



Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures

February 2024

Overview

The Consumer Financial Protection Bureau (CFPB) is currently working on a proposed regulation to update its mortgage servicing rule to permanently allow for streamlined loss mitigation reviews.¹ The National Consumer Law Center (NCLC)² conducted a nationwide survey in January 2024 to shed light on certain ongoing challenges that create an elevated risk of foreclosure.

The survey findings show that the Bureau, while updating the mortgage servicing rule, should address gaps in the current regulation that leave particularly vulnerable homeowners at risk:

- heirs who inherit a home subject to a mortgage;
- homeowners with long-dormant “zombie” second mortgages; and
- borrowers with limited English proficiency (LEP).

The Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X require mortgage servicers to follow certain procedures to communicate with struggling homeowners about loss mitigation options, review and evaluate applications, investigate errors, and provide information about the servicing of the mortgage loan. While the original rule required every application to be handled through a fully documented process, the Bureau is now considering whether and how to permit servicers to review homeowners for loan modifications and other relief based on a “streamlined” application, which might proceed solely by phone and without documentation of income.

Adapting Regulation X to permit streamlined reviews with appropriate protections is extremely important. However, to engage in that process without addressing exclusions and barriers that prevent access to the new protections would be like operating to repair an injury to the heart while leaving a visible tumor on the lungs. While Regulation X is open on the table, now is the time to help ensure that the changes are available to the range of borrowers who need them and that the regulation fulfills the purposes for which it was designed: avoiding unnecessary foreclosures.³ We call on the CFPB to take the following steps:

1. Close the loophole in the successor in interest rule to protect heirs from avoidable foreclosures;
2. Protect homeowners with “zombie” second mortgages, including Home Equity Lines of Credit; and
3. Require simple and broad language access, in the form of translated vital servicing documents and oral interpretation, to borrowers with limited English proficiency across the mortgage market.

Nationwide Survey of Homeowner Advocates

NCLC conducted a nationwide survey of homeowner advocates from January 22 to January 29, 2024. More than 100 people working in 26 states responded to the survey.⁴ The respondents were HUD-certified housing counselors (46), legal services attorneys (43), private consumer attorneys (8), other nonprofit employees (3), and one court employee.

The survey's results show significant ongoing problems with successor-in-interest reviews, zombie second mortgages, and communication with LEP consumers about loss mitigation. While the CFPB's mortgage servicing regulations have led to major strides in procedural transparency and fairness in loss mitigation, these particular challenges remain.

Successors in Interest

The Problem

People who inherit a home or are awarded it in a divorce, but are not the original borrower on the mortgage (so-called "successors in interest"), are still struggling to keep their homes, even where they qualify for assistance. NCLC continues to hear from homeowner advocates around the country that they are being contacted by a significant number of successors in interest, many of them older adults, who are struggling to obtain loss mitigation and information about the mortgage secured by their home, despite the existing RESPA rule. Servicers fail to timely evaluate documents submitted, request the same document over and over again, and ask for documents that do not exist or are not reasonably necessary.⁵

The CFPB updated its mortgage servicing rules in 2016, effective April 2018, giving these successors the protections of the RESPA and Truth In Lending Act (TILA) mortgage servicing rules, but only once they are "confirmed" by the mortgage servicer as a successor in interest. The Bureau took that action based on reports of widespread confusion about these homeowners' rights and options, but left the determination of whether a homeowner qualifies as a successor at the discretion of the servicer.⁶ More than five years after the successor rule took effect, attorneys and counselors representing homeowners continue to cite successor problems as among the most difficult problems they face as they work to save homes from foreclosure. Successors in interest face ongoing problems while attempting to save the family home.

Older Adults, Women, and Communities of Color are Disproportionately Impacted

This is a major issue impacting older adults, as most people inheriting the home of a spouse or parent are in their 60s or older. Older adults may also face technological barriers that make it difficult for them to communicate with servicers, particularly in the immediate aftermath of a family member's death. The harm also falls disproportionately on women, as they are more likely to survive a male spouse and to have been a non-borrower on the home loan due to the wage gap. Moreover, like so many economic justice issues, the burden of these mortgage servicing problems is also hitting the hardest in communities of color due to lower accumulated wealth and a slower full economic recovery after the COVID-19 pandemic.⁷ For these communities, successor issues threaten their ability to build and transfer generational wealth.

