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August 29, 2023

Via petitions@cfpb.gov
The Honorable Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC, 20552

Re: Request for RESPA Rulemaking: Home Equity Lines of Credit, Home Equity Conversion Mortgages, Language Access, and Manufactured Housing.

Dear Director Chopra,

The National Consumer Law Center (on behalf of its low-income clients) urges the Bureau to modify the mortgage servicing rules in Regulation X, 12 C.F.R. Part 1024, to provide consistent, fair, and transparent protections to borrowers across the mortgage market.

The Bureau has announced that it is currently reviewing how Regulation X could better accommodate streamlined loss mitigation processes while preserving consumer protections.[1] This letter constitutes our petition for the Consumer Financial Protection Bureau (CFPB) to take the following steps through a RESPA rulemaking:

1. Remove the HELOC exemption from Regulation X sub-part C;
2. Remove the reverse mortgage exemption from Regulation X sub-part C; and
3. Require mortgage servicers to provide meaningful language access, in the form of translated vital servicing documents, to borrowers with limited English proficiency (LEP); and
4. Clarify the application of RESPA to loans secured by manufactured homes.

Current events and recent evidence show that, now more than ever, it is necessary to expand the coverage of Regulation X to save consumers' homes. "Zombie" second mortgages are a recognized problem, but borrowers with zombie home equity lines of credit (HELOCs) cannot access Regulation X's servicing protections. They need the right to seek information about the owner and servicer of the loan, pause the foreclosure process, and be reviewed for loss mitigation.

[1] Rohit Chopra, The CFPB intends to identify ways to simplify and streamline the existing mortgage servicing rules, CONSUMER FIN. PROT. BUREAU (Jun. 15, 2023), https://www.consumerfinance.gov/about-us/blog/the-cfpb-intends-to-identify-ways-to-simplify-and-streamline-the-existing-mortgage-servicing-rules/

Reverse mortgage borrowers face an endless run-around in attempting to apply for a repayment plan to cure defaulted property charges, while foreclosure looms. Certain manufactured home borrowers also lack key protections.

Limited English proficient mortgage borrowers continue to operate without key loss mitigation notices in a language they can understand, forcing them to rely on family members to interpret highly technical, and sensitive, information.

It is time for the exemptions of these loan types to be removed, and translated notices to be required, to provide vital home-retention protections for all borrowers. Each recommendation we advance in this petition would directly expand access to crucial loss mitigation protections for vulnerable mortgage borrowers, reducing the risk of unnecessary foreclosures. This is precisely what Congress intended by authorizing the Bureau to impose additional servicing protections in RESPA's Section 6(k)(1)(E).[2]

1. The HELOC exemption in Regulation X's Subpart C is no longer appropriate and should be repealed.

Recent experience has shown that borrowers with HELOCs have the same problems—and therefore need the same protections—as closed-end mortgage borrowers.

As recognized by the CFPB, zombie second mortgages are a significant problem for consumers. Many zombie second mortgages were originated by predatory lenders in the early 2000s and careless underwriting and abusive terms led to early defaults on many of these mortgages. As housing values plummeted, many went silent until recently when housing prices increased and investors reappeared to demand the entire balance due. Investors have targeted homeowners who are current on their first mortgage and have significant equity in their homes. This has caused a crisis for borrowers who thought they were up to date on their mortgage only to have the second reappear and threaten to take their home. A substantial number of zombie second mortgages are HELOCs.[3]

Appendix A includes examples illustrating the broad scope of the problem with zombie HELOCs. One such example is a couple in East Hartford, Connecticut, who took out a HELOC in the early 2000s. They fell behind on their payments in 2010, and shortly after that stopped receiving statements. Their servicer did not send them any statements for over ten years. In 2022, they suddenly began to receive statements again, but from a new servicer, Planet Lending, that they had never heard of before. As a result, they thought the communications were a scam. They were then served with a foreclosure notice claiming they owed over $135,000 at an interest rate of 14.9% when they had only drawn about $40,000 on the line of credit.

HELOC homeowners need the right to seek detailed information about their loan, receive notifications of servicing transfers, receive early intervention when they fall behind, and be protected from foreclosure while they apply for loss mitigation.

[2] 12 U.S.C. §2605(k)(1)(E) ("A servicer of a federally related mortgage shall not . . . fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter.").

[3] *See* Appendix A, Examples of Homeowners Struggling with HELOC Second Mortgages, NAT'L CONSUMER L. CTR (Aug. 2023).

The couple has limited income, had to ask their children for support, and are working with a legal services attorney to defend the foreclosure.

As this story and others in the appendix show, the problems faced by homeowners and risks of home loss are the same for both closed end and open end (HELOC) loans. However, the most robust home preservation protections under Regulation X, Subpart C that allow homeowners to seek detailed information about the loan, allege errors with the servicing of the loan, receive notifications of servicing transfers, receive early intervention when they fall behind, and be protected from foreclosure while being evaluated for loss mitigation options are not available to HELOC homeowners.

In 2013, during the financial crisis, the CFPB amended Regulation X by modifying and adding these important home-retention protections to Subpart C for homeowners struggling to retain their homes. However, the Bureau retained the pre-existing exemption for HELOCs from servicing protections. In doing so, the CFPB relied on a provision that gives it authority to make "reasonable exemptions" in order to "achieve the purposes" of RESPA.[4]

In its analysis during and since the 2013 rulemaking, the CFPB claimed that Regulation Z already provides HELOC borrowers with comparable protections.[5] But this simply is not true. The CFPB's own [mortgage servicing coverage chart](https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-coverage-chart.pdf) highlights the significant gaps in HELOC protections.[6] Moreover, the CFPB in 2013 did not consider whether extending the HELOC exemption was appropriate in light of the Dodd-Frank Act amendment to RESPA § 2605(k)(1)(C), which states that a servicer shall not "fail to take timely action to respond to a borrower's request to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties."[7]

In 2013, the CFPB did not consider whether extending the HELOC exemption was appropriate in light of the Dodd-Frank Act amendment to RESPA which requires servers to timely respond to borrowers regarding loan payment errors, payoff amounts, foreclosure prevention or other servicing duties.

The Fair Credit Billing Act dispute process set forth in Regulation Z is not an adequate substitute for Regulation X's servicing rules. Regulation Z's dispute process is better suited to unsecured, revolving debt that is used for purchasing retail goods and services—not a loan secured by the borrower's home.[8] HELOC borrowers are very different from credit card

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[4] 12 U.S.C. § 2617

[5] 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal, 77 FR 57199, 57216. (Sept. 17, 2012); Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 Fed. Reg. 10695, 10721 (Feb. 14, 2013); *Lyons v. PNC Bank, N.A.*, 618 F. Supp. 3d 238, 243 (D. Md. 2022).

