition to the confounding variables identified by the notice – "consent orders, State law, or private contracts" – there is the overwhelming number of changes in servicing policy instituted by the federal mortgage investors (Fannie Mae, Freddie Mac, FHA) since the implementation of the Servicing Rule. For example, Fannie Mae has made dozens of changes to its servicing standards since 2015,[9] while Freddie Mac has made more than 30 such changes since 2014.[10] Because roughly three-fifths of the mortgage market is subject to these policy changes,[11] the changes make it difficult to disentangle the effects of these policy changes. Moreover, given the dominance of these government investors, their standards often influence mortgage servicers' practices for loans not directly subject to their mandates, including loans kept on a bank's balance sheet. The challenge of isolating the impact of the servicing rules will limit the ability to identify true causal effects.

B. The Bureau Should Explore and Address Data Challenges in Determining Costs of Servicing.

The mortgage servicing industry often focuses on regulatory compliance in general, and the servicing rules in particular, as a significant driver of rising servicing costs. To the extent that the Bureau relies on such industry data, we urge the Bureau to look behind these claims and demand greater data transparency.

The servicing of performing loans has long been a highly automated process that includes sending out monthly billing statements, receiving payments, and remitting payments to loan owners. The transaction processing business can be largely automated and has major economies of scale. For example, in 2006, the direct annual servicing cost (excluding technology investments and corporate overhead) for performing loans was $63 per loan.[12] However, small and medium servicers ($88) spent twice as much as mega servicers to service these loans ($44).[13] More recent MBA data suggest that the cost of servicing performing loans increased to $181 by 2015, but the publicly available figures do not distinguish between small, medium, large, and mega servicers.[14] Additionally, the figures used now are fully-loaded, including items such as corporate overhead, which limits the ability to perform an "apples-to-apples" comparison.
It is not disputed that handling defaulted loans involves much greater discretion, expertise, and manpower, and therefore servicing such loans involves greater costs. MBA data indicate that the

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[8] 82 Fed. Reg. at 21955.
[9] This figure was confirmed with a Fannie Mae website search.
[10] *See* Freddie Mac Servicing Guide, *available at*: http://www.freddiemac.com/singlefamily/guide/
[11] Urban Institute Housing Finance Policy Center, Housing Finance at a Glance, June 2017, at 6.
[12] Marina Walsh, The 2007 Servicing Operations Study, MORTGAGE BANKING, Sept. 2007, at 67.
[13] *Id*.
[14] Mortgage Bankers Association, Servicing Costs Per Loan: Performing vs. Non-Performing (Aug. 2, 2016), *available at* https://www.mba.org/servicing-newslink/2016/august/servicing-newslink-8-2-16/news-and-trends/mba-chart-of-the-week-servicing-costs-per-loan-performing-v-non-performing.

annual cost of servicing non-performing loans has gone from $482 per loan in 2008 to $2,386 per loan in 2015.[15] The component parts of these servicing costs are not publicly known. Therefore, it cannot be determined whether increased costs are driven by regulatory compliance or by aged technology and inefficient "siloed" operations. Even within the industry, it is well known that lack of investment in technology has led to "redundant, inefficient, incompatible systems that are increasingly costly to maintain."[16]

When viewed out of context, the aggregate "cost per loan" for servicing a loan in default does not provide meaningful information. Primarily because of the servicers' own decisions, the length of default periods increased dramatically during the past six to seven years. Servicers largely imposed these delays and the ensuing costs on themselves. Any attempt to tie changes in servicers' costs to the Bureau's rules is likely to be based on conjecture and needs to be documented in great detail. Similarly, the frequency of loan modifications and the impact of modifications on borrowers' payments were very different in the three years before 2013 and in the years since then. These differences had much to do with the volume of loans in default and the financial circumstances of the borrowers facing foreclosure at a given time. There is not going to be an evaluation technique that will allow anyone to isolate the impact of the CFPB rules on overall trends in the frequency and types of loss mitigation help that borrowers received as the foreclosure crises grew and subsided. A better approach would be to focus on data collection for the future, when the long term delinquency and foreclosure trends will hopefully be more stable.

While servicing costs have undoubtedly increased over the years, we urge the Bureau to take a closer look at industry data before using it to justify any changes to the existing rules.

C. The Bureau Should Consider Qualitative, Not Just Quantitative, Data.

We do not believe that the Bureau can assess the impact of the servicing rule by relying solely on data that the servicers produce. This is true for both data summaries and for individual documents hand-picked by servicers. Individual borrowers, housing counselors, and consumer attorneys are an essential source of information about servicers' performance. For example, it is difficult to see how the Bureau could assess the effectiveness of incomplete documentation notices or RFI/NOE responses without reviewing the actual documents that servicers have been sending out to comply with these rules. The servicers typically use form documents. It will not be difficult to review enough of these form documents to get an accurate picture of the documents in wide use. The Bureau must also assess real borrowers' reactions to the form documents. Was the boilerplate comprehensible? Was it relevant? Did it facilitate compliance with the goals of the rules?

We urge the Bureau to solicit both documents and comments from borrowers, housing counselors, and borrowers' attorneys as part of an assessment of the efficacy of the servicing rules.

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[15] *Id.*
[16] *See, e.g.*, Fiserv, "A Consolidated Approach to Loan Servicing Drives Portfolio Profitability," at 1 (2014).

III. The Mortgage Servicing Rule Has Resulted in Significant Benefits for Homeowners and Communities and Has Served the Consumer Purposes of RESPA.

The CFPB's mortgage servicing rule has resulted in substantial benefits for consumers and has advanced the consumer protection purposes of RESPA. The rule has resulted in improvements in the timeliness and completeness of servicers' responses to borrower requests for information and complaints. It has promoted accuracy in servicing and the avoidance of unwarranted or unnecessary costs and fees. It has facilitated the review of borrowers for foreclosure avoidance options. Transparent servicing rules help to combat discriminatory practices and promote fair servicing. Finally, the rule has resulted in increased efficiency and transparency in mortgage servicing and loss mitigation, as well as access to mortgage information and foreclosure relief.

Our conclusions regarding these benefits flowing from the mortgage servicing rule are informed by reports from attorneys and housing counselors representing homeowners around the country as well as a national survey of consumer advocates conducted by NCLC in June 2017.[17] There were 233 respondents to the survey from 41 states.[18] Of the respondents, 171 were housing counselors, 49 were attorneys, and 13 were employees of other nonprofits. Collectively, the respondents have had contact with a significant number of consumers. Fifty-seven percent of respondents (133 people) work in offices that assist 100-500 homeowners per year.[19]

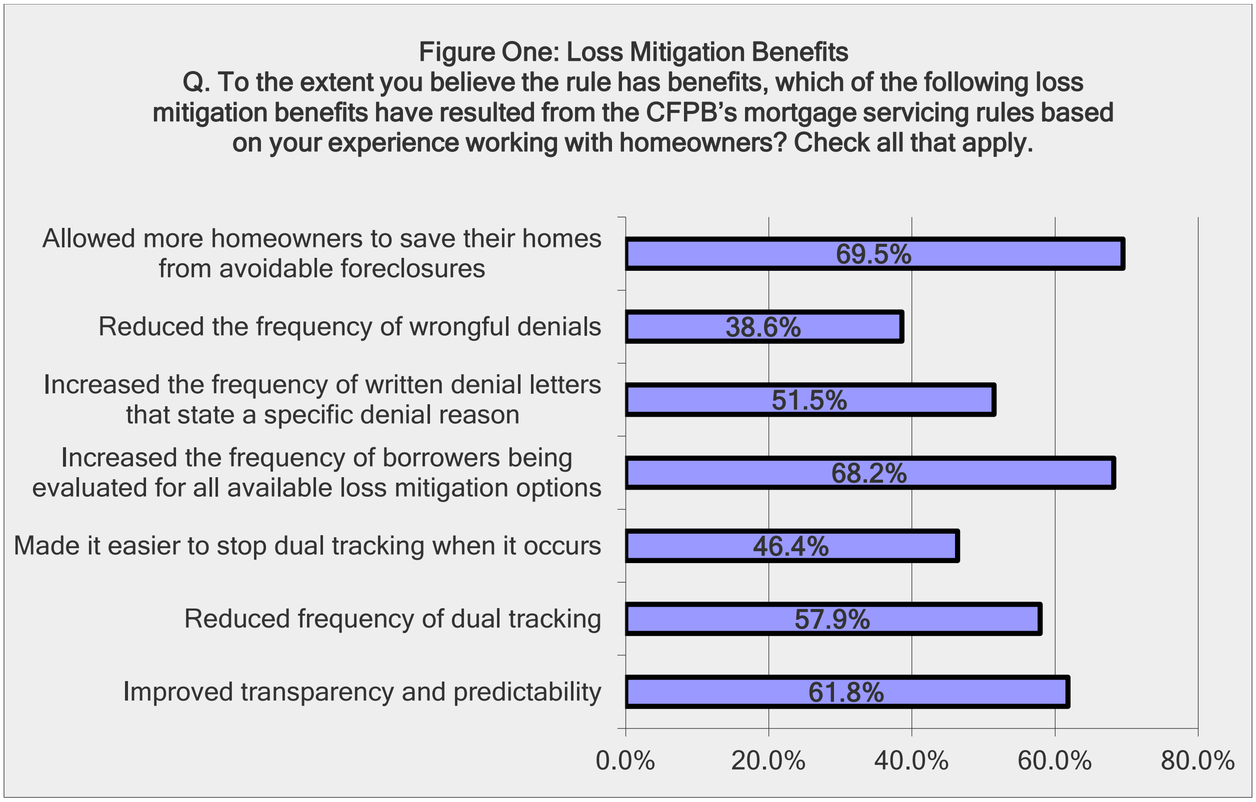
Among the survey respondents, 85% stated that they either somewhat agreed or strongly agreed that the CFPB's mortgage servicing rules have benefited homeowners. Eighty-six percent answered that they somewhat or strongly agreed with the statement, "The CFPB's mortgage servicing rules have allowed me to help more homeowners avoid foreclosure and obtain loss mitigation than I could have without them."

The specific loss mitigation related benefits respondents believed had resulted from the servicing rules are shown in Figure 1 below. Over half of respondents believed the rule had reduced the frequency of dual tracking (58%), improved transparency and predictability (62%), and increased the frequency of denial letters identifying a specific reason for a denial (52%). Nearly 70% of respondents believed the rules had increased the frequency of borrowers being evaluated for all available loss mitigation options and allowed more homeowners to save their homes from avoidable foreclosures.

The other servicing related benefits respondents identified from the servicing rules are shown in Figure 2 below. Forty-five percent of respondents stated that borrowers were more likely to be

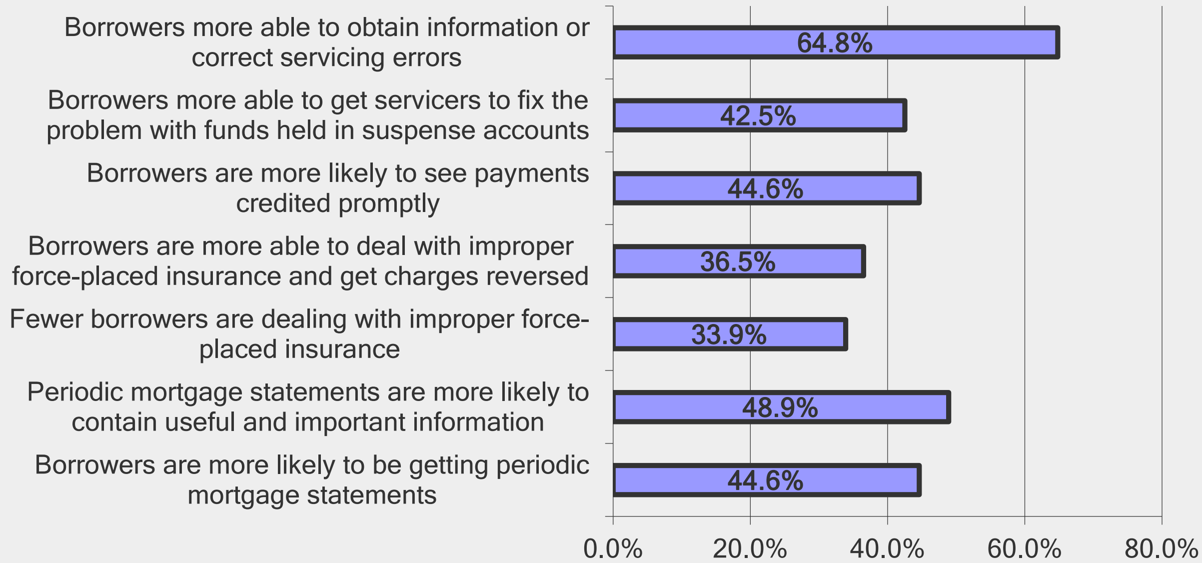
[17] See the attached appendix for the full survey results.
[18] In addition, one respondent reported working for an entity that serves homeowners in all fifty states.
[19] Twenty-one percent of respondents (50 people) work in an office that serves fewer than 100 homeowners per year; 15% of respondents (36 people) work in an office that serves 500-1,500 homeowners per year; 4% of respondents work in an office that serves over 1,500 homeowners per year; and 2% of respondents did not identify a number of homeowners served by their programs.

getting periodic mortgage statements, and nearly 50% said those statements were more likely to contain useful and important information. A third of respondents said fewer borrowers were dealing with improper force-placed insurance. Sixty-five percent of respondents said borrowers have been more able to obtain servicing information and correct servicing errors due to the servicing rules.



Source: NCLC Survey of Consumer Advocates, June 2017

Figure Two: Servicing Benefits
Q. To the extent there are benefits, which of the following servicing benefits have resulted from the CFPB's mortgage servicing rules based on your experience working with homeowners? Check all that apply:



Source: NCLC Survey of Consumer Advocates, June 2017

In narrative responses, survey respondents noted that the servicing rule has led to more standardized loss mitigation functions, helped to reduce dual tracking, made it more likely that a borrower would get a loss mitigation application evaluated within thirty days, and made denial letters and other communications from servicers easier to understand. Respondents also noted that RFIs and NOEs had resulted in obtaining information and resolving issues without litigation. A number of respondents noted the importance of the Bureau's mortgage servicing enforcement work in policing servicer misconduct under the rule and deterring abusive practices.

In summary, the servicing rule has resulted in tangible benefits to homeowners who are attempting to understand the servicing of their loans, reduce improper fees and charges, and obtain loss mitigation to save their homes from foreclosure. By the same token, these benefits to homeowners have spilled over to benefit their communities, where fewer foreclosures have occurred as a result. Although these benefits are substantial, there are still a number of problems the servicing rule should be modified to address. In the next section, we outline the changes and improvements still needed to address the purposes of the rule.

IV. While the Rule Has Improved Mortgage Servicing and Loss Mitigation, Further Improvements are Needed to Meet the Purposes of the Regulation.

Although the servicing rule has resulted in substantial benefits and has been effective in serving the core consumer protection purposes of RESPA, important improvements are still needed. Below are our recommendations for ways the rule should be expanded or modified to better serve its consumer purposes. Our recommendations address ten core issues:

- Servicing transfer problems;
- Problems with tying protections to receipt of a “complete” application;
- Force-placed insurance issues;
- Loss mitigation timing and other issues;
- The duplicative request rule;
- Error resolution;
- Coverage of Regulation X;
- Protections for long-dormant mortgages;
- Successors in interest; and
- Borrowers with limited English proficiency.

A. Servicing Transfer Requirements Should Be Expanded.

Many servicing problems occur at or near the time of a transfer of servicing, often caused by servicers’ inability to communicate with each other and reconcile account records. In some cases this is caused by the incompatibility of the servicers’ record systems. Borrower payments made during the transition period may not be properly credited, and information about pending loss mitigation applications or offers may not be timely and accurately communicated to the transferee servicer. Errors involving even just one or two payments can spiral into a threatened foreclosure despite borrower efforts to prove that payments were in fact made.[20]

The Bureau has been keenly aware of servicing transfer problems. Before the 2013 RESPA Servicing Rule took effect, the Bureau issued two compliance and policy bulletins on servicing transfers.[21] At the time the second bulletin was released, Director Cordray stated: “We will not tolerate consumers getting the runaround when mortgage servicers transfer loans.”[22] In a recent special edition of the Supervision Highlights, the Bureau highlighted a number of servicing transfer problems, including the inability of some transferee servicers to honor the terms of existing trial and permanent loan modifications, caused in part by “incompatibilities between servicer platforms.”[23] The Bureau noted that for some servicers “delays in honoring in-flight modifications were caused by their dependence on the information technology department to manually override data fields whenever the servicing platform rejected transferor data.”[24]

In a recent enforcement action against one of the largest national servicers, the Bureau alleged that the servicer failed to promptly verify that loan data was complete and accurate as part of the

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[20] *E.g.*, Rawlings v. Dovenmuehle Mortgage, Inc., 64 F. Supp. 2d 1156 (M.D. Ala. 1999).
[21] *See* CFPB Bulletin 2013-11, *Mortgage Servicing Transfers*, Feb. 11, 2013 and Bulletin 2014-01, *Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers*, Aug. 19, 2014.
[22] *See* CFPB Issues Bulletin to Prevent Runarounds in Mortgage Servicing Transfers, Aug. 19, 2014, https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-bulletin-to-prevent-runarounds-in-mortgage-servicing-transfers/
[23] Supervisory Highlights Mortgage Servicing Special Edition, Issue 1, p. 17, at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Mortgage_Servicing_Supervisory_Highlights_11_Final_web_.pdf.
[24] *Id*. at 18.

loan boarding process.[25] Rather than complete the loan verification process within 60 days of boarding the loan, the Bureau alleges that the servicer "relied on unverified loan information for months - and often for more than a year - to service hundreds of thousands of loans." At one point the servicer had a "backlog of more than 400,000 transferred loans that remained unverified." The enforcement proceeding also revealed the importance of the verification process, as the servicer reported that at different time periods anywhere from 72 to 90 percent of the verified loans contained errors or incomplete information that needed corrections.

The amendments to the 2013 RESPA Servicing Rule that go into effect later this year should help address some of the transfer of servicing problems. But these amendments focus on a small subset of issues. We urge the Bureau to make the transfer of servicing a critical issue in the assessment and to consider the following recommendations for expanding the 2013 RESPA Servicing Rule on this issue.

1. *The Servicing Rule should prevent borrowers from getting the runaround when servicing is transferred, by prohibiting servicers from making duplicative and burdensome requests for information and documents that have been previously provided to a transferor servicer.*

We support the issuance of § 1024.41(k), which goes into effect on October 19, 2017. This new provision clarifies and expands several of the Bureau's Official Interpretations on servicing transfers, and generally holds a transferee servicer to the same standards and timelines as a transferor servicer when servicing of a mortgage loan is transferred while a loss mitigation application is pending. However, new § 1024.41(k) does not go far enough in addressing the systemic problems caused by transfers of servicing or in helping borrowers avoid unwarranted or unnecessary costs from getting the runaround when servicing is transferred.