Survey Results

The NCLC survey demonstrated that successors face widespread challenges being confirmed as a successor in interest, increasing their risk of foreclosure. The primary survey findings related to successors in interest are described below.

1. Servicers are requesting unreasonable proof of successor status and causing unreasonable delays in confirming successors in interest.

The problems faced by successors reflect noncompliance with the existing successor in interest rule and highlight a need for greater clarity in the rule. Servicers are imposing unnecessary delays and roadblocks in the process of confirming a successor in interest, and successors have no enforceable remedy until the servicer “confirms” them.

Struggling to Get Confirmed

More than 80% of respondents reported that they had worked with clients who, despite sending the documentation reasonably necessary to show their identity and ownership interest, still struggled to get a servicer to confirm their status. Over half of respondents said they had experienced this “several” or “many” times:

Have you been in contact with a successor in interest who is struggling to get the servicer to agree they are a “confirmed” successor despite the fact that they have sent all the documentation that is reasonably necessary to show their identity and ownership interest?
(Survey Question 3, 101 Responses)



Repetitive Requests

Three in four respondents had worked with successors in interest whose servicers required them to submit the same document(s) multiple times.

Have you been in contact with a successor in interest whose servicer is requiring them to submit the same document or documents multiple times? (Question 4, 99 Responses)



Unreasonable Requests

Nearly 40 percent of respondents said they had been in contact with a successor in interest whose servicer required them to submit documents that either do not exist or are not reasonably required under the applicable law and facts, with over a quarter of surveyed respondents expressing that they had experienced this “several” or “many” times.

Have you been in contact with a successor in interest whose servicer is requiring them to submit documents that do not exist or are not reasonably required under the applicable law and facts? (This could include, for example, a servicer demanding a probate court order where probate was not required under the applicable law and facts.) (Question 5, 100 Responses)



Back to Square One

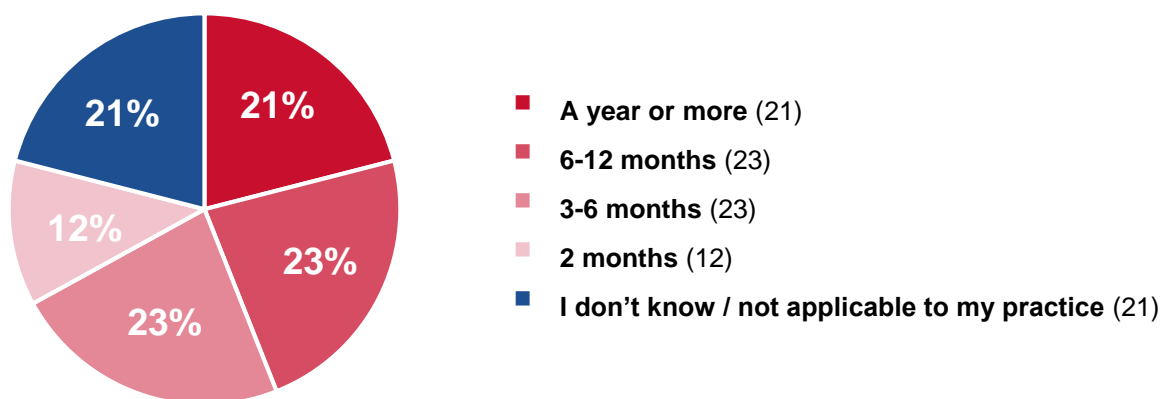
Nearly half of respondents had been in contact with a successor in interest who was confirmed as a successor in interest by a servicer, but was later treated as if they were not a confirmed successor by the same servicer. Roughly one in five respondents had experienced this “several” or “many” times.

Half of respondents surveyed had been in contact with a successor in interest who was initially confirmed as such by a servicer but who, *after a servicing transfer*, were treated as if the initial confirmation had not occurred (i.e., were required to submit documentation to be confirmed by the new servicer).⁸

Long Delays

Nearly three in four respondents reported an unnecessary delay of three months or longer from a mortgage servicer in confirming a successor in interest, with over one in five respondents experiencing a delay of a year or more:

What is the longest unnecessary delay you have seen by a mortgage servicer in confirming a successor in interest? (Question 9, 100 Responses)



Recommendations

- **The Bureau should modify the definition of a “confirmed successor” to be any person who *has provided* reasonable proof of successor status.**
- In the alternative, the Bureau could create a private right of action when a servicer fails to provide to the potential successor in interest a description of the documents reasonably required to confirm successor status or fails to confirm a successor within certain reasonable timeframes.
- In addition, supervision and enforcement of any rule is vitally important.

