

**Comments to  
The Consumer Financial Protection Bureau**

**Regarding  
Protections for Borrowers Affected by the COVID-19 Emergency under the Real Estate  
Settlement Procedures Act (RESPA), Regulation X**

**Docket No. CFPB-2021-0006**

**Submitted By**

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

**Americans for Financial Reform Education Fund**

**and**

**National Housing Law Project**

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## Introduction

We appreciate the opportunity to comment on the Bureau’s Notice of Proposed Rulemaking, “Protections for Borrowers Affected by the COVID-19 Emergency under the Real Estate Settlement Procedures Act (RESPA), Regulation X” (the NPRM). The National Consumer Law Center<sup>1</sup> (on behalf of its low-income clients), Americans for Financial Reform Education Fund,<sup>2</sup> and the National Housing Law Project<sup>3</sup> submit these comments based on the experience of our organizations and the developments advocates and housing counselors in the field have reported to us during the COVID-19 pandemic.

Our comments and recommendations focus on needed improvements to the rule to protect the most vulnerable borrowers in the hardest-hit communities. We appreciate that the NPRM, as written, is narrowly drafted and applies to loss mitigation efforts during a limited period of time in which the effects of the pandemic are most acute. This approach is, we believe, appropriate under the exceptional circumstances of COVID-19 and can help many borrowers, especially if certain adjustments are made as we recommend below.

In order to protect borrowers exiting forbearance from unnecessary foreclosures and ensure that borrowers can obtain an affordable loss mitigation option when one is available, the following additional safeguards are needed:

- The Bureau should make the Live Contact requirements more meaningful by requiring servicers to tell borrowers what investor rules apply to this loan in addition to describing to the borrower the options that are specific to their loan.
- The Bureau should require the same COVID-specific information in proposed § 1024.39(e) live contacts to be communicated in the written early intervention notice required by § 1024.39(b).
- For borrowers not currently in forbearance, the Bureau should require servicers to describe both forbearance options and non-forbearance loss mitigation options.
- For borrowers in forbearance, the Bureau should require servicers to provide the required information in all live contacts during a forbearance, not just in the final live contact attempt.
- The Bureau should modify the Official Interpretations to define “good faith efforts” and other sufficient measures in a manner consistent with the goals of § 1024.39(e).

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<sup>1</sup> Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. [www.nclc.org](http://www.nclc.org)

<sup>2</sup> **Americans for Financial Reform Education Fund (AFREF)** is a nonpartisan, nonprofit coalition of more than 200 civil rights, consumer, housing, labor, business, investor, faith-based, civic and community groups formed in the wake of the 2008 financial crisis that is working to build a fair and just financial system that contributes to shared prosperity for all families and communities. [www.realbankreform.org](http://www.realbankreform.org).

<sup>3</sup> The **National Housing Law Project (NHLP)** is a non-profit law and advocacy center established in 1968 and based in San Francisco, California. NHLP is dedicated to advancing housing justice by using the power of the law to increase and preserve the supply of decent affordable housing, improve existing housing conditions, expand and enforce low-income tenants’ and homeowners’ rights, and increase opportunities for racial and ethnic minorities. [www.nhlp.org](http://www.nhlp.org).

- The Bureau should translate the model Early Intervention notice, which contains information about how to contact a housing counselor, into the top LEP languages and require servicers to provide the translated notice to LEP borrowers.
- The Bureau should clarify reasonable diligence requirements and should require servicers to send the (b)(2) notice, which informs the borrower how to complete an application and be reviewed for all options, and resume reasonable diligence efforts at least 30 days before the end of a forbearance period.
- The Bureau should strengthen the proposed anti-evasion exception to allow streamlined loan modification offers only if a borrower is informed of the investor rules that apply to the loan, informed of the opportunity to seek a full review, and provided a written notice of any streamlined option that is offered or denied. The borrower should have appeal rights and dual tracking protections in this context as well.
- The Bureau should replace the proposed “date certain” pre-foreclosure review period with the 120-day grace period approach.
- If the Bureau adopts the proposed “date certain” pre-foreclosure review period, any off ramp must be structured to directly promote sustainable loss mitigation outcomes. Servicers must be required not only to contact borrowers but to provide an actual offer of a streamlined loan modification along with other protections.
- The Bureau must address the incentive for early foreclosures created by its proposal by revoking the Joint Agency Statement and requiring that any servicer who initiates foreclosure before the rule’s effective date must be able to demonstrate strict compliance with early intervention and reasonable diligence requirements in the existing regulations.
- If the Bureau adopts the proposed “date certain” pre-foreclosure review period, it should provide protection for borrowers who exit forbearance after December 31, 2021 by finalizing a pre-foreclosure review period that extends to the later of December 31, 2021 or 120 days after the end of a forbearance period.

## **Background**

As the Bureau observes in the NPRM, the COVID-19 pandemic has caused millions of homeowners to struggle to pay their mortgages. Many of those homeowners have sought, and obtained, a forbearance to provide temporary relief from mortgage payments while they seek a return to full employment. Yet a significant number of homeowners have defaulted on mortgage payments without obtaining a forbearance – putting them at elevated risk of foreclosure, particularly as foreclosure moratoria begin to expire. Available data shows that people of color are both more likely to have missed a mortgage payment during the pandemic and more likely to have missed a payment without being placed in a forbearance.

The CFPB’s actions here carry significant weight. Strong loss mitigation policies have the ability to slow the growth of existing racial inequities; weak policies will have the opposite effect. Communities of color, especially Black and Latinx communities, have been hit the hardest by both COVID-19 and the economic consequences of COVID-19, on top of deep and pre-existing disparities. Aside from the staggering disparities in infection, hospitalization, and death from

COVID-19,<sup>4</sup> African Americans and Latinx have borne the brunt of the economic fallout. While the overall unemployment rate during this crisis peaked at 14.7% in April 2020 and had fallen to 11.1% in June, the unemployment rate for African Americans peaked at 16.8% in May and remained at 15.4% percent in June.<sup>5</sup> For Latinx, the unemployment rate peaked at 18.9% in April 2020 and remained at 14.5% in June.<sup>6</sup> In summer 2020, the gap between the Black and white unemployment rates grew to the largest it had been in five years.<sup>7</sup>

This disparity in economic hardship has persisted throughout the crisis. The occupations that have been slow to fully bounce back from the crisis—fields such as retail, food preparation and service, and construction—disproportionately employ African Americans and Latinx workers.<sup>8</sup> The large reductions in city and state public sector employment hit Black workers particularly hard.<sup>9</sup> Compounding job loss is the historical reality that African Americans and Latinx have been less likely to receive unemployment benefits when eligible.<sup>10</sup> This outlook is further exacerbated by the concerning job numbers issued in April 2021, showing much weaker job growth than expected.<sup>11</sup>

As a country, we have still not recovered from the trillions of dollars in lost equity from the Great Recession.<sup>12</sup> The Bureau must ensure that COVID-19 does not result in another devastating round of unnecessary foreclosures, concentrated in communities of color.

Our comments on the NPRM are based on the information we have gathered from attorneys, housing counselors, and other advocates representing homeowners around the country. This information comes from advocates who have reached out to us for assistance escalating problems with government agencies or brainstorming legal strategies. In addition, we have solicited both homeowner examples and survey responses to capture the scope of the problems in servicers' existing loss mitigation efforts. Specifically, in May 2021 the National Consumer Law Center conducted a nationwide survey of attorneys, housing counselors, and other homeowner advocates. The 185 individuals responding to the survey assist homeowners in 31 states and include 94 housing counselors, 57 legal services attorneys, 14 private consumer attorneys, and 20 other advocates. As discussed throughout this comment, the survey responses reflect significant problems in servicers' communications with homeowners regarding loss mitigation. Borrowers and advocates are struggling to reach the designated point of contact by phone. Servicers are

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<sup>4</sup> See, e.g., Ctrs. For Disease Control and Prevention, [COVID-19 in Racial and Ethnic Minority Groups](#) (2020), (last updated June 25, 2020) (hospitalizations per capita are five times as high for African Americans and Native Americans as for whites, and four times as high for Latinx as for whites); Tiffany Ford, et al., [Race Gaps in COVID-19 Deaths Are Even Bigger Than They Appear](#), Brookings Institution (June 16, 2020).

<sup>5</sup> Bureau of Labor Statistics, [The Employment Situation—June 2020](#), at 7 (2020).

<sup>6</sup> *Id.*

<sup>7</sup> Jonnelle Marte, [Gap in U.S. Black and white unemployment rates is widest in five years](#), Reuters (July 2, 2020).

<sup>8</sup> Keith Wardrip & Anna Tranfalgia, Federal Reserve Bank of Philadelphia, [COVID-19: Which Workers Will Be Most Impacted?](#) (2020).

<sup>9</sup> David Cooper & Julia Wolfe, [Cuts to the state and local public sector will disproportionately harm women and Black workers](#), (July 9, 2020). See also, Nat'l League of Cities, [City Fiscal Conditions 2020](#), (noting historical outpacing of expenditures over revenues and cities' general requirements to have balanced budgets; predicting further cutbacks in payroll).

<sup>10</sup> Austin Nichols & Margaret Simms, Urban Institute, [Racial and Ethnic Differences in Receipt of Unemployment Benefits During the Great Recession](#) (2012).

<sup>11</sup> Patricia Cohen, [Job Growth Slowed in April, Muddling Expectations](#), New York Times (May 7, 2021).

<sup>12</sup> Ingrid Gould Ellen & Samuel Dastrup, [Housing and the Great Recession](#), (Oct. 2012), (\$7 trillion in home equity lost between 2006 and 2011, with losses concentrated in communities of color).

refusing to discuss post-forbearance options with borrowers until after the forbearance ends. And in too many instances, servicers seem to be unaware of the investor rules that apply to a given borrower's loan.<sup>13</sup> The individual examples collected by Americans for Financial Reform Education Fund reflect similar and pervasive problems.<sup>14</sup> These reports from around the country illuminate the need for improvements in the proposed rule, which we discuss below.

