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Office of Regulations
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X
Docket No.: CFPB-2021-0006

Dear Acting Director Uejio and CFPB staff,

The 42 undersigned consumer, community, housing, and other public interest organizations submit these comments in response to the proposed Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X.

As the CFPB notes in its proposal, the COVID-19 pandemic has had a devastating economic impact on the lives of millions of people across the United States. Many families have experienced tremendous financial distress that has caused them to fall behind on their mortgage payments and other obligations. Due to underlying health and socioeconomic disparities, low- and moderate-income (LMI) families and communities of color, especially Black, Latinx, and Native American communities, have been hit particularly hard by illness, unemployment, and economic instability. Women of color are experiencing compounded challenges from health and economic disparities based on race and sex. As a result of longstanding inequities, borrowers of color and LMI borrowers are bearing the brunt of the pandemic's adversities, and it is critical that they are able to access loss mitigation options that will enable them to sustain homeownership.

In response to this proposal, we urge the Bureau to take the following additional steps to help avoid unnecessary foreclosures and to facilitate streamlined loan modifications for borrowers facing COVID-19 hardships that will make it possible for them to keep their homes and provide them with the stability they need to recover and rebuild.

1. Pre-foreclosure protections must be strengthened.

While we recognize that the Bureau seeks to avoid unnecessary foreclosures through its creation of the December 31, 2021 pre-foreclosure review period, the gaps in the proposal and its structure will limit its effectiveness. Because of the delay in its effective date, the Bureau has created an incentive for servicers to hasten filing foreclosures before the rule comes into effect. The Bureau's current supervision guidance and enforcement activities are insufficient to address

the gap, so it is critical for the Bureau to address the gap through additional guidance and/or impose specific consequences for accelerating foreclosures during the pandemic. It also should reinstate the requirement for servicers to timely send a delinquency notice when a borrower is 45 days late.

Additionally, the pre-foreclosure review proposal leaves borrowers exiting forbearance after December 31, 2021 unprotected. Borrowers exiting forbearance in 2022 should not face immediate foreclosure after forbearance.

Instead of using the approach of the December 31, 2021 pre-foreclosure review period, we urge the Bureau to adopt the “grace period” approach so that servicers would not be allowed to proceed with foreclosure until 120 days after the end of a forbearance plan, which modifies 12 CFR 1024.41(f)(1)(i). This grace period will give every borrower needed time to try to resolve their delinquency at the end of forbearance without creating a cliff resulting in a substantial crush of foreclosures on January 1, 2022. Data on borrowers exiting forbearance shows that many borrowers already are leaving without a loss mitigation solution, and this problem will only escalate later this year, as borrowers leave forbearances in greater numbers and with larger arrearages. We need a rule that gives servicers and borrowers time to resolve defaults whenever they occur.

That said, if the Bureau chooses to adopt its proposed December 31, 2021 pre-foreclosure review period, it should implement exceptions (“off ramps”) that create meaningful incentives to loss mitigation. The off ramps mentioned by the Bureau in the preamble to its proposed rule on their own are insufficient to facilitate loss mitigation and indeed could actually undercut the Bureau’s stated goal of preventing foreclosures. The worst possible outcome would be to have a stated pre-foreclosure review period through the end of the year, which will be the headline that the public and borrowers will hear about and rely on, while at the same time having off ramps that do not promote sustainable foreclosure relief for homeowners and will confuse borrowers who find themselves in foreclosure prior to December 31.

At a minimum, all off-ramps for occupied properties should require servicers to make a streamlined loan modification offer to borrowers, whether or not they are in contact with their servicer, that the borrower can accept within 30 days of the offer to avoid foreclosure. The offer should be durable in that borrowers can accept it even after a foreclosure is filed with a recognition that the numbers may adjust, understanding that servicers may only be able to provide estimated figures to borrowers in the streamlined offer. The key is that servicers provide something the borrower can accept and that they meet all other reasonable diligence and early intervention guidelines. There also should be an off-ramp for vacant and abandoned properties that provides specificity on how servicers should determine the property status.