2. Successors need dual tracking protections while being confirmed and applying for loss mitigation.

Another problem reflected in the survey results is that successors are facing the risk of foreclosure while attempting to get confirmed as a successor in interest, all with the goal of applying for loss mitigation. If a mortgage is already more than 120 days past due when the original borrower passes away, a successor in interest needs dual tracking protections while they communicate with a servicer and provide the appropriate reasonable documents to prove successor status. In our survey, more than 75 percent of respondents had been contacted by clients at risk of foreclosure while their servicer delayed unreasonably in confirming them as a successor in interest, with nearly 40 percent of respondents having experienced this “several” or “many” times.

Have you been contacted by a successor in interest who was at risk of foreclosure while the servicer delayed unreasonably in confirming them as a successor in interest? (Question 8, 99 Responses)



One Georgia advocate recently highlighted this problem. Her client, Mrs. B, was a 73-year-old African American widow who had lived in her home for over 29 years. Mrs. B’s husband had always handled the mortgage payments and did not discuss the mortgage with his wife. Mrs. B did not realize that the mortgage payments had fallen behind during the illness that eventually led to her husband’s death.

After her husband died and she learned that the mortgage was in default, Mrs. B promptly began communicating with the mortgage servicer to try to find a way to save her home. Servicer representatives repeatedly told Mrs. B that they could not communicate with her because she was not on the loan. They did not tell her what she needed to do to be recognized as a successor in interest.

In late March 2023, a supervisor at the servicer finally told Mrs. B that she could submit a loan modification application, which she did on March 31, 2023. On April 4, 2023, the mortgage servicer conducted a nonjudicial foreclosure of Mrs. B’s home. On April 5, 2023, she called the mortgage servicer (believing the foreclosure had not gone through), and the representative she spoke with told her she needed to file for probate of her husband’s estate. Despite her many prior phone calls, this was the first time the servicer had mentioned probate.⁹

Recommendations

- **The CFPB should provide dual tracking protections to successors in interest once they have notified a servicer that they are a potential successor in interest.**
- These protections should last until the servicer requests and the successor provides reasonable documentation of successor status. Successors need a reasonable amount of time to prove their status and apply for a loan modification before they face loss of the family home.

3. Co-owners who signed the security instrument, while not included in the definition of successor in interest, also need protections.

The survey results also reflect instances from around the country of homeowners who were jointly on the title to the home but are having difficulty getting information about the mortgage because they signed only the security instrument, not the note. These co-owners are not covered by the definition of “successor in interest” if there has not been a transfer of title to a spouse or through a divorce or if they were never married to the borrower.

Co-owners Struggling

More than three quarters of respondents surveyed had experienced a situation in which a co-owner of the property who signed the security instrument (mortgage or deed of trust) but was not a borrower on the promissory note struggled to get information about the mortgage or apply for loss mitigation.

*Have you been in contact with a co-owner of the property who signed the security instrument (mortgage or deed of trust) but was not a borrower on the promissory note and is struggling to get information about the mortgage or apply for loss mitigation? (Question 10, 100 Responses)*¹⁰



Of particular concern, many of these cases involve domestic violence, and the co-owner is an individual who has remained in the home and has not yet been able to obtain a divorce or a quitclaim deed from an abusive ex-partner or spouse who has left the home. Often the servicer will tell the survivor that they cannot get information about the mortgage loan or apply for a loan modification unless the ex participates in the process or signs a quitclaim deed, but communicating with the ex-partner or spouse puts these homeowner-occupants at significant risk.

Survivors at Risk

Nearly two in five respondents had worked on cases where a co-owner of the property was a survivor of intimate partner violence or emotional, financial, or physical abuse, with nearly 20 percent of respondents experiencing these cases “several” or “many” times:

If you have been in contact with a co-owner of the property who signed the security instrument (mortgage or deed of trust) but was not a borrower on the promissory note, and is struggling to get information about the mortgage or apply for loss mitigation, have these cases involved situations where the co-owner is a survivor of intimate partner violence or emotional, financial, or physical abuse? (Question 11, 95 Responses)



Recommendations

The Bureau should include a definition of “borrower” in Regulation X that would include a signatory to the security instrument even if they did not sign the promissory note. This would make sense for the same reasons it made sense to include successors in interest in the definition of borrower: a person is entitled to information and loss mitigation for the mortgage secured by their home.