New § 1024.41(k) and related comments do not adequately address the persistent problem of servicers demanding that borrowers effectively start over with a new loss mitigation application upon transfer. Transferee servicers routinely make duplicative and burdensome requests of borrowers for information and documents that have been previously provided to a transferor servicer. In the survey of consumer advocates conducted by NCLC in June 2017, 81% of respondents (188 advocates) said that in the past two years they had seen problems with transferee servicers telling borrowers they needed to submit a new loss mitigation application to the transferee despite a pending application that was submitted to the prior servicer. Half of respondents had experience with transferee servicers initiating a foreclosure despite a pending loss mitigation application that was submitted to a prior servicer. If a loan is transferred with a loss mitigation application pending or when a borrower is in a loss mitigation program, § 1024.41(k) should clearly specify the obligations of both the transferor servicer and the transferee servicer to ensure that there is a seamless transfer of information from one to the other.

Section 1024.41(k) should require the transferor servicer to transmit all documents and information that have been provided by a borrower on a loss mitigation application to the

[25] *Consumer Financial Protection Bureau v. Ocwen Financial Corporation*, Case No. 9:17-CV-80495 (S.D. Fla.), complaint available at http://files.consumerfinance.gov/f/documents/20170420_cfpb_Ocwen-Complaint.pdf.

transferee servicer at loan boarding. Any records of the transferor's discussions with the borrower about loss mitigation and copies of all written communications between the parties, including all notices sent by the transferor servicer as required by § 1024.41(b)(2), should also be provided to the transferee servicer. Similarly, the transferor servicer must assemble and transmit all information and documents related to any temporary or permanent loan modifications offered or entered into with the borrower.

Section 1024.38(b)(4) currently requires a transferor servicer to have policies and procedures reasonably designed to provide for timely transfer of all information and documents in its possession or control to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred. This regulation has been in place since January 10, 2014, and yet there we have not seen any meaningful improvement with transfer problems relating to pending loss mitigation. Quite simply, § 1024.38(b)(4) is not effective and has not been taken seriously by servicers, perhaps because there is no private right of action to enforce it or because it merely requires servicers to adopt "policies and procedures that are reasonably designed to achieve the objectives" of the provision. The Bureau should impose specific requirements upon transferor servicers in § 1024.41(k).

New Official Interpretations 41(k)(1)(i)-1.i states that a transferee servicer must obtain from the transferor servicer information and documents a borrower submitted to a transferor servicer in connection with a loss mitigation application, consistent with policies and procedures adopted pursuant to § 1024.38. Again, this is wholly inadequate as it focuses solely on the transferee servicer. Moreover, § 1024.41(k) or the Official Interpretations should require a transferee servicer to not only "obtain" information and documents from a transferor servicer, but to also review this information immediately upon boarding to determine if the transferred information and documents may be used and are sufficient to process the loss mitigation application.[26] ***Before*** requesting missing or additional documents and information from a borrower pursuant to § 1024.41(b), the regulation should require that the transferee servicer (1) first verify that the information has not already been transmitted and (2) then check with the transferor servicer to determine if the needed documents are available and can be transferred to the transferee servicer.[27] The Official Interpretations should explain that requesting additional documents from the borrower and requiring borrowers to resubmit loss mitigation application materials following a transfer should be the exception rather than the rule.

[26] Official Interpretations 41(k)(1)(i)-1.ii requires the transferee servicer to exercise reasonable diligence to complete a loss mitigation application, but the commentary describes this merely in terms informing the borrower of documents needed to complete the application process in accordance with § 1024.41(b).

[27] Official Interpretations § 38(b)(4)(ii)-1 states that the "transferee servicer's policies and procedures must address obtaining any such missing information or documents from a transferor servicer before attempting to obtain such information from a borrower." This is a general procedural requirement rather than a specific mandate and also is not privately enforceable.

2. *Transferee servicers should be required to send borrowers written notice about the status of their loss mitigation application following a transfer of servicing, regardless of whether the transferor servicer has provided other § 1024.41 notices.*

The most pressing concern for borrowers who are mid-stream in the loss mitigation process at the time of transfer is whether the new servicer is aware of the pending loss mitigation application and will continue with the evaluation process. New § 1024.41(k) does not require that this essential information be provided in all situations. All borrowers in loss mitigation should get some written confirmation of where they stand with the new servicer.

New § 1024.41(k)(2) provides that if a transferee servicer begins servicing a mortgage loan at a time when the period to provide the acknowledgement notice required by § 1024.41(b)(2)(i)(B) has not expired as of the transfer date, the transferee servicer must provide the notice within 10 days (excluding legal public holidays, Saturdays, or Sundays) after the date the transferor servicer received the application. This provision addresses only the situation in which the 5-business day time period for sending an acknowledgement notice "has not expired" as of the transfer date. At a minimum, § 1024.41(k)(2) should also require the transferee servicer to send the acknowledgement notice if the transferor servicer was required to send the notice but failed to do so prior to the transfer date. The transferee servicer should be required to review the transferred documents to determine if an acknowledgement notice was sent to the borrower, and if not, § 1024.41(k)(2) should apply and require that it be sent to the borrower.

Section 1024.41(k) should also require that within a specified time period the transferee servicer must either send the borrower an acknowledgement notice under § 1024.41(b)(2)(i)(B) stating that information and documents are needed and the deadline for the borrower to respond, or a notice of complete application under new § 1024.41(c)(3), regardless of whether the transferor servicer has provided such a notice. The specified time period for these notices should be the earlier of 1) any time deadline for the sending of these notices that would be imposed directly on the transferee servicer under § 1024.41(k)(2) as revised or § 1024.41(c)(3); or 2) no later than 20 days after the transfer date. A shorter time period should apply if a foreclosure sale has been scheduled and the borrower could lose the right to an evaluation under § 1024.41(c) or protections under § 1024.41(e) through (h).

Section 1024.41(k) should provide for an alternative form of compliance if the transferor servicer has sent an acknowledgement or complete application notice to the borrower prior to the transfer date, and the transferee servicer has determined that no additional information or corrections are needed. In that case the transferee servicer should send an abbreviated version of the written notices no later than 20 days after the transfer date stating that the information provided in the notice of complete application under proposed § 1024.41(c)(3) sent by the transferor servicer is still valid and that the transferee servicer will be evaluating the borrower's complete application.

The notice requirements we propose would also provide an opportunity for the transferee servicer to comply with new Official Interpretations 41(k)(1)(i)-1.ii, by notifying the borrower of any changes to the application process, such as a change in the address to which the borrower should submit documents and information to complete the application. The Bureau should also require one of the notices that the transferee servicer gives to the borrower to include the telephone number for accessing the new servicer's loss mitigation personnel assigned to the borrower under the continuity of contact rule, § 1024.40(a).

A transfer of servicing can create anxiety for borrowers if they are deprived of critical information. These concerns exist under normal circumstances, but are heightened when a transfer occurs while a delinquent borrower is facing foreclosure and seeking loss mitigation options. The amendments for improving the 2013 RESPA Servicing Rule that we propose here will help borrowers obtain accurate information about the loss mitigation process and facilitate review of foreclosure avoidance options by servicers. It will also ensure that the new servicer knows the status of the borrower's application, and it will bring to the surface and allow an early opportunity to correct any errors in its treatment of the borrower's file.

3. *Transferee servicers should be required to accept and honor all loss mitigation offers that have been accepted by the borrower and to promptly convert trial loan modification agreements to permanent agreements.*

New §1024.41(k)(5) states that a transfer of servicing does not affect a borrower's ability to accept or reject a loss mitigation offer, and that the transferee servicer must allow the borrower to accept or reject the offer. We support this rule but have concerns that it does not go far enough to protect borrowers when a transferee servicer fails to honor loss mitigation offers that have already been accepted by the borrower before the servicing transfer.

The Bureau's supervisory examinations have revealed significant problems in this area. A recent Supervisory Highlights states that:

> Additionally, one or more servicers failed to honor the terms of in-place trial modifications after transfer. Some borrowers who completed trial payments with the new servicer nevertheless encountered substantial delays before receiving a permanent loan modification. Supervision concluded that the delay caused substantial injury as trial payments were less than the amounts required by the promissory note, and consumers continuing to make trial payments while waiting for the permanent modification accrued interest on the unpaid principal balance.[28]

In NCLC's June 2017 national survey of consumer advocates, 61% of respondents said that in the past two years they had seen problems with transferee servicers failing to honor a pending trial modification offered by the prior servicer. Fifty-five percent said they had seen transferee servicers fail to convert a trial modification to a permanent modification upon completion of the trial plan.

No provision in § 1024.41, including new §1024.41(k), addresses this problem. We urge the Bureau to amend § 1024.41 to include a specific requirement that transferee servicers must honor

[28] Supervisory Highlights Mortgage Servicing Special Edition, Issue 1, p. 17-18, at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Mortgage_Servicing_Supervisory_Highlights_11_Final_web_.pdf.

all loss mitigation agreements entered into prior to transfer. Although such agreements are arguably enforceable against the loan holder and transferee servicer as a matter of contract law, a requirement in § 1024.41 will promote compliance by providing the borrower with explicit, privately enforceable remedies against the servicer. The Bureau should also undertake rulemaking on problems related to the failure of servicers to promptly convert trial loan modification agreements to permanent agreements.[29]

4. Information about borrower error resolution rights should be restored to transfer of servicing notices.

Before the 2013 RESPA Servicing Rule went into effect, servicers were required to provide a statement on the transfer of servicing notice of the borrower's rights under the error resolution process in 12 U.S.C. § 2605(e).[30] The Bureau eliminated this requirement from the transfer notice when § 1024.33(b)(4) was finalized. The reasons given by the Bureau for this deletion were not compelling at the time, and have proven to be even less convincing in light of mounting problems with servicing transfers.

The Bureau stated that "detailed information about the error resolution and information request process may not always be optimally located in the transfer notice" and that borrowers should be informed of this process "through mechanisms that do not necessarily depend on the transfer of servicing."[31] The Bureau suggested that servicers would inform borrowers of dispute rights as part of their compliance with the requirement being added in § 1024.38(b)(5), that servicers maintain policies and procedures reasonably designed to ensure that servicers "inform borrowers of procedures for submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36."

However, the Bureau did not mandate any process or method that servicers must use to inform borrowers of dispute or information rights. In fact, none of the mandatory contacts with borrowers require disclosure of these rights. For example, periodic billing statements sent under § 1026.41, early intervention written notices sent under § 1024.39, and loss mitigation notices sent under § 1024.41 (notice of acknowledgment of receipt of borrower's loss mitigation application, notice of decision on evaluation of borrower's complete loss mitigation application, notice of decision on appeal) do not require the servicer to inform the borrower of the right to send a notice of error or request for information.

Left to their own devices to develop "policies and procedures," servicers have been ineffective in communicating this critical information to borrowers. As part of this servicing assessment, the Bureau should evaluate the effectiveness of § 1024.38(b)(5).

Moreover, the Bureau should restore the requirement that transfer notices include disclosure of borrower rights under 12 U.S.C. § 2605(e). The Bureau's recent enforcement action against a large national servicer demonstrates the need for restoring the requirement. The Bureau documented that the servicer routinely "boarded loans that contained payment history data that it

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[29] See our more detailed discussion of problems that arise after a trial plan offer in Section IV(D)(5), *infra*.
[30] *See* former § 1024.21(d)(3)(vii).
[31] 78 Fed. Reg. 10730 (Feb. 14, 2013).

had reason to believe was inaccurate or incomplete," and had boarded incomplete or incorrect payment histories into its servicing platform, including "payment histories that include misapplied payments and transactions that occurred before the loan was even originated."[32] The complaint further alleges that the servicer failed to verify that corporate advances and servicing-related fees were valid and actually owed by borrowers, even though in many instances the servicer did not have invoices or other documents to support the fees, and even though the servicer was receiving disputes from borrowers that the fees were not owed. These errors were not isolated, with as many as 72 to 90 percent of the verified loans containing errors or incomplete information that needed corrections during certain periods. The potential costs to borrowers from unwarranted fees is also alarming. For the loans the servicer boarded in one year, it was missing invoices or other documents to support $98 million in corporate advances that it had charged to borrowers.

It is hard to imagine a better time to notify borrowers of dispute rights than at the time of servicing transfer. Servicing errors are most likely to occur at transfer than at any other time during the life of the loan. In NCLC's national survey conducted in June 2017, 73% of consumer advocates responding (171 advocates) stated that they had seen problems in the past two years with transferee servicers not having accurate information about consumers' account status or payment history. We also believe that consumers have a significant interest in servicing transfer notices out of apprehension that their account is being correctly handled by a new servicer, and are therefore more likely to read them than other notices they receive from servicers (or refer back to them when needed). The Bureau should therefore ensure that borrowers are equipped with information at the most appropriate time about the tools they have to dispute transfer-related servicing errors.

The Bureau should not assume that consumers are generally aware of their RESPA dispute rights or that they will know how to validly exercise these rights by a limited disclosure on a periodic statement of a toll-free number telephone number or electronic mailing address they can use to obtain account information (or if they have "questions"). In fact, such disclosures can actually mislead consumers by making them believe that oral inquiries will trigger rights under § 1024.35 and § 1024.36. As discussed below, the problem is exacerbated by the Bureau's reliance upon the designated address rule for borrower inquiries, because borrowers are not effectively notified of the need to use a designated address or that sending a notice of error or request for information to the servicer's address other than the designated address will render it invalid.

5. *The Bureau should define industry-wide standards and protocols to ensure the compatibility of transferred data as between servicers.*

The Bureau's supervisory and enforcement proceedings have highlighted serious problems in the boarding of loans from one servicer to another, based in part on the incompatibility of servicer systems of record. One cause of these problems is that the servicing market has relied upon outdated and deficient servicing technology. The Bureau can no longer rely upon individual

[32] Consumer Financial Protection Bureau v. Ocwen Financial Corporation, et al., Case No. 9:17-CV-80495 (S.D. Fla.).

servicers to voluntarily develop policies, procedures and technology systems for the timely and accurate transfer of data.

The Bureau should define industry-wide standards and protocols to ensure the compatibility of transferred data as between servicers. As part of this effort, the Bureau should consider the feasibility of standards that would permit loan-level information to travel with borrower in a uniform format from servicer to servicer, not unlike the universal system of electronic medical records (EMR) used in the medical field. Such standards would ensure that all servicers speak the same language when transferring information.

B. Protections Should Not Be Contingent on a Complete Application.

1. The Bureau should act to extend the rule's protections to streamlined modifications, where no application occurs.

Continued reliance on a "complete application" to trigger essential borrower protections risks making the Bureau's loss mitigation rules obsolete under current loss mitigation protocols while creating incentives for servicers to avoid having borrowers complete the application process. In their current form the CFPB's loss mitigation rules offer no meaningful borrower protections when a servicer reviews loss mitigation options for a borrower who did not submit an application. Subject to an exception for short-term forbearance and repayment plans, the rules discourage servicers from offering loss mitigation options unless a borrower has submitted a complete application.[33] The Bureau's Official Interpretation includes a further exception allowing approval of a loss mitigation option when the servicer does not consider any information provided by the borrower. The relevant text states:

> [n]othing in § 1024.41(c)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. . . . For example, if a servicer offers trial loan modification programs to all borrowers who become 150 days delinquent without an application or consideration of any information provided by a borrower in connection with a loss mitigation application, the servicer's offer of any such program does not violate ¶ 1024.41(c)(2)(i), and a servicer is not required to comply with § 1024.41 with respect to any such program, because the offer of the loss mitigation option is not based on evaluation of a loss mitigation application. Official Interpretations to Reg. X, ¶ 41(c)(2)(i)-1

It is the submission of the initial complete application to a particular servicer that triggers the important procedural safeguards under § 1024.41. These include the servicer's duty to review for all available options, the notice of the evaluation decision, the right to appeal a denial of a loan modification, and dual tracking protections. The borrower has a private right to remedies under RESPA when a servicer ignores these protections.

[33] 12 C.F.R. § 1024.41 (c) (1).

The focus on the loss mitigation application made sense while the Home Affordable Modification Program ("HAMP") was in effect (although even such a focus, in our view, should be based on an initial package, not a complete application, as discussed below). Beginning in early 2009, the major servicers were under contractual obligations to consider *applications* for HAMP submitted by borrowers in default. While HAMP was in place, servicers of GSE loans were under a similar obligation to consider all borrowers in default for HAMP modifications when they submitted an *application* for loss mitigation assistance. However, as of the end of 2016 HAMP expired for new applications.

In the post-HAMP world, servicers of both GSE and non-GSE mortgages are committing themselves to loan modification protocols in which applications do not play a significant role. Fannie Mae and Freddie Mac announced the contours of their new "Flex Modification" program in notices published during December 2016.[34] According to these notices, all servicers of GSE loans must implement the Flex Modification program by October 1, 2017. Servicers may at their discretion begin to offer the Flex Modification earlier. Once a servicer begins to implement the Flex Modification program, the servicer must discontinue evaluations for the GSE Standard and Streamlined Modification.[35] By the end of this year, the Flex Modification will be the only mortgage modification option available for most residential borrowers in the country. The mortgage servicing industry is actively encouraging the adoption of similar modification protocols that minimize the role of loss mitigation applications.[36]

The Flex Modification program is designed to facilitate modifications without input from borrowers. It is what the Official Interpretation describes as an option approved "without an application or consideration of any information provided by a borrower in connection with a loss mitigation application." Official Interpretations to Reg. X, ¶ 41(c)(2)(i)-1. Servicers conduct Flex Modification evaluations based on information contained in their own records and from the property valuations they obtain. GSE servicers must evaluate all borrowers for a Flex Modification during the 90-to-105-day delinquency period. After this initial period for mandatory evaluations, servicers have the discretion to conduct similar unilateral evaluations as the delinquency continues, up until a set time before a foreclosure sale (30 days before a non-judicial sale and 60 days before a court-ordered sale).

The total lack of transparency in the servicers' unilateral Flex Modification evaluations raises significant concerns. The GSE rules do not direct servicers to inform borrowers that they are being reviewed for the option. Servicers need not give borrowers notice of the outcome of the review. The absence of appeal rights is inherent in this structure. Dual tracking protections do not apply. This lack of transparency can lead to a number of problems. For example, a borrower

[34] Fannie Mae Lender Letter LL-2016-06 (December 14, 2016, reposted December 15, 2016), hereinafter "Fannie Mae Letter;" Freddie Mac Bulletin 2016-22 (December 14, 2016), hereinafter "Freddie Mac Bulletin."

[35] Fannie Mae Letter p. 1; Freddie Mac Bulletin p. 1.