## **1. The Bureau should strengthen its proposed Early Intervention and Live Contact requirements.**

### **a. Introduction: The Bureau's Early Intervention Proposal**

The Bureau has taken an important step to protect consumers from the extraordinary risks of harm posed by the pandemic by proposing to modify the Early Intervention rule. Under these circumstances, and in light of reports of many borrowers not being aware of available loss mitigation options, it is entirely appropriate and well suited to serving the goals of Regulation X that the Bureau proposes to eliminate servicer discretion and require servicers to provide information about the available loss mitigation options.<sup>15</sup> Proposed § 1024.39(e) should apply even when the servicer is maintaining ongoing contact with a borrower pursuant to loss mitigation efforts. Reports from the field indicate that borrowers in forbearance have been unable to obtain clear information from servicers regarding post-forbearance options. This has been confirmed by complaints the Bureau has received from consumers.<sup>16</sup> Proposed § 1024.39(e) can help to address this significant problem.

Although we commend the Bureau for proposing § 1024.39(e), we also point out below a number of ways the proposal could be strengthened to better protect borrowers and further advance the purpose of RESPA to provide clear information about loss mitigation options.

### **b. The Bureau should modify the proposed rule to adequately protect borrowers by requiring the same information be conveyed in the written early intervention notice, rather than only in live contact attempts.**

The Bureau has proposed requiring that specific content related to loss mitigation options be conveyed to borrowers when live contact is successfully achieved during the pandemic. These proposed Early Intervention changes would be much more impactful if they were also incorporated into written notices. Borrowers may miss calls from their servicers for many reasons, such as being unable to take calls during the day because of work or child care, or having limited cell phone minutes or bad phone reception. When borrowers have tried to proactively contact their servicers for assistance during the pandemic, they have had numerous difficulties even getting through to a live representative. Sometimes borrowers have simply been unable to get through, have had their calls dropped or rerouted, or have been forced to wait on

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<sup>13</sup> See Appendix A, Nationwide Survey of Homeowner Advocates, National Consumer Law Center (May 2021).

<sup>14</sup> See Appendix B, Consumer Experiences: Examples from Homeowner Advocates and the CFPB Complaint Portal, Americans for Financial Reform Education Fund (May 2021).

<sup>15</sup> Notice of Proposed Rulemaking, 86 Fed. Reg. 18840, 18848 (Apr. 9, 2021).

<sup>16</sup> See CFPB Complaint Bulletin, *Mortgage forbearance issues described in consumer complaints*, May 2021, p. 10 (“Based on complaints and company responses, it appears consumers would benefit from clearer communication from servicers over the phone and in writing.”).

hold for as long as a couple of hours. While some level of reliance on phone conversations is necessary, written notices play an important role in clarifying borrowers' rights and options.

Legal services attorneys and housing counselors report that phone conversations with servicers during the pandemic often are not giving borrowers complete or accurate information regarding available loss mitigation options. Similar complaints from consumers have been submitted to the Bureau.<sup>17</sup> Many servicers that ask if the borrower can afford to resume the regular monthly payment are giving the impression that this is the only alternative to foreclosure. Many borrowers have been told that the servicer cannot discuss post-forbearance options with them while they are in forbearance. Other borrowers exit forbearance without ever being informed that they were eligible to extend the forbearance or that there were cure options available.

In the responses to NCLC's nationwide survey of homeowner advocates, 88.6% of respondents (164 out of 185 advocates) had spoken to homeowners who had difficulty reaching their "point of contact" by phone. Seventy-three of those advocates had heard of that problem many times. Ninety-one respondents had advised homeowners who had exited forbearance without having received any information about post-forbearance options, and 104 had advised homeowners who had exited forbearance without being notified that they could have extended the forbearance under applicable investor rules. Ninety advocates had had interactions with a servicer "point of contact" in which the servicer representative did not seem to know which specific investor rules applied to the loan or did not convey accurate information about the options available from the relevant investor.

The risks of misinformation and lack of clarity are far greater when relying solely on telephone communication to convey loss mitigation options. It will be much more difficult for the Bureau to supervise servicers' handling of these communications than it is to review servicing notices.

Servicers are required under the proposed rule to go over a "list and brief description" of each option made available by the owner or assignee of the borrower's mortgage loan. This will be a significant amount of information. Borrowers would be much better able to digest the information if it were also required to be contained in the written notice required pursuant to § 1024.39(b). The Bureau should amend § 1024.39(b) to require the same specific information being provided orally pursuant to § 1024.39(e). This step would not impose a new notice requirement on services, but would simply modify the content of the existing early intervention written notice.

At an absolute minimum, the Bureau should rescind the April 3, 2020, Joint Agency Statement, which said that the Bureau would not take supervisory or enforcement action against servicers that failed to send the Early Intervention notice required by § 1024.39(b). The Bureau should require servicers to resume sending Early Intervention notices effective immediately, and publish a model Early Intervention notice, preferably as an addition to existing Appendix MS-4 to Part 1024, that would contain a description of examples of pandemic-specific loss mitigation options available for both FHA and GSE loans. This model notice should be translated into the top eight languages spoken by limited English proficient (LEP) borrowers, and the Bureau should encourage servicers to provide the notice in both English and Spanish in addition to any other language the servicer has reason to know a borrower might prefer. In addition, the Bureau should

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<sup>17</sup> See CFPB Complaint Bulletin, *Mortgage forbearance issues described in consumer complaints*, May 2021, p. 19 ("Many of these complaints stemmed from phone calls with servicers, suggesting that servicers may not be clearly communicating about the variety of available options.").



encourage servicers to put the language from the model Early Intervention notice on their Coronavirus relief web pages in the top eight LEP languages, using the Bureau's translation.

- c. The Bureau should require pandemic-specific content in written Early Intervention notices, and require them to be provided in other languages once the Bureau has translated them, because relying solely on live contact attempts is particularly harmful to LEP borrowers and borrowers with disabilities.**

Relying on live contact as the only required contact with borrowers raises concerns for all borrowers, but leaves LEP borrowers particularly vulnerable because of the increased likelihood that they will not be able to effectively communicate with their servicer about their loss mitigation options in a phone conversation. Currently, many servicers do not track the language preference of their borrowers, which means that the servicing staff are unlikely to know whether the borrower they are calling is LEP or what their preferred language is before they make the call. Without having this information in advance, servicer representatives will not be able to leverage any existing resources they have available to accommodate the LEP borrower, such as assigning LEP borrowers to servicer staff that speak their preferred language for their phone communications or making sure they have access to language line services before they initiate the call.

Even if a borrower has a single point of contact who speaks their preferred language and this information is in their file, borrowers often face challenges in being able to reach their contact or get the information they need from them. Throughout the past year, some LEP borrowers have been unable to get through on the phone to their preferred language servicer contact even with several attempts, and some only made contact after they had an advocate's help.<sup>18</sup> As noted above, many borrowers have struggled to get in touch with their servicers by phone during the pandemic, which is especially harmful to LEP borrowers because it undermines their ability to reach the assigned representative who speaks their preferred language if they have one.

While it may be an issue for many borrowers, LEP borrowers are even less likely to grasp complex information that is given to them only over the phone in a language they do not feel comfortable using for financial transactions. Even when an LEP borrower has a servicing contact that speaks their preferred language, some LEP borrowers found that their servicing contact still could not provide them with information about what COVID loss mitigation options were available or how to access them. For example, a Spanish-speaking borrower in New York with a FHA loan had a Spanish-speaking representative assigned to her file, but the representative was not adequately trained and was not informed about the availability of FHA COVID loss mitigation options.<sup>19</sup> Another Spanish-speaking borrower in California faced similar challenges, waiting on hold for long periods of time to speak to a rushed representative who did not properly communicate her loss mitigation options.<sup>20</sup>

Moreover, servicers have limited language capacity. For many LEP borrowers, there are no servicing representatives who speak their preferred language, especially if the preferred language is not Spanish. While most servicers use a language line to provide oral interpretation, such

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<sup>18</sup> See Appendix A (comment from an advocate regarding the difficulties faced by LEP borrowers); Appendix B, Consumer Experiences: Examples from Homeowner Advocates and the CFPB Complaint Portal.

<sup>19</sup> See Appendix B, Consumer Experiences, Example from Anna Poppe, Long Island Housing Services.

<sup>20</sup> *Id.*, Example from Johanna Torres, California Rural Legal Assistance, Inc.

phone calls take much longer to complete – which is not always feasible for borrowers who have to work during business hours.

For these reasons, written notices are critically important for LEP borrowers. LEP borrowers may not have anyone in their life who can be available to interpret for a phone call without notice, but they are far more likely to have trusted family or friends who are able to explain the contents of a written English notice and help them figure out the next steps needed to get access to the right loss mitigation option. Some LEP borrowers read English better than they understand spoken English, and a written notice makes it possible for these LEP borrowers to better comprehend their options than a phone call. LEP borrowers also benefit from being able to review the details and reference the text in a written notice on their own time when they are not pressured to respond quickly, as they often are on the phone. Housing counseling assistance is especially helpful for LEP borrowers who may need tailored advice about their specific situation. Requiring servicers to include a message in the top five LEP languages about how to get assistance from a housing counselor who speaks the borrower’s preferred language with a written notice explaining COVID loss mitigation options would go a long way to help LEP borrowers take the steps they need to avoid foreclosure and sustain homeownership beyond the COVID-19 pandemic. The Bureau should translate the model Early Intervention notice, which contains information about how to contact a housing counselor, into the top LEP languages and require servicers to provide the notice in-language to LEP borrowers.