Zombie HELOCs

The Problem

Borrowers with home equity lines of credit (HELOCs) have the same problems—and therefore need the same protections—as closed-end mortgage borrowers. This is particularly true once the home equity line has been fully drawn and the borrower is in the repayment period.

Many long-time homeowners are currently threatened with foreclosure of home equity lines that were originated during the subprime lending boom and were never truly open-end credit. These loans went dormant for many years - with no periodic statements or communication from the servicer to the borrower - only to reemerge and threaten foreclosure. So-called “zombie second mortgages” include a substantial number of HELOCs.¹¹

Appendix B 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 they stopped receiving statements. Their servicer did not send them any statements for more than 10 years. In 2022, they suddenly began to receive statements again, but from a new servicer, Planet Lending, which they had never heard of before. As a result, they thought the communications were a scam. The couple was then served with a foreclosure notice claiming they owed over \$135,000 at an interest rate of 14.9%, despite only drawing about \$40,000 on the line of credit. 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 open end (HELOC) loans as for closed-end 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.

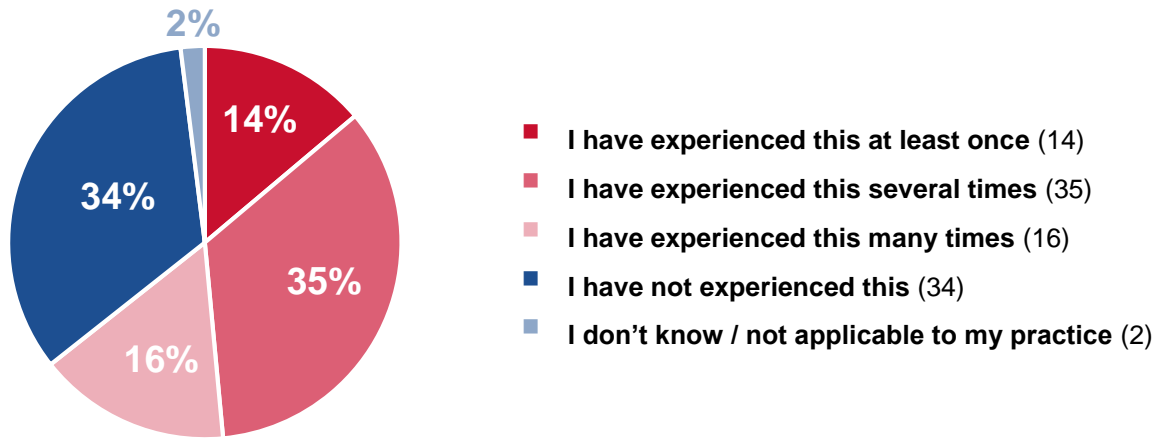
Survey Results

The NCLC survey demonstrated that servicer collections and foreclosure actions on zombie second mortgages are a major problem, and a significant percentage of zombie second mortgages are HELOCs.

Prevalence

Nearly two thirds of survey respondents had been in contact with a homeowner at risk of foreclosure by a second mortgage that was more than 10 years delinquent and for which the homeowner said they were not receiving periodic mortgage statements in recent years, with over one third of respondents having experienced this several times.