[36] The GSEs Fannie Mae and Freddie Mac inaugurated "streamlined modification" programs beginning in 2013. These resembled the "Flex-Mod" option in that servicers unilaterally offered fixed term modifications to borrowers at a set time of delinquency. Borrowers accepted the offers by commencement of trial plan payments. The Mortgage Bankers Association has recently advocated a "One Mod" option that keeps application requirements to a minimum and allows for unilateral servicer offers at a fixed stage of delinquency. *See* https://www.mba.org/issues/residential-issues/one-mod-a-post-hamp-loan-modification

who did not receive a Flex Modification offer at the 90-to-105 days of delinquency stage may not be aware that a review took place. A servicer could have neglected to perform the review entirely or could have conducted an evaluation, but performed it improperly. The servicer could have used an erroneous property valuation or principal balance figure and found the borrower ineligible based on these erroneous inputs. The Flex Modification guidelines give the servicer wide discretion to use automated valuation devices for the property value calculation.[37] Any of the other basic eligibility factors could have been misapplied. Notably, only 39% of respondents to NCLC's national survey believed wrongful denials for loss mitigation options have been reduced by the servicing rule; wrongful denials are still quite common. Without notice of a denial, the borrower will have no opportunity to challenge or appeal it.

During the extensive time period while servicers may conduct unilateral evaluations, borrowers also have the right to submit a loss mitigation application and be evaluated for a Flex Modification. The borrower's right to a review based on an application extends throughout most of the delinquency and pre-foreclosure sale time frame.[38] The substantive terms of the Flex Modification available through an application and through a servicer's proactive solicitation are similar, but not identical.[39] Flex Modifications based on an application before the loan reaches 90 days delinquent are targeted to an affordable debt-to-income ratio.

This simultaneous right of the borrower to apply for a Flex Modification while the servicer has the ongoing option to conduct unilateral reviews without the borrower's knowledge opens up further problems. The Bureau's rules define the term "application" broadly. The servicer has a duty to follow up any borrower contact seeking loss mitigation help (provided the borrower gives any information that a servicer would require for evaluation of a loss mitigation option) by making affirmative efforts to assist the borrower to complete an application.[40] This means promptly giving the borrower written notices specifying how to complete an application and assisting the borrower with these efforts.[41] By exempting no-application reviews from the regulation, the rule creates an incentive to ignore communications from borrowers that should be construed as initiation of an application. The Bureau should amend § 1024.42(c)(2) and the related Official Interpretation to address these open-ended discretionary reviews for loss mitigation options whether or not they are tied to a fixed time of delinquency or are conducted without an application.

[37] Fannie Mae Letter. pp. 3-4.
[38] The relevant time limits for eligibility for a Flex Modification are that the borrower must be at least 60 days in arrears, or if current or less than 60 days in arrears must meet the GSEs "imminent default" standard. Borrowers may submit an application up to the date of a foreclosure sale, but dual tracking protections may not apply to delay the sale or entry of judgment if the complete application is submitted less than 37 days before the sale date or if the application is not the borrower's first one to the servicer.
[39] The only exception is that slightly more favorable terms (through an additional housing expense-to-income ratio check) are potentially available when the borrower submits a BRP before the loan is 90 days delinquent. It is unlikely that many borrowers will apply during this very limited time frame and that they will be eligible for the additional principal forbearance. It will be important, however, to monitor the effects of this additional component and the extent to which extending it to later stage delinquencies would meaningfully improve outcomes.
[40] 12 C.F.R. § 1024.40(b).
[41] 12 C.F.R. § 1024.41(b).

Moreover, dual tracking problems in no-application loan modification programs are not adequately addressed by the current rule. Specifically, a borrower who accepts an unsolicited trial modification offer and begins performing under such an agreement would not have a clear claim under § 1024.41(g) if a servicer conducted a foreclosure sale while the trial plan was in place. This is true because such a borrower never submitted a "complete application." NCLC has heard from several advocates who have experienced this problem with existing streamlined modification programs. In the national survey NCLC conducted in June 2017, over 30% of respondents stated that they had seen problems with streamlined modifications where the protections of § 1024.41, such as dual tracking protections, would have been helpful, but did not apply. Given the increasing percent of loan modifications that will be offered to borrowers without an application under Flex Mod and similar programs going forward, this problem is likely to grow. The Bureau should amend §1024.41 to provide for dual tracking protections upon acceptance of a no-application loss mitigation offer and to require specific written denial or offer letters, as well as appeal rights, after *any* review for loss mitigation.

Reviews of borrowers for "no-application" loan modification programs and offers of such loss mitigation options should be subject to all requirements of §1024.41.   In the context of a Flex Modification, all borrower rights that flow from a complete application must apply whether or not an application has been submitted, including a written notice of decision, appeal, and dual tracking protections. When a borrower has indicated an intention to submit an application, a servicer should also be obligated to take reasonable steps to help the borrower complete the application.

The Bureau should also amend its rules to add procedural protections for borrowers when servicers unilaterally review for a loss mitigation option tied to a fixed time of delinquency or otherwise. Servicers must never conduct reviews in secret. Borrowers must be notified when a review for any option has been performed, the outcome of the review with full information on the basis for any denial, and what further options remain available. Borrowers denied as a result of a unilateral review should also be informed in writing that they can submit an application if they believe the denial was improper.

2. An initial package should trigger dual tracking and appeal protections.

Submission of an initial package should trigger dual tracking and appeal protections. Section 1024.41 imposes a number of duties on a servicer once it receives a borrower's complete application for loss mitigation review. Reliance on submission of a "complete" application confounds attempts to address dual-tracking and wrongful foreclosures due to inconsistent and opaque implementation. Moreover, it creates exactly the wrong incentive—to drag out the application process in order to increase default servicing fee income.

The CFPB should define the minimum requirements in all cases for the initial submission of a loss mitigation application or package, similar to the proposal put forward by the California

Monitor for the National Mortgage Settlement.[42] Servicers would, of course, be permitted to request additional information intended to satisfy any investor requirements after an initial package is submitted. However, § 1024.41 should provide that once the borrower has submitted documentation that satisfies this initial showing, the dual tracking restrictions under § 1024.41(g) would apply even if the servicer determines that the loss mitigation application is not "complete." This is the only approach that provides servicers with an incentive to process applications in a timely manner and avoids potential manipulation of the process based on a servicer's subjective determination of a "complete" application.

To implement this proposal, the CFPB should define in § 1024.41 the elements of an initial submission of a loss mitigation package, similar to the "Initial Package" under HAMP. The HAMP handbook provided that the Initial Package included:

- A Request for Mortgage Assistance (RMA) Form, including a homeowner hardship affidavit, rental property certification, and Dodd-Frank certification;
- IRS Form 4506-T or 4506T-EZ, which authorizes the release of a transcript of the borrower's tax return; and
- Documentation to verify the borrower's income.

By submitting this information and these documents, which is no simple task, the borrower is clearly demonstrating a commitment to the loss mitigation process. There is a strong likelihood that the borrower will respond and follow through with requests for additional information to complete the application. It is therefore appropriate at this point for the borrower to be protected from dual tracking while the initial application is being evaluated.

We are not suggesting a complete restructuring of § 1024.41. All of the current timelines and procedural requirements in § 1024.41 would remain unchanged. These timelines and the related borrower protections, however, should be aligned with the submission of an initial loss mitigation application (an Initial Package) as defined by the CFPB rather than a complete loss mitigation application. Current provisions that require a servicer to evaluate the borrower for all available loss mitigation options and that deal with duplicative requests would continue to apply only to a complete loss mitigation application.

C. Force-Placed Insurance Rules Should Be Strengthened.

1. *The Bureau should substantially strengthen the force-placed insurance rules, including how flood insurance is addressed.*

The Bureau should revisit the force-placed insurance provisions in its mortgage servicing rule to ensure that homeowners without escrow accounts are protected from force-placed insurance abuses. The Bureau should also flatly prohibit mortgage servicers from accepting any payments,

[42] *See* California Monitor, *The 'Complete' Application Problem: A Solution to Help Homeowners and Banks Work Together*, *available at*:https://oag.ca.gov/sites/all/files/agweb/pdfs/mortgage_settlement/03-report-complete-app-problem.pdf.

including reinsurance deals and free or discounted administrative services, from force-placed insurance companies or their affiliates. In NCLC's national survey of consumer advocates conducted in June 2017, only one-third of respondents had seen an improvement in force-placed insurance problems stemming from the servicing rule. The current rule leaves too many opportunities for continued abuse in an area with a long-history of such conduct. These gaps must be addressed.

2. *The Bureau should 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 proposed 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 an 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.

3. *The Bureau should 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 current rules leave substantial room for evasion and do not address the role that reinsurance deals play in servicers' business decisions about force-placed insurance.

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, using affiliates to reinsure force-placed insurance policies is a low-risk way for the banks that own mortgage servicing companies to claim a portion of the exorbitant premiums charged for force-placed insurance

The CFPB should make clear that neither mortgage servicers nor 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. Such regulations are within the Bureau's broad authority to regulate servicers' force-placed insurance practices because they would apply to the servicer's conduct. We do not ask the Bureau to regulate insurers or insurance products. Instead our recommendations apply to servicing federally regulated mortgage loans—a topic squarely within the Bureau's jurisdiction.

4. *The Bureau should strengthen notice requirements and limit retroactive charges.*

The CFPB should strengthen 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. 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.

5. *The Bureau should limit the amount of force-placed insurance coverage purchased.*

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 require servicers to obtain the same amount of insurance coverage as the homeowner had when last in compliance with the mortgage's insurance requirement. Under no circumstances should the amount of force-placed insurance exceed the replacement cost of the improvements on the mortgaged property.

6. *The Bureau should plug the gap in force-placed insurance coverage and require servicers to advance funds for all flood insurance.*

    a. *The rules for mandatory flood insurance have undergone a major change in recent years.*

In July 2012, after years of debate, the Biggert-Waters Flood Insurance Reform Act became law.[43] Intended to save the National Flood Insurance Program from insolvency, the changes in Biggert-Waters required the federal banking agencies to update their regulations for loans in areas having special flood hazards.

Several months later, the CFPB proposed amending Regulation X's coverage of hazard insurance for home mortgages.[44] As described below, the amendment covered flood insurance in some circumstances but specifically excluded it from coverage in others. This arrangement was largely to avoid the risk of overlap with the banking agencies' regulations.

In October 2013, the banking agencies jointly proposed amendments to the flood-insurance regulations,[45] after the CFPB's amendments had been finalized. But the banking agencies' proposal, itself, had to be amended a year later[46] after the President signed into law the Homeowner Flood Insurance Affordability Act of 2014.[47] The banking agencies then finalized their revised regulations.[48]

Not surprisingly, after all these changes involving multiple agencies and two branches of government, there remains a gap in the consumer protections for flood insurance.

b. The Bureau excluded government-mandated flood insurance from the definition of "force-placed insurance" in the belief that other regulations provided adequate protection.

When the CFPB amended Regulation X, the Bureau prohibited servicers from force-placing hazard insurance unless the servicer is unable to disburse funds from the borrower's escrow account.[49] In effect, this will often require servicers to advance the cost of maintaining the borrower's hazard insurance rather than force-placing more expensive coverage. But the Bureau defined "force-placed insurance" as excluding "[h]azard insurance required by the Flood Disaster Protection Act of 1973" (hereinafter "FDPA insurance").[50] This means Regulation X allows a servicer to force-place FDPA insurance on properties in special flood hazard areas even when the servicer could avoid doing so as described in Reg. X § 1024.17(k).

The Bureau adopted this exclusion because the Bureau believed that the FDPA and its regulations adequately protected homeowners in flood zones and that additional coverage by Regulation X would be unreasonably burdensome, without a countervailing benefit to

43 Public Law 112–141, 126 Stat. 916 (July 6, 2012)
44 *See* 77 Fed. Reg. 57,199 (Sept. 17, 2012) (proposed rule). *See also* 78 Fed. Reg. 10,696 (Feb. 14, 2013) (final rule).
45 78 Fed. Reg. 65,108 (Oct. 30, 2013).
46 79 Fed. Reg. 64,518 (Oct. 30, 2014).
47 Pub. L. 113-89, 128 Stat. 1020 (Mar. 21, 2014).
48 80 Fed. Reg. 43,215 (July 21, 2015).
49 Reg. X § 1024.17(k)(5)(i) (as amended).
50 Reg. X § 1024.37(a)(2)(i).

consumers.[51] At the time, with the banking agencies' regulations not yet complete, the Bureau did not realize that this decision would create a gap in the rules for mandatory flood insurance.

The Bureau recognized that a servicer may require a borrower to renew or replace flood insurance even though the insurance is no longer required under the FDPA. In that situation, neither the FDPA nor the banking agency rules would apply.[52] Therefore, the Bureau crafted Regulation X's definition of force-placed insurance to include flood insurance when required by the servicer but not the FDPA. The Bureau described this aspect of the regulations as "intended to fill precisely this gap to ensure that consumers have basic procedural and substantive protections in the absence of FDPA coverage."[53] This statement by the CFPB shows that the Bureau did not intend to leave any gaps between the protections created under RESPA and the FDPA. Unfortunately, subsequent events would reveal a larger gap that the Bureau had not anticipated.

c. The banking agencies' FDPA flood regulations create another gap in consumer protections.

The banking agencies finalized their flood insurance regulations in July 2015.[54] When consumer groups asked them to include a provision equivalent to Regulation X's § 1024.17(k)(5), the banking agencies decided they lacked the authority to do so.[55] As a result, because Regulation X excludes FDPA mandated flood insurance, a servicer may force-place such insurance even when the servicer could avoid doing so by advancing funds through the borrower's escrow account. According to the Federal Register, the banking agencies believe this problem can be fixed only by exercising the CFPB's authority under the Real Estate Settlement Procedures Act.[56] Because neither Regulation X nor the banking agencies' flood insurance regulations prohibit the force-placement of FDPA flood insurance in the circumstances described by § 1024.17(k)(5), borrowers in flood zones will remain exposed to all the risks that the CFPB's amendments were designed to address.

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51 78 Fed. Reg. 10,696, 10,723 (Feb. 14, 2013) ("the FDPA provides an extensive set of restrictions on flood insurance provision, and the Bureau was concerned that overlapping regulatory restrictions would be unduly burdensome and produce little consumer benefit.")
52 78 Fed. Reg. 10,696, 10,732 (Feb. 14, 2013).
53 78 Fed. Reg. 10,696, 10,732 (Feb. 14, 2013).
54 80 Fed. Reg. 43,215 (July 21, 2015). *See also* 79 Fed. Reg. 64,518 (Oct. 30, 2014).
55 79 Fed. Reg. 64518, 64523 n.27 (stating "the CFPB relied on its authority under section 19(a) of RESPA to prescribe such rules and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA. The Agencies note that the Federal flood statutes do not contain a provision similar to the provision relied upon by the CFPB to require a servicer to advance funds to a borrower's escrow account.").
56 *See* 79 Fed. Reg. 64518, 64523 n.27 (stating "the CFPB relied on its authority under section 19(a) of RESPA to prescribe such rules and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA. The Agencies note that the Federal flood statutes do not contain a provision similar to the provision relied upon by the CFPB to require a servicer to advance funds to a borrower's escrow account.").

d. The Bureau can easily amend Regulation X to fill the gap in force-placed flood insurance protections.

In 2013 the Bureau was correctly concerned about avoiding overlapping regulations when amending Regulation X. But the justification for excluding FDPA flood insurance from § 1024.17(k)(5) no longer stands. As interpreted by the banking agencies, the FDPA and its regulations cannot protect consumers in this area. Therefore, we encourage the Bureau to revise § 1024.17(k)(5) "to fill … this gap to ensure that consumers have basic procedural and substantive protections in the absence of FDPA coverage."[57]

This gap can easily be closed by amending § 1024.17(k)(5)(i) as indicated below. With this change, the existing restriction on purchasing force-placed insurance - as defined in Regulation X - will be extended to force-placed flood insurance required by the FDPA:

> Timely payment of hazard insurance—(i) In general. Except as provided in paragraph (k)(5)(iii) of this section, with respect to a borrower whose mortgage payment is more than 30 days overdue, ~~but who has established an escrow account for the payment for hazard insurance, as defined in § 1024.31,~~ a servicer may not purchase <u>hazard insurance required by the Flood Disaster Protection Act of 1973 or</u> force-placed insurance, as that term is defined in §1024.37(a), unless a servicer is unable to disburse funds from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner.[58]

If the CFPB declines to make this change, a servicer would be required to advance the cost of non-flood-hazard insurance *and* flood insurance required by the servicer (for borrowers not in special flood hazard areas). But the same servicer would not be required to advance the premiums for FDPA-mandated insurance. There is no rational explanation for this difference. It will inevitably confuse servicers and homeowners, and will expose homeowners to the very problems the rule was designed to address.

D. Loss Mitigation Timing and Related Matters Need Further Attention.

1. Persistent problems regarding the timing and method of correspondence of loss mitigation offers and appeals must be addressed.

In its last proposed amendment of the servicing rules, the Bureau sought comment on whether the timing of mailing of loss mitigation letters is presenting problems for borrowers.[59] NCLC and other commenters urged the Bureau to address the problems created by severe mailing delays

57 78 Fed. Reg. 10,696, 10,723 (Feb. 14, 2013).
58 This clause of section 1024.17(k)(5)(i) would need additional changes to reflect the other recommendations we make in these comments, such as expanding protections to borrowers without existing escrow accounts.
59 79 Fed. Reg. 74216 (Dec. 15, 2014).

and backdating. The Bureau opted not to adopt any further changes to the servicing rules when the final amendment was issued in 2016.

We strongly urge the Bureau to address the persistent problems in this area. Borrowers are facing much shorter response and appeal timeframes than intended by the Bureau, particularly due to the delay in receiving a servicer's decision by mail. Furthermore, some servicers engage in improper backdating of documents, which severely undercuts or eliminates a borrower's ability to respond to or appeal a servicer's decision.[60] The general guidance in § 1024.38(b)(1)(i) has proven to be ineffective in getting servicers to provide accurate and timely disclosures to borrowers as required by § 1024.41. These timing issues undermine the consumer protections of RESPA and harm homeowners by denying their right to properly review an offer or appeal a denial.

2. *The deadline for a borrower to respond to or appeal a decision should commence from the date a letter is postmarked, and servicers should be required to mail letters by First Class mail or the equivalent.*

Under the current rules, the loss mitigation deadlines, including responding to or appealing a decision, are based on when a communication is provided by a servicer.[61] Specifically, if a complete application is received ninety days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than fourteen days after the offer is **provided** to the borrower.[62] If a complete loss mitigation application is received less than ninety days but more than thirty-seven days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than seven days after the offer is provided to the borrower.[63] Because the timing deadlines are based on when a decision is "provided by a servicer," and these decisions are sent by mail, homeowners generally have less than fourteen or seven days to respond to or appeal a decision once they actually receive it.

