



**Americans for Financial Reform**  
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October 9, 2012

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, D.C. 20552

Submitted electronically to <http://www.regulations.gov>

Re: Mortgage Servicing Proposals:  
Truth in Lending Act – Docket No. CFPB-2012-0033<sup>1</sup> (RIN 3170-AA14) and  
Real Estate Settlement Procedures Act – Docket No. CFPB-2012-0034<sup>2</sup> (RIN 3170-AA14)

Dear Consumer Financial Protection Bureau:

Please accept these comments from Americans for Financial Reform and our undersigned member organizations on your proposed servicing regulations in the two separate dockets. Americans for Financial Reform is a coalition of over 250 national, state, local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups along with prominent independent experts.

We appreciate the CFPB's attention to the problems of homeowners, recognition of the need for uniform servicing standards to right the pervasive problems in the servicing system, and the steps in the proposal to increase transparency and responsiveness to homeowners. We are deeply concerned, however, that the loss mitigation provisions, including but not limited to the provisions on dual track, are inadequate to solve the servicing problems that cause unnecessary foreclosures and which are imposing profound and damaging costs on households, neighborhoods and our economy as a whole. We are also seriously concerned about the limits of the error resolution rules. Indeed, we fear that in some areas the proposal takes us backwards from current standards. In addition, we urge the CFPB to extend its attention to a number of servicing issues not touched on (or too lightly touched on) in the proposed rule, including the maintenance of vacant properties, the situation of tenants / renters, the role of housing counseling in preventing foreclosures and encouraging successful modifications, and the application of fair lending rules to loan modifications.

Elements of the proposal that we believe will improve communication and transparency, and help prevent unnecessary foreclosures or other delays or abuses, along with some of the additional steps that should be taken in each of these areas include:

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<sup>1</sup> 77 Fed. Reg. 57319 (Sept. 17, 2012).

<sup>2</sup> 77 Fed. Reg. 75200 (Sept. 17, 2012).

1. **Avoiding force placed insurance.** The affirmative proposal requiring servicers to pay premiums for property insurance from escrow accounts (even if the borrower is behind on the loan) to avoid force placed insurance (in proposed § 1024.37 of the RESPA regulations) is excellent. *The CFPB should also expand these protections to homeowners who do not have escrow accounts, who include many of those borrowers most in need of this protection.*
2. **Better information management procedures.** Proposed § 1024.38, which establishes affirmative mandates on servicers for information management policies that require servicers to provide the borrower with the entire loan file upon request, will be extremely valuable (so long as the “entire loan file” is considered to include all of the payments on the loan from closing through the date of the request). *The CFPB should also affirmatively require servicers to provide borrowers with verification of the servicer’s right to foreclose before initiating one.*
3. **Continuity of contact required.** The new and affirmative requirements in proposed § 1024.40 for dedicated contact personnel to be assigned to each borrower is good. It will be helpful for the contact to be required to have access to all relevant information about the borrower, and to be able to provide the borrower with accurate information about what she needs to do and her status. *Especially given the recent history of failing to comply with rules and standards it is important that servicers be required to actually comply with these requirements, and not just have policies and procedures in place to do so. Servicers should also be required to provide an electronic portal for communications with borrowers or their designated representatives, particularly for delivering documentation for a loan modification request. Conventional application procedures should still be available as well.*
4. **Early intervention efforts required.** Proposed 12 C.F.R. § 1024.39 requires servicers to make good faith efforts to notify delinquent borrowers of their loss mitigation options and provide information to the borrower about the foreclosure process. This is new and an affirmative requirement that will be helpful to homeowners. *The CFPB should also include a specific requirement that servicers provide detailed information about all of the loss mitigation strategies employed by the servicer, the eligibility requirements, and the steps required for homeowners to apply for these options.*
5. **Periodic billing statements.** Proposed 12 C.F.R. § 1026.41 will require servicers of closed-end residential mortgage loans to send a periodic statement for each billing cycle, providing information on partial payments, payment option loans, and issues related to delinquency, (unless the loan is a fixed-rate loan and a coupon book is provided). This proposal follows the statutory requirements and will be beneficial to homeowners.

### **Error Resolution**

We are very concerned that the proposed rule on error resolution (§ 1024.35) limits the grounds upon which a borrower can demand that servicers resolve errors to nine specific situations.

The error resolution procedure must be expanded to include a general ground that covers any borrower request to avoid foreclosure or address other “standard servicer dut[y]”, as current regulation does. Without this change, this provision will be a retreat from existing consumer protections. The California Reinvestment Coalition and other commenters provide a helpful list of additional types of errors that should be added, and we support these additions. We are also convinced however that relying on only a specific list—even if it is expanded—allows and at worst invites new or different servicer failures that avoid the list.

In addition to its negative impact on borrowers, the limitation to specific grounds appears to be in violation of the mandates of Congress in Dodd Frank to expand homeowners’ rights in dealing with servicers under the Real Estate Settlement Procedures Act (RESPA). The proposed regulations do include better timing requirements and a prohibition on charging for responding to requests as mandated by the changes to RESPA made in the Dodd Frank Act. But the Dodd Frank Act changes also added more general requirements on servicers to respond to errors relating to “servicer’s duties” pointing in exactly the opposite direction from the move in the proposal to eradicate the general catch-all that has long been in the law under the requirements for servicers to respond to Qualified Written Requests (QWRs).