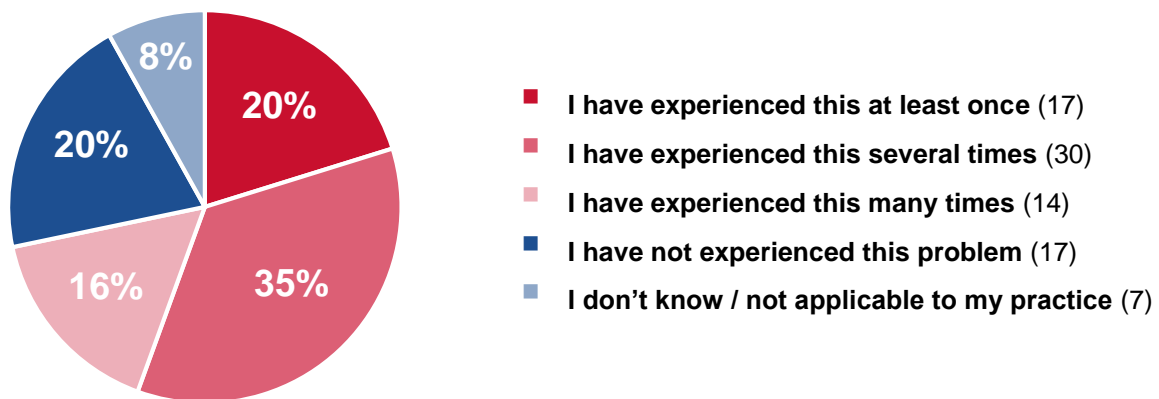
Have you been in contact with a homeowner who is at risk of foreclosure by a second mortgage that is more than ten years delinquent and for which the homeowner says he or she was not receiving periodic mortgage statements in recent years, so-called "zombie second" mortgages? (Question 12, 101 Responses)



Collecting Interest Retroactively

More than seven in 10 respondents had seen instances where the servicer appeared to be attempting to collect mortgage interest that accrued over a period of time when the homeowner reported they were not receiving periodic mortgage statements, with over half reporting they had experienced this several or many times.

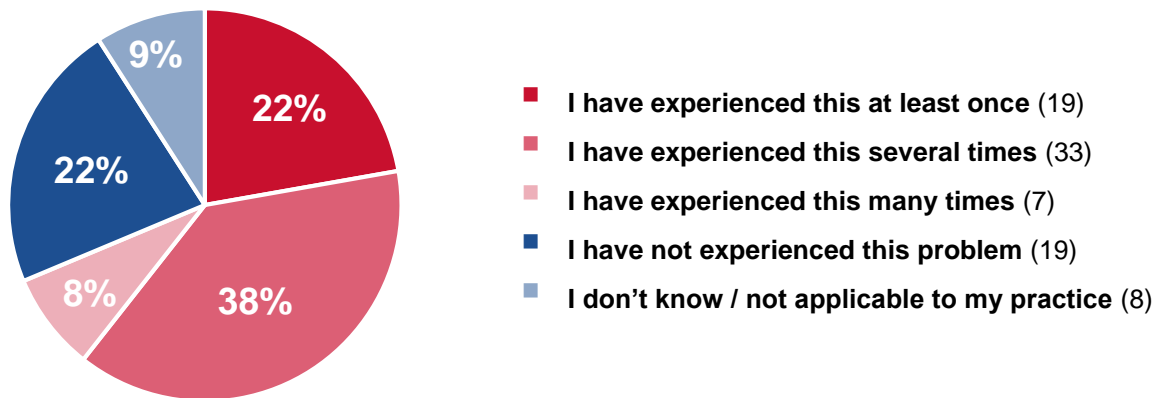
With zombie second mortgages, have you seen instances where the servicer appears to be attempting to collect mortgage interest that accrued over a period of time when the homeowner reports they were not receiving periodic mortgage statements? (Question 13, 85 Responses)



Straight Into Foreclosure

Roughly 70 percent of respondents experienced instances where the first communication from the servicer after a period of the homeowner not receiving statements for many years was a notice of intent to foreclose or other communication related to initiating foreclosure. Nearly half of respondents had seen this several or many times.

With zombie second mortgages, have you seen instances where the first communication from the servicer after a period of the homeowner not receiving statements for many years was a notice of intent to foreclose or other communication related to initiating foreclosure? (Question 15, 86 Responses)



HELOC Zombies

Almost two thirds of respondents surveyed had seen instances where a zombie second mortgage was a home equity line of credit (HELOC). Roughly 40 percent of respondents had seen this several or many times.

Have you seen instances of zombie second mortgages where the zombie mortgage was a home equity line of credit (HELOC)? (Question 14, 86 Responses)



Recommendations

- **The CFPB should cover HELOCs in the RESPA servicing rules, especially the rules allowing for Notices of Error, Requests for Information, and loss mitigation protections.** The billing dispute rights that apply to open-end credit are not equivalent to the NOE and RFI rights in Regulation X.
- For too many borrowers, Regulation X's current treatment of HELOCs is a one-way street to foreclosure. The statute contains no HELOC exemption, and we disagreed with the decision to preserve the regulatory HELOC exemption in 2013.¹² Significant shifts in the mortgage lending and servicing markets over the last 10 years have further illuminated the need to give HELOC borrowers these important protections.