2. Accurate and complete information must be provided in early intervention.

Borrowers are struggling to get accurate information about their forbearance and post-forbearance options, and the Bureau should adopt its proposal to require servicers to

communicate specific information and should strengthen that requirement. Information is key to preventing avoidable foreclosures. For borrowers who are currently in forbearance, in addition to stating when the forbearance is scheduled to end, the servicer should be required to inform the borrower of whether the applicable investor rules allow for additional forbearance extensions (and state the maximum forbearance available for this loan, based on investor rules and when this borrower entered forbearance). The servicer should be required to communicate generally about the full range of post-forbearance options in every live contact attempt, not just the final live contact event before the end of forbearance. Borrowers need accurate information as early as possible. Many borrowers would choose to exit forbearance earlier if they had better information about the post-forbearance options; yet in some cases servicers are refusing to communicate about post-forbearance options until the forbearance ends.

3. Homeowners need streamlined modifications that come with key consumer protections.

Borrowers need protections in how they access streamlined loan modifications to improve the chances that homeowners can find an affordable home retention option. Borrower access to streamlined modifications will allow for quicker resolution for borrowers with serious delinquencies; however, in allowing these modifications, borrowers should be afforded with the key protections that Regulation X provides for complete applications – namely a written offer or denial letter, right to appeal, and dual tracking protections.

The Bureau should strengthen its proposed rule related to streamlined COVID-19 related loan modification options by requiring servicers to provide certain information in written offer and denial letters, allowing for appeals, and expanding dual-tracking protections to pause foreclosures during the modification process. Borrowers being offered streamlined loan modification offers also need to receive information about the range of options available to protect against the harms of being reviewed for one option rather than all options simultaneously, an approach already favored by the regulation.

The Bureau also should require that in any communication regarding a deferral or streamlined loan modification, the servicer should be required to identify the owner or guarantor of the loan and inform the borrower that if resuming the regular monthly payment is not affordable, other options may be available. The servicer should also inform the borrower of how to be considered for those other options. It should also require servicers that consider a streamlined loan modification option to send a written notice detailing all streamlined modification options that are being offered and any streamlined modification options that are not being offered, including the specific reason for any denial. Borrowers should have the right to appeal the terms of loss mitigation offers or denials that the borrower asserts are not proper. Once a servicer offers a streamlined modification option, the servicer should be prohibited from making the first notice or filing necessary to initiate foreclosure until the borrower rejects or fails to accept the streamlined offer (without submitting an appeal) or the borrower fails to perform under a loss mitigation option.

In addition, for borrowers who do not accept a streamlined modification offer, the Bureau should require servicers to resume reasonable diligence efforts and send a notice detailing how to submit a complete application (as required by § 1024.41(b)(2)) before the servicer is permitted to initiate foreclosure.

These changes are necessary in order to protect borrowers facing COVID-19 hardships and to promote sustainable loss mitigation. We appreciate the Bureau's attention to these important issues.

Sincerely,

Americans for Financial Reform Education Fund
Affordable Homeownership Foundation Inc.
Atlanta Legal Aid Society, Inc.
Better Markets
California Reinvestment Coalition
Center for Community Progress
Center for NYC Neighborhoods
Center for Responsible Lending
Coalition on Human Needs
Community Legal Aid Services, Inc.
Community Legal Services of Philadelphia
Connecticut Fair Housing Center
Consumer Action
Empire Justice Center
Fair Housing Center of Central Indiana
Granite State Organizing Project (GSOP)
Jacksonville Area Legal Aid, Inc.
Legal Aid Society of Southwest Ohio, LLC
Long Island Housing Services, Inc.
Massachusetts Communities Action Network
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Consumer Advocates
National CAPACD- National Coalition for Asian Pacific American Community Development
National Community Stabilization Trust
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
NHS Brooklyn, CDC, Inc
North Carolina Justice Center
PA Save Our Homes Coalition
Pennsylvania Council of Churches
Public Good Law Center
Public Justice Center

Savannah-Chatham County Fair Housing Council, Inc.
Take on Wall Street
U.S. PIRG
United Way of Southern Cameron County
Utica Neighborhood Housing Services, Inc.
Virginia Citizens Consumer Council
Western New York Law Center, Inc.
Woodstock Institute