[6] *See* Mortgage Servicing Coverage Chart, CONSUMER FIN. PROT. BUREAU, https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-coverage-chart.pdf; For example, while the CFPB has pointed to Reg. Z's § 1026.13 billing error resolution as a way for HELOC homeowners to assert an error on the loan, this provision is limited to billing errors related to the use of the account to finance retail purchases of goods and services, not servicing errors generally. The FCBA also does not include a provision to gather important information about the loan to help homeowners identify the owner of the loan and the accurate amounts due on the loan - both crucial questions for zombie second mortgages.

[7] 12 U.S.C. §2605(k)(1)(C). Because Congress has not exempted HELOCs from RESPA coverage, the CFPB should have considered the impact of the Dodd-Frank Act amendments on the CFPB's exercise of exemption authority for HELOCs.

[8] *See supra* note 6.

borrowers. Their volume of debt is likely to be much higher, and—most importantly—HELOC borrowers in default have much more to lose than credit card borrowers.

While the Bureau cited data showing that HELOC borrowers delinquent on their first mortgages will often remain current on their HELOCs to retain access to the line of credit, the Bureau did not address delinquency and foreclosure rates among borrowers once the draw period ends.[9] At that point, the creditor cannot restrict access to the line of credit to mitigate loss, and the borrower cannot use it to mitigate an income reduction. While the CFPB previously stated that HELOCs tend to reflect better credit quality than closed-end subordinate loans, that statement appears to have been based on the consumer's credit at origination and relied in part on access to the unutilized line of credit.[10] Newer research from a prime lender shows that "homeowners who obtained a cash-out refinance had no change in income whereas homeowners who extracted equity via a HELOC experienced declining income."[11] Thus, drawing down a line of credit may actually be a sign of impending financial distress. Greater home equity lending at the zip code level, especially with HELOCs, has been related to higher default rates on first mortgages in the same area.[12] This means extending protections to HELOC borrowers could help prevent first-mortgage distress too.

The zombie second mortgage crisis is not a one-time occurrence; today's HELOCs could be tomorrow's zombie seconds. HELOC lending was up nearly 50% over the first five months of 2022.

The zombie second mortgage crisis is not a one-time occurrence; today's HELOCs could be tomorrow's zombie seconds. HELOC lending was up nearly 50% over the first five months of 2022.[13] According to the four stages of the real estate cycle—recovery, expansion, hypersupply, and recession[14]—an epidemic of zombie HELOCs could be planting roots just as zombie second mortgages did in the 2000s. As home values rise in the expansion and hypersupply phases, more homeowners are taking out HELOCs.[15] When housing prices inevitably self-correct, many homeowners will be unable to keep up with payments. Investors will again go dormant while they wait for prices to increase, just as they did in the late 2000s, only to emerge years later and demand the full balance of the mortgage or else risk foreclosure. The current high interest rates have made cash-out refinances less attractive to cash-strapped homeowners, making HELOCs more common.[16]

[9] Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 Fed. Reg. 10695, 10721 (Feb. 14, 2013)

[10] 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal, 77 Fed. Reg. 57199, 57216 (Sept. 17, 2012); 78 Fed. Reg. 10695, 10722 (Feb. 14, 2013)..

[11] Tapping Home Equity: *Income and Spending Trends Around Cash-Out Refinances and HELOCs*, JPMORGAN CHASE & CO. (Dec. 2020), https://www.jpmorganchase.com/institute/research/household-debt/report-tapping-home-equity

[12] Michael LaCour-Little, Yu, and Sun, The Role of Home Equity Lending in the Recent Mortgage Crisis, 42 REAL ESTATE ECON. 153 (2014) cited in https://ssrn.com/abstract=3055371.

[13] Bill Conroy, *HELOC volume up nearly 50% over first five months of 2022*, HOUSINGWIRE (Sept. 13, 2022), https://www.housingwire.com/articles/heloc-volume-up-nearly-50-over-first-5-months-of-2022/;

[14] Testimony of Glenn R. Mueller, Ph.D. before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, U.S. House of Representatives, Sept. 14, 2006, at p. 19–20, https://www.fdic.gov/resources/regulations/federal-register-publications/2007/07c04test1ag.pdf.

[15] Conroy, *supra* note 13; Swapna Venugopal Ramaswamy, *Home equity line of credit and home equity loans: 'Right tool at the right time'*, USA TODAY (Nov. 10, 2022), https://www.usatoday.com/story/money/2022/11/10/home-equity-line-credit-applications-surged/7999537001/.

[16] Ramaswamy, *supra* note 15.

For too many borrowers, Regulation X's current treatment of HELOCs is a one-way street to foreclosure. We disagreed with the decision to preserve the HELOC exemption in 2013,[17] but significant shifts in the mortgage lending and servicing markets over the last ten years have further illuminated the need to give HELOC borrowers these important protections. The CFPB should address this coverage gap in any upcoming RESPA rulemaking.

2. **The Bureau should remove the exemption from sub-part C of Regulation X for reverse mortgage loans.**

We urge the Bureau to remove the reverse mortgage exemption from the loss mitigation, early intervention, continuity of contact, and policies and procedures sections of Regulation X. An alarming number of reverse mortgage borrowers have faced the risk of preventable foreclosures over the past ten years. A disproportionate number of those borrowers were homeowners of color.[18] Foreclosure avoidance options are available to them, but without the protections of Regulation X, stopping foreclosure to allow for a full review of those options is nearly impossible.

Foreclosure avoidance options are available to reverse mortgage borrowers, but without the protections of Regulation X, stopping foreclosures to allow for a full review of those options is nearly impossible.

In its section-by-section analysis for the 2014 servicing rule, the Bureau gave the following reasons for not including reverse mortgage transactions in the rule: (1) most reverse mortgages are made under FHA's Home Equity Conversion Mortgage (HECM) program and must comply with program rules, which the Bureau said "provide many protections for borrowers that are appropriate for the specific circumstances of a reverse mortgage transaction," and (2) "many of the timing requirements in § 1024.41 relate to the length of the borrower's delinquency, which is a concept that does not apply cleanly with respect to reverse mortgage transactions."[19] Below we discuss why each of these arguments should be reconsidered.

Reverse mortgages were designed to make it easier for older homeowners to age in place by allowing them to borrow against the equity in their home without the obligation to make monthly loan payments. The loan becomes due and payable after the borrower dies. However, the loan can also be called due and payable after an event of default, such as failure to pay required property charges (property taxes and insurance) or failure to occupy the home (or simple failure to return an occupancy certification). Regardless of the reason the loan enters "due and payable" status, there are options available to the borrower or heirs to avoid foreclosure. Borrowers in default on property charges can be offered a repayment plan or an "At-Risk Extension" of the lender's deadline to foreclose. Seniors who still occupy the home or who are able to return to the home (such as after an extended medical absence) can cure a "non-

[17] Nat'l Consumer L. Ctr. & Nat'l Ass'n of Consumer Advoc., Comment Letter on the 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal 5–7 (Oct. 9, 2012), https://www.nclc.org/resources/comments-to-the-cfpb-on-the-2012-real-estate-settlement-procedures-act-mortgage-servicing-proposal/.