Written notices are also important to reach certain borrowers with disabilities who have difficulty communicating by phone. A servicer may not be set up with the technology, for example, to effectively communicate with borrowers who have hearing disabilities or speech impairments over the phone, but these borrowers are able to read written notices about their options. Other borrowers with disabilities may not be able to communicate by phone at all. Also, like LEP borrowers, borrowers with disabilities who need additional assistance may also have trusted family, friends, or other support to help them understand the contents of a written notice, but may not have such support available on standby for phone calls. Written notices would undoubtedly help all borrowers better understand their options, but they are absolutely crucial to give LEP borrowers, borrowers with disabilities, and any other borrowers with phone communication challenges a meaningful opportunity to access loss mitigation.

**d. The Bureau should adopt its proposed rule requiring servicers to describe to the borrower the options that are specific to their loan, but should also require them to tell borrowers what investor rules apply to this loan.**

The Bureau’s proposed rule requires the servicer, once it makes live contact with the borrower, to provide a list and brief description of the types of forbearance extension, repayment options, and other loss mitigation options made available by the owner or assignee of the loan. We commend the Bureau for making this proposed change to the Early Intervention rule. Based on the information we have gathered from homeowner advocates around the country, clear and accurate information about loss mitigation options is not flowing to homeowners. This rule change is badly needed, and the fact that the information provided must be specific to this borrower’s loan is extremely important.

Legal services attorneys and housing counselors have reported that a significant number of servicer representatives handling phone calls with borrowers do not even seem to know which

investor rules apply to the borrower's loan, or, if they know the investor, are not aware of the specific options available. In NCLC's nationwide survey of homeowner advocates, 90 advocates had had interactions with a servicer "point of contact" in at least one case in which the servicer representative did not seem to know which specific investor rules applied to the loan or did not convey accurate information about the options available from the investor. Thirty-one respondents had experienced this several times, and 15 respondents had experienced it many times. One hundred and four respondents had advised homeowners who had exited forbearance without being informed that under applicable investor rules, they could have extended their forbearance further. Borrower advocates have provided detailed examples of this problem from borrowers in Connecticut, Puerto Rico, Washington, DC, and Pennsylvania.<sup>21</sup>

We have one key recommendation for improving the Bureau's proposed requirement, in addition to the recommendation noted in the preceding section that the information be provided in writing. To make the requirement more substantial (and to allow a borrower, the borrower's trusted advisor, and the Bureau to monitor the accuracy more easily), the Bureau should require the servicer to also inform the borrower of the applicable owner or assignee and any insurer. If this information is provided, the borrower will have the option to verify and seek more information regarding the investor rules that apply to their loan.

The Bureau has specifically asked whether additional guidance is necessary for servicers to know which forbearance programs they must discuss with the borrower. We recommend that servicers be required to disclose the particular investor, and discuss the specific options available from that investor. If the borrower has identified a COVID-19 related hardship, it would be reasonable to focus on COVID-19 related forbearance options, as well as all available loan modification, deferral, and other loss mitigation options.

**e. For borrowers not currently in forbearance, the Bureau should require servicers to describe both forbearance options and non-forbearance loss mitigation options.**

The Bureau has asked whether it should require servicers to explain to borrowers who are not currently in forbearance and who indicate they are facing a COVID-19 related hardship not just the available forbearance options, but also "post-forbearance" or "permanent" loss mitigation options.<sup>22</sup> The answer is yes, absolutely. Borrowers who have fallen behind on payments and have never entered forbearance have been difficult to reach. It would be reasonable to describe, in any communication with such a borrower, the array of temporary and permanent loss mitigation options. Many of these borrowers, especially at this point in the pandemic, may have reached a point where their income has stabilized and a deferral or loan modification is more appropriate than a forbearance.

Regarding the content of these conversations with borrowers not currently in forbearance, the servicer should provide some information about the kinds of repayment and "cure" options available from the relevant investor and whether there is a different set of options after a forbearance.<sup>23</sup> With respect to explaining the credit reporting implications of entering a forbearance, this is less likely to be a significant issue for borrowers who have already fallen

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<sup>21</sup> Appendix B, Consumer Experiences: Examples from Homeowner Advocates and the CFPB Complaint Portal, Americans for Financial Reform Education Fund (May 2021).

<sup>22</sup> 86 Fed. Reg. at 18852.

<sup>23</sup> *Id.*

behind without a forbearance in place, and it would be reasonable not to recommend or require servicers to discuss credit reporting implications in this call unless the borrower asks. If a borrower asks a question about how their credit records can be impacted by various options, the servicer should be required to provide accurate information.

**f. For borrowers in forbearance, the Bureau should require servicers to provide the required information in all live contacts during a forbearance, not just in the final live contact attempt.**

The information the Bureau is requiring servicers to provide to borrowers in an active forbearance is extremely important. For that reason, it should be required in all live contacts made with the borrower during a COVID-19 forbearance, rather than just in the last live contact before a forbearance is scheduled to end.

Borrowers need information about post-forbearance options well before the forbearance ends. As the Bureau has noted, seeking loss mitigation assistance earlier may help to ensure that a loss mitigation option is finalized before the forbearance ends.<sup>24</sup> The longer a borrower stays in forbearance (and the greater the accrued arrearage, including escrow deficiencies and shortages), the more difficult it can be to resolve the delinquency and prevent foreclosure. A loan modification can become less affordable (or completely unaffordable) when the arrearage grows too large. Many borrowers realize at a certain point that their economic situation has stabilized, they are not expecting their income to improve any further for the time being, and they are ready to exit forbearance before its scheduled end. Unfortunately, many borrowers in that situation are being told by servicers that they cannot apply for post-forbearance options until their forbearance has ended.<sup>25</sup> In NCLC's nationwide survey of homeowner advocates, 59% of respondents (109 advocates) had spoken to homeowners who had been told by their servicers they could not be evaluated for post-forbearance options while the forbearance was in effect. Fifty-two of those advocates had heard this problem from borrowers either "several times" or "many times."

In every live contact with a borrower in an active forbearance, the servicer should be required to communicate to the borrower the following information: the owner or assignee and any insurer of their loan, the applicable investor rules, the date the forbearance is scheduled to end, and a list and brief description of the loss mitigation options specifically available from this investor, including any remaining forbearance extensions, and the various options to cure the default. The servicer should be required to tell borrowers that they can be evaluated for specific options while in forbearance and inform each borrower of the terms of streamlined deferral or loan modification options available to them (as well as the right to submit a complete application), in order to determine if the borrower wishes to exit forbearance early.

**g. The Bureau should modify the Official Interpretations to define "good faith efforts" and other sufficient measures in a manner consistent with the goals of § 1024.39(e).**

The Bureau is proposing to revise the Official Interpretation to § 1024.39(a) in several places to make it consistent with the goals of § 1024.39(e), but there are two notable exceptions. First, in

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<sup>24</sup> 86 Fed. Reg. 18850 and 18853.

<sup>25</sup> In light of this significant problem, FHA recently announced that post-forbearance reviews should occur at any point, and borrowers need not exit forbearance to be eligible for review. *See* FHA Info 21-28 (May 7, 2021), available at [https://www.hud.gov/sites/dfiles/SFH/documents/SFH\\_FHA\\_INFO\\_21-28.pdf](https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_21-28.pdf).

the description of what constitutes “good faith efforts” to establish live contact in comment 1021.39(a)-3, the current language states that if a borrower has six or more consecutive missed payments, good faith efforts might require “no more than including a sentence requesting that the borrower contact the servicer” in a periodic statement or an electronic communication. This would totally eviscerate the purpose of proposed § 1024.39(e). During the pandemic, a significant number of the borrowers who are currently in forbearance have been in forbearance for more than six months, as 12-18 month forbearance periods have become common. Also as a result of the pandemic, many borrowers have fallen seriously delinquent due to economic forces beyond their control without obtaining a forbearance, and these seriously delinquent borrowers are precisely the borrowers intended to be benefited by proposed § 1024.39(e). The Bureau should therefore amend the Official Interpretation as follows:

For example, ... “good faith efforts” to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication, except during the time period in which § 1024.39(e) applies. During the time period in which § 1024.39(e) applies, “good faith efforts” to establish live contact would include, even for borrowers that have missed six or more consecutive payments, making at least four telephone calls to the last known phone numbers of record, at different times of the day, and sending a correspondence via regular U.S. mail and electronic communication, provided an email address is on file, encouraging the borrower to respond to learn about available loss mitigation options.

In addition, the Bureau should modify proposed comment 1024.39(a)-4(ii) as follows:

If appropriate, a servicer may satisfy the requirement in § 1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by § 1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact and the notice must include the specific information required by § 1024.39(e), during the time period when § 1024.39(e) applies.

**2. The Bureau should strengthen the proposed reasonable diligence rule to make the requirements more concrete, including requiring servicers to send the (b)(2) notice as part of the resumption of reasonable diligence efforts.**

**a. Introduction: The proposed rule does not align with the existing reasonable diligence requirements or the Bureau’s earlier Joint Statement.**

The Bureau’s loss mitigation rule defines a loss mitigation application broadly, so that virtually all borrowers who have received a COVID-19 forbearance are considered to have submitted applications (either partial or complete) to their servicers. For borrowers who are not offered or do not accept a deferral or streamlined modification under the proposed rule, the Bureau’s existing loss mitigation rule provides those borrowers no meaningful protections until they

submit a complete application. While we have raised significant concerns about the complete application requirement at every rulemaking proceeding the Bureau has held on loss mitigation, the Bureau has made this approach the cornerstone of section 1024.41.