In NCLC's March 2015 comments to the Bureau's proposed amendments, we shared results of a nationwide survey of attorneys and housing counselors that included several examples of problems with backdated letters and mailing delays. Over two years later, we are still hearing about these kinds of problems from advocates who represent homeowners around the country. At NCLC's June 2017 Mortgage Conference, several attendees spoke up during a plenary session about documents being received 10 or more days after the date of the letter – often too late for a borrower to accept an offer or appeal a denial. In a national survey of consumer

[60] *See, e.g.*, Sudarshan Varadhan, *Ocwen to Hire Independent Firm to Probe Backdated Foreclosure Letters*, Reuters (Oct. 24, 2014), http://www.reuters.com/article/2014/10/24/ocwen-financial-new-york-mortgages-idUSL3N0SJ6JS20141024 (reporting that hundreds of thousands of borrowers may have been harmed by Ocwen's backdated documents that improperly cut off their appeal rights).
[61] 79 Fed. Reg. 74216 (Dec. 15, 2014) (citing 78 FR 10695, 10836 (Feb. 14, 2013)).
[62] 12 C.F.R. § 1024.41(e)(1).
[63] *Id.*

advocates NCLC conducted in June 2017, 79% of respondents stated that in the past two years, they have seen mailing delays creating deadline problems either sometimes or often.

When a borrower has 14 days to respond to an offer, but receives it 10-12 days after the date printed on the letter, this leaves minimal time for a borrower to review the letter, seek advice, and contact the lender with a response. Such shortened timeframes place tremendous pressure on homeowners, particularly those that are unrepresented, to make a hasty decision without the opportunity to review the terms and consider the implications of accepting or rejecting an offer or making an appeal. A homeowner who receives a backdated letter after the deadline to accept the offer has already passed may also lose the opportunity to save the home.

We urge the Bureau to address these mailing delays by treating a notice as "provided to the borrower" on the date it is postmarked, and requiring servicers to send mailings in a manner that results in a postmark. The Bureau also should require that servicers send notices by First Class mail (which typically takes around 3 days to arrive) or an equally fast courier service, rather than "Standard Mail," which often takes from ten to fourteen days to be delivered.[64] The Bureau should prohibit the use of Standard Mail, or any similar mail service that has a delivery time slower than First Class mail, for sending notices that trigger borrower response deadlines under Regulation X. These changes would provide borrowers nearly the fourteen or seven days to respond to or appeal a decision and remove the incentive for servicers to backdate letters.

3. *The Bureau should require servicers to stop automatic mailings of loss mitigation solicitations once a loss mitigation application has been received.*

Once a borrower has submitted a loss mitigation application and the servicer has sent the response required by § 1024.41(b)(2), indicating that the application has been received and informing the borrower whether or not it is complete, the servicer should cease sending automated solicitations to apply for loss mitigation. It is extremely confusing, and creates a host of problems, when a borrower receives a letter inviting him or her to fill out and return "the enclosed application for loss mitigation" while a pending application is already under review. Especially for unrepresented borrowers, such communications give the impression that the servicer has lost or is unaware of the pending application or requires an entirely new application from the borrower. If a borrower responds by submitting a new application (as directed to by the form letter), it may result in a servicer discontinuing its review of the pending application and starting over with the new complete application, potentially resulting in a borrower losing protections under the servicing rules.

4. *The CFPB should allow borrowers to accrue additional loss mitigation protections if a scheduled sale date is postponed or rescheduled.*

[64] 12 C.F.R. § 1024.41(e)(1).

The CFPB should clarify that the protections of § 1024.41 are tied to the length of time between the date of a complete application and the date when a foreclosure sale ultimately occurs. It is logical and fair to allow the protections of § 1024.41 to come into play when a foreclosure sale is rescheduled. Currently, it is not clear whether the applicable protections of the servicing rule depend upon the date of an initially scheduled foreclosure sale or the date a foreclosure sale actually occurs. The regulation repeatedly uses the term "foreclosure sale" and not "scheduled foreclosure sale." While § 1024.41(b)(3) states that the determination of whether protections under the regulation apply is based on the "date a complete application is received," the provision also states this date is considered in relation to the number of days between when a complete application is received and the date "when a foreclosure sale *occurs*."[65]

The Bureau has muddied the waters on this issue with its Official Interpretation, which suggests that the Bureau believes the determination as of the date the application becomes complete is fixed and cannot be adjusted based on a rescheduled sale date. Specifically, the Official Interpretation states, "The protections under § 1024.41 that have been determined to apply to a borrower pursuant to § 1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled *or rescheduled*."[66] It makes sense to establish the full range of protections for borrowers who submit a complete application before a sale date is scheduled, and these protections should not be lost due to a later-scheduled sale. But when an initial foreclosure date is postponed, borrowers should be able to obtain the protections of § 1024.41, including timely review for all options, prohibition on proceeding with a sale during a pending review, and, where applicable, the right to an appeal.

The Bureau has cited two primary reasons for imposing a rigid "forward looking" stance on the servicing protections as of the date of complete application. The first was to ensure certainty and clarity for borrower and servicers about which protections apply.[67] It is very important for borrowers to know as of the date of an application whether they can rely on certain protections of the rule. But the same concern does not arise for servicers needing to know with a certainty that protections do not arise for a given application. Servicers have technology and systems that can easily track a change in the scheduled foreclosure date vis-a-vis the date of the application and allow them to adjust accordingly.

The second reason the Bureau pointed to for its forward-looking approach was a desire not to disincentivize servicers from rescheduling sale dates. However, there is no evidence that servicers' conduct would be changed based on believing the rules would take effect. Servicers reschedule sales for many reasons: in order to comply with state foreclosure laws; in order to allow time for them to review a loss mitigation application that appears viable; in order to comply with a request from an elected official; in order to help a struggling borrower. The Bureau should look more closely at whether the prospect of triggering additional protections would change the servicer's decision in any significant number of cases.

[65] 12 C.F.R. 1024.41(b)(3).
[66] Official Interpretation, 1024.41(b)(3)-2 (emphasis added).
[67] Amendments to the 2013 Mortgage Rules, 78 Fed. Reg. 60382, 60396-98 (Oct. 1, 2013).

When a foreclosure date is either postponed or canceled and later rescheduled, quite frequently the new sale date is 2-3 months or more after the original sale date.[68] In this situation, under one interpretation of the current rules, the borrower would be better off withdrawing a pending loss mitigation application and submitting a new complete application after the postponement – a nonsensical result that makes more work for all involved. After a lengthy postponement, it is only logical to require the servicer to evaluate within 30 days, refrain from foreclosing while evaluating the application, and recognize the borrower's right to appeal. In general, servicers should be completing their review and decision regarding a loss mitigation offer within 30 days of the application being complete. If they are evaluating a complete application, they should be able to do so within 30 days-- even when a sale was scheduled and then postponed. Servicers have the ability to continuously track the timing of loss mitigation applications, even those that initially may not be subject to certain requirements under § 1024.41, and monitor whether the rescheduling of sale dates triggers new or additional requirements based on the initial submission.

The only rule that would be difficult to adjust based on a rescheduled sale date is the provision of the notice required by §1024.41(b)(2). Servicers admittedly cannot go back in time and send a notice within five business days if their obligation is not triggered until after the fifth day. The solution to this problem is to always require that the (b)(2) notice be sent, regardless of when an application is received. Even when a foreclosure is scheduled within 37 days, a servicer that is evaluating a loss mitigation application – as is often the case – should be required to send the (b)(2) notice. Given the automation of certain loss mitigation processes, servicers may already be sending the notice after all applications, rather than differentiating based on proximity to a scheduled sale date. The Bureau should review servicers' systems to determine whether that is the case. Similarly, the Bureau should require the notice of complete application, which takes effect in October 2017, to be sent regardless of the complete-date. In the section disclosing applicable dual tracking restrictions, the letter could state that no federal foreclosure protections apply (if complete less than 38 days before a foreclosure date).

5. *The Bureau should address problems that arise after a borrower is offered a trial modification.*

The loss mitigation rules focus almost entirely on the review of an application up to the point of a trial plan (or other loss mitigation) offer. They do not adequately address problems that arise while a borrower is performing under a trial modification. Borrowers face a range of problems not clearly addressed by § 1024.41, including servicers failing or refusing to convert a trial modification to a permanent modification[69] or asking for additional documents during a trial

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[68] *See, e.g., Thomas v. Wells Fargo Bank*, 2016 WL 1701878 (S.D. Cal. Apr. 28, 2016) (sale rescheduled from Sept. 10th to November 6th, 57 days in the future); *Dionne v. Federal Nat'l Mortg. Ass'n*, 2016 WL 6892465 (D.N.H. Nov. 21, 2016) (sale originally scheduled for Oct. 1, 2014 was canceled; rescheduled sale was conducted Jan. 12, 2015, three and half months later).

[69] For a more detailed discussion of these problems in connection with servicing transfers, see Section IV(A)(3).

plan. Often times requests for additional documents relate to purported "title issues," sometimes involving successors in interest or absent co-borrowers. The documents requested during the trial plan are often unnecessary or unreasonable, may be difficult to produce, and then may result in a wrongful denial for a permanent loan modification. It is then unclear whether the appeal process applies in this situation.

Moreover, a foreclosure carried out while the borrower is performing under an active trial plan might not give rise to a clear cause of action under the rules if the borrower never submitted an application but was offered, and accepted, a streamlined trial modification.[70]

A related problem is the practice by some servicers of imposing unreasonable and opaque rules regarding signing of permanent loan modification agreements. Borrowers are told that their loan modification will not be honored because they signed with the wrong color ink or because a notary stamp carried into the margin. One respondent to NCLC's national survey of consumer advocates described the problem this way:

> [Servicer] uses a checklist when they receive a final mod package. The checklist includes "notary or signature missing or incorrect." This is what the bank checks if the signature reads John Smith and under the signature line the text reads John Q Smith. However, when the signature is completely illegible it is not marked as incorrect or missing. I have seen a borrower go through 5 rounds of trials and final mod documents and get denied because he didn't sign his middle initial. The bank has no rational for this. Indiana law will allow a smilie face to work as an adequate signature.[71]

The Bureau has suggested in the past that breach of contract claims will be sufficient to address trial plan conversion problems. This is not the case. First, a claim under RESPA provides the important and necessary right to seek attorneys' fees if the Plaintiff prevails. Secondly, many courts have erected barriers to a successful breach of contract claim based on a trial plan offer and acceptance, such as the statute of frauds.[72] Failure or refusal to timely convert trial modifications to permanent modifications is precisely the kind of servicing misconduct the RESPA rules were designed to prevent, and the Bureau should address it.

[70] See our discussion of the Flex Mod program and other streamlined modification programs, Section IV(B)(1).
[71] Response to NCLC National Survey, June 2017. Additional survey data is found in Appendix A.
[72] *See, e.g.,* Goss v. ABN AMRO Mortg. Group, 549 Fed. Appx. 466 (6th Cir. 2013) (after observing that statute of frauds issues must be considered on a "case-by-case" basis under Michigan law, lack of servicer signature means that statute forecloses breach of contract and promissory estoppel claims); *Pool v. Wells Fargo Bank*, 2012 WL 3264294 (D. Colo. Aug. 10, 2012) (written representations in the TPP are barred by the Colorado statute of frauds which requires that a credit agreement must be "signed by the party against whom enforcement is sought"); *Brady v. Chase Home Fin*., L.L.C., 2012 WL 1900606 (W.D. Mich. May 24, 2012) (Michigan courts interpret an authorized signature in compliance with statute of frauds to be that of an authorized representative of the financial institution, therefore a signature on the cover letter stating "Sincerely, CHASE HOME FINANCE LLC" is insufficient).

E. The Duplicative Request Rule Should be Eliminated or Modified.

1. The CFPB should apply the servicing rules to all requests for loss mitigation review, and do away with the exclusion for "duplicative" requests.

As NCLC has stated in prior comments, the exemption from coverage of the rules for so-called "duplicative" requests is extremely problematic. Servicers frequently review successive applications for loss mitigation. Often times, a second or third application results in a loss mitigation offer – either because the borrower's circumstances have changed or because the servicer failed to evaluate the prior application properly. Investor guidelines applicable to many mortgage loans require a servicer to review a loss mitigation application even if a prior application from the borrower has been reviewed. For example, under FHA's loss mitigation program, if a borrower fails to successfully complete a trial plan, mortgagees must still re-evaluate the borrower's eligibility for other loss mitigation options. If there has been a change in circumstances, the borrower is eligible to reapply for FHA assistance and begin a second trial plan if found eligible.[73] Fannie Mae loss mitigation rules generally require servicers to review a borrower's application for a loan modification provided that the borrower has not had three or more prior modifications nor defaulted on a trial plan in the past 12 months.[74] Freddie Mac's rules are similar.[75]

When a servicer is required to review a subsequent application, or voluntarily elects to do so, it makes no sense to exempt the servicer from following the procedures set out in § 1024.41. One of the significant impacts of the 2013 RESPA Servicing Rule is that servicers are encouraged to use uniform loss mitigation procedures for all borrowers. Section 1024.41 has created an industry standard for handling loss mitigation applications. Borrowers will come to expect over time (if they have not already) that the minimum protections in § 1024.41 apply whenever a loss mitigation application is being reviewed by a servicer. Borrowers may fail to take other actions to save their homes from foreclosure based on a misplaced belief that they are protected by the Bureau's dual tracking rule or other protections.

The Bureau's stated reasons for imposing the duplicative request rule do not bear out. Servicers and borrowers do not place more emphasis or devote more resources to an initial application; they expend resources equally on each successive application. The need for a bright line rule regarding applicability of the servicing rules could be equally well served by making the rules apply to all loss mitigation applications.

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[73] HUD Handbook 4000.1 III,A,2,c (Dec. 30, 2016 pdf version p. 634).
[74] *See* Fannie Mae Servicing Guide, D2-3.2-05, 07, and 08, available at: https://www.fanniemae.com/content/guide/servicing/d2/3.2/07.html.
[75] *See* Freddie Mac Servicing Guide, pp. 9206-3, 9206-16 (July 3, 2016, available at: http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/030916Guide.pdf.

2. *If the Bureau continues to apply a limited exemption for "duplicative" requests, the rules should apply unless the servicer notifies the borrower in its first written response that it deems the application to be duplicative and considers the rules not to apply.*

If the Bureau does not adopt our proposal discussed in the previous section, and continues to maintain a limited exemption for "duplicative requests," a servicer should be required to inform the borrower in writing that an application will not be subject to the requirements of § 1024.41. The servicer should not be permitted to raise the exemption in § 1024.41(i) for the first time as a defense when the borrower seeks to enforce a loss mitigation requirement that the borrower believes is applicable or in response to a complaint filed with the Bureau or other authorities. Similar to the Bureau's treatment of the limitation for duplicative requests for information or notices of error, the exemption in § 1024.41(i) should apply only if timely notice is given to the borrower.[76] If the servicer does not notify the borrower otherwise in writing within five business days of the receipt of the request, the loss mitigation rules should apply to the request.

3. *At a minimum, the duplicative request rule should have an exception based on changed circumstances or a time limitation.*

No request for loss mitigation arising out of a change in circumstance should be considered a duplicative request. A rule based on a changed circumstance standard more appropriately directs servicer resources to borrowers who are deserving of a second look before losing their homes to foreclosure. The Bureau has expressed concern that a changed circumstance standards will be difficult to administer by servicers, but HAMP Guidelines required servicers to review borrowers based on a change in circumstances and servicers are currently applying such standards under existing loss mitigation programs and are capable of doing so.

The Bureau's amendment, effective October 2017, to allow a loss mitigation request to be covered by the rules if the borrower has at some point cured the default since the prior request, is woefully inadequate. Many times, a borrower has remained in default since the prior request because the servicer wrongfully denied a loss mitigation request or solicited a new application without properly reviewing one that was pending. If the Bureau will again refuse to consider a changed circumstances exception to the duplicative request rule, the Bureau should at a minimum include an alternative time limitation exception to the rule. Although it is an imperfect solution similar to the proposed cure-of-default exception, a time limitation would provide some additional protection for borrowers and it meets the Bureau's qualification of being subject to a bright-line, simple-to-apply test. Such a rule could provide that a servicer be required to comply with the requirements of § 1024.41 for a complete loss mitigation application received more than one year following the evaluation of a prior complete loss mitigation application.

F. Error Resolution Rights Should Be Expanded To Better Meet the Intent of RESPA.

[76] *See* 12 C.F.R. §§ 1024.35(g)(2), 1024.36(f)(2).

1. *Borrower foreclosure protections should be incorporated into the error resolution process.*

The 2013 RESPA Servicing Rule permits servicers to proceed with foreclosures, and submit adverse information to credit reporting agencies, during the response period for a notice of error. One exception in the error resolution provision is carried over from the previous regulation: disputes relating to payments require that the servicer not negatively report to credit reporting agencies while the error is being resolved.[77] Foreclosures, however, may proceed even if there is a payment dispute that goes to the very right of the servicer to declare the account in default. The sole exception relating to foreclosure proceedings applies only if the borrower sends a notice of error based on the servicer's noncompliance with the loss mitigation dual tracking protections under §§ 1024.41(f), (g), or (j).

We believe the Bureau missed an opportunity in the 2013 rule to implement two provisions of RESPA that are intended to assist borrowers avoid foreclosure: the error resolution procedure under § 2605(e) and the servicer prohibition in § 2605(k)(1)(C) from "fail[ing] to take timely action to respond to a borrower's requests to correct errors relating to … avoiding foreclosure." To fully implement these provisions, the Bureau should amend § 1024.35(h)(i) to provide that a servicer shall not proceed with a foreclosure proceeding if a borrower has sent a notice of error (1) challenging the alleged basis for the default or grounds for foreclosure or (2) asserting that the servicer has not properly evaluated a loss mitigation application, until such time as the servicer has conducted a reasonable investigation of the notice of error and provided a response in accordance with § 1024.35(e).

RESPA does not authorize a servicer to proceed with collection or foreclosure during the response period to a qualified written request or notice of error. HUD had given servicers this right to proceed with foreclosure in a prior version of Regulation X, based apparently upon the general language in RESPA § 2615 dealing with the validity of contracts. This statutory provision merely states the uncontroversial proposition that nothing in RESPA affects the "validity or enforceability" of loan agreements or mortgages in connection with federally related mortgage loans. Section 2615 does not mean that mortgage contract provisions that squarely conflict with RESPA are nevertheless enforceable. For example, if a mortgage contained a provision that the servicer has 90 days to respond to a notice of error, or that limits the borrower to one notice of error per year, or that requires a borrower to pay a $200 fee for a response to a notice of error, clearly these contract provisions must give way to the statute and regulation, and are not enforceable. HUD's construction of § 2516 (apparently adopted by the Bureau) leads to the absurd result that mortgage holders and servicers could by contract avoid duties under RESPA.

The more logical construction of § 2615 in the context of the entire statutory scheme is that it is intended to serve the same function as a severability clause in a contract. In other words, if a mortgage contract contains an unlawful provision such as those in the above examples, the contract as a whole would nevertheless remain valid and enforceable even though the individual provisions that violate RESPA would not be enforceable.