[18] Sarah Bolling Mancini, *Unmet Promise: Reverse Mortgage Servicing Challenges and How to Preserve Housing Stability for Older Adults*, National Consumer Law Center, 18–21 (Feb. 6, 2023), https://www.nclc.org/resources/unmet-promise-reverse-mortgage-servicing-challenges-and-how-to-preserve-housing-stability-for-elder-adults/.

[19] Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 Fed. Reg. 10,696, 10,722 (Feb. 14, 2013).

occupancy" default by sending an occupancy certification. After the borrower dies, a non-borrowing spouse can apply for the "Mortgagee Optional Election" in order to remain in the home until their death, and heirs can seek to proceed with a full sale, short sale, or deed in lieu of foreclosure.

It is true that FHA rules govern the vast majority of reverse mortgage loans.[20] However, these rules are not chiefly designed to protect borrowers from unnecessary foreclosures. Rather, the HECM program rules are mostly focused on safety and soundness in the loan origination process and aggressive foreclosure timelines in order to protect the FHA insurance fund. Because reverse mortgages are negatively amortizing and FHA insurance covers any deficiency, speed of foreclosure and diligence in protecting the collateral is heavily emphasized in FHA's rules.

Rather than creating a designated pre-foreclosure window in which to evaluate loss mitigation options, FHA requires foreclosure to be initiated and completed within certain deadlines. FHA requires the servicer to request permission to accelerate the loan within 30 days of a default. After starting the acceleration process, servicers are to send a delinquency letter that lays out available options for loss mitigation. But if the borrower responds asking to apply for a repayment plan or other option, the servicer must review them while still initiating the foreclosure process, so that the "first legal action" to foreclose can be taken *no later than* six months from the date of default. Servicers report that they typically refer loans to foreclosure counsel by 90 days from default, and sometimes even earlier - all the while a borrower may have unexplored foreclosure avoidance options. Reverse mortgage servicers have raised concerns that FHA's rules essentially require them to engage in dual tracking - reviewing loss mitigation simultaneously while pursuing acceleration and foreclosure.[21] FHA's rules can be reconciled with Reg. X protections, but have an entirely different emphasis.

Reverse mortgage servicers have raised concerns that FHA's rules essentially require them to engage in dual tracking.

FHA's forward mortgage handbook is replete with processes and procedures servicers are required to follow to reach out to homeowners, attempt to make live contact, and review them for foreclosure avoidance options.[22] Yet the reverse mortgage servicing guidelines contain none of these protections.[23] FHA requires only one letter to the borrower mentioning housing counseling and loss mitigation options, sent after the servicer has requested FHA's permission to accelerate the loan.[24] Thus, despite the fact that reverse mortgage borrowers are of advanced age and may require more assistance understanding their circumstances and

[20] Mancini *supra* note 18, at 6.

[21] *See, e.g.,* Comments of the National Reverse Mortgage Lenders Association to the CFPB on Federal Register Docket No. CFPB-2022-0059, CFPB Request for Information Regarding Mortgage Refinances and Forbearances at 3 (Nov. 28, 2022).

[22] *See* Fed. Hous. Admin. Single Family Housing Policy Handbook 4000.1 (rev. Aug. 9, 2023) at Sec. III.A.2.iii, 955-966 (detailing FHA requirements for early live outreach, written notices of loss mitigation options, and reasonable attempts to arrange a face-to-face meeting).

[23] *See generally* Fed. Hous. Admin. Draft HECM Handbook at 287-296, https://www.hud.gov/sites/dfiles/SFH/documents/sfh_hb_4000_1_hecm_orig_serv_draft.pdf. HUD has been working on its revised reverse mortgage handbook, which has not been updated for many years. The draft handbook contained very little about default servicing and almost no outreach requirements related to loss mitigation. *See* Nat'l. Consumer L. Ctr., Comments on the Draft Home Equity Conversion Mortgage Sections of Single Family Housing Policy Handbook, 14–15 (Jan. 31, 2022), https://www.nclc.org/resources/comments-on-the-draft-home-equity-conversion-mortgage-sections-of-single-family-housing-policy-handbook/.

[24] Draft HECM Handbook supra note 23, at 290.

The outreach required by FHA for reverse mortgages in default is significantly less rigorous than the outreach required under RESPA's early intervention rule, continuity of contact, and loss mitigation rules.

options, the outreach required by FHA for reverse mortgages in default is significantly less rigorous than the outreach required under RESPA's early intervention rule, continuity of contact, and loss mitigation rules.

The lack of clear and meaningful outreach about foreclosure avoidance options has had devastating effects on elderly borrowers. Over 65% percent of homeowner advocates surveyed by NCLC estimated that lack of clear information about loss mitigation options posed a barrier to preventing foreclosure in 40% or more of their cases.[25]

Advocates have described a variety of harms to reverse mortgage borrowers that would be prevented by the application of Regulation X, subpart C:

- Dual tracking: foreclosure sales scheduled and carried out during a loss mitigation review[26]
- Lack of awareness of options; unclear communication[27]
- Lack of servicer attempts at live contact; opaque letters that homeowners don't understand[28]
- Failure to review loss mitigation applications in a timely manner[29]
- No ability to reach a servicing representative with information or authority,[30] and
- Heirs struggling to get information to sell the home or enter a deed in lieu of foreclosure.[31]

Prompt payoff statements for reverse mortgages are also extremely important. When the reverse mortgage borrower dies, heirs have the right to satisfy the loan for the lesser of the loan balance or 95% of fair market value of the home.[32] In order to assess their options and sell the home if there is still equity, heirs need to be able to get a prompt and accurate payoff quote. The Bureau should remove the reverse mortgage exception to its Truth in Lending Act prompt payoff rule.[33] There is no reason why a reverse mortgage servicer cannot provide an accurate payoff quote within seven business days.[34] Yet delays in receiving payoff quotes have threatened heirs' ability to close on sales and refinances.[35] Reverse mortgage borrowers and heirs should, like forward mortgage borrowers, be able to get a payoff statement within seven business days.

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[25] Mancini *supra* note 18, at 33 (describing results of a nationwide survey of 45 HECM advocates from 22 states).

[26] Mancini *supra* note 18, at 7.