### **Loss Mitigation**

We are seriously concerned that the proposal on loss mitigation – § 1024.41 – does not take the steps needed to turn around a servicing system that has failed spectacularly – at overwhelming cost to homeowners, communities and the economy as whole – and that in fact it moves backwards in some ways from current standards. The proposal only mandates *procedures* rather than substantive requirements, and these procedures are only required for “servicers that offer loss mitigation options in the “ordinary course of business.” The proposal would also take a dangerous step in the wrong direction by being more permissive on dual track – proceeding with the foreclosure process while evaluating the homeowner for loss mitigation – than the AG settlement or California law. The record is clear that dual tracking leads to foreclosures in cases where homeowners can and would be able to make continuing payments on their homes. It should not be permitted.

In order to respond to the lessons of the foreclosure crisis we need loss mitigation rules that address the following issues:

- a) Servicers should be required to undertake loss mitigation; including loan modification reviews and offers, and consideration of any appeal if necessary prior to initiation of foreclosure.
- b) Homeowners seeking assistance after a foreclosure has started should have their foreclosures paused while their files are reviewed, and if needed, appealed, in a timely fashion.
- c) Consistent and transparent consideration of specific types of loss mitigation / home saving strategies should be mandated, with affordable loan modifications ranked first.
- d) All servicers should be required to consider affordable loan modifications, and to offer NPV-positive affordable loan modifications to qualified homeowners facing hardship when these exist. NPV tests must be transparent so that regulators, investors, and homeowners can understand the inputs and calculations, they must

be reasonably based on actual costs and circumstances, and they must not penalize homeowners for the hardship leading to the search for a loan modification. This does not mean that servicers can only ever make NPV positive modifications, but that affordable NPV positive modifications for qualified borrowers must be offered. Further, servicers who utilize NPV models should be required to verify that they are accurate and non-discriminatory.

- e) Servicers must be required to notify borrowers about available loss mitigation options, and about application procedures and documents required to apply for them.
- f) Successful trial loan modifications must be automatically converted to permanent modifications by the mortgage servicer. Homeowners should not bear the financial burden of undue delay in conversion.
- g) Notification to homeowners regarding their status, including the reasons for the denial of a loan modification, must be provided in writing and with sufficient detail and documentation to permit actual understanding of the reasons for denial.
- h) Borrowers who are deemed to have submitted incomplete loan modification applications must be allowed a reasonable amount of time to complete the loan application so that servicers cannot run out the clock on homeowners.
- i) The error resolution procedures should include a basis for a homeowner to assert an error for the servicer's failure to satisfy loss mitigation requirements, as well as a general catch-all, which will allow homeowners the ability to challenge servicer abuses in real time to save their homes.

These issues need to be addressed urgently. However, if the CFPB does not believe it can address these issues in a final rule based on the proposed rule under consideration and / or on the timeline driven by the servicing changes more specifically mandated by Dodd Frank, then we urge the CFPB to withdraw and repropose the loss mitigation rule.

### **Other issues**

We echo and support the comments made by various AFR member organizations regarding the need for servicing standards to:

- deal with the serious problems caused by the deterioration of vacant properties, and the maintenance and marketing of vacant properties;
- include standards of protection for tenants / renters affected by foreclosures on the homes they live in;
- make it clear that modifications and servicing in general must be provided in compliance with fair lending laws, and be equally available to all borrowers, including the provision of information in additional languages and in ways that is usable by borrowers with disabilities, and that the CFPB will take steps to affirmatively further this goal; and
- recognize the role of not for profit housing counseling in preventing unnecessary foreclosures, and strengthen counselors' ability to do so successfully.

### **Conclusion**

In sum, we think that - with some additional steps taken and gaps closed – there is much that will assist homeowners and the functioning of the housing markets in many of the CFPB's servicing proposals around strengthening record keeping and communications policies and procedures. But we are seriously

concerned about the loss mitigation and error resolution proposals, and believe that major improvements in these areas are needed – including withdrawing and re-issuing a proposal in this area if that is necessary in order to make the major changes required - in order to live up to the CFPB’s consumer protection responsibilities, prevent millions of unnecessary foreclosures, and improve the functioning of the housing market and the economy.

We appreciate your concern for homeowners and for the housing market, and we thank you for your willingness to consider our comments; we are happy to answer questions and to discuss these issues further at any time

Sincerely,

AFL-CIO

Alliance for a Just Society

Americans for Financial Reform

California Reinvestment Coalition

Consumer Action

Consumer Federation of America

Consumers Union

ESOP: Empowering and Strengthening Ohio’s People

The Leadership Conference on Civil and Human Rights

Maryland Consumer Rights Coalition

NAACP

National Association of Consumer Advocates

National CAPACD

National Community Reinvestment Coalition

National Council of La Raza

National Fair Housing Alliance

National People’s Action

NEDAP

PICO National Network

U.S. PIRG

## **Following are the partners of Americans for Financial Reform.**

*All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company

- Home Actions
- Housing Counseling Services
- Home Defenders League
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal

- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

*List of State and Local Affiliates*

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS



- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY

- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

### *Small Businesses*

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