The Bureau's position that borrowers can access protections only through a complete application is premised on the duty of servicers to act with reasonable diligence to collect information needed to complete the application. However, the Bureau has done little in this proposed rule to address the increased risk of harm to borrowers caused by its earlier action in relieving servicers of the obligation to comply with the loss mitigation rule, including reasonable diligence requirements. On April 3, 2020, the Bureau issued with other agencies a Joint Statement on the impact of the COVID-19 emergency on consumers and mortgage servicers.<sup>26</sup> The Joint Statement provided that as of April 3, 2020, and until further notice, the Bureau and other agencies would not take supervisory or enforcement action against servicers for:

- failing to provide the acknowledgment notice required by § 1024.41(b) within five days of a request for a forbearance (which is an incomplete application), provided the servicer sends the notice before the end of the forbearance period;
- delays in establishing or making good faith efforts to establish live contact with delinquent borrowers as required by § 1024.39(a), provided the servicer makes good faith efforts to establish live contact within a reasonable time; and
- delays in sending the written early intervention notice to delinquent borrowers required by § 1024.39(b), provided the servicer makes good faith efforts to establish live contact within a reasonable time;
- delays in sending other notices and taking the actions described in § 1024.41(b)-(d), (h)(4), and (k), including the 30-day application evaluation and related notices, and the processing of appeals and related notices, provided the servicer makes good faith efforts to provide these notices and take the related actions within a reasonable time.

The Joint Statement has not been repealed, and nothing in the proposed rule suggests that it will be repealed or modified before the effective date of the proposed rule. While some provisions of the Joint Statement are potentially supplanted by the proposed rule, servicers will not be incentivized to comply with the new requirements if they remain protected from supervisory or enforcement actions by the Joint Statement. More significantly, several critical reasonable diligence requirements, such as the acknowledgment notice required by § 1024.41(b)(2), and the written early intervention notice required by § 1024.39(b), are not even addressed by the proposed rule, leaving servicers free to ignore those requirements for the large number of borrowers who will be ending forbearance and soon facing foreclosure.

Similarly, the Bureau's March 31, 2021 Bulletin 2021-02: *Supervision and Enforcement Priorities Regarding Housing Insecurity*, contains only vague statements about the need for servicers to promptly resume reasonable diligence for borrowers who request further assistance; nothing in the Bulletin explicitly overrides the Joint Statement. By separate correspondence, we are urging the Bureau and other regulators to revoke the Joint Statement and resume enforcing

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<sup>26</sup> Consumer Fin. Protection Bureau et al., [\*Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act\*](#) (Apr. 3, 2020), at 5-7.

the requirements of 1024.41(b)(2) as well as Early Intervention efforts, especially during the period of time before the final rule takes effect.

**b. The Bureau should modify the proposed rule to address when and how reasonable diligence efforts should resume.**

Over 6.5 million borrowers were placed in forbearance programs in response to the COVID-19 pandemic. These borrowers' requests for forbearances were in most cases incomplete loss mitigation applications received by their servicers before any initiation of foreclosure. This created an immediate tension with existing servicing requirements. Section 1024.41(b)(1) imposes a general requirement that servicers exercise reasonable diligence to complete borrowers' loss mitigation applications. Comment 41(b)1-4.iii permits a servicer to suspend reasonable diligence efforts if a borrower is performing on forbearance until near the end of the forbearance. This comment does not specify exactly when efforts should resume.

This lack of specificity was not an issue when the anti-evasion exception for short-term options was adopted, because that exception was designed for forbearance programs that would extend no more than six months.<sup>27</sup> But now, with over 2 million borrowers who will have been in forbearance programs for 12 to 18 months, it is critical that the Bureau provide detailed guidance on when and under what terms servicers must resume reasonable diligence.

Proposed comment 41(b)(4)-iv clarifies that a servicer must contact the borrower 30 days before the end of forbearance to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. While we generally support the comment, the Bureau should be more explicit as to the type of contact that will satisfy the requirement.

Proposed comment 41(b)(4)-iv does not state if either a written notice or live contact will satisfy the outreach requirement. For the reasons discussed earlier, we are concerned that the Bureau's proposal relies too heavily on attempts at live contact by the servicer. Again, this is confirmed by complaints that the Bureau has received from consumers expressing frustration that servicers have not communicated clearly with them in phone calls about loss mitigation options and the difficulties some borrowers faced in even getting through to a representative to talk about their options.<sup>28</sup>

By noting that the live contact under proposed § 1024.39(e)(2) and the contact under proposed comment 41(b)(4)-iv will "complement each other,"<sup>29</sup> the proposal suggests that both requirements could be satisfied in the same attempt at live contact with the borrower. This creates the potential for borrower confusion, as each contact requirement has a different focus - the live contact under proposed § 1024.39(e)(2) is intended to provide a brief description of streamlined options that may be available without a complete application, while the contact under proposed comment 41(b)(4)-iv is intended to resolve whether the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. It is

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<sup>27</sup> See Comment 41(c)(2)(iii)-1 ("A short-term payment forbearance program for purposes of § 1024.41(c)(2)(iii) allows the forbearance of payments due over periods of no more than six months.").

<sup>28</sup> See CFPB Complaint Bulletin, *Mortgage forbearance issues described in consumer complaints*, May 2021, p. 9, ("Many of these complaints stemmed from phone calls with servicers, suggesting that servicers may not be clearly communicating about the variety of available options.").

<sup>29</sup> 86 Fed. Reg. 18853 (Apr. 9, 2021).

also difficult for servicers to achieve live contact with some borrowers, leaving those borrowers without access to critical information about end-of-forbearance options.

We urge the Bureau to modify proposed comment 41(b)(4)-iv to require, in addition to any live contact, some form of written notice to the borrower. At a minimum, the Bureau should require that borrowers be sent the written notice required by § 1024.41(b)(2), as discussed more fully below.

The Bureau asks if a 30-day deadline before the end of forbearance for completing the reasonable diligence contact is appropriate. We believe this is an appropriate timeline if the Bureau adopts our suggestion, discussed in § 4(a) of these comments, for a “grace period” approach to § 1024.41(f)(1)(i) that would prevent servicers from initiating foreclosure until 120 days after the end of a forbearance plan. If that is not adopted, and borrowers can exit forbearance on or after January 1, 2022, with no pre-foreclosure review period, we believe the proposal should be modified to provide that reasonable diligence efforts must resume at least 60 days before the end of a forbearance plan.

- c. The Bureau should clarify that the resumption of reasonable diligence efforts must include sending borrowers the written notice required by § 1024.41(b)(2) at least 30 days before the end of forbearance to borrowers who have not yet accepted a COVID-19 payment deferral, streamlined loan modification, or forbearance extension.**

A borrower who affirms a COVID-19 hardship when requesting a forbearance from a servicer has submitted a loss mitigation application. A servicer who provides a forbearance other than through a blind offer is therefore required to review the borrower’s application and determine the documents and information needed to complete the application. The servicer must also send the written notice required by § 1024.41(b)(2) to the borrower within five days of the request for a forbearance.<sup>30</sup>

Given the large number of borrowers who received forbearances during the pandemic, it made sense for the Bureau to relieve servicers of the reasonable diligence requirements while borrowers were in forbearance programs. Servicers would not have been able to adequately comply with the requirements, and borrowers would not have benefited from being asked to complete applications at a time when their financial situations were still uncertain. Thus, the Joint Statement permitted servicers to pause reasonable diligence efforts while borrowers were in forbearance and to wait to send the acknowledgement notice required by § 1024.41(b)(2) until the end of the forbearance period.

Proposed § 1024.41(c)(2)(vi)(B) sensibly continues to provide relief from the normal regulatory requirements for a servicer who offers a streamlined loan modification under proposed § 1024.41(c)(2)(vi)(A) that the borrower accepts. It appropriately makes clear, however, that a servicer must immediately resume reasonable diligence efforts if the borrower fails to perform under a trial loan modification plan offered pursuant to proposed § 1024.41(c)(2)(vi)(A) or if the borrower requests further assistance. Although not stated explicitly, this duty to immediately resume reasonable diligence would also apply if the servicer does not offer, or the borrower does

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<sup>30</sup> This acknowledgement notice must be sent even if the borrower is in a short-term loss mitigation option such as a forbearance. See Comment 41(c)(2)(iii)-2.



not accept, a COVID-19 payment deferral under § 1024.41(c)(2)(v)(A)(1), a loan modification under proposed § 1024.41(c)(2)(vi)(A), or an extension of an existing forbearance program.

With over 2 million borrowers currently in forbearance programs that they received in response to the COVID-19 pandemic, a significant group of these borrowers will not transition to one of the streamlined options. The proposed rule does not adequately address how those borrowers will be helped or how and when servicers will inform borrowers before initiating foreclosure about the documents and information they need to submit to complete their applications.

The Bureau's proposal is based on the false assumption that servicers have been engaging with borrowers about post-forbearance loss mitigation options and sending notices required by Regulation X during the forbearance period. The Bureau stated that "borrowers who previously entered into a forbearance program will have received at least two written notifications earlier in the loss mitigation process, as required under Regulation X: (1) the written notice required under § 1024.41(b)(2) when the borrower submits the initial application requesting a forbearance program, and (2) written notification of the terms and conditions of the forbearance program, required under § 1024.41(c)(2)(iii) ...."<sup>31</sup>

We are perplexed that the Bureau believes that borrowers have received § 1024.41(b)(2) notices. Our experience is that most borrowers on forbearance have not received this notice (and certainly not "earlier" in the loss mitigation process as the Bureau suggests). Our understanding is that servicers have relied on the Joint Statement and have not sent borrowers the § 1024.41(b)(2) notice.

And while borrowers hopefully received the § 1024.41(c)(2)(iii) notice when they obtained a forbearance, this notice is not a substitute for the § 1024.41(b)(2) notice. The § 1024.41(c)(2)(iii) forbearance notice at best provides very general information indicating that other loss mitigation options may be available and that the borrower has the option to submit a complete application. More concerning, though, is that many of the § 1024.41(c)(2)(iii) forbearance notices that were sent at the beginning of the pandemic actually provided misleading information, often suggesting that the borrower would need to repay the forborne payments in a lump sum.

We also believe that servicers have not been providing the § 1024.41(c)(2)(iii) notice when forbearance plans have been extended. While the Bureau has permitted servicers to provide successive forbearances that exceed in duration the 6-month limitation in comment 41(c)(2)(iii)-1, it is critically important that borrowers receive written notice with each forbearance extension that conforms with § 1024.41(c)(2)(iii) and includes information about the duration of the extension, and informs borrowers that other loss mitigation options may be available, and that the borrower may submit a complete application to be reviewed for all available options. The Bureau should remind servicers of this requirement when issuing the final rule in this docket and in supervisory bulletins.