[27] Mancini *supra* note 18, at 33 (over 65% of survey respondents said lack of information about options was a barrier to obtaining reverse mortgage loss mitigation in over 40% of their cases); 37-38 (74% of respondents said lack of information was an impediment to heirs avoiding foreclosure); 40 (more than have of interviewees mentioned clients getting the run-around from reverse mortgage servicers - having to submit documents multiple times, representatives that appeared to have no information, etc).

[28] *E.g.,* Robocalls; opaque letters

[29] Mancini *supra* note 18, at 45-46.

[30] *Id.* at 40-43.

[31] *Id.* at 53-56.

[32] 24 C.F.R. § 206.125(a)(2)(ii).

[33] 12 C.F.R. § 1026.36(c)(3) (seven business days for most loans; within a "reasonable time" for reverse mortgages.

[34] Reverse mortgage servicers do struggle to provide a prompt and accurate payoff quote when a loan is in active foreclosure, but a ban on dual tracking would address that issue and there is already a carve-out to the seven-day time period for loans in active foreclosure.

[35] Mancini *supra* note 18, at 53-56.

The fact that delinquency works differently for reverse mortgages should not be an impediment to including them in Regulation X.

The fact that delinquency works differently for reverse mortgages should not be an impediment to including them in Regulation X. The Bureau's definition of delinquency as beginning on "the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid"[36] would not work for reverse mortgages, because borrowers do not have the duty to make periodic payments. But reverse mortgages do go into default, and servicers are used to identifying the date of default and counting forward from that date. For reverse mortgages, loss mitigation obligations should run from the date the loan either becomes due and payable automatically or is eligible to be called due and payable.[37] The Bureau could simply add an additional sentence to the definition of delinquency, providing, "For reverse mortgage loans, a borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a loan becomes eligible for due and payable status, or enters due and payable status, whichever occurs first."

With this modified definition of delinquency, the servicing rules would be well suited to reverse mortgage loans. Early intervention should begin within 36 days (live contact) and 45 days (written efforts) of the default. Continuity of contact should be established, including the assignment of specific servicing personnel able to discuss loss mitigation, within 45 days. The servicer should not initiate foreclosure within the first 120 days of delinquency. Reverse mortgage borrowers need these protections, and it would not be difficult to apply them.

With the existing exemption, the most vulnerable homeowners - extremely low-income consumers who are subject to significant health impacts if evicted from their homes - currently get the fewest protections from preventable foreclosures. We urge the Bureau to remove this carve-out.

3. **The CFPB should require mortgage servicers to provide meaningful language access, in the form of translated vital servicing documents, to borrowers with limited English proficiency (LEP).**

It is impossible to divorce language barriers from other structural issues in our mortgage market. Taking the issue of zombie second mortgages as an example, one-third of the stories we compiled in the attached appendix dealt with borrowers who had limited English proficiency.[38] These language barriers adversely affected their understanding of the underlying mortgage contract, and often reinforced the mistaken belief that their second mortgages were either discharged in bankruptcy or modified into their main mortgage years before. These language barriers also caused the voices of third parties, like mortgage brokers and ill-informed bankruptcy attorneys, to have an outsized role in further reinforcing that misbelief. And when the time came to fight off impending foreclosure, these borrowers did not have the benefit of learning about their rights or options in their preferred language, leading them to sign loan

[36] 12 C.F.R. § 1024.31.

[37] Death of the borrower or transfer of the property results in the reverse mortgage becoming due and payable without Secretary approval. The loan becomes "eligible for due and payable status with HUD's approval" when the home ceases to be the borrower's principal residence or the borrower fails to pay property charges or otherwise breaches an obligation under the loan. *See generally* Draft HECM Handbook, *supra* note 23, at 287-288, https://www.hud.gov/sites/dfiles/SFH/documents/sfh_hb_4000_1_hecm_orig_serv_draft.pdf.

[38] *See* Appendix A, Examples of Homeowners Struggling with HELOC Second Mortgages, NAT'L CONSUMER L. CTR (Aug. 2023).

modifications they would struggle to afford, borrow money from friends and family, and contact bankruptcy attorneys. Put simply, language barriers exacerbate consumer harm. Mandatory language access is crucial to ensuring that loss mitigation is available to as many consumers as possible.

These issues are systematic and widespread. According to the 2021 American Community Survey, approximately 25.9 million individuals in the United States, roughly 8.2% of the U.S. population over the age of five, are limited English proficient ("LEP"), meaning they have a limited ability to read, write, speak, or understand English.[39] Thus, individuals with LEP make up nearly one in twelve Americans. Nearly two thirds of this population is Spanish speaking.[40] The challenges that LEP consumers face have been well documented by the CFPB[41] and other agencies concerned with housing finance and access to sustainable homeownership.[42]

In 2018, the Federal Housing Finance Agency (FHFA) created a Mortgage Translations Clearinghouse for common origination and servicing documents,[43] and now requires originators to ask loan applicants about their language preference in the Supplemental Consumer Information Form (SCIF).[44] FHFA also requires mortgage servicers to maintain this information in a queryable format, report data on borrower language preference back to FHFA, and transfer this information whenever the loan servicing transfers.[45] Beginning on August 28, 2023, the Federal Housing Administration (FHA) began requiring originators to use the SCIF as part of the application process for FHA-insured loans.[46]

While these welcome developments have contributed to several mortgage lenders' decision to invest in providing greater non-English language resources and documents to LEP mortgage

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[39] U.S. Census Bureau, *2017–2021 American Community Survey 5-Year Estimates*, American Community Survey (Washington, DC: U.S. Census Bureau) Table DP02 (accessed August 8, 2023), https://data.census.gov/table?tid=ACSDP5Y2021.DP02&hidePreview=true; *Why We Ask Questions About Language Spoken at Home*, U.S. CENSUS BUREAU, (accessed August 8, 2023), available at https://www.census.gov/acs/www/about/why-we-ask-each-question/language/.

[40] U.S. Census Bureau, 2017–2021 American Community Survey, *supra* note 39.

[41] *See e.g.*, Consumer Fin. Prot. Bureau, *Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace*, (Nov. 22, 2017), https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf; Consumer Fin. Prot. Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, (Jan. 13, 2021), https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/statement-regarding-the-provision-of-financial-products-and-services-to-consumers-with-limited-english-proficiency/.

[42] *See, e.g.*, Kleimann Communication Group for Fannie Mae and Freddie Mac, Language Access for Limited English Proficiency Borrowers: Final Report, (Apr. 2017), available at https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf; Fed. Hous. Finance Agency, Improving Language Access in Mortgage Lending and Servicing Request for Input (May 15, 2017), https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Language_Access_RFI.pdf.

[43] *Mortgage Translations*, FED. HOUS. FIN. AGENCY, (accessed August 8, 2023), available at https://www.fhfa.gov/MortgageTranslations.

[44] *FHFA Announces Mandatory Use of the Supplemental Consumer Information Form*, FED. HOUS. FIN. AGENCY, (May 3, 2022), https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx.