[77] 12 C.F.R. § 1024.35(h)(i).

Based on this proper construction of § 2615, the Bureau should implement the intent of Congress to permit a notice of error to be used by the borrower for the purpose of "avoiding foreclosure." Congress could not possibly have intended in enacting § 2605(k)(1)(C) that a servicer would be permitted to foreclose on a borrower before responding to a borrower's notice of error that asserts that the loan is not in default or that the servicer has no grounds under the mortgage or applicable state law to foreclose. Even if the Bureau does not accept our interpretation of § 2615, it should conclude as a matter of statutory construction that the general language in § 2615 has been superseded by the more recent and specific Dodd-Frank amendment to RESPA (§ 2605(k)(1)(C)) which directly adopts an error resolution process for "avoiding foreclosure."

Finally, if the Bureau continues to believe that § 2615 prevents it from requiring servicers to suspend foreclosure during the response period to a notice of error that disputes the servicer's authority to foreclose, then the Bureau should declare under its TILA UDAP authority[78] that proceeding with foreclosure in this situation by a mortgage holder or servicer is an unfair and deceptive practice.

2. *Servicer procedures used to confirm an agent's authority should not impose unreasonable barriers or cause unnecessary delay.*

Official Interpretations § 35(a)(1) and § 36(a)(1) provide, consistent with RESPA, that a notice of error and a request for information is deemed to be submitted by the borrower if it is submitted by an agent of the borrower. However, these comment provisions then state that the servicer may "undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf," and that "[u]pon receipt of such documentation, the servicer shall treat the notice of error as having been submitted by the borrower." Servicers have used these comment provisions to evade compliance with RESPA's error resolution procedures by setting up burdensome requirements for third-party authorizations and unilaterally rejecting borrowers' authorizations.

Some servicers routinely reject authorizations if they are not prepared on a form used by the servicer, even if the borrower's authorization clearly establishes that the agent has authority to act on behalf of the borrower. Other servicers require that the signatures on authorizations be notarized or, unknown to the borrower or advocate, unilaterally impose an expiration date on an existing valid authorization, causing further delay. Legal services advocates report that some servicers often reject authorizations by claiming that they appear to be signed by someone other than the borrower, even when there is no reason to question the borrower's signature and the authorization is submitted by an advocate who has had many prior dealings with the servicer. The Bureau should clarify in the Official Interpretations that servicer procedures used to confirm an agent's authority should not impose unreasonable barriers or cause unnecessary delay. The Official Interpretations should give explicit examples of unreasonable authorization procedures.

The Bureau should also clarify that while a servicer may seek information about the agent's authority, the notice of error or request for information sent by an agent must be treated as valid

[78] 15 U.S.C. § 1639.

upon receipt even if not accompanied by an authorization. RESPA does not require that an authorization be provided, nor does it provide that a communication loses its status as a valid notice of error or request for information because it is not accompanied by an authorization.[79] If the Bureau does not take this action, it should at a minimum provide that a servicer must notify the borrower if it is refusing to comply with a notice of error or request for authorization because of an alleged deficient authorization, using procedures similar to those set out in § 1024.35(g) and § 1024.36(f). In the alternative, the servicer should be required to respond directly to the borrower, which avoids any concern about unauthorized release of borrower information to a third party.

3. The Bureau should take action to help borrowers avoid the "exclusive address" trap for RESPA inquiries.

A change made by the Bureau in the 2013 RESPA Servicing Rule has produced numerous court decisions in which borrowers have been denied rights under RESPA's error resolution procedures on purely technical grounds. For example, a borrower in a recent case was denied the right to sue her servicer for noncompliance with the RESPA inquiry and dispute procedures simply because the P.O. Box number she used to send her written request to the servicer had a mistake in one digit.[80] She mailed the letter to "PO Box 24726" rather than servicer's designated address at "PO Box 24736." Even though the servicer actually received and responded to the request, the court dismissed the borrower's complaint that the servicer's response was deficient. The trap that the borrower fell into is that she did not use the servicer's "exclusive address."

The obligation to comply with RESPA § 2605(e) is triggered simply by the servicer's "receipt" of a qualified written request (now referred to as a notice of error or request for information). However, the prior version of Regulation X permitted servicers to establish, upon notice to the borrower, a separate and "exclusive" office and address for receipt and processing of qualified written requests. This rule gave rise to extensive litigation before the 2013 Servicing Rule amendments, often with the issue being raised for the first time as a "gotcha" in litigation by defense counsel. The Bureau had the opportunity to fix problems with the rule when the borrower inquiry and dispute procedures were significantly amended in 2013. Rather than make the provision more consistent with RESPA's statutory language and remedial consumer purpose, the Bureau actually made matters worse for consumers.

Before the 2013 amendments, a line of decisions had reached the reasonable conclusion based on the statutory language that if the servicer actually ***receives*** the qualified written request, the only impact of the exclusive address rule is that it alters the timing for when the servicer needs to comply with the request.[81] In other words, if the letter is received by the servicer (often

[79] *See Moon v. GMAC Mortgage Corp.*, 2009 WL 3185596 (W.D. Wash. Oct. 2, 2009) (letter sent by borrower's attorney that was not signed by the borrower and did not contain an authorization was a qualified written request).
[80] *Best v. Ocwen Loan Servicing*, LLC, 2016 WL 125875 (E.D. Mich. Jan. 12, 2016).
[81] *Allen v. Bank of Am.*, 933 F. Supp. 2d 716, 733 (D. Md. 2013) (letter sent by plaintiffs' friend to servicer's outside counsel that was forwarded to servicer was valid qualified written request because "§ 2605(e)(1) is triggered if the

established by its acknowledgement of receipt as required by RESPA), the clock begins to start for compliance purposes only after the letter is transferred internally to the "exclusive" department within the servicer's shop that handles borrower inquiries.

Unfortunately, language used by the Bureau in the 2013 rule undermines these decisions and suggests that a request sent to an address other than the exclusive address is not valid for purposes of RESPA enforcement, even if actually received. In describing the notice to be provided to borrowers about the exclusive address, §§ 1024.35(c) and 1024.36(b) provide: "The notice shall include a statement that the borrower must use the established address to assert an error [or request information]." The court in *Best v. Ocwen* concluded that the "borrower must use" language in the regulation "leaves no ambiguity" that a servicer has no duty to comply with a request that is not sent to the exclusive address.

The Bureau's regulation on this issue has undermined the intent of Congress and permitted servicers to avoid compliance with the error resolution process. The Bureau should codify in the rule the holding of the pre-2013 court opinions that the exclusive address requirement affects only the timing for when the servicer needs to comply with the notice or request, if the notice is actually received by the servicer. If the Bureau does not take this action, it should provide that a servicer must notify the borrower if it is refusing to comply with a notice of error or request for information because it was not sent to the exclusive address, using procedures similar to those set out in §§ 1024.35(g) and 1024.36(f).

G. Coverage of Regulation X

1. *HELOCs should be subject to the same servicing rules as other subordinate home liens.*

The Bureau should reconsider its decision to exempt home equity lines of credit (HELOCs) from coverage of the 2013 Servicing Rule. An important improvement to Regulation X made by the Bureau is that most of the references to mortgage loans in Regulation X now refer to a "federally related mortgage loan," and this phrase is defined in Regulation X to include subordinate liens.[82] However, a broad exemption was retained for HELOCs. The scope of the Subpart C provisions of Regulation X (§§ 1024.30 through 1024.41) apply to "mortgage loans,"[83] and that term is

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servicer 'receives' the request, regardless of whether it was first directed to the servicer"); *Benner v. Bank of Am.,* 917 F. Supp. 2d 338 (E.D. Pa. 2013) (although the servicer has divisions throughout the country, each office is still under the management and control of the servicer, and the borrower's letter was eventually received by the servicer); *Vought v. Bank of Am.,* 2010 WL 4683599 (C.D. Ill. Sep 24, 2010), recommendation adopted, 2010 WL 4683596 (C.D. Ill. Oct. 27, 2010) (RESPA obligations triggered by receipt of qualified written request from a borrower, even if request not sent to designated address). *See also Catalan v. GMAC Mortg. Corp*., 629 F.3d 676 (7th Cir. 2011) (letter sent by borrowers to HUD which was forwarded to servicer, under facts of case involving long-standing dispute with servicer, held to be a qualified written request); *McMillen v. Resurgent Capital Serv., L.P.*, 2015 WL 5308236, at *6 (S.D. Ohio Sept. 11, 2015) (adopting the "minority view" on issue and concluding that "the statutory language indicates that receipt triggers the servicer's duty to respond under RESPA").

[82] 12 C.F.R. § 1024.2.

[83] 12 C.F.R. § 1024.30(a).

defined as federally related mortgage loans, but does "not include open-end lines of credit (home equity plans)."[84] Thus, a servicer does not need to comply with the Subpart C requirements if the mortgage loan is a HELOC, even if the HELOC is a first lien (and only mortgage of the borrower) on the property. Servicers have ample experience regarding loss mitigation on HELOCs since HELOCs in first lien position were eligible for HAMP review.

The exemption was retained based on the erroneous assumption that TILA's protections for open-end credit under the Fair Credit Billing Act provide equivalent protections to those under RESPA. Unlike a credit card transaction, however, borrowers put their homes at risk in a HELOC. A default on a credit card debt, by comparison, which may generally be discharged in a bankruptcy, does not put the home in immediate jeopardy.

Moreover, the Fair Credit Billing Act was not designed to address a mortgage loan product that is secured by a lien on the borrower's residence. Rather, it is primarily intended to deal with billing errors related to the use of an open-end credit account to finance retail purchases of goods and services. For example, it protects consumers in situations that do not typically arise in HELOC transactions, such as an extension of credit that was not made to the consumer,[85] an unauthorized extension of credit, i.e., an extension of credit to someone without actual, implied, or apparent authority to use the credit card or account, even if the cardholder received benefit from the unauthorized use;[86] an extension of credit for property or services that was not accepted by the consumer or the consumer's designee,[87] an extension of credit for property or services not delivered to the consumer or the consumer's designee as agreed,[88] an extension of credit for which the consumer requests additional clarification or documentation (e.g., because the transaction cannot be identified from the information given);[89] or the failure to send the periodic statement to the consumer's last known address if the creditor had received the address, in writing, at least twenty days before the end of the billing cycle for the periodic statement.[90]

In contrast, most of the errors listed in § 1024.35(b) as covered errors for which a homeowner could obtain redress are not considered billing errors for open end credit. For example, a HELOC borrower is far more likely to need error resolution assistance when a HELOC servicer has failed to apply an accepted payment under the terms of the HELOC mortgage contract and applicable law, has failed to provide accurate information regarding foreclosure or loss mitigation options, has failed to transfer accurately and timely information related to the servicing of the HELOC loan account to a transferee servicer, or has imposed a fee or charge that the servicer lacks a reasonable basis to impose on the borrower. A homeowner cannot use the billing error procedures under the Fair Credit Billing Act to address these problems.

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[84] 12 C.F.R. § 1024.31 (definition of "mortgage loan").
[85] Reg. Z § 1026.13(a)(1).
[86] Reg. Z § 1026.13(a)(1).
[87] Official Staff Commentary § 1026.13(a)(3)-1.
[88] Reg. Z § 1026.13(a)(3).
[89] Reg. Z § 1026.13(a)(2).
[90] Reg. Z § 1026.13(a)(7).

In addition, RESPA applies not only to billing error inquiries but to any request for information relating to the mortgage loan. The Fair Credit Billing Act provision applies only to billing errors and does not give a HELOC borrower the right to send a request for information.

Finally, the exemption from RESPA coverage of home equity lines of credit directly conflicts with the language in RESPA that expressly requires a servicer to respond to borrower inquiries regarding the "servicing" of any "federally related mortgage loan."[91] The statutory definition "federally related mortgage loan" does not include an exemption for HELOCs. This conflict between the statute and Regulation X has led some courts to conclude that the regulation is not entitled to agency deference.[92]

2. *The Bureau should create a registry of servicers who claim to be exempt from the servicing regulations under the "small servicer" definition.*

"Small servicers" are exempt from several of the requirements imposed on servicers by the 2013 TILA and RESPA Servicing Rules. The definition of small servicer was placed in the Regulation Z provision that covers the periodic statement requirements, and that definition is referenced in the other applicable regulations. A small servicer is defined in part as a servicer that services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee.[93]

Advocates who assist borrowers with loss mitigation and foreclosure defense have indicated that they have had questions about whether particular servicers are exempt from certain requirements based on the small servicer exemption. It is difficult for advocates to determine whether the servicer meets the exemption definition based on publicly available information. It would be extremely helpful if the Bureau created a registry of servicers who claim to be covered by the small servicer definition, which could be accessed on the Bureau's website. While information reported on the registry would not be controlling as to whether the entity is in fact a small servicer, it would give advocates the opportunity to check whether an entity is claiming to be exempt. Public notice about small servicers would also reduce the number of complaints to the Bureau and other parties.

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[91] 12 U.S.C. § 2605(e)(1)(A).

[92] *Hawkins-El v. First Am. Funding*, L.L.C., 891 F. Supp. 2d 402, 408 (E.D.N.Y. 2012) (HELOC is subject to RESPA qualified written request provisions despite contrary Regulation X exemption), *aff'd*, 529 Fed. Appx. 45 (2d Cir. 2013); *Cortez v. Keystone Bank*, 2000 WL 536666 (E.D.Pa. May 02, 2000)(refusing to apply Regulation X open-end credit exclusion from RESPA's error resolution provisions). *See also MorEquity, Inc. v. Naeem*, 118 F.Supp.2d 885 (N.D. Ill. 2000) (noting in *dicta* that the regulation conflicts with RESPA).

[93] 12 C.F.R. § 1026.41(e)(4)(ii)(A).

3. The Bureau should expand the protections of RESPA that apply to reverse mortgages.

Reverse mortgages are currently exempted from almost all provisions of the servicing rule. Other than the ability to send an NOE or RFI, reverse mortgage borrowers have few protections from servicing abuses. Even though it was not a focus of the survey, seven different respondents to NCLC's national survey raised problems with reverse mortgage servicing – most of them focused on borrowers' struggles to obtain loss mitigation.[94] Reverse mortgage servicers evaluate borrowers for loss mitigation after a default on property charges. There is no logical reason to exclude reverse mortgage servicers from the rules governing loss mitigation, continuity of contact, and early intervention.

H. Protections for Long-Dormant Mortgages

The Bureau's recent amendments to § 1026.41(e)(6) define a reasonable option for treatment of mortgage loans while servicers have suspended collection under their internal accounting systems. The rule suspends the obligation to provide regular account statements so long as the servicer does not charge additional fees and interest on the account. The rules now require the servicer to provide a notice explaining the impact of the suspension of payments. 12 C.F.R. § 1026.41(e)(6)(i)(B). However, continuing problems with enforcement of dormant mortgages persist, and the Bureau should take concrete steps to remedy these shortcomings while maintaining this new rule.

The problems arise when buyers of long-dormant mortgages decide to resume assessment of costs and interest, and begin to foreclose. According to NCLC's national survey of consumer advocates, conducted in June 2017, over half of respondents said they are seeing issues with long-dormant mortgages, for which periodic statements have not been sent for some time, where a servicer reappears and initiates foreclosure without giving the borrower a chance to apply for loss mitigation. These decisions to resume collection and enforcement occur without advance notice. Borrowers have no time to apply for loss mitigation. The 120-day pre-foreclosure referral period under § 1024.41(f)(1) will have invariably passed long ago under a prior owner and servicer. Specialized buyers of long-delinquent mortgages tend to be the parties involved in these foreclosures. They have often purchased the loans at substantial discounts. These circumstances make the loans very appropriate for loss mitigation that mutually benefits borrowers and investors.

The Bureau should require that servicers provide notice to the borrower when they have decided to resume collection on a dormant mortgage loan. The notice should be provided 60 days before the accrual of interest and costs actually resumes. For purposes of § 1024.39 (early intervention), § 1024.40 (continuity of contact) and § 1024.41 (loss mitigation procedures) the date of inception of delinquency should be calculated as beginning on the date when the resumption of accrual of interest and fees takes effect. The borrower should be entitled to new

[94] The complete survey results are attached in Appendix A, including respondents' comments regarding reverse mortgages.

early intervention notices and a 120-day window to apply for loss mitigation before foreclosure is commenced. This will ensure that the borrower has a reasonable time to apply for loss mitigation under circumstances that take the new financial condition of the loan into account.

I. Protect Successors in Interest and Subject the Successor Confirmation Process to Private Remedies.

The Bureau has taken an important step forward by amending the servicing rule to address the problems faced by successors in interest trying to preserve their homes. This rule is much needed, and should be implemented as scheduled, without delay. However, we anticipate that certain problems will continue unless the Bureau amends the rule to provide successors with an enforcement mechanism for servicer abuse and delays in the process of confirming (or failing to confirm) a successor's identity and ownership interest. Advocates continue to report problems with servicers demanding probate documents where none are required (where the transfer occurred through a right of survivorship deed) and other difficulties getting servicers to communicate with successors.[95] Successors must be able to enforce their rights once they have provided documentation establishing their identity and ownership interest in the home. The Bureau should not allow for abuse and delay by preventing a claim until a servicer has "confirmed" successor status.

J. Provide Access for Borrowers with Limited English Proficiency (LEP).

We note that in order to properly assess the impact of the servicing rule, the Bureau must assess the extent to which borrowers with limited English proficiency (LEP) are able to access the market. Collection, tracking and transfer of language preference are essential both to assessing and providing access.[96] Over half of respondents to NCLC's survey of consumer advocates stated that they were seeing borrowers with limited English proficiency who were struggling to get clear information related to servicing or loss mitigation because of a lack of access to translated notices or oral interpretation. The lack of LEP protections in the servicing (and origination) markets raises significant fair lending concerns and we urge the CFPB to consider additional rulemaking and other steps it can take to require servicers and other market participants to effectively meet the needs of LEP borrowers.

K. Mandate Affordable Loan Modifications.

As discussed in the introduction, the end of HAMP and the splintering of loss mitigation protocols increases the need for a minimum standard for loan modifications. The Bureau should mandate affordable loan modifications consistent with investor interests for qualified borrowers facing hardship. While it remains to be seen whether the Flex Mod protocol can provide sustainable solutions to the range of GSE borrowers, the PLS market has no uniform or transparent loan modification standards. We urge the Bureau to use its broad authority to take on

[95] See selected comments from NCLC's national survey, attached in Appendix A.