Even if the Bureau were correct that some borrowers have received both the § 1024.41(b)(2) notice and the § 1024.41(c)(2)(iii) notice earlier in the forbearance period, many of these borrowers would have received these notices more than a year ago. It is likely that the information in the notices is no longer accurate and the deadline identified in the § 1024.41(b)(2) notice for submitting documents to complete the application has long passed, making the notice effectively meaningless or, even worse, misleading.

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<sup>31</sup> 86 Fed. Reg. 18861 (Apr. 9, 2021).

For borrowers who have not been sent a § 1024.41(b)(2) notice, there is nothing in the proposed rule that would prevent a servicer, either before the effective date of the rule or after December 31, 2021, from sending those borrowers the § 1024.41(b)(2) notice one day before the end of their forbearance and then initiating foreclosure one day after the forbearance. This is because the Bureau has relieved servicers of the requirement to send the notice within five days of a request for a forbearance and replaced it with the vague suggestion in the Joint Statement that it be sent “before the end of the forbearance period.” Unlike the 30-day deadline in proposed comment 41(b)(4)-iv, the Bureau’s proposal does not include a firm deadline for when the § 1024.41(b)(2) notice must be sent.

We urge the CFPB to require that a servicer must send the § 1024.41(b)(2) notice at least 30 days before the end of forbearance to borrowers who are not offered or have not yet accepted a COVID-19 payment deferral under § 1024.41(c)(2)(v)(A)(1), a loan modification under proposed § 1024.41(c)(2)(vi)(A), or an extension of an existing forbearance. This requirement should apply to all borrowers who were not previously sent a § 1024.41(b)(2) notice during the forbearance period or were sent the § 1024.41(b)(2) more than three months before the end of forbearance. In addition, the borrower should be informed in the (b)(2) notice or in a separate notice if the borrower was reviewed but not approved for streamlined options, and provided with the specific reasons for the denial.<sup>32</sup>

For borrowers who submit a loss mitigation application before foreclosure referral, the reasonable diligence requirement and the § 1024.41(b)(2) notice are intended to give the borrower an opportunity to complete an application and gain the protections under the rule before the 120-day period pre-foreclosure review period expires. Borrowers have been denied this opportunity and the related protections in part because of the Joint Statement’s relaxation of the normal requirements. To remedy this situation, the Bureau should also require that the § 1024.41(b)(2) notice give borrowers at least 30 days to submit the information and documents to complete the application and that the servicer shall not make the first notice or filing to initiate the foreclosure process until the completion period has expired.

**3. The Bureau should strengthen the proposed anti-evasion exception to allow streamlined loan modification offers only if a borrower is informed of the investor rules that apply to the loan and of the opportunity to seek a full review, and given written notice of any streamlined option that is offered or denied.**

**a. Introduction: The Bureau’s proposed approach poses the risk of significant harm to borrowers unless additional safeguards are implemented.**

The Bureau has proposed creating an additional anti-evasion exception in order to allow servicers to offer a streamlined loan modification without collecting a complete application and reviewing the borrower for all available loss mitigation options. This proposal would be in

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<sup>32</sup> As discussed in the following section, the invisibility of servicers’ review of streamlined options poses significant risks of wrongful denials going unchecked as well as borrowers lacking information about what options have already been ruled out for them. We are suggesting that any offer of a streamlined option include notice of any streamlined options that have been denied (and the reasons). However, in order to provide the same information to borrowers not offered any streamlined options, it would be helpful to include this information within reasonable diligence efforts and within any (b)(2) notice sent after the rule’s effective date.

addition to the anti-evasion rule the Bureau issued in its June 2020 Interim Final Rule (IFR), which allowed servicers to offer a deferral option.

Under the extraordinary circumstances presented by the pandemic and its immediate economic aftermath, there are good reasons to allow servicers to make streamlined loan modification offers without collecting a complete application and reviewing the borrower simultaneously for all available options. Given the number of borrowers likely to need loan modifications within a very short window of time, the burden of collecting income documentation may become unmanageable for servicers. Because of the economics of mortgage servicing, servicers are unlikely to staff up to a level that would be necessary to process such a large number of full-documentation applications effectively. Borrowers could give up and fail to complete the process, especially if the experience of attempting to submit documentation is marked by the typical problems of an overburdened, under-staffed servicing system.

However, there is also a risk of significant harm to borrowers of allowing servicers to conduct a sequential review of a limited set of options rather than a simultaneous review for the full array of available options. Borrowers are being asked whether they can afford a certain payment without sufficient information about the other options that may exist. Both the deferral and the streamlined loan modification options are based on asking the borrower whether the proposed payment is affordable. Moreover, even if they know a payment will be difficult or impossible to afford at present, borrowers may say they can afford the payment based on hope that their circumstances will improve if they believe their only other options are to (a) pay the arrearage in full, or (b) lose the home to foreclosure. Even though the GSEs gave servicers a sample deferral offer letter and guidance for such letters that clearly requires servicers to notify borrowers that payment-reduction options may be available, servicers are sending deferral offer letters that convey the misimpression that the only options are deferral, lump sum payment, or foreclosure.<sup>33</sup> Evidence from homeowner advocates shows that information being given out over the phone is similarly incomplete and inaccurate.<sup>34</sup> When streamlined modifications begin to be offered in substantial numbers, we expect to see similar misinformation (and lack of information) unless the Bureau imposes additional criteria as part of the proposed anti-evasion exception. In NCLC's nationwide survey of homeowner advocates, 91 respondents had advised homeowners had exited forbearance without having received any information about post-forbearance options, and 90 advocates had spoken with servicer representatives that did not seem to know the specific investor rules that applied to a given loan. In addition, a number of survey respondents commented that they had not yet handled many cases involving homeowners that had reached the end of their forbearance period, so these numbers likely under-represent the scope of the problem.<sup>35</sup>

Borrowers can make the best decision about which loss mitigation option is most suitable when they are informed of all available options. This is the logic that led the Bureau to require a simultaneous review for all options, rather than a sequential review for one option at a time,

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<sup>33</sup> See Appendix B at 4 (example of Ms. W, from Jennifer Rentenbach at Atlanta Legal Aid); see also [Letter to Acting Director David Uejio from coalition of consumer advocacy organizations](#) (March 12, 2021), Exhibit A (Example Deferral Letter Sent to Fannie Mae Borrower).

<sup>34</sup> See Appendix A, Nationwide Survey of Homeowner Advocates (109 advocates had spoken with homeowners who were told they could not be evaluated for post-forbearance options while in forbearance).

<sup>35</sup> See *id.*

when it issued the RESPA loss mitigation rule.<sup>36</sup> The Bureau recognized that borrowers should not be expected to identify the most appropriate loss mitigation option blind, and that servicers should not be permitted to steer borrowers to one particular loss mitigation option when the borrower lacks full information.<sup>37</sup>

The Bureau's NPRM underestimates the harm to borrowers of being offered the wrong loan modification option – of being offered an option that is not affordable when another available option would have been affordable. The Bureau states that if a borrower defaults on a trial payment plan (TPP), then the servicer will be required to resume reasonable diligence efforts and send the (b)(2) notice in order to evaluate the borrower for all available options. However, the FHA COVID Streamlined modification options do not involve TPPs. FHA borrowers have been severely economically impacted by COVID-19, and it is also a book of loans for which deeper payment reduction is typically available if a borrower submits a complete application (or even the light documentation required for COVID-19 FHA HAMP). Therefore, relying on the possibility that a borrower will default on a TPP is not likely to help the borrowers who are offered (and accept, due to lack of information) an unaffordable streamlined loan modification, at least among FHA borrowers.

Even for GSE loans, where TPPs are required, a TPP default will block the borrower from obtaining any future Flex Modification.<sup>38</sup> Currently, many Fannie and Freddie borrowers will not be able to get a better loan modification option by submitting a complete application. The Flex Modification rules for borrowers that are more than 90 days delinquent do not currently allow for any deeper payment reduction based on proof of income or reaching a target DTI ratio. However, advocates are pushing the GSEs to change their rules to allow for additional payment relief for borrowers who need it most. If Fannie and Freddie change their rules to allow for a Flex Modification that reduces the interest rate to the current market rate, even for borrowers below 80% LTV, in order to reach a certain payment reduction or DTI ratio target, then GSE borrowers might have additional options based on submitting a complete application. Even now, GSE borrowers who submit a complete application when they are less than 90 days delinquent may obtain deeper payment reduction through the Flex Modification than they would without submitting proof of income.

The Bureau states that the risks to borrowers are minimal because accepting the streamlined option will end the delinquency. This statement fails to take into account the fact that once a loan modification is finalized, documented, and boarded into the servicing system, it is extremely unlikely that servicers are going to implement a second loan modification within a short window of time. More likely, a borrower who redefaults in short order is going to be blocked from obtaining another loan modification, even if it would have been available from the outset. Implementing (and boarding) two loan modifications within a short time period is not something servicers have ever done before.<sup>39</sup> GSE rules prohibit a borrower from obtaining a Flex

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<sup>36</sup> Section-by-Section Analysis, § 1024.41, 78 Fed. Reg. 10,696, 10,859 (Feb. 14, 2013).

<sup>37</sup> 78 Fed. Reg. 10,696, 10,828 (“The Bureau simply does not believe that permitting servicers to steer borrowers to apply for particular loss mitigation options, when the servicer has a far superior capacity to make the relevant determination, reasonably protects the borrower’s interest.”)

<sup>38</sup> See Fannie Mae Single Family Servicing Guide D2-3.2-07 (“Eligibility Criteria for a Fannie Mae Flex Modification” includes, “The borrower must not have failed a Fannie Mae Flex Modification Trial Period Plan within 12 months of being evaluated for another Fannie Mae Flex Modification.”)