[45] *FHFA Announces Update for Servicers to Maintain Fair Lending Data*, FED. HOUS. FIN. AGENCY, (Aug. 10, 2022), https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Update-for-Servicers-to-Maintain-Fair-Lending-Data.aspx.

[46] Federal Housing Administration to Require Use of Supplemental Consumer Information Form, U.S. DEP'T OF HOUS. & URB. DEV., (Jun. 27, 2023), https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_126.

Without the incentive to attract LEP borrowers, language services in mortgage servicing and loss mitigation do not appear to have matched the progress on the origination side.

applicants,[47] we have observed this progress to be largely cabined to mortgage originators, which have an incentive to attract new borrowers. As the CFPB has noted, mortgage servicers are not subject to these incentives.[48] Without the incentive to attract LEP borrowers, language services in mortgage servicing and loss mitigation do not appear to have matched the progress on the origination side, even though Regulation X expressly allows servicers to provide required disclosures in languages other than English.[49] LEP mortgage borrowers need and deserve concrete protections, which can only be provided through regulatory mandates.

A lack of language assistance in the loss mitigation process can have dire consequences for already vulnerable families facing hardship. While large-scale study of loan performance and loss mitigation outcomes for LEP borrowers has long been difficult due to inconsistent data-gathering and record retention by servicers, a CFPB report on mortgage servicing metrics during the COVID-19 pandemic found that the proportion of delinquent LEP borrowers without a loss mitigation option after forbearance increased, while the proportion of non-LEP borrowers in the same situation decreased over the study period.[50] These findings illustrate that loss mitigation options are powerless to help borrowers stay in their homes if those borrowers are not given the opportunity to understand that they have options.

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Mandatory, government-translated written communications that convey essential information would go a long way to improving these outcomes. A study commissioned by Government Sponsored Enterprises Fannie Mae and Freddie Mac demonstrates the importance of providing translated vital documents.[51] The study found that many participants, even those that could comfortably speak English, preferred to have the opportunity to review written materials in their preferred language to verify their understanding.[52] The study also found that in the absence of in-language written materials, borrowers relied on third parties, such as family members (including children), friends, and

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[47] See, e.g., *Guaranteed Rate Launches One of The Most Extensive Spanish Language Mortgage Program in the US Housing Market*, GUARANTEED RATE, (Sept. 22, 2022), https://www.rate.com/news/guaranteed-rate-new-spanish-language-program#:~:text=LAP%20comprises%20many%20company%20initiatives,language%2Dservices%20for%20more%20information.

[48] Rohit Chopra, *supra* note 1.

[49] 12 C.F.R. §1024.32(a)(2)

[50] Consumer Fin. Prot. Bureau, *Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May- December 2021*, 3 (May 2022), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.

[51] Kleimann Communication Group for Fannie Mae and Freddie Mac, Language Access for Limited English Proficiency Borrowers: Final Report, (Apr. 2017), https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf.

[52] *Id.* at 7–8.

mortgage professionals, to interpret key terms.[53] This practice of relying on others to verbally convey information forces LEP borrowers to rely on their memories to recall information, and problematically, trust individuals who may not have the expertise to offer effective interpretation, or an incentive to convey the information in an objective manner.[54] This leaves LEP borrowers at a heightened risk of misunderstanding important documents, or worse, manipulation and abuse. This reality is unacceptable.

The CFPB should use the anticipated Regulation X rulemaking as an opportunity to act on its knowledge of the unique challenges that LEP mortgage borrowers face in loss mitigation by requiring that servicers provide at least a subset of required disclosures in-language.

The CFPB should use the anticipated Regulation X rulemaking as an opportunity to act on its knowledge of the unique challenges that LEP mortgage borrowers face in loss mitigation by requiring that servicers provide at least a subset of required disclosures in-language. We recommend that the Bureau implement this requirement in three steps. First, the CFPB should designate which documents are vital–that is, which are most important to ensuring that LEP mortgage borrowers understand their options in loss mitigation. At minimum, we recommend that these documents include the Early Intervention notice required under 12 CFR 1024.39, the notice required under 12 CFR 1024.41(b)(2), the short-term offer notice required under 12 CFR 1024.41(c)(2)(iii), the written offer or denial notice required under 12 CFR 1024.41(c)(1)(ii), the notice of servicing transfer under 12 CFR 1024.33(b)(1), and periodic statements required under 12 CFR 1026.41. These documents would be considered the universe of "vital" documents that would be implicated by the rest of these requirements. Second, we recommend that the CFPB require mortgage servicers to provide bilingual vital documents in both English and Spanish to every borrower, so long as a federal government agency has provided a bilingual model translation of that document. Third, the CFPB should require servicers to provide translated vital documents whenever a servicer is aware of a consumer's non-English language preference and where a federal government agency has published a model translated notice or document in that language. The CFPB should itself publish templates of the vital servicing documents listed here in at least the top five languages spoken by LEP consumers in the United States and should work to expand that list of translations over time.

This approach will accomplish several objectives. First, requiring universal bilingual vital documents in English and Spanish will allow the largest proportion of LEP borrowers to experience the benefits of improved language access in loss mitigation under Regulation X. In addition, requiring that servicers provide translations whenever a model vital document is available in the consumer's preferred language will enable smaller language groups to receive these notices as the number of complete and accurate government-provided translations grows, and as servicers begin to collect and maintain language preference information in a more systematic manner. In addition to serving these often underserved groups, structuring the mandate in this manner will also allow language access to improve in real time. The CFPB would have the time to undertake all appropriate measures to develop translated model notices and disclosures in different languages, and once the model translations are publicly available, servicers would be required to begin using them without the Bureau having to undertake additional rulemakings.

[53] *Id.*

[54] *Id.* at 8.

The CFPB has long appreciated the challenges that LEP borrowers face in understanding the terms of their mortgage but has not previously had the time to test required disclosures in other languages.[55] While consumer testing of model notices can be a significant undertaking, we urge the CFPB to prioritize LEP mortgage borrowers. The failure of mortgage servicers to voluntarily provide translated loss mitigation notices to consumers over the past decade since the servicing rule took effect shows the need for a mandate in this space. If one in twelve consumers will predictably and reliably misunderstand a notice, that notice cannot be considered effective. Just as all model notices should undergo rigorous consumer testing to ensure consumer comprehension, all disclosure-based regimes must also consider how LEP individuals will come to learn of their rights under federal consumer protection law.