[96] For a discussion of the Bureau's authority and recommendations for improving access, see Americans for Financial Reform, *Issue Brief: The CFPB and Other Federal Agencies Should Adopt Strong Language Access Protections for Homeowners and Other Consumers* (May 2016), *available at* http://ourfinancialsecurity.org/wp-content/uploads/2016/05/AFR_LEP_Issue_Brief_05.26.2016.pdf.

this important mission. Without broad, transparent minimum standards, lack of information may result in discretionary reviews with discriminatory results. The lack of alignment between servicers' incentives and the interests of investors and homeowners makes it unlikely servicers across the market will offer sustainable modifications. A loan modification mandate could require outcomes that are NPV positive at either the loan or portfolio level. It should require terms that are more affordable (for example, by reducing payments) and more sustainable (where there is a reasonable basis to believe the change in terms will improve long-term performance). The waterfall should reduce the interest rate before extending the term to promote the accrual of home equity. The loan modification protocol should apply to all loans a company services.

V. Conclusion

Thank you for the opportunity to comment on the Bureau's Servicing Rule Assessment. We appreciate the work the Bureau has done to develop the rule because it has substantially improved access to fair and sensible servicing in communities across the country. We hope the Bureau can use this opportunity to obtain input from a wide range of sources and identify and implement needed data collection and reporting. We also hope the Bureau will be able to consider additional changes to the rule such as those recommended above to better effectuate its purposes. For further discussion, please contact Alys Cohen at acohen@nclc.org or John Rao at jrao@nclc.org.

Appendix A: NCLC's National Survey of Consumer Advocates

June 2017

Executive Summary

In June 2017, the National Consumer Law Center (NCLC) conducted a national survey of consumer advocates. The survey was aimed at gathering information about the impact of the mortgage servicing rule for the Consumer Financial Protection Bureau's 2013 RESPA Servicing Rule Assessment.

There were 233 respondents to the survey from 41 states.[97] The respondents included 171 housing counselors, 49 attorneys in private or legal services settings, and 13 employees of other nonprofits. Collectively, the respondents have had contact with a significant number of consumers. Fifty-seven percent of respondents (133 people) work in offices that assist 100-500 homeowners per year.[98]

The survey responses demonstrated the significant benefits flowing to homeowners from the mortgage servicing rule. Specifically:

- Eight-five percent of respondents agreed that the CFPB's mortgage servicing rules have benefited homeowners.
- Eighty-six percent of respondents agreed with the statement, "The CFPB's mortgage servicing rules have allowed me to help more homeowners avoid foreclosure and obtain loss mitigation than I could have without them."
- Over half of respondents believed the rule had reduced the frequency of dual tracking (58%), improved transparency and predictability (62%), and increased the frequency of denial letters identifying a specific reason for a denial (52%).
- Nearly 70% of respondents believed the rules had increased the frequency of borrowers being evaluated for all available loss mitigation options and allowed more homeowners to save their homes from avoidable foreclosures.
- Forty-five percent of respondents stated that borrowers were more likely to be getting periodic mortgage statements as a result of the rule, and nearly 50% said those statements were more likely to contain useful and important information.
- One third of respondents said fewer borrowers were dealing with improper force-placed insurance. Sixty-five percent of respondents said borrowers have been more able to obtain servicing information and correct servicing errors due to the servicing rules.

The survey results also show the need for the CFPB to modify and expand the mortgage servicing rule to further meet the consumer-protection purposes of RESPA. Responses demonstrated the following ongoing problems the rule should be amended to address:

[97] In addition, one respondent reported working for an entity that serves homeowners in all fifty states.

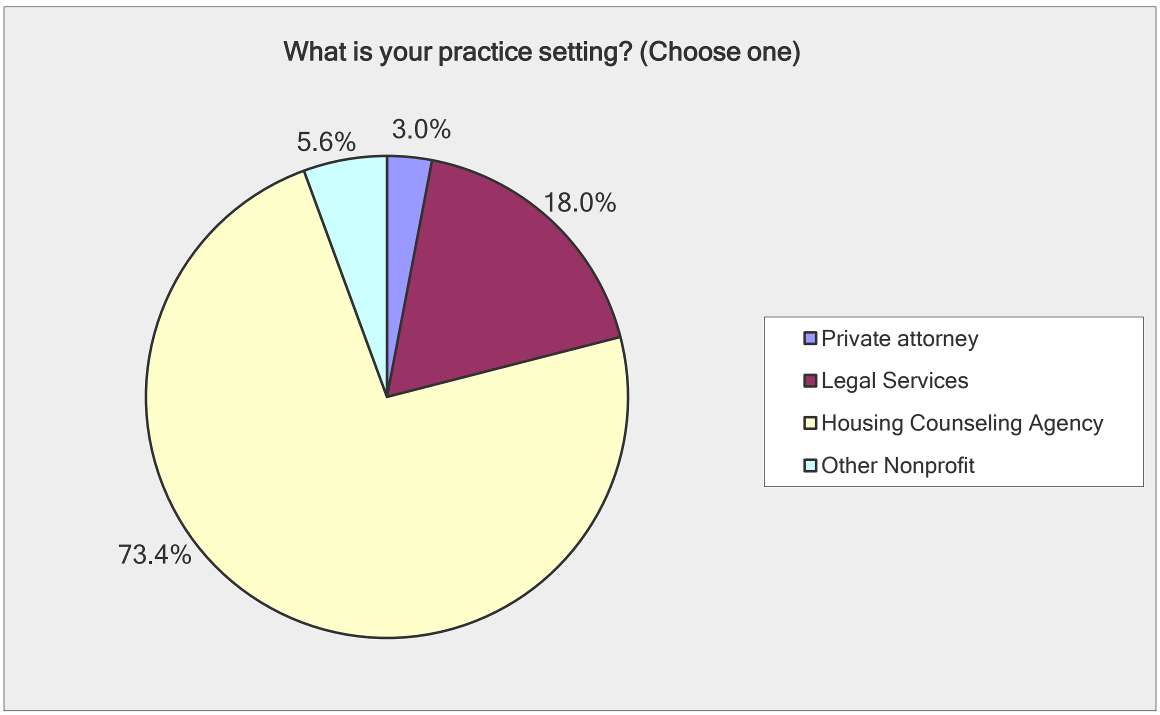
[98] Twenty-one percent of respondents (50 people) work in an office that serves fewer than 100 homeowners per year; 15% of respondents (36 people) work in an office that serves 500-1,500 homeowners per year; 4% of respondents work in an office that serves over 1,500 homeowners per year; and 2% of respondents did not identify a number of homeowners served by their program.

- **Transfers of servicing**. Eighty-one percent of respondents (188 advocates) said that in the past two years they had seen problems with transferee servicers telling borrowers they needed to submit a new loss mitigation application to the transferee despite a pending application that was submitted to the prior servicer. Sixty-one percent had seen transferee servicers failing to honor a pending trial modification.
- **Mailing delays**. Seventy-nine percent of respondents stated that in the past two years, they had seen mailing delays creating deadline problems either sometimes or often.
- **Force-placed insurance**. Only one-third of respondents had seen an improvement in force-placed insurance problems stemming from the servicing rule.
- **Long-dormant mortgages**. Over half of respondents said they are seeing issues with long-dormant mortgages, for which periodic statements have not been sent for some time, where a servicer reappears and initiates foreclosure without giving the borrower a chance to apply for loss mitigation.
- **Problems with streamlined modifications**. Over 30% of respondents stated that they had seen problems with streamlined modifications where the protections of § 1024.41, such as dual tracking protections, would have been helpful, but did not apply. This problem is likely to grow with the expansion of "no-application" loan modifications.
- **LEP borrowers struggling**. Over half of respondents stated that they were seeing borrowers with limited English proficiency struggling to get clear information related to servicing or loss mitigation because of a lack of access to translated notices or oral interpretation.

The full results of the survey are shown by individual questions below. In total, they reflect a substantial benefit that has flowed to homeowners from the servicing rule as well as the continued need for further expansion of mortgage servicing protections.

Question 1: Practice Settings of Respondents

What is your practice setting? (Choose one)		
Answer Options	Response Percent	Response Count
Private attorney	3.0%	7
Legal Services	18.0%	42
Housing Counseling Agency	73.4%	171
Other Nonprofit	5.6%	13
answered question		233
skipped question		0



Question 2: States Represented (41 in total)

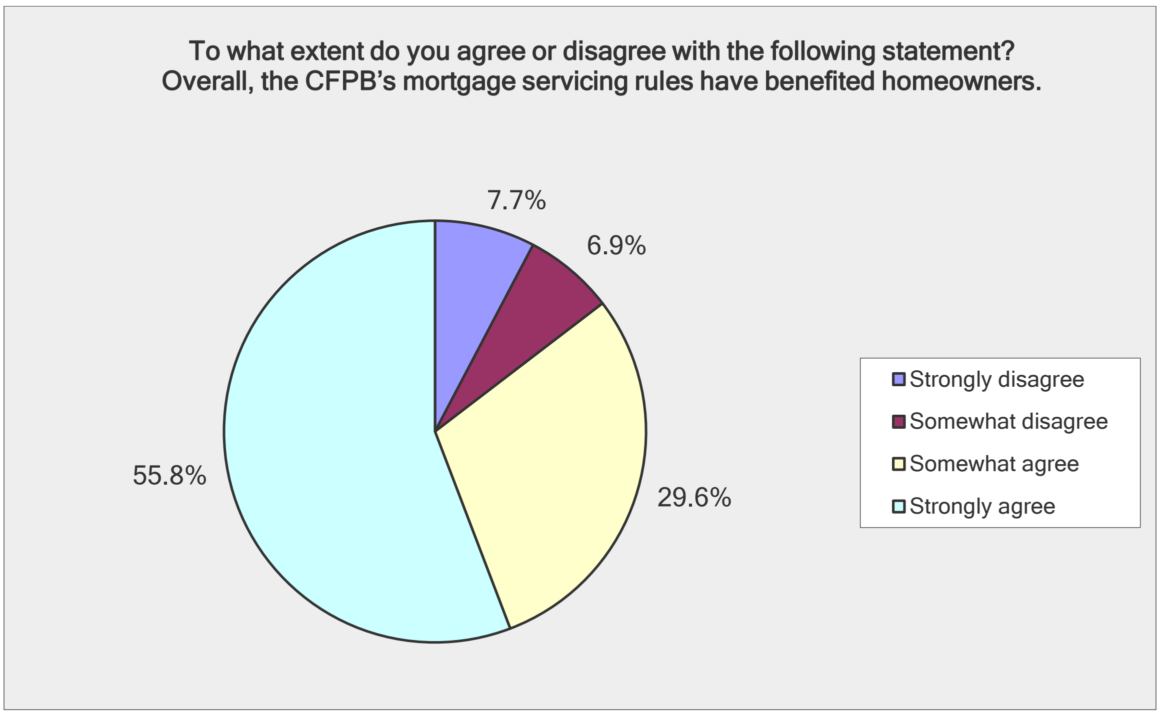
In what state do you work?	
Answers	**Response Count**
All States	1
Alabama	3
Arizona	7
Arkansas	1
California	17
Colorado	3
Connecticut	5
District of Columbia	1
Florida	14
Georgia	4
Hawaii	1
Illinois	8
Indiana	5
Iowa	1
Kansas	2
Kentucky	1
Louisiana	3
Maine	5
Maryland	16
Massachusetts	10
Michigan	9
Minnesota	4
Mississippi	3
Missouri	3
Montana	2
New Hampshire	1
New Jersey	7
New Mexico	2
New York	38
North Carolina	11
Ohio	7
Oklahoma	1
Oregon	8
Pennsylvania	6
Rhode Island	3
South Carolina	3
Tennessee	1
Texas	5
Vermont	2
Virginia	5
Washington	4
West Virginia	1

Question 3: Number of Homeowners Assisted by Respondents

Approximately how many homeowners does your office assist per year?		
Answers	**Response %**	**Response Count**
1-99 homeowners per year	21%	50
100-500 homeowners per year	57%	132
500-1500 homeowners per year	15%	36
Over 1500 homeowners per year	4%	10
N/A	2%	5
answered question		233
skipped question		0

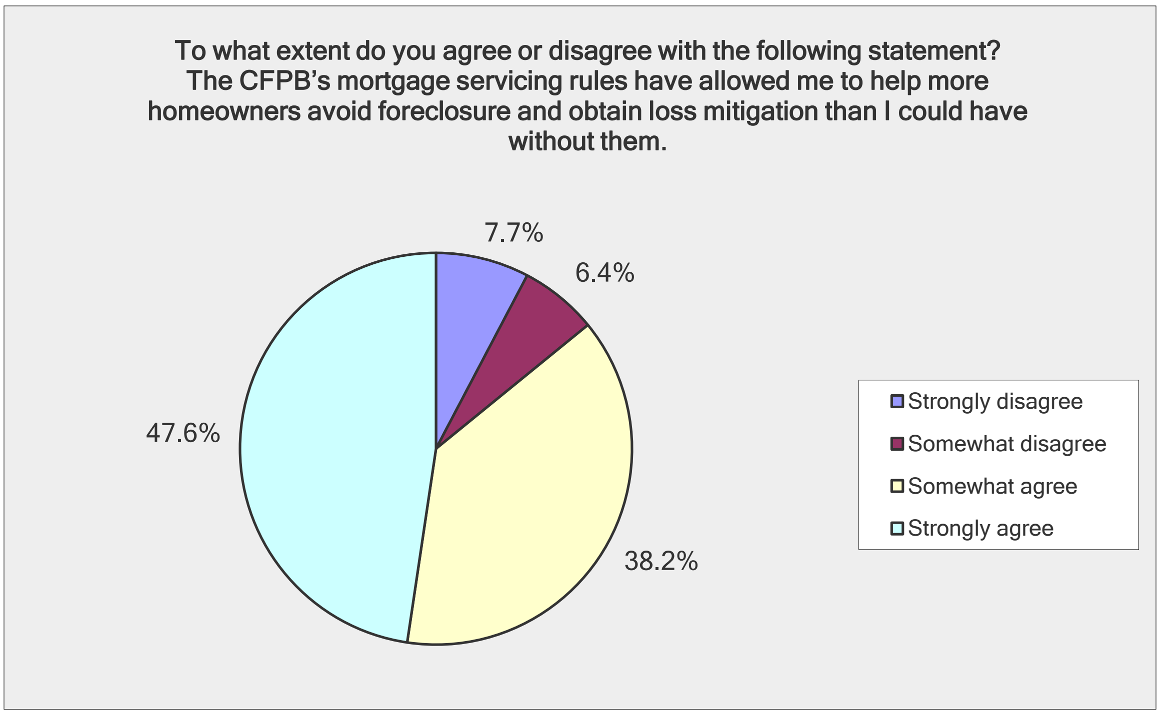
Question 4: Whether the Mortgage Servicing Rules Benefit Homeowners

To what extent do you agree or disagree with the following statement? Overall, the CFPB's mortgage servicing rules have benefited homeowners.		
Answer Options	**Response Percent**	**Response Count**
Strongly disagree	7.7%	18
Somewhat disagree	6.9%	16
Somewhat agree	29.6%	69
Strongly agree	55.8%	130
	answered question	233
	skipped question	0



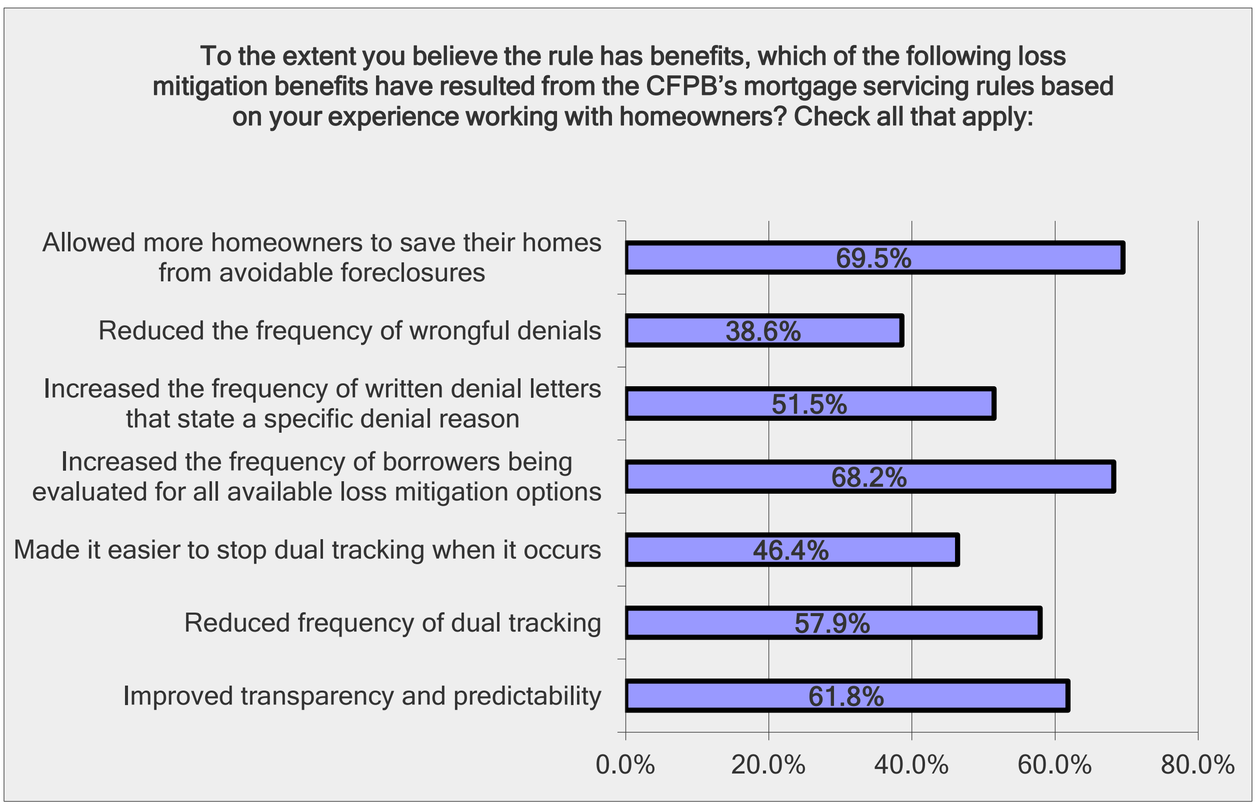
Question 5: Whether the Mortgage Servicing Rules Save Homes

To what extent do you agree or disagree with the following statement? The CFPB's mortgage servicing rules have allowed me to help more homeowners avoid foreclosure and obtain loss mitigation than I could have without them.		
Answer Options	Response Percent	Response Count
Strongly disagree	7.7%	18
Somewhat disagree	6.4%	15
Somewhat agree	38.2%	89
Strongly agree	47.6%	111
answered question		233
skipped question		0