<sup>39</sup> Although FHA rules provide that eligible borrowers may obtain more than one COVID-19 Home Retention Option, it is not clear whether that policy means the borrower may receive more than one loan modification in a

Modification after a default within 12 months of obtaining a prior Flex Modification; so a borrower who took a less beneficial streamlined Flex Mod offer will not be able to later obtain a deeper payment reduction Flex Mod based on income documentation.<sup>40</sup> The fact that a borrower's delinquency would be cured by accepting the streamlined loan modification (providing a new 120-day pre-foreclosure review period) will not help the borrower if it gains the borrower time to submit a new application that will simply be denied.

Another risk of this proposed framework is that the servicer could offer any streamlined option it wants (declining to offer other streamlined options), or could find the borrower ineligible and offer nothing, and the borrower would never know. The review conducted by servicers is shrouded in mystery. Borrowers will be harmed by the lack of information about which options they have been reviewed for and even determined to be ineligible for. Examples abound of borrowers who have been wrongfully found ineligible for a streamlined modification or been offered a modification with the wrong terms. In NCLC's nationwide survey of homeowner advocates, 61 advocates responded that they had seen homeowners wrongfully denied for a Flex Modification at least once. Thirty-two advocates had managed to get a wrongful denial reversed through their advocacy.<sup>41</sup>

The opaqueness of most Flex Modification reviews means that these problems do not come to light in most instances. Yet experienced legal services attorneys and housing counselors who know the rules of the Flex Modification program have reported many instances in which borrowers were offered a Flex Modification with incorrect, disadvantageous, and unaffordable terms because the servicer used an inaccurate property valuation. The biggest factor that determines modification terms in the Flex Modification is the loan to value ratio. Borrowers with an LTV below 80% are offered no principal forbearance and no adjustment of the interest rate down to the current market rate. Therefore, reliance on an inaccurate automated valuation can result in a dramatically worse loan modification offer than the borrower should have been given, or even in an outright denial. Fannie and Freddie borrowers who have had a Flex Modification in the past six years and are determined by the servicer to have an LTV below 80% are likely to see a payment increase and will therefore be found ineligible for the Flex Modification.<sup>42</sup>

If a servicer has determined based on the information available to it that the borrower is not eligible for a Flex Modification (because, for example, the modification would result in a payment increase), the borrower is much better off knowing that information immediately. A borrower who disagrees can appeal the denial and provide information (for example, proof of the home's value) that might change the outcome. If there is no basis to overturn the decision, the

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short time period. Moreover, even if FHA rules allow it, it will be up to servicers to decide whether to implement such a policy. See Dep't of Housing and Urban Dev't, Mortgage Letter 2021-05 at 6 (Feb. 16, 2021).

<sup>40</sup> See Fannie Mae Single Family Servicing Guide D2-3.2-07 ("Eligibility Criteria for a Fannie Mae Flex Modification" includes the following: "The mortgage loan must not have been modified three or more times previously" (a payment deferral does not count towards this lifetime limit), and, crucially: "The mortgage loan must not have received a Fannie Mae Flex Modification and become 60 days or more delinquent within the first 12 months of the effective date of the mortgage loan modification without being reinstated.") (emphasis added).

<sup>41</sup> See Appendix A at 2. See also Appendix B at 4 (example of Ms. B, from Rachel Scott, Atlanta Legal Aid Society).

<sup>42</sup> This is true because Fannie and Freddie are currently not reducing the interest rate to the market rate for borrowers below 80% LTV. If 12 to 18 months of missed payments are capitalized without reducing the interest rate to the market rate, as, then if the term is already close to 480 months due to a prior Flex Mod, the very slight term extension from a new Flex Mod is not sufficient to offset the payment increase due to capitalized arrears. Fannie and Freddie estimate that roughly 85% of their loans are currently below 80% LTV.

borrower is better off knowing that she is not eligible for the Flex Modification now, rather than going through the months-long process of trying to submit an application that will be deemed “complete,” and falling several more months behind, before learning that this option is not available. The delay, frustration, and growing arrearages caused by lack of information about streamlined reviews will cause significant harm to borrowers. The inability to overturn an improper denial will cause even greater harm to the borrowers who are wrongfully denied. Thus, the total lack of transparency in the reviews of incomplete applications that servicers will conduct under the proposed rule poses a substantial risk of harm to consumers. The Bureau must include additional criteria for the new anti-evasion exception, as described below, to protect against these risks of harm.

Another risk of harm to borrowers posed by the proposed rule that the Bureau should address is the risk that borrowers might lose one definite option (the streamlined modification option) by virtue of asking to be evaluated for all available options. In its final rule, the Bureau should ensure that if the borrower asks to be considered for all available options, they are not required to give up the right to obtain a streamlined modification option as a condition of that full review. It should also require that servicers evaluate the borrower simultaneously for all available streamlined modification options.

This risk of harm posed by allowing sequential review is especially great for FHA borrowers because of FHA’s COVID-19 loss mitigation policies. FHA offers two COVID streamlined loan modification options. The first (option “B” in the FHA COVID waterfall, after option “A,” the stand-alone partial claim) involves capitalizing arrears, reducing the interest rate to the current market rate (if lower than the current rate), and extending the loan to a new 30-year term. The second streamlined modification (option “C”) involves putting arrears into a partial claim, up to the maximum partial claim (if it has not already been exhausted in prior loss mitigation), reducing the interest rate to the market interest rate, and extending the loan to a new 30-year term. HUD’s recent Mortgagee Letter provides that a borrower is eligible for Option B only if they cannot afford to resume the regular contractual payment, and is eligible for Option C if they cannot afford Option B.<sup>43</sup> HUD also provides for one other COVID modification (option “D,”) a light-documentation version of FHA-HAMP, in which the partial claim may be utilized for both arrearage and principal forbearance, but only as necessary to reach a target payment based on affordability. A borrower who wishes to be considered for option D must submit proof of income (which is not required for options B or C).

FHA’s Mortgagee Letter 2021-05 seems to direct servicers to first offer only option B, and not offer the borrower option C unless the borrower attests that they cannot afford option B. This kind of sequential review is precisely what RESPA was designed to prevent. RESPA permits servicers to implement an investor “waterfall,” but does not permit a servicer to stop evaluating for other options based solely upon a borrower’s preference.<sup>44</sup> An unsupported statement from the borrower regarding what they can afford is tantamount to stating a preference. Moreover, the use of a waterfall as an evaluation tool for a complete application results in the borrower still being notified of the reason for denial of the other modification options, which is missing from

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<sup>43</sup> Mortgagee Letter 2021-05 (Feb. 26, 2021).

<sup>44</sup> See Section-by-Section Analysis, Amendments to the 2013 Mortgage Rules, 81 Fed. Reg. 72,160, 72,239-42 (Oct. 19, 2016).

the Bureau's proposal.<sup>45</sup> For the same reasons considered by the Bureau in 2016, including concerns about steering by servicers and imperfect information on the part of borrowers, the Bureau should make clear that servicers are required to evaluate borrowers for all streamlined options available for their loan. The Bureau should not permit servicers to stop evaluating borrowers for other streamlined options based merely on a statement about what the borrower can afford, and should require servicers to notify borrowers of all streamlined options being denied and the reasons for denial even if another option is offered.

The FHA protocol is not an eligibility "waterfall," because being eligible for the highest option in the list does not preclude being eligible for the lower options. Rather, FHA is directing servicers to ask borrowers whether they can afford a certain option. If they say yes, that is the option they will be given, but if they say no, they could be offered one of several other options. Asking someone, "Can you afford this" is not an eligibility criterion. It is an offer. It is tantamount to saying, "Do you want this?" or "Will you accept this?" A borrower might say she cannot afford, or does not want to accept, a Covid-19 Owner Occupant Loan Modification (Option B), because the payment is really going to be a struggle for her. She could ask to be reviewed for FHA-HAMP, and could be denied because based on her documented income, the modification will result in a housing-to-income ratio greater than the 40% maximum allowed. That borrower might then say, "Ok, then I want the last thing you offered me."

The fact that the borrower previously said she could not afford the streamlined modification should not bar her from now getting that streamlined modification option. "What you can afford" is changeable, and also can be aspirational. If it is the only way to save her home, a borrower might be able to get help from a family member, rent out a room in the house, sell various household items -- whatever it takes to make it work. We have seen this countless times, when a good housing counselor sits down with the homeowner and explains, "This is the lowest modified payment you can get. What can we take out of your budget to make it work?" This is the kind of decision that can only be made with complete information about available loss mitigation options.

RESPA currently requires that a borrower be evaluated for all available options *simultaneously*. If the Bureau is going to create an exception to allow for a review for one of several options, the Bureau should make sure borrowers are protected from the harms of that kind of sequential review by making it clear that all streamlined modification options must be reviewed simultaneously and a streamlined modification offer cannot be revoked (or deemed rejected) if the borrower requests a review for all available options. Rather, the streamlined options should be included among the review for all available options.

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<sup>45</sup> A servicer's decision not to offer a borrower a loan modification available to the borrower is a denial of that loan modification option for purposes of the § 1024.41(d) notice requirement, notwithstanding the servicer's offer to the borrower of a different loan modification option or other loss mitigation option. See comment 1024.41(d)-3.

**b. The Bureau should include additional criteria for both anti-evasion exceptions.**

- i. In deferral offers, the Bureau should require simultaneous notice of other options and ensure that a deferral is not deemed rejected if the borrower asks to be reviewed for all available options.**

The proposed rule modifies the language of the IFR in connection with creating the new COVID-19 loan modification evasion option (and separately defining “COVID-19 related hardship.”) In addition to these changes, the Bureau should modify the language of § 1024.41(c)(v)(A) to add the following criteria for the anti-evasion exception (after criteria 1-3):

(4) The servicer notifies the borrower at the time the loss mitigation option is offered that other options may be available that may result in a lower payment.