4. Manufactured homes titled as real property should be covered by RESPA.

Momentum is building to increase the number of manufactured homes titled as real property and financed through home-only mortgages rather than through chattel loans—and these borrowers also need RESPA's protections.[56]

The statutory definition of "federally related mortgage loan" includes loans that are secured by manufactured homes titled as real property under state law, regardless of whether the lender has a lien on the land beneath the home. The statute requires the loan to be secured by "residential real property . . . designed principally for" family occupancy. 12 U.S.C. § 2602(1)(A). Yet HUD's 1975 regulation narrowed the definition by requiring the lien also to be secured by land. This should be revisited, as many states allow manufactured homes to be titled as real property even when the home is located on leased land. *See* Appendix B.

Conclusion

We appreciate the Bureau's continued engagement with homeowner advocates. We request an opportunity to meet regarding this petition, and we look forward to working with you to ensure RESPA more broadly meets the needs of today's homeowners. If you have additional questions about this request, please contact Alys Cohen at acohen@nclc.org.

Sincerely,

The National Consumer Law Center (on behalf of its low-income clients)

Attached:
Appendix A, Examples of Homeowners Struggling with HELOC Mortgages
Appendix B, Applicability of RESPA to Manufactured Homes

[55] When the CFPB initially promulgated the mortgage servicing rules under RESPA in 2013, the Bureau acknowledged the barriers LEP consumers face, but declined to require servicers to offer translated notices because it had "not had the opportunity to test the disclosures that the Bureau [was] adopting, or the pre-existing RESPA disclosures, in other languages."78 Fed. Reg. 10695, 10707 (Feb. 14, 2013). The CFPB would later reiterate that "LEP consumers should be served fairly, equitably, and in a nondiscriminatory manner," but had nearly identical reasons for declining to impose language access requirements when it amended the mortgage servicing rules in both 2016 and 2021. *See* Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 72160, 72163-4 (Oct. 19, 2016); Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X, 86 Fed. Reg. 34848, 34860 (Jun. 30, 2021).

[56] *See* Fannie Mae, What is Duty to Serve?, (2022), https://www.fanniemae.com/media/45201/display.

Appendix A: Examples of Homeowners Struggling with HELOC Mortgages

Zombie Second Mortgage HELOCs

A. East Hartford, Connecticut
Example provided by: Theresa Dudek-Rolon, Connecticut Fair Housing Center

A first-generation American, working-class couple took out a HELOC in the late 2000s. Their business was hit badly by the recession and in 2010 they fell behind on the loan payments. Shortly after that, they stopped receiving statements on their HELOC. They did not receive a statement for over ten years. In 2022, they suddenly began to receive statements again. They had never heard of the servicer, Planet Lending, sending the statements and thought the communications were a scam. They were then served with a foreclosure notice on their home. The servicer claimed that the couple owed over $135,000 at an interest rate of 14.9% on a loan from which they initially drew about $40,000. They have limited income as one of the homeowners is retired. The other has had to take time off work to fight this foreclosure, and their entire family has been mired in stress. They are current on their first mortgage and have equity in the home. The couple has had to ask their children for support. They were able to connect a legal aid attorney at the Connecticut Fair Housing Center who will help them defend the foreclosure.

B. Brooklyn, New York
Example provided by: Arthur Burkle, Neighborhood Economic Justice Project (Brooklyn, NY)

Another homeowner, from a primarily Black neighborhood in Brooklyn took out a HELOC in 2007 to help finance repairs to his home. Similarly affected by the financial crisis, he fell behind on the loan around 2008 and stopped hearing from the lender shortly after. He modified his first mortgage several years ago, and believed the HELOC to have been modified with it. He had not received any notices or statements for over 10 years when a servicer he had never heard of, FCI Lender Services, Inc. filed a foreclosure against him. The servicer claimed an unpaid principal of $97,000, and claimed to be owed in total almost $250,000. With an attorney’s help from the Neighborhood Economic Justice Project, the homeowner was able to get the foreclosure dismissed based on the statute of limitations.

C. West Palm Beach, Florida
Example provided by: Malcolm Harrison, MEH Real Property

A couple with two children took out a HELOC in 2005, for home improvement purposes. They made one withdrawal from the HELOC for about $50,000, and never made additional draws. They made substantial payments on the HELOC until around 2008 and the couple lost their livelihood. They stopped receiving statements then, for over a decade. In the meantime, they struggled with their first mortgage but managed to modify it and save their home from foreclosure. They assumed the HELOC had been modified along with their first mortgage.

In 2020, the current investor of the loan, 1 Oak Richland LLC, filed a foreclosure lawsuit demanding $120,000, $53,000 of which was interest and fees. In conversations, the investor offered an unsustainable loan modification at 10% interest that had to be accepted within 7 days. The investor/debt collector texted the homeowner threatening messages, and after he learned that the couple had sought legal counsel, told the homeowner over the phone that he would "bury him" and take his house. The loan has been transferred between different servicers including Value-add Mortgage Fund and CTF Asset Management four times. The couple and their attorneys are currently fighting the lawsuit.

D. Los Angeles, California
Example provided by: Jumana Bambot, Public Counsel, Los Angeles

A 60-year-old Black homeowner took out a HELOC in 2006 as part of an 80/20 mortgage. After the economic crisis, he filed for bankruptcy in 2010, and stopped receiving HELOC statements. In 2020, he unexpectedly heard from a new servicer, who sent him a notice and offered him a loan modification. However, he had just lost his job and was not in a position to take on an additional financial burden. Two years later the servicer recorded a notice of default. The homeowner reached out to the servicer, who offered a loan modification provided that he pay a large deposit and even larger balloon payment. The homeowner was afraid to lose his home and felt he had no other options, so he agreed to the terms and managed to scrape together the deposit. Though he has now modified the loan, he has no idea how he will pay the balloon payment. He has contacted Public Counsel, Los Angeles for help.

E. Los Angeles, California
Example provided by: Jumana Bambot, Public Counsel, Los Angeles

A 62-year-old Latinx homeowner, who speaks only Spanish, took out a HELOC for about $130,000 for an 80/20 mortgage in 2006. She has diligently kept up with her first mortgage, but filed for bankruptcy in 2013 and was informed by her bankruptcy attorney—who is now disbarred—that filing for bankruptcy had discharged her HELOC, among other debts. She did not hear anything from any servicer after she filed for bankruptcy. But in 2022, she received a letter demanding $223,000 under threat of foreclosing her home. The letter claimed that $136,000 of that amount was unpaid principal.

The homeowner did not understand the situation, or how she could possibly owe on a debt that an attorney had assured her had been discharged. She was unable to put any money toward this repayment, since most of her income goes toward her first mortgage payments. Her case has not been settled but she has connected with Public Counsel, Los Angeles for help.

F. Stockton, California
Example provided by: Johanna Torres, California Rural Legal Assistance

A disabled, elderly homeowner with limited English proficiency took out a HELOC for $95,000 in 2006 to help pay for home repairs. She remained current on payments for six or seven years, until the interest payments grew so high that she became unable to keep up. She filed for bankruptcy, and believed the loan had been discharged. She stopped hearing from her servicer after she filed for bankruptcy.