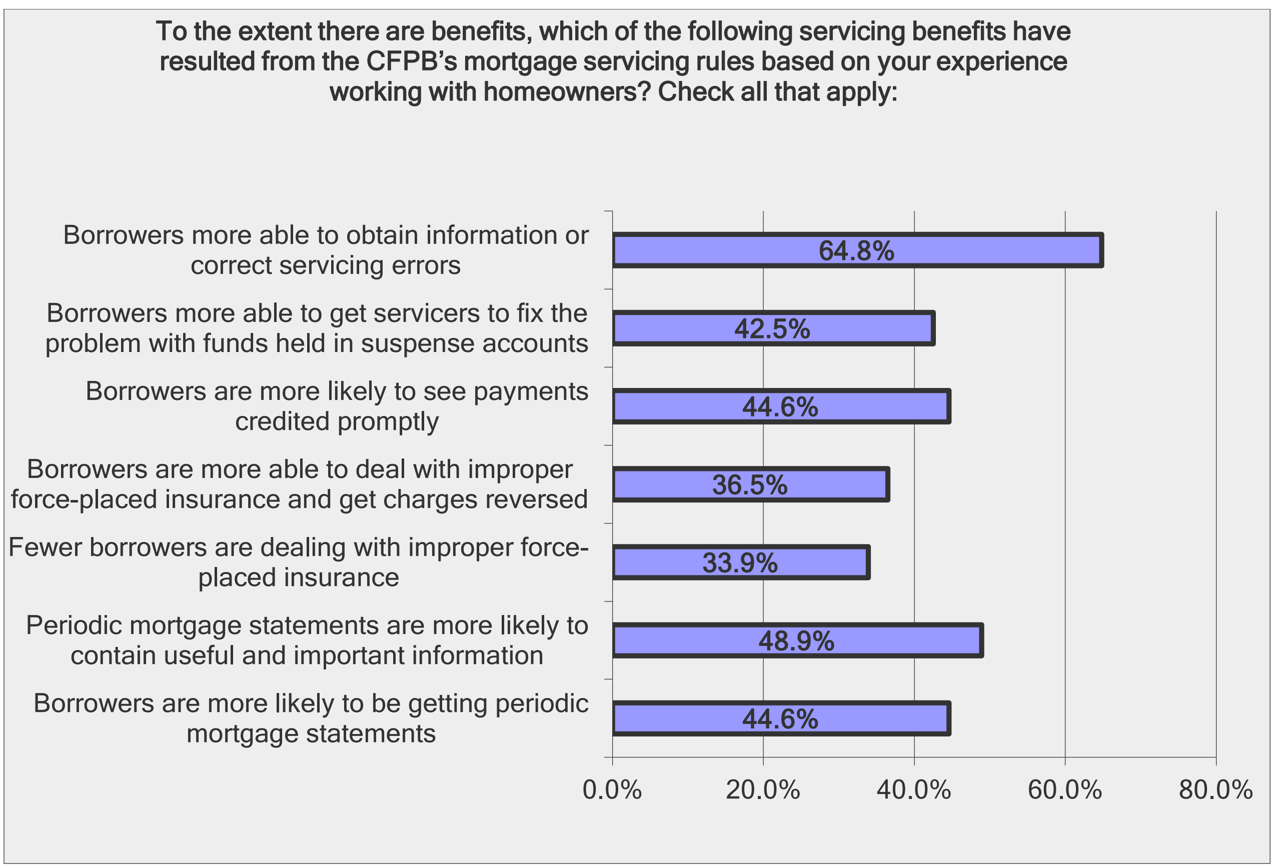
Question 6: Loss Mitigation Benefits

To the extent you believe the rule has benefits, which of the following loss mitigation benefits have resulted from the CFPB's mortgage servicing rules based on your experience working with homeowners? Check all that apply:		
Answer Options	Response Percent	Response Count
Improved transparency and predictability	61.8%	144
Reduced frequency of dual tracking	57.9%	135
Made it easier to stop dual tracking when it occurs	46.4%	108
Increased the frequency of borrowers being evaluated for all available loss mitigation options	68.2%	159
Increased the frequency of written denial letters that state a specific denial reason	51.5%	120
Reduced the frequency of wrongful denials	38.6%	90
Allowed more homeowners to save their homes from avoidable foreclosures	69.5%	162
answered question		233
skipped question		0



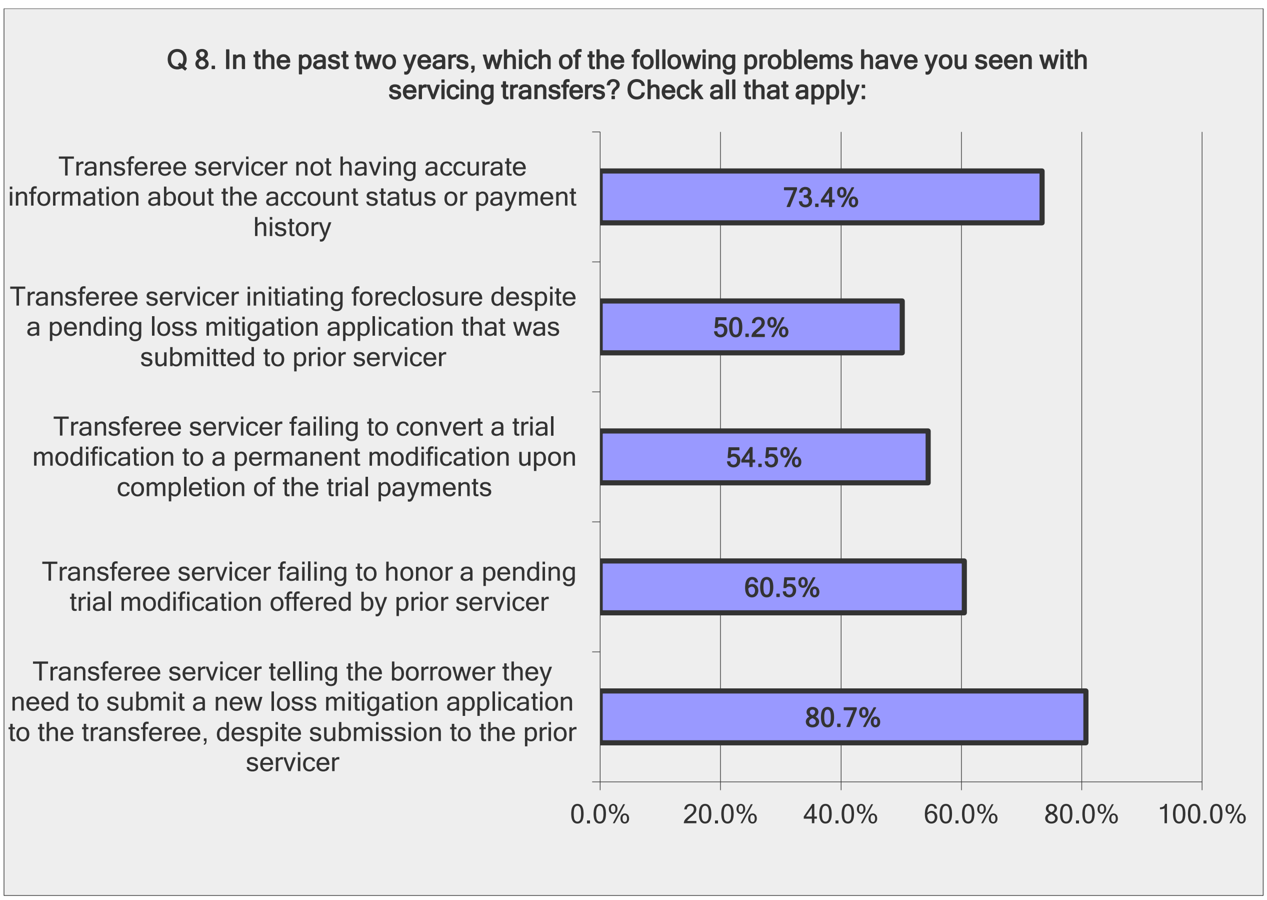
Question 7: Other Servicing Benefits

To the extent there are benefits, which of the following servicing benefits have resulted from the CFPB's mortgage servicing rules based on your experience working with homeowners? Check all that apply:		
Answer Options	Response Percent	Response Count
Borrowers are more likely to be getting periodic mortgage statements	44.6%	104
Periodic mortgage statements are more likely to contain useful and important information	48.9%	114
Fewer borrowers are dealing with improper force-placed insurance	33.9%	79
Borrowers are more able to deal with improper force-placed insurance and get charges reversed	36.5%	85
Borrowers are more likely to see payments credited promptly	44.6%	104
Borrowers more able to get servicers to fix the problem with funds held in suspense accounts	42.5%	99
Borrowers more able to obtain information or correct servicing errors	64.8%	151
	answered question	233
	skipped question	0



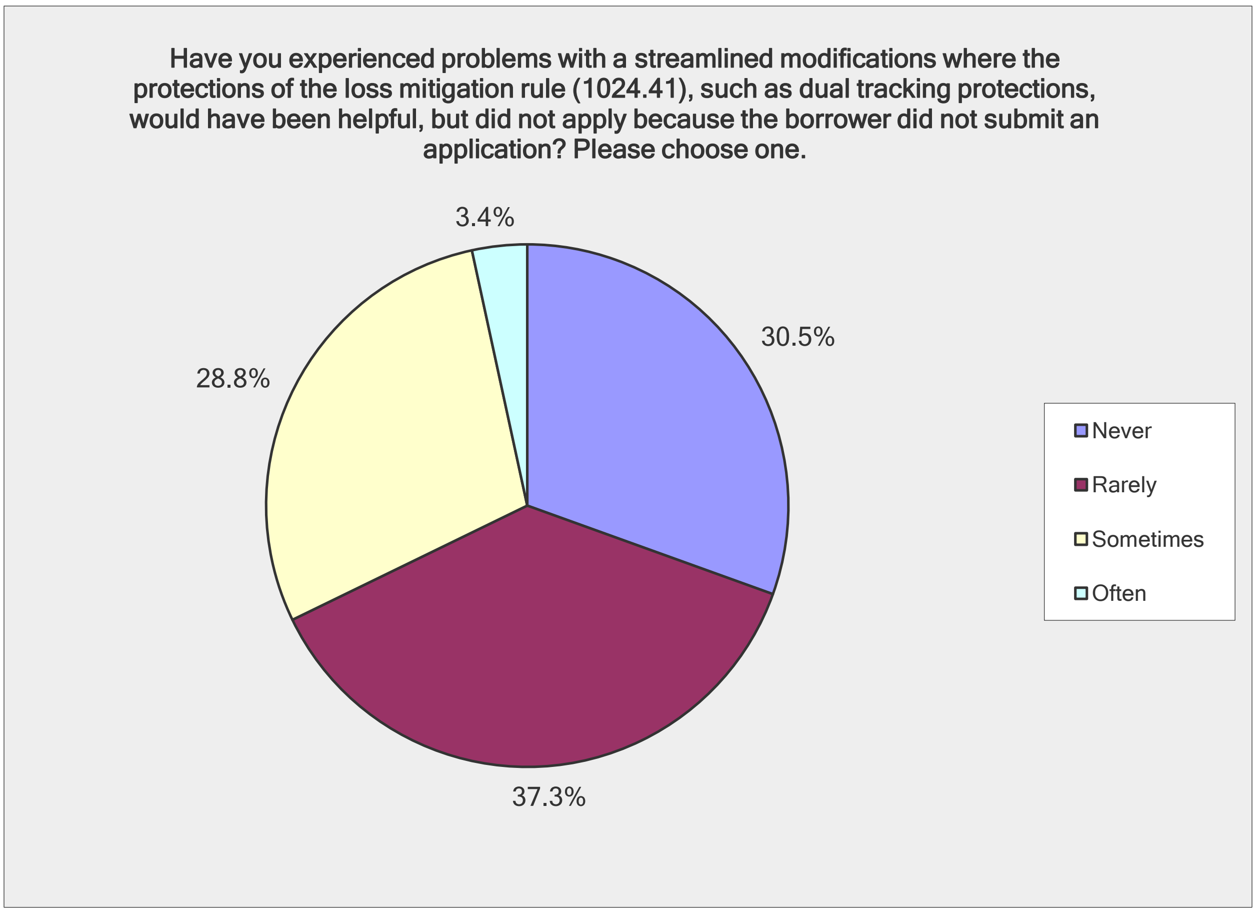
Question 8: Servicing Transfers

In the past two years, which of the following problems have you seen with servicing transfers? Check all that apply:		
Answer Options	Response Percent	Response Count
Transferee servicer telling the borrower they need to submit a new loss mitigation application to the transferee, despite submission to the prior servicer	80.7%	188
Transferee servicer failing to honor a pending trial modification offered by prior servicer	60.5%	141
Transferee servicer failing to convert a trial modification to a permanent modification upon completion of the trial payments	54.5%	127
Transferee servicer initiating foreclosure despite a pending loss mitigation application that was submitted to prior servicer	50.2%	117
Transferee servicer not having accurate information about the account status or payment history	73.4%	171
answered question		233
skipped question		0



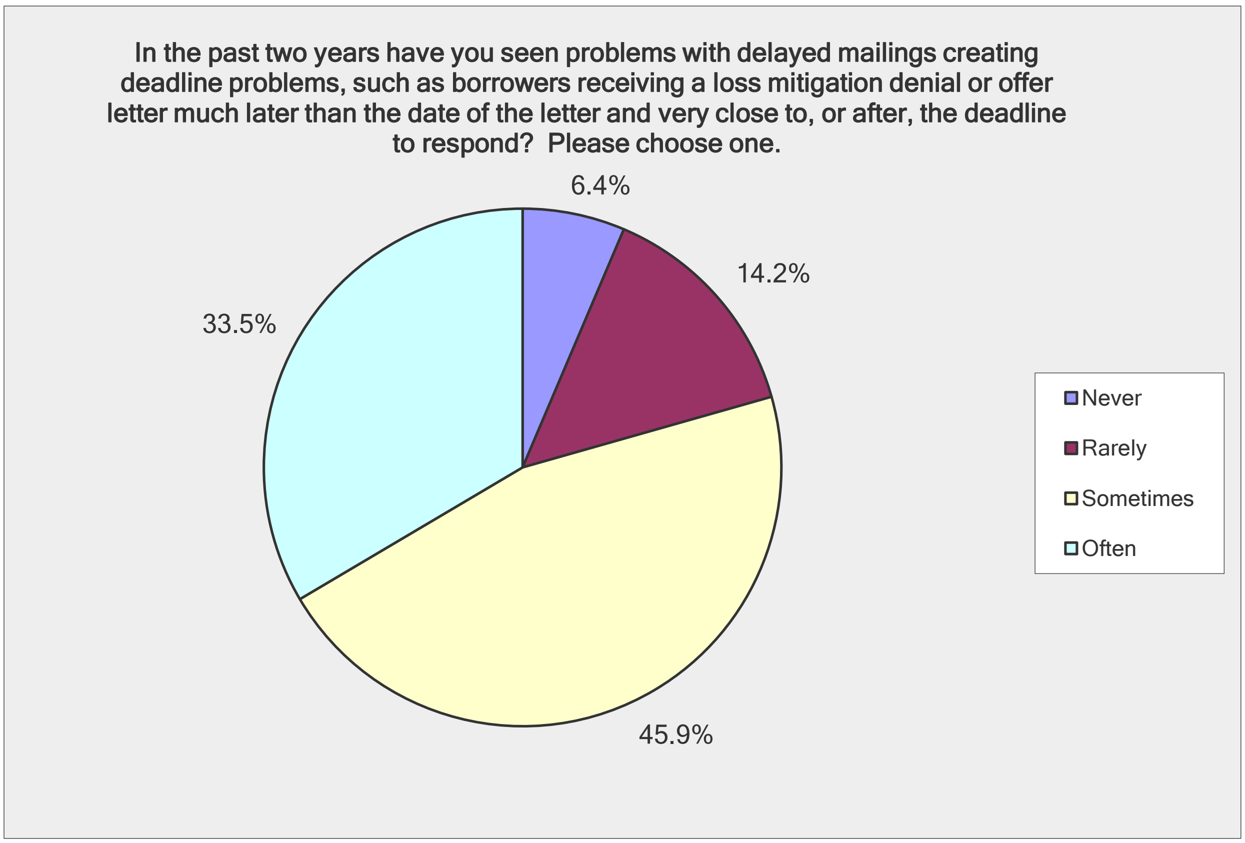
Question 9: Problems with Streamlined Modifications

Have you experienced problems with a streamlined modifications where the protections of the loss mitigation rule (1024.41), such as dual tracking protections, would have been helpful, but did not apply because the borrower did not submit an application? Please choose one.		
Answer Options	Response Percent	Response Count
Never	30.5%	71
Rarely	37.3%	87
Sometimes	28.8%	67
Often	3.4%	8
	answered question	233
	skipped question	0



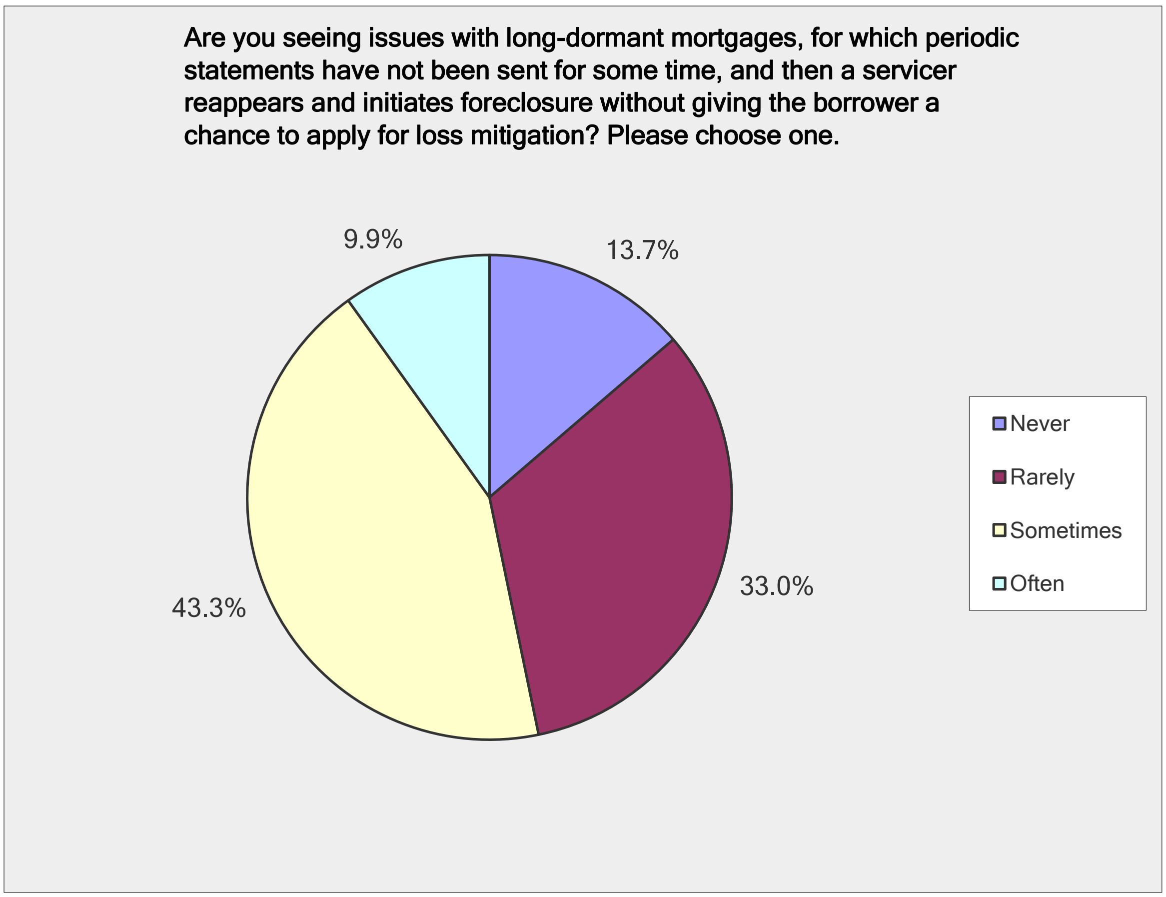
Question 10: Problems with Delayed Mailings