Consumers with Limited English Proficiency

The Problem

It is impossible to divorce language barriers from other structural issues in our mortgage market. Language barriers in the loss mitigation process block consumers with limited English proficiency from accessing measures that could save their home in a timely manner. Taking the issue of zombie second mortgages as an example, one third of the HELOC stories we compiled in the attached Appendix B involved borrowers who had limited English proficiency (LEP).¹³ When the time comes to fight off impending foreclosure, these borrowers do not have the benefit of learning about their rights or options in their preferred language. Mandatory language access is crucial to ensuring that loss mitigation is available to as many consumers as possible when they need it most.

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.¹⁴ These findings illustrate that loss mitigation options do not work to help borrowers stay in their homes if those borrowers are not given the opportunity to understand that they have options and to meaningfully communicate with their servicer.

Survey Results

The NCLC survey revealed that consumers with limited English proficiency face significant barriers in accessing loss mitigation, leading to delays and, sometimes, unnecessary foreclosure.

Prevalence

Over half (51%) of survey respondents indicated that they had been in contact with LEP homeowners who, because all relevant notices were sent in English, struggled to obtain loss mitigation options. Nearly one third of respondents had experienced this with their clients several or many times.

Have you been in contact with a homeowner with limited English proficiency who struggled to obtain loss mitigation options due to the fact that all loss mitigation notices were sent in English? (Question 16, 101 Responses)



Causing Delays

Nearly half (46 percent) of respondents surveyed had worked with a homeowner with limited English proficiency who was delayed in the process of seeking loss mitigation assistance due to the fact that all loss mitigation notices were sent in English, with one quarter of respondents experiencing this several or many times.

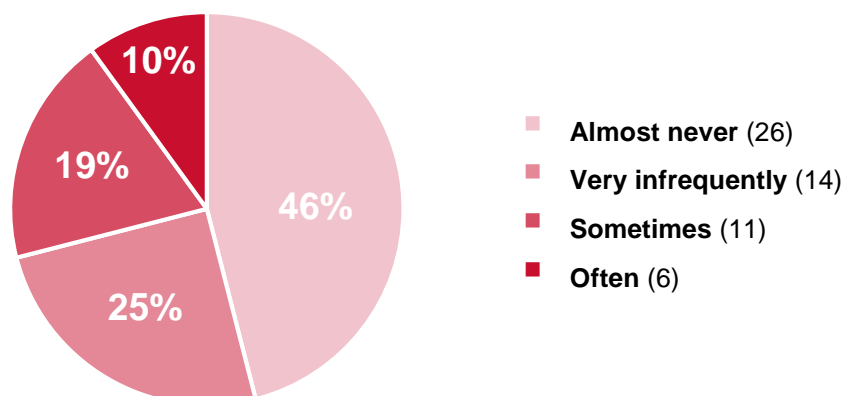
Have you been in contact with a homeowner with limited English proficiency who was delayed in the process of seeking loss mitigation assistance due to the fact that all loss mitigation notices were sent in English? (Question 17, 99 Responses)



English-only Notices

Of respondents who indicated they frequently represent homeowners with limited English proficiency, only 10 percent indicated that servicers often sent loss mitigation notices in non-English languages. Nearly half of respondents working with LEP homeowners expressed that servicers “almost never” or “very infrequently” send such notices.

If you frequently represent homeowners with limited English proficiency, how often would you estimate that servicers send loss mitigation notices in non-English languages? (Question 18, 57 Responses)



Recommendations

- **The CFPB should act on its knowledge of the unique challenges that LEP mortgage borrowers face in loss mitigation by requiring that servicers provide the most important loss mitigation notices in-language.** These documents should always be provided bilingually in English/Spanish.
- **These key loss mitigation notices should also include a tag line disclosure directing consumers to a page on the servicer’s website to obtain the notice in other top languages for which the CFPB has provided a model translation.**
- Finally, the CFPB should **require that all servicers provide qualified oral interpretation services to consumers in a range of languages, and that these services be provided without unreasonable delay in a range of languages**, including languages of lesser dispersion.