She did not hear from the investor for about a decade. She then received a notice of foreclosure on her home in 2022. After contacting the HELOC servicer, Specialized Loan Servicing, the homeowner was offered a loan modification with a $27,000 down payment and a $700 monthly payment, plus a final balloon payment of over $4,000. Afraid to dispute the amount or request more information given the active notice of sale, she borrowed from friends and family to accept the loan modification and save her home.

G. Delano, California
Example provided by: Johanna Torres, California Rural Legal Assistance

A limited-English-proficiency homeowner bought a home in 2006 under the terms of an 80/20 mortgage, but was not informed that 20%, $60,000, of her debt was tied to a HELOC. The broker told her that this was the only way she could get this kind of loan.

She initially fell behind on her mortgage (and HELOC) payments in 2007–08, at the time of the economic crisis. She eventually managed to modify the interest on her first mortgage, and was informed that the secondary loan was no longer a problem.

She had no reason to doubt this until 2022, when Specialized Loan Servicing contacted her demanding over $100,000, including a non-negotiable down payment of $29,000, to stop the servicer from filing for foreclosure. Unable to afford $29,000, the homeowner was forced to contact bankruptcy attorneys.

H. Salinas, California
Example provided by: Johanna Torres, California Rural Legal Assistance

An elderly homeowner with limited English proficiency bought a home in 2007 with an 80/20 mortgage. He was not aware that his 20% loan, for $100,000, had been filed as a HELOC. He never received statements regarding the HELOC, either from the servicer or anyone else, from 2007 through 2021. The original servicer went out of business and dissolved, and the homeowner had modified his first mortgage successfully, so he assumed that the HELOC had dissolved with the servicer.

In 2021, the homeowner began to receive calls and collection letters from Real Time Resolutions regarding the HELOC. He had never heard of Real Time Resolutions. They claimed he owed $123,000. He believed it to be a scam until a notice of default was filed against his home. The servicer told him that to save his home, he would need to pay $14,000 to secure a temporary loan modification. He wanted more information and doubted the legitimacy of the servicer, but they would not provide it. He had no way to know if even the amount claimed was correct or dispute the amounts before having to make a decision on the loan mod.

Afraid to wait and possibly lose his home, the homeowner agreed to the loan modification. He, his wife, and his brother-in-law have been burdened with fighting to save this home and pulling together thousands of dollars without warning. The homeowner is currently making payments to the new servicer. Though he is not in foreclosure now, he is at risk.

I. Montgomery County, Maryland
Example provided by: Phillip Robinson, Consumer Law Center, Maryland

Another homeowner originated a HELOC in 2007 with a credit limit of $140,000. She fell behind on payments in 2011 and did not hear from the owner or servicer of the loan for many years. The loan was transferred between servicers multiple times, but there was no significant activity on the HELOC until 2020, when a foreclosure was filed against the homeowner. By that time, the homeowner had accumulated significant equity in the property. The foreclosure was delayed because of the pandemic. As of 2021, the servicer, SCI was asking for over $229,000 to satisfy the debt. The homeowner was able to retain an attorney on a contingency basis and the foreclosure action is on appeal.

J. Baltimore County, Maryland
Example provided by: Phillip Robinson, Consumer Law Center, Maryland

A homeowner who was very sick took out a HELOC in 2006 for $88,500 to help pay for his living and medical expenses. He fell behind on payments after two years. Eventually, the creditor sued him personally for nonpayment and obtained a default judgment in 2014. The following year, he passed away.

The homeowner's brother and mother still live in the house subject to the HELOC. Though all creditors should have come forward with claims within six months of the homeowner's death, no one filed for the HELOC debt. The occupants did not know about the debt because they did not receive any communications. Years later, however, the servicer, Specialized Loan Servicing, came forward and attempted to foreclose on the original homeowner's brother and mother. They are claiming $180,500 is owed. The current occupants were able to retain an attorney and are currently fighting this foreclosure.

HELOC Successor in Interest/ Loss Mitigation Problems

K. Atlanta, Georgia
Example provided by: Rachel Scott, Atlanta Legal Aid Society

A 74-year-old African American homeowner had purchased his home in the 1970s, lived there for more than 40 years, and paid off his mortgage. In 2005, he and his then-wife (who was never on title to the home) took out a Home Equity Line of Credit primarily for payment of some of her debts. The couple divorced later that year, and the court awarded the home to the husband/homeowner, and ordered his ex-wife to pay the HELOC. He did not receive any statements on the loan, because the statements were apparently being sent to his ex-wife. He did not realize the loan was in default until he received notice of foreclosure in 2019 or 2020.

The homeowner filed Chapter 13 bankruptcy to stop the foreclosure sale, and then attempted to apply for a loan modification. Specialized Loan Servicing provided conflicting/confusing information about the application status. Representatives would confirm that they received everything, but then say they still needed a signed application form (which had already been provided). SLS finally provided a letter stating that the ex-wife was required to be included as a co-applicant and provide all of her financial information. The legal services attorney provided the divorce decree and explanation letter as to why her participation was not required, since the homeowner was the sole person on title and had been awarded all interest in the home in the divorce. SLS continued to demand that the ex-wife either had to be on the application, or she needed to sign a quitclaim deed to our client (which should not have been necessary because she had no ownership interest to deed to him). Nonetheless, the ex-wife cooperated in signing a deed and SLS finally confirmed in writing that the application was complete. However, for several months, the homeowner did not receive a decision or any further communication about his application. SLS ultimately denied the application, and still included the ex-wife's information on the decision letter. The homeowner had no other option than to take out a reverse mortgage to pay off the HELOC and save his long-time home.

L. Washington County, Minnesota
Example provided by: Sheila Hawthorne, HUD Certified Housing Counselor, Washington County Community Development Agency

A recently divorced woman was awarded the marital home in the property settlement, but her ex-husband failed to make the required payments on the HELOC and US Bank initiated foreclosure. The bank refused to communicate with her because she was not named on the promissory note. She reports that the CFPB also refused to address her complaint for the same reason--the CFPB forwards the complaint to the servicer, who responds that the borrower is not on the loan and the complaint is closed.[1] After getting help from a housing counselor and a state emergency fund, she was able to reinstate the loan and stop the foreclosure.

But, when she tried to contact the servicer to ask what the monthly payment was, so she could keep the loan current, they again refused to talk to her despite accepting the reinstatement funds in her name along with proof that she is the successor in interest. She and her housing counselor continue to receive conflicting responses and information from the US Bank but are unable to compel cooperation because they have been told that HELOCs are not subject to the successor-in-interest rule.

[1] This client filed CFPB Complaint # CFPB #221221-9997648 (Dec. 21, 2022).