In the past two years, have you seen problems with delayed mailings creating deadline problems, such as borrowers receiving a loss mitigation denial or offer letter much later than the date of the letter and very close to, or after, the deadline to respond? Please choose one.		
Answer Options	Response Percent	Response Count
Never	6.4%	15
Rarely	14.2%	33
Sometimes	45.9%	107
Often	33.5%	78
answered question		233
skipped question		0



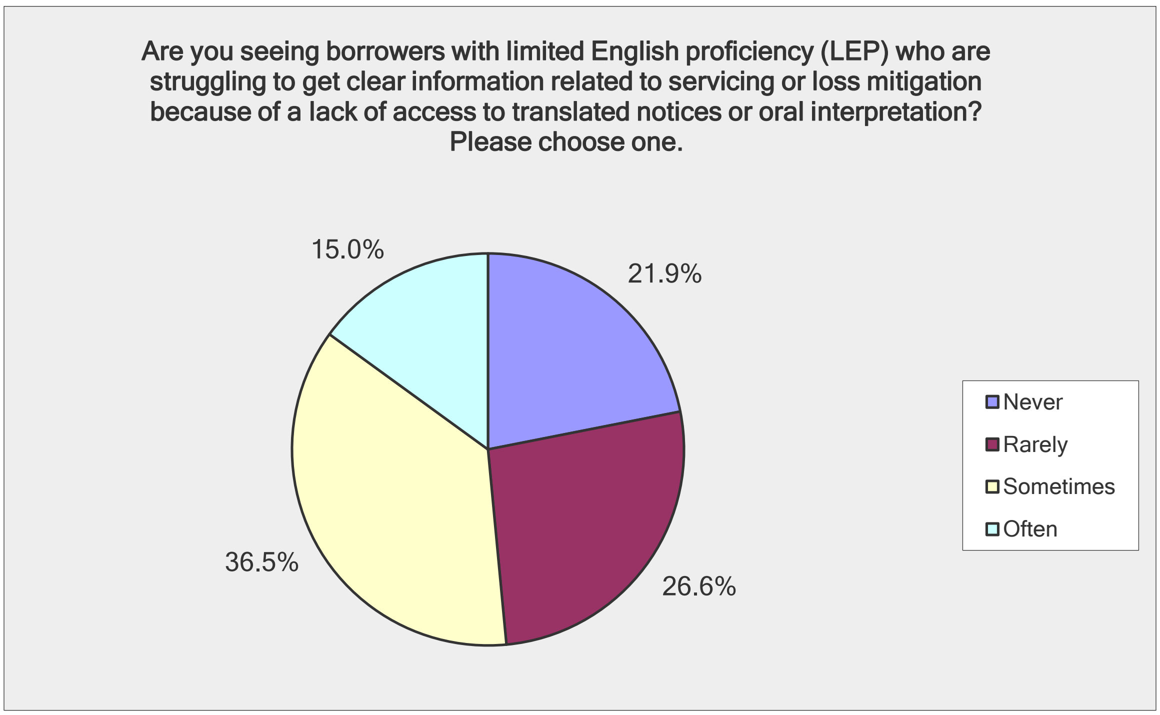
Question 11: Problems with Dormant Mortgages

Are you seeing issues with long-dormant mortgages, for which periodic statements have not been sent for some time, and then a servicer reappears and initiates foreclosure without giving the borrower a chance to apply for loss mitigation? Please choose one.		
Answer Options	Response Percent	Response Count
Never	13.7%	32
Rarely	33.0%	77
Sometimes	43.3%	101
Often	9.9%	23
answered question		233
skipped question		0



Question 12: LEP Borrowers Struggling

Are you seeing borrowers with limited English proficiency (LEP) who are struggling to get clear information related to servicing or loss mitigation because of a lack of access to translated notices or oral interpretation? Please choose one.		
Answer Options	Response Percent	Response Count
Never	21.9%	51
Rarely	26.6%	62
Sometimes	36.5%	85
Often	15.0%	35
	answered question	233
	skipped question	0



Selected Comments from Respondents

The following are selected comments from the respondents regarding benefits of the servicing rule and ongoing problems that need to be addressed.

Benefits of the Rule
More likely to get a decision in 30 days with confirmation of complete package. More regular contact and communication with a SPOC.
Our office uses both QWR provisions often - the RFI has helped us get information the homeowner is often unable to get directly from their servicer and we're unable to get from their attorneys otherwise, and NOE has helped us resolve issues without litigation, especially for the charging of extra fees, etc.
I think it standardized some loss mit functions that were otherwise haphazard or whatever the servicer decided they wanted to do with the borrower. Established some minimum standards that servicers had to follow, where before there were no minimum standards servicers had to follow and could blow off borrowers they didn't want to deal with.
Made it easier to understand denial letters and communications from servicers.
In general most services have improved their practices.
The CFPB's RFI/NOE regulations are a critical tool for borrowers and their advocates to obtain information and resolve problems. The 120-day foreclosure hold in the CFPB rules has definitely contributed to averting unnecessary foreclosures, in part because having a uniform national rule makes compliance more likely (as opposed to differing state law requirements that servicers often conveniently fail to implement). The Reg. X loss mitigation rules will become even more important once certain state law protections sunset. For example, a number of important dual-tracking protections in California's HBOR will sunset as of Jan. 1, 2018.
Consistency. Easier to counsel regarding options because the general options apply.
As an attorney, I am able to get more information through a QWR/RFI/NOE than I was able to get prior to the implementation of those rules. They even are useful where they do not clearly apply, such as in mobile home purchases without land.
Because of the clarity the servicing rules have added to issues (force-placed ins, dual servicing, QWR/NOE etc...) which were being litigated previously, both sides now have a clearer idea of what is prohibited. This produces more efficient resolution of disputes and less litigation. There may be as many or more cases (because of the industry's failure to correct), but the cases are resolved more efficiently now, saving both sides resources.
The CFPB rules have helped greatly in forcing servicers to properly handle loss mitigation applications - but often only when a borrower has legal representation that can push back on servicer errors. CFPB enforcement actions with certain servicers appears to have been very helpful.
The CFPB has been a catalyst for change in the mortgage industry. Due to the rules/regulations that they have been able to implement, homeowners now have protection from losing their home due to failure of the system and processes that had no direction, guidelines, or consequences for lack of follow through. These rules have improved the chances of homeowners and lenders being able to come to a mutually beneficial solution. It is essential that these rules continue to be supported and expanded upon to ensure that homeowners are supported and processes are clearly defined, accessible to homeowners, and not only provide structure but also consequences if the rules are not followed.

Transfers of Servicing
I have had several cases where a transferee servicer has brought a dispositive motion for foreclosure, but I have fought it by citing Rule 1024.41.
Our Manatee & Sarasota county homeowners whom received TPPs but were denied Perm Mods encountered most denials because of loan transfers from one servicer to another. This was frequent. Using CFPB/HUD rulings, many of our clients obtained permanent mods, but not until after consistent battling with servicers. Very time consuming, but eventually I saw fewer clients with such difficulties.
All of my client examples come from New York, NY (mostly Queens). For one case, after the loan was permanently modified, a servicer charged Ms. M's account with an additional $4000 of attorney's fees. Ms. M's loan was a GSE loan, so the maximum amount allowed is pre-set. Using the NOE, we were able to get the servicer to take this amount off of her account. For Mr. R, we used the NOE to get his servicer to properly apply FHA loss mitigation rules correctly in evaluating him for a modification, and his servicer ultimately offered him the FHA-HAMP modification for which he qualified.
Loan Servicing transfer during a trial modification, new servicer says the modification was not permanent so they will not honor, advised client to continue to make trial payment but loan goes into foreclosure. Newton, NJ
I've had a couple clients whose escrow payments increased suddenly following a servicing transfer. We've been able to have the shortage/deficiency spread over more than 12 months by sending NOEs and CFPB complaints. The shortage/deficiencies existed usually because of the prior servicer's lack of diligence in keeping escrow properly funded.
New servicers are appearing often so we are unable to obtain a single point of contact for them. If we get someone, they do not stay long enough to complete the file and render a decision.
Complete Application Issues
There remain issues regarding the "facially complete" application. Most servicers are sending out the initial 5 day letters but they are holding out on sending a missing documents letters and insisting that applications are never "facially complete." It would be helpful if there were a default rule in place that says that if the servicer does not send a determination or missing documents letter within 30 days of the issuance of the 5 day letter, the application is considered "facially complete" by default.
Servicers continue to ask for financials stating the documents are required for the modification and no decision has been made.
Borrower lives in Corrales, NM. On July 12, 2016, Borrower submitted a loss mitigation application with supporting documentation to his servicer. Borrower did not receive the initial "five day" notice of receipt and determination of completion as required; as such, Borrower's application was considered "facially complete" as of July 12, 2016. Two weeks later, on July 26, 2016, servicer requested supplemental documentation, specifically an additional paystub for Borrower's wife, additional information as to Borrower's new job offer, and an amended IRS 4506-T Form. Borrower timely responded to the request, submitting all requested supplemental documentation on August 4, 2016. Borrower also provided updated paystubs on August 31, 2016 (to satisfy Servicer's request) and September 13, 2016 (on Borrower's own initiative). Under 12 C.F.R. §1024.41(c)(iv), Borrower's application was "complete" on August 31, 2016. Despite Borrower having submitted a complete application on August 31, 2016 and supplementing the application on his own initiative, servicer failed entirely to review Borrower's loss mitigation

application. Servicer had failed to review the application despite warnings at two mediated settlement facilitations and indicated in late December 2016 that the application had grown stale without review. Borrower has submitted two loss mitigation application packets since November 2015 and has not received a determination on either application. A CFPB complaint was filed and was dismissed without further investigation after servicer produced a denial letter from May 2016, a letter issued before the application had even been submitted. There appears to be little enforcement of these regulations by the CFPB when a complaint is filed.
Washington State. We have hundreds of examples. The client submits BRP to Servicer and no response for 30 +days. Then a letter comes out stating missing documents which are not missing. The letter does not indicate what was missing or does, does not meet the 5 Day Rule for response, and even Facially Complete files are not timely reviewed.
Account managers making it harder on homeowner and not wanting to submit the financial packet to loss mitigation to be reviewed. In one instance I had an account manager asking for proof of hardship because the homeowner fell behind due to personal issues and was trying to get on track. The account manager said that her handling her money incorrectly was not a hardship and her being in abusive relationship was not a hardship. She didn't want to submit the application to loss mitigation for review after the homeowner was out of hardship and doing much better with the help of housing counselor. After persuasion finally she submitted the packet.
Dual tracking should include anyone who applied for a loan mod, not just a complete case. The process is overwhelming and the chances of a borrower having a complete package on the first try are slim.
Some servicers are re-requesting documents that have been submitted various times. I had one client submit his paystubs four separate times because their servicer said it was misplaced, lost or they simply didn't record it (did acknowledge receiving it) but is now lost in the system. There must be a uniform way of servicers processing client documents especially when clients are trying to submit a full modification packet on a short time frame to avoid a NOS. I feel that some servicers are doing this on purpose to be able to issue the NOS.
The dual-tracking rules are helpful, but the absence of appeal rights for borrowers who apply after the 45-day mark is a problem. Given servicers' continuing tendency to issue wrongful denials, being able to appeal a denial and having time to have an appeal reviewed is crucial for all applicants.
Mailing Issues
The 14-day period to appeal under 1024.41(h)(2) is too short and should be extended to 30 days. Often, the denial letter arrives many days after the date on the letter, leaving little time to put together and submit an appeal.
Time should be after receipt of letter. Often homeowners receive the letter after the time the information must be given. Send certified/receipt if need be to prove it is taken 15-20 days from the date of the letter to be received
Rules should require mailings of documents containing response deadlines by stamped mail requiring USPS cancelation showing mailing dates, because I am certain that servicers are not mailing on the dates on their documents.
Conversion from Trial to Permanent Modification
[Servicer] uses a checklist when they receive a final mod package. The checklist includes "notary or signature missing or incorrect" This is what the bank checks if the signature reads John Smith

and under the signature line the text reads John Q Smith. However, when the signature is completely illegible it is not marked as incorrect or missing. I have seen a borrower go through 5 rounds of trials and final mod documents and get denied because he didn't sign his middle initial. The bank has no rational for this. Indiana law will allow a smilie face to work as an adequate signature.
Foreclosure sale after loan modification, when homeowner in complete compliance with loan mod.
Umpqua, OR. I have two customers who have completed their Trial Payment Plans and are waiting for the Modification Documents from [Transferee Servicer]. So far, this process has taken over 2 months, including changing the loan numbers for my customers which causes considerable anxiety to my customers. The change from [Transferor] to [Transferee Servicer] seems to have dropped the original file documents off [Transferee Servicer's] system.
Force-placed insurance
Homeowners with forced-placed insurance and taxes when transferred to other lenders and not letting the homeowners know of increase in payments until after the fact.
Milton, PA. New servicer placed forced insurance on mortgage when homeowner previously did not have an escrow account. Homeowner was paying twice for HO insurance.
Force-placed insurance remains a significant problem and the CFPB servicing regulations do not appear to have improved the situation. It remains very difficult for a borrower to get usable, detailed information about their accounting and to correct any accounting errors. Servicers rarely correct any accounting errors and any information that is offered to a borrow is impossible for a borrower to understand or interpret.
Dormant Mortgages
A major problem we see is servicers being dormant in initiating the foreclosure process, not sending out any mortgage statements to the homeowners and, once the housing prices have increased, after years of not collecting payments, they begin a prompt foreclosure proceeding.
In cases where homeowners had a second lien with a different servicer and not eligible for modification, we are starting to see servicers of second liens threatening to foreclose, especially where there is a fair amount of equity.
Clients not getting a monthly mortgage statement and then getting foreclosure notices.
We have started to see more long dormant second mortgages popping up after allegedly being purchased by investors. One client tried in vain to figure out who to pay when his current second mortgage was transferred to Countrywide in 2005. Last year an investor popped up claiming he owed $100,000 and filed a foreclosure action. The matter is still pending.
When servicers chose to let a homeowner stay in a home for an extended period of time without making payments, there should be a rule requiring the servicer to offer affordable workouts for the huge arrears.
Successors in Interest
Problems with getting servicers to comply with CFPB Bulletin 2013-12 re communications with successors in interest.
Death of a spouse in which the surviving spouse is not on the mortgage and the servicer will not talk to them.
We see continuous problems with servicers improperly refusing to communicate with heir or

successors in interest, suggesting an estate must be opened when that is not necessary, etc. In our experience it always takes attorney intervention to escalate the issue and get it resolved. It appears many servicers have failed to comply with the CFPB rules and recommendations on this issue.
I'm still having problems with servicers that don't understand the rights of successors-in-interest to access loan information following the death of the mortgagor. I have had servicers demand probate documents where there was no probate of the estate and the claim of the successor-in-interest was based on joint or successor tenancy interest in the title.
Though the situation has improved, successors-in-interest remain largely unable to retain homes in the family's name.
Homeowners who inherit property with a mortgage are still having difficulty with communications with the mortgage company. There is a lack of transparency and an unwillingness to provide basic, non-confidential information in easy to understand ways.
JS and his brother had to wait months to be evaluated for an assumption and modification of their deceased father's mortgage. They lived with their father and were the successors to the title of the property as well as authorized representatives on the mortgage, itself. Ditech Financial kept insisting on a probate declaration, but California law did not require probate of their father's estate. They sent multiple copies of a will, trust, and grant deed showing that they were the executors/trustees of their father's estate and sucessors to the title through joint tenancy. Ditech kept insisting on a probate declaration for even a couple months after I became involved and informed them of the rules regarding successors-in-interest. They finally relented and processed JS and his brother's applications, but the excessive delay almost cost them the chance to receive assistance from the Federal Hardest Hit funds.
Need greater enforcement of requirement that servicers communicate with successors in interest - ie surviving spouse or divorcee - and consider them for loan assumption/modification.
LEP Borrowers
During outbound call campaigns, we have noticed a high number of LEP clients stating their mortgage company reaches out, but there is no opportunity to receive the correspondence in their language. Often, they claim to have been hung up on despite making an effort to communicate their need.
We have had many Spanish-only clients come in with foreclosure notifications in English and clients are not able to understand. By the time they have reached our offices, in some cases it is too late for us to assist them because there is a NOS. These clients have shown us their mortgage statements, which are sent in Spanish, yet they get correspondences from servicers in English. This makes absolutely no sense. Services need to fix this issue so that clients are able to read the letters they are receiving and take prompt action. Even servicers who provide lists of counseling agencies are providing the information in English and not Spanish.
In Baltimore City, MD a homeowner I was working with only speaks Greek. Wells Fargo would repeatedly have English speaking reps call the homeowner. I requested this stop and that the client be contacted by Greek speaking reps, which they did do - twice. Then the English speaking reps started calling her again, which made her very upset and confused.
The rule where mortgage servicers did not have to review incomplete loss mitigation packages if less than 37 days away from the sale date has been problematic for clients. If LEP clients do not understand what is going on and there mortgage servicer is not helping, how can they know they are running out of time?

Reverse Mortgages
Reverse mortgage clients not able to obtain work-outs.
Issues arising from HECMs, such as failing to work with borrowers or otherwise deal with them appropriately.
Some sort of "loss mitigation" rules should be required for reverse mortgages for borrowers who are attempting to cure property charge delinquencies.
Reverse mortgages not handled compassionately due to age and health of the client.
Port Chester NY. Reverse mortgage servicer continues to pay property taxes in advance of due date.
Queens, New York City, NY. Many reverse mortgage homeowners in foreclosure for improper force-placed insurance or falling behind in property taxes of as little as one quarter. Also, many had lines of credit which servicer was paying property charges from, which at some point ran out and servicer failed to inform homeowner but instead advanced funds, resulting in a foreclosure.
Strengthen rules that apply to reverse mortgage servicers.