Conclusion

The Bureau has wisely undertaken to update Regulation X to allow for permanent streamlining in the loss mitigation process while still providing key protections for homeowners. This important work would be incomplete if the Bureau did not simultaneously act to protect successors in interest, HELOC borrowers, and consumers with limited English proficiency from unnecessary foreclosures.

For more information about these issues, contact Sarah Mancini, smancini@nclc.org, Nketiah Berko, nberko@nclc.org, or Nicole Cabañez, ncabañez@nclc.org.

Endnotes

¹ Consumer Financial Protection Bureau, Unified Agenda, Fall 2023, RIN: 3170-AB04.

² Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. www.nclc.org.

³ See Section-by-Section Analysis, § 1024.41, 78 Fed. Reg. 10,696, 10,822 (Feb. 14, 2013) (relying on the Bureau's authority under 12 U.S.C. §§ 2605(k)(1)(C), 2605(k)(1)(E), and 2617(a)).

⁴ As shown in Appendix A, the survey included respondents assisting homeowners in Alabama, Arizona, California, Washington, DC, Florida, Georgia, Hawaii, Illinois, Maryland, Maine, Michigan, Minnesota, North Carolina, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia, Vermont, Washington, Wisconsin, and West Virginia.

⁵ Comments of the National Consumer Law Center and other organizations on the Notice of Assessment of 2013 RESPA Servicing Rule and Request for Public Comment (July 10, 2017), <https://www.nclc.org/resources/comments-2013-respa-rule/>; Comments of the National Consumer Law Center and other organizations on the Request for Information Regarding Mortgage Refinances and Forbearances, 87 Fed. Reg. 58487, Docket No. CFPB-2022-0059 (Nov. 28, 2022), https://www.nclc.org/wp-content/uploads/2022/11/CFPB_group_mortgage_refinance_comment.pdf.

⁶ National Consumer Law Center, Snapshots of Struggle: Saving the Family Home After a Death or Divorce (Mar. 2016), <https://nclc-old.ogoseense.net/issues/snapshots-of-struggle.html>; National Consumer Law Center, NCLC Survey Reveals Ongoing Problems with Mortgage Servicing (May 2015), https://nclc-old.ogoseense.net/images/pdf/foreclosure_mortgage/mortgage_servicing/ib-servicing-issues-2015.pdf; National Consumer Law Center, Examples of Cases Where Successors in Interest and Similar Parties Faced Challenges Seeking Loan Modifications and Communicating with Mortgage Servicers (July 1, 2014), available at http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/successor-stories-2014.pdf; *Are Mortgage Servicers Following the New Rules? A Snapshot of Compliance with CFPB Servicing Standards*, National Council of La Raza and National Housing Resource Center (Jan. 9, 2015), available at http://www.nclr.org/images/uploads/publications/mortgageservicesreport_11215.pdf; *Chasm Between Words and Deeds X: How Ongoing Mortgage Servicing Problems Hurt California Homeowners and Hardest-Hit Communities*, California Reinvestment Coalition (May 2014), <http://www.calreinvest.org/publications/california-reinvestment-coalition-research>.

⁷ See, e.g., American Civil Liberties Union and MFY Legal Services, Inc., *Here We Go Again: Communities of Color, the Foreclosure Crisis, and Loan Servicing Failures* (Apr. 9, 2015), <https://www.aclu.org/documents/here-we-go-again-communities-color-foreclosure-crisis-and-loan-servicing-failures>.

⁸ Charts depicting these and all other survey results are found in the attached Appendix A.

⁹ Details provided by Rachel Scott, Senior Attorney, Atlanta Legal Aid Society. Fortunately, Ms. Scott was able to get the foreclosure sale rescinded, which would not have been possible without legal representation.

¹⁰ Throughout this report, percentages are reflected in the pie chart and the raw number of responses is in parentheses in the key. The full set of survey results are found in Appendix A.

¹¹ See Appendix B, Examples of Homeowners Struggling with HELOC Second Mortgages.

¹² National Consumer Law Center and National Association of Consumer Advocates, 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/>.

¹³ See Appendix B, Examples of Homeowners Struggling with HELOC Second Mortgages.

¹⁴ Consumer Financial Protection Bureau, *Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May- December 2021*, 3 (May 2022), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.