(5) The offer of the loss mitigation option is not deemed rejected if the borrower asks to be reviewed for all loss mitigation options available to the borrower. The servicer shall include the loss mitigation option as part of the review for all loss mitigation options available to the borrower.

In order to prevent harm to borrowers from sequential review, servicers must be required to inform borrowers that other options may be available. Otherwise, borrowers who cannot afford the current payment will likely accept a deferral simply because they believe there are no other options. This information should be included in any written notice offering the deferral and in any communications (live contact and recorded phone messages) with the borrower about the deferral option. The Bureau should review servicer scripts to ensure that these live communications are not conveying the misimpression that the deferral is the only alternative to immediate lump-sum repayment or foreclosure. *See* 12 C.F.R. § 1024.38(b)(2)(i) (requiring servicers to provide accurate information regarding available loss mitigation options).<sup>46</sup>

Moreover, if the servicer is to be permitted to offer one of several available loss mitigation options, the Bureau must protect borrowers from the harm of sequential review by ensuring that borrowers are not penalized for requesting a review for all available options. The review for all available options should include the previously offered deferral so that if the borrower is still eligible according to investor guidelines, the deferral will be offered again alongside any other available options. This is important because there are some borrowers who will not qualify for a Flex Modification or an FHA loan modification. Those borrowers would normally be reviewed for all options simultaneously and allowed to select the best option that they can receive. In allowing servicers to evade the obligation to conduct a full review for all available options, the Bureau should protect borrowers from the harm of being required to give up a bird in the hand for what could end up being none in the bush. This same issue arises in the context of streamlined loan modification options, and is included in our recommendations related to the new anti-evasion requirement, below.

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<sup>46</sup> Additionally, as was discussed in prior comments related to the IFR, the Bureau should clarify in the rule that deferrals may still be offered pursuant to the IFR if they involve a period of repayment beyond the existing loan term. [See Comments to the CFPB regarding the IFR at 14-15](#) (Aug. 14, 2020).



**ii. If the Bureau will allow streamlined loan modification offers as an exception to the anti-evasion rule, it should include certain additional criteria that are necessary to prevent consumer harm.**

The most effective way to protect borrowers from the risks and harms of streamlined COVID loan modification options described above would be to incorporate them as a form of “complete” application and require full compliance with the RESPA rules applicable to the complete application framework. As we have described previously, we continue to believe such a system would be more appropriate than creating another exception to the anti-evasion rule.<sup>47</sup>

However, if the Bureau moves forward with creating this new exception, it should incorporate the following revisions to the proposed rule in order to protect against the risks of harm.

Most importantly, the Bureau should require a written notice of all streamlined options the borrower was considered for. The borrower should be given a written notice outlining all options for which the borrower was approved, and all options for which the borrower was denied, including the reason for the denial. If there is more than one streamlined modification option available for a borrower’s loan, the servicer should be required to offer the borrower all streamlined modification options for which the borrower qualifies, and provide a specific written denial for any that are not approved. These steps are necessary so that borrowers can challenge those decisions when the servicer gets it wrong.

We therefore recommend that the Bureau include an additional criterion for the anti-evasion exception. The Bureau should modify proposed § 1024.41(c)(vi)(A) by adding the following criterion (after criteria 1-4):

(5) The servicer provides the borrower with a notice in writing stating the servicer’s determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. This notice shall identify the owner, assignee, or insurer/guarantor of the loan, which will assist the borrower in determining any investor guidelines that apply to the borrower’s loan. This notice shall also identify any option for which the borrower was not approved, and the specific reason or reasons for such denial. The servicer shall include in this notice the amount of time the borrower has to accept or reject any offer of a loss mitigation program consistent with paragraph (e)(1) of this section, a notification that the borrower has the right to appeal the denial of any streamlined loan modification option for a period of no less than 30 days, and any requirements for making an appeal.

**The Bureau should incorporate dual tracking protections for borrowers who are offered streamlined loan modifications based on an incomplete application.**

Additionally, the Bureau should impose dual tracking protections for borrowers who are offered and accept a streamlined loan modification option. Under the proposed rule, a borrower could accept a streamlined modification and could be foreclosed on while performing under a TPP agreement without there being a violation of RESPA. This is because the Bureau has not made

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<sup>47</sup> [Letter to Acting Director David Uejio from coalition of consumer advocacy organizations](#) (March 12, 2021).

the dual-tracking protections that would normally be available to borrowers under § 1024.41(f)(2) and (g) applicable to borrowers who are offered streamlined options. In many states, breach of contract is not a viable theory for breaches of TPP agreements – yet this kind of servicing error would be outrageous and unfair. The best way to prevent this potential harm is to explicitly create dual tracking protections for borrowers who have accepted a streamlined modification offer (or have rejected an offer and filed an appeal).

The Bureau should modify proposed § 1024.41(c)(vi)(A) by adding the following criterion:

(6) Once a servicer makes an offer of loss mitigation pursuant to paragraph (c)(2)(vi)(A) of this section, the servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless the borrower has rejected all streamlined loss mitigation options offered by the servicer and has not filed a timely appeal, or the borrower fails to perform under an agreement on a loss mitigation option.

**The Bureau should require that servicers also include streamlined options in the review for all available options when a borrower elects to apply for all available options.**

As described above, the new exception creates a substantial risk that borrowers may accept a streamlined modification, and in so doing, lose the right to obtain a better loan modification that they truly could have afforded. Borrowers must be notified that other options may be available, and must not be disadvantaged by asking for a review for all available options.

We therefore recommend that the Bureau include additional criteria for the anti-evasion exception. The Bureau should modify proposed § 1024.41(c)(vi)(A) by adding the following criteria:

(7) The servicer notifies the borrower at the time the loss mitigation option is offered that other options may be available that may result in a lower payment.

(8) The offer of the loss mitigation option is not deemed rejected if the borrower asks to be reviewed for all loss mitigation options available to the borrower, and the servicer notifies the borrower of this fact. The servicer shall include the loss mitigation option as part of the review for all loss mitigation options available to the borrower.

We believe that the proposed rule as drafted has created some confusion about whether interest and escrow arrearages may be capitalized when the servicer offers a streamlined modification. Some readers have believed that the prohibition on deferred amounts accruing interest was a prohibition on capitalizing arrears. The Bureau should clarify the criterion in (c)(vi)(A)(1) by stating the modification may include capitalizing interest and escrow portions of unpaid

payments. It is important for the Bureau to clearly state that escrow shortages, in addition to escrow advances, may be capitalized.<sup>48</sup>

It appears the Bureau may have inadvertently omitted the words “or, for a mortgage insured by the Federal Housing Administration, the mortgage insurance terminates” from proposed § 1024.41(c)(vi)(A)(2) (related to the fact that certain amounts may be deferred until a certain date). This language is included in proposed § 1024.41(c)(v)(A)(1) and would seem to apply equally to deferred amounts in a streamlined modification.

### **iii. Specific questions posed by the Bureau**

The Bureau requested feedback regarding all aspects of proposed § 1024.41(c)(vi)(A), including certain specific questions. We respond to several of those questions below.

- The Bureau should maintain the proposed criterion that the term not be extended beyond 480 months from the modification effective date and the requirement that the modification does not cause the borrower’s principal and interest payment to increase. Although FHA rules sometimes allow for a COVID-19 streamlined loan modification that includes a payment increase, this relatively rare situation is one in which the borrower would be much better off having a review for all available loss mitigation options. Before accepting a modification that would result in a P&I payment increase, the borrower should be evaluated for all options in order to make a well-informed decision.
- The Bureau asked about whether it should maintain the criterion of requiring that servicers waive all existing late charges, penalties, stop payment fees, or similar charges if the borrower accepts the streamlined loan modification. In order to increase servicers’ willingness to offer streamlined modifications, the Bureau should modify this criterion to require only the waiver of any such charges that were incurred after March 1, 2020. This would be consistent with FHA rules, and servicers still could offer waiver of additional charges if they wish. However, we have also asked FHA to change its policy on this issue, which could happen before a final rule is issued. The Bureau should make the streamlined modification offer consistent with FHA and GSE rules on the issue of waiver of fees and charges.
- The Bureau asked if the anti-evasion exception should apply only to borrowers experiencing a COVID-19 related hardship, or to all borrowers offered modifications within a certain time period. Changing to a fixed time period might be easier for servicers to administer, and if so, we have no objection as long as the time period is long enough to take into account the additional time some borrowers may need to get back on their feet.

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<sup>48</sup> See Memorandum from John Rao and Eric Stein to Joseph Devlin, Consumer Financial Protection Bureau (April 8, 2021).

#### **4. The Bureau Should Mandate a 120-Day Grace Period Beginning When the Borrower Exits Forbearance, or at a Minimum, Make Significant Improvements to its Proposal for a Pre-Foreclosure Review Period.**

##### **a. Introduction: The Bureau must provide time for borrowers to obtain loss mitigation after forbearance.**

There remain over two million people in mortgage forbearance plans, and many of them are facing serious delinquency. Given the clear challenges that the servicing industry will face in helping these borrowers transition to sustainable home-retention solutions, the Bureau must ensure that borrowers have sufficient time to access affordable arrangements between the end of forbearance and the start of foreclosure. Once foreclosure begins, costs rise for homeowners and the miscommunications and incentives inherent in the dual tracking of foreclosure and loss mitigation make it harder to prevent avoidable foreclosures. Importantly, homeowners often face challenges resolving their delinquencies at the same time they are entering the foreclosure pipeline. As we discuss below, available data show that borrowers are not resolving their delinquencies at the same quick pace they are exiting forbearance. Accordingly, time and systems are necessary to avoid unnecessary foreclosures of homeowners exiting COVID-19 forbearances.

The Bureau proposes to address this problem, and the challenges faced by the over 240,000 homeowners who are seriously delinquent and not in forbearance, by establishing a pre-foreclosure review period until the end of 2021, creating a uniform period during which homeowners, including those who exit forbearance, will not face foreclosure. (Since the 120-day pre-foreclosure waiting period in the Bureau's existing servicing rule will have expired for most borrowers while they are in forbearance, they too will be facing foreclosure at the end of the year.)

The Bureau's proposed approach has several weaknesses. First, it creates immense pressures on the entire foreclosure system if hundreds of thousands of foreclosures begin in January 2022. Beyond the pressures on courts, foreclosure attorneys, and the many other participants in foreclosure processes, it imposes a burden on servicers, and therefore borrowers, with hundreds of thousands of homeowners still seeking loss mitigation while foreclosures are starting. Servicers do not have the resources to manage this volume successfully. While borrowers generally have been able to obtain forbearances when sought, the loss mitigation process, even a streamlined one, requires a higher order of communication and efficiency.

Second, the pre-foreclosure review period only provides a cushion after forbearance for those exiting forbearance before the end of the year (and, in reality, before October 2021), leaving those exiting forbearance late in 2021 and into 2022 with no meaningful protections.

Third, the fact that the rule will not take effect for several more months means servicers can, and arguably are incentivized to, begin foreclosures before the new rule takes effect if not otherwise restricted from doing so. Thus, the rule creates a "doughnut hole" for foreclosures, providing uniform protections for one period of time with no protections before or after that period.

Finally, we recognize that the proposed pre-foreclosure review period applies to those not in forbearance (unlike a post-forbearance grace period or cushion) as well as those who are, in an effort to provide those borrowers with an additional opportunity for avoiding foreclosure. We are very concerned that many of these 240,000+ seriously delinquent borrowers who are not in

forbearance have been delinquent for a long time, often pre-COVID, and are nevertheless not in touch with their servicers. Giving them more time without adding any meaningful loss mitigation requirements will simply eat into their equity without giving them a new reason to get in touch with their servicer.

The alternative “grace period” approach that the Bureau has put forth as an option in the section-by-section analysis is a better approach. It would give most COVID-affected borrowers, those in forbearance, with the time they need to find an affordable solution without swamping the servicers with a single exit period that applies to all borrowers at the same time. The Bureau should establish that for borrowers in forbearance during the pandemic, the 120-day period of delinquency (pre-foreclosure review period) in which a servicer cannot proceed with foreclosure under 12 C.F.R. 1024.41(f)(1)(i) does not start running until the end of a borrower’s forbearance period. Even if streamlining will help borrowers and servicers identify a loss mitigation option, finalizing loss mitigation takes several steps, and a 120-day cushion or grace period will allow all parties the time needed to arrange a permanent, sustainable solution.

If the Bureau declines to implement the alternative 120-day post-forbearance grace period and retains the proposed pre-foreclosure review period, pausing foreclosures from the effective date of the proposal through December 31, 2021, substantial revisions should be made. Although it is less effective than the 120-day cushion, the pre-foreclosure review period gives borrowers and servicers a date certain for the resumption of foreclosures, providing simplicity and alignment but also creating a logjam in the system. Recognizing this likelihood of overloading the servicing system, the Bureau requests comment about exemptions or “off ramps” from the pre-foreclosure review period, in which servicers could initiate foreclosure even before the period ends if, on a case by case basis, a loan satisfies certain requirements. While off ramps have the potential to mitigate the crush of loss mitigation and foreclosure activity in early 2022, the specifics of the off ramps discussed in the Bureau’s proposal do not on their own promote effective loss mitigation and instead offer exits that could easily result in unnecessary foreclosures.

If the Bureau pursues the proposed “date certain” pre-foreclosure review period, any off ramp must be structured to directly promote sustainable loss mitigation outcomes. **At a minimum, a servicer should not be permitted to proceed with a foreclosure during the pre-foreclosure review period unless it has made a streamlined loan modification offer that meets the standard the Bureau has set out for COVID-19 streamlined options and the borrower has been given 30 days to accept.** For borrowers who have already been in contact with their servicer, a servicer should also evaluate borrowers for all other applicable loss mitigation options and send specific denial notices for any option the borrower is not eligible to receive. Before pursuing any foreclosure, the servicer must also meet all early intervention and reasonable diligence requirements, discussed above, and provide an opportunity to appeal the servicer’s decisions.

Moreover, regardless of the approach the Bureau takes, it must fix the incentive its proposal creates for servicers to hasten foreclosure filings in advance of the effective date of the final rule. While the Bureau has made clear it is stepping up its enforcement and supervision work on mortgage servicing, these measures do not provide individuals with tools to access sustainable outcomes when a foreclosure is looming. Also, the Bureau’s March 31, 2021, compliance bulletin will not meaningfully change servicer behavior unless the Bureau withdraws the April 2020 Joint Agency Statement. As discussed earlier in these comments, we recommend the Bureau withdraw that Joint Agency Statement immediately, so that servicers are required to

comply with the early intervention and loss mitigation requirements of Regulation X that will protect borrowers and incentivize loss mitigation during the gap before the effective date of the final rule. It is incumbent upon the Bureau to address this problem and either issue an Interim Final Rule or guidance promoting rigorous loss mitigation outreach and evaluations and prohibiting foreclosures during this intervening period, especially to prevent an acceleration of foreclosures in the private market.

The Bureau must also provide protection for borrowers after December 31, 2021, in order to avoid a crush of foreclosures in which homeowners will have little opportunity to be reviewed for an alternative before the foreclosure process begins. As noted below, data from FHA show that delinquencies are taking time to resolve and that there remain many serious delinquencies in the mortgage system. If the Bureau chooses to implement a December 31, 2021, pre-foreclosure review period, we urge the Bureau to adopt a rule that provides for a pre-foreclosure review period that ends 120 days after the end of forbearance or December 31, 2021, whichever is later. This approach would help homeowners exiting forbearance toward the end of 2021 in addition to those exiting in 2022 and beyond.

**b. The Bureau should replace the proposed “date certain” pre-foreclosure review period with a 120-day post-forbearance grace period.**

As we have already suggested, the Bureau should require servicers to wait until the 120<sup>th</sup> day of delinquency after the end of a COVID forbearance before a servicer can initiate foreclosure. This would mirror the existing 120 day pre-foreclosure period for delinquent borrowers in 12 C.F.R. 1024.41(f)(1)(i).<sup>49</sup> While we believe this change should become permanent in the Bureau’s loss mitigation rules, it should clearly apply while COVID-related loss mitigation options are offered.

Even under the best designed loss mitigation system, it is important to have the 120-day window at the end of a forbearance plan because it takes significant time and effort to move borrowers from forbearance plans to sustainable post-forbearance options. The previous financial crisis illustrated this very clearly. Stories of documents gone missing, improper loan modification denials, and failure to follow basic procedures were endemic and led to unnecessary foreclosures and litigation.<sup>50</sup>

While the Bureau’s mortgage servicing rules have improved the situation to some extent, and while we expect that a truly streamlined system for offering payment-reduction loan modifications will avoid some of the delays that were common in the previous crisis, streamlining is not a panacea for all loss mitigation delays. Even if there are fewer barriers to finding an affordable loss mitigation option, there are several barriers in the process of moving borrowers from forbearance to post-forbearance beyond reaching the right loss mitigation option. These include borrower confusion, escalations when mistakes are made, generation of loss mitigation documents, execution of those documents, and on-boarding loan modifications and deferrals into the servicer’s system. There will also inevitably be problems with the COVID-19 array of options that may not have been anticipated. A problem in any of these areas can and will lead to delays, and borrowers may lose their homes as a result.

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<sup>49</sup> [Joint Letter to CFPB Proposing a Framework for Streamlined Modifications](#) (March 12, 2021); [Group Letter to CFPB Urging Prevention of Covid Foreclosures](#) (Jan. 28, 2021).

<sup>50</sup> See., e.g., Consumer Financial Protection Bureau, [Supervisory Highlights Mortgage Servicing Special Edition](#) at 7 (June 2016).

Data from the Bureau’s consumer complaint system show that barriers to loss mitigation options are a significant issue during the COVID-19 crisis. Complaints have hit a peak during the crisis, and one of the frequent topics for complaint is delays in the loss mitigation system.<sup>51</sup>

The best way to minimize the likelihood that barriers and mistakes in the post-forbearance process will lead to unnecessary foreclosures is to build in time after forbearance for each borrower to be reviewed for loss mitigation. In cases where servicers and borrowers quickly move to post-forbearance options, the window will not impact servicers, because the default will be cured. For others, time will be needed.

Establishing a 120-day cushion at the end of forbearance fits with the concept of forbearance, which is designed to give a borrower facing hardship a pause to recover financially. If a borrower faces foreclosure right after a forbearance, this greatly reduces the benefits of any pause. Deprived of the 120-day pre-foreclosure pause contemplated by the existing rule (but unavailable because the clock ran during the forbearance), such borrowers will emerge from forbearance struggling to complete loss mitigation applications or otherwise make repayment arrangements while at the same time responding to the initiation of the foreclosure process and incurring additional foreclosure related fees that make finding a workable resolution even more difficult. It may also delay a borrower’s ability to obtain loss mitigation, costing them precious home equity.

Delinquency data show that servicers are not rapidly processing borrowers through the loss mitigation waterfall at the end of forbearance plans and that pauses in the foreclosure system are needed. FHA data are particularly relevant because federally-insured Ginnie Mae loans make up a disproportionately high number of loans in COVID-19 forbearances.<sup>52</sup> According to data pulled from HUD’s Neighborhood Watch system, the number of loans in forbearance decreased by almost 100,000 loans (from 800,374 to 701,806) between January and March of 2021.<sup>53</sup> During that same period, however, the number of loans in serious delinquency only decreased by approximately 30,000 (from 919,801 to 888,323). Moreover, the current number of seriously delinquent loans is only down 50,000 from the peak of 933,472 in November of 2020. These data reflect that there are a substantial number of seriously delinquent FHA loans that are no longer in forbearance. The trendline from the Black Knight market data suggests a similar pattern outside FHA.<sup>54</sup> The system clearly needs time to provide assistance