Mortgage Lending

3.2.2.3 Applicability to Manufactured Homes

The extent of RESPA's applicability to transactions involving manufactured homes is debatable. The definition of "federally related mortgage loan"[79] includes loans made by a "dealer," a term elsewhere defined as someone engaged in the retail business of selling manufactured homes.[80] And loans secured by manufactured homes are clearly subject to RESPA when the loan is *also* secured by a lien on the real property under the home.[81] This much is clear because the Act requires loans to be "secured by a . . . lien on residential real property . . . designed principally for the occupancy of from one to four families." The land beneath the home is real property and the manufactured home meets the occupancy requirement. Regulation X's definition of "federally related mortgage loan" specifically includes loans secured by real property "upon which there is . . . [l]ocated or, following settlement, will be placed" a manufactured home.[82] HUD confirmed that RESPA covers loans secured by manufactured homes under these circumstances in the *Federal Register* notice announcing the original version of Regulation X and in a more recent, informal statement on HUD's website.[83]

In contrast, there are coverage issues for manufactured homes that are—themselves—titled as real property but that are located on land that is not subject to the lender's lien. Manufactured homes may be titled either as personal property (chattel) or as real property, depending on state law.[84] Manufactured homes may be purchased with land (sometimes called a "land-home contract"), but they may also be purchased without land. A home purchased without land may be placed on rented land, a lot leased from a manufactured-home community, or on land already owned by the consumer or a family member. When state law allows a manufactured home to be titled as real property, the homeowner's interest in the land will have no bearing on the nature of the title and should have no bearing on whether RESPA applies to the loan used to purchase the home.

The statutory definition of "federally related mortgage loan" appears to include loans that are secured by manufactured homes titled as real property regardless of where the home is placed or whether the lender has a lien on the land beneath the home. The Act requires the loan to be secured by "residential real property . . . designed principally for" family occupancy.[85] When the manufactured home is titled as real property, it meets both of these requirements regardless of where the home is placed.

The Regulation X definition of "federally related mortgage loan" first proposed in 1975 followed the statutory definition.[86] But when the final regulation was announced, the definition was changed to require a lien on real estate "upon which there is located a structure, including a mobile home owned or to be owned by the borrower."[87] The notice provided no explanation for the change, except to mention that HUD had received comments requesting "clarification of the coverage of mobile homes."[88] The notice then stated that the final regulations only covered "mobile homes and mobile home lots" if both were purchased with the loan at issue.[89]

So the final version of Regulation X's definition of "federally related mortgage loan," which remains unchanged in this regard, appears to add a restriction that has no basis in the statute. Furthermore, HUD provided no justification for this restriction. HUD's suggestion that the change was in response to requests for "clarification," could mean the definition should be interpreted as consistent with the statutory definition, despite HUD's unsupported statement that land must be included in the transaction.

There are a number of reasons why HUD's interpretation is inappropriate. There is little substantive difference between condominium units, shares in a cooperative, and timeshares—all of which are subject to RESPA—and manufactured homes. In addition, even if HUD's interpretation was correct at the time, it has been superseded by other developments.

Shortly after HUD announced its interpretation and finalized the original Regulation X,[90] HUD finalized separate regulations defining new standards for mobile home construction.[91] Homes built under the new "HUD Code" were substantially safer and more durable than older mobile homes. So the homes described in HUD's interpretation are no longer made for residential use. Homes meeting the HUD Code are now called "manufactured homes." Today's manufactured homes are difficult to move once set up and are, therefore, no longer "mobile" as were pre-HUD-Code mobile homes. Instead, today's manufactured homes are very similar to site-built homes and may be classified as real property under many state statutes.[92]

In addition, the requirement that a lien on real estate be involved does not specify the size or location of the real estate, or that the lien be the sole security for the loan. The only requirement is that the land be the site of a "a structure . . . owned or to be owned by the borrower."[93] Thus the real estate could be a postage-stamp sized portion of the ground under the home that secures one percent of the loan amount. Or the real estate could even be another parcel of land with a structure on it, located somewhere entirely unrelated to the manufactured home.

Because there is no rational basis for differentiating among manufactured homes this way, it would be more appropriate to construe the "upon which" language either as an anachronism not relevant to manufactured homes meeting the HUD Code or as an arbitrary limitation that exceeded HUD's authority in adopting Regulation X.

Footnotes

79 *See* § 3.2.2.1, *supra* (discussing definition of federally related mortgage loan).

80 Reg. X, 12 C.F.R. § 1024.2(b).

81 Dep't of Hous. & Urban Dev., FAQs About RESPA for Industry (undated) (available online as companion material to this treatise) ("[A] loan secured by a manufactured home (mobile home) [is a] covered transaction under RESPA . . . only if the manufactured home is located on real property on which the lender's interest is secured by a lien."). *See* 40 Fed. Reg. 22,448 (May 22,

1975) (final notice for original Reg. X stating "The final regulations cover, mobile homes and mobile home lots only if both the mobile home and the lot on which it is to be located are being purchased with the proceeds of the loan in question."; *N.B.* Other aspects of RESPA's scope have been expanded since 1975 so the purchase limitation found in the 1975 rule no longer applies).

82 Reg. X, 12 C.F.R. § 1024.2(b).

83 Dep't of Hous. & Urban Dev., FAQs About RESPA for Industry (undated) (available online as companion material to this treatise); 40 Fed. Reg. 22,448 (May 22, 1975). *But see* § 3.2.1, *supra* (discussing whether all HUD interpretations have been superseded).

84 *See generally* National Consumer Law Center, Consumer Credit Regulation § 11.5.2 (3d ed. 2020), *updated at* www.nclc.org/library.

85 12 U.S.C. § 2602(1)(A).

86 *Compare* 40 Fed. Reg. 7072 (Feb. 18, 1975) (proposed 24 C.F.R. § 82.1(a)(1)), *with* Pub. L. No. 93-533, § 3(1)(A), 88 Stat. 1724 (1974).

87 40 Fed. Reg. 22,448 (May 22, 1975) (final version of 24 C.F.R. § 82.2(e)).

N.B. In the final version, the regulation used the term "Home Mortgage" rather than "federally related mortgage loan." The terminology was later changed back to the statutory term.

88 40 Fed. Reg. 22,448 (May 22, 1975).

89 *Id.*

90 *Id.*

91 40 Fed. Reg. 58,752 (Dec. 18, 1975). *See* 24 C.F.R. § 3280.2 (defining "manufactured home").

92 *See* National Consumer Law Center, Consumer Credit Regulation § 11.5.2 (3d ed. 2020), *updated at* www.nclc.org/library.

93 40 Fed. Reg. 22,448 (May 22, 1975) (final version of 24 C.F.R. § 82.2(e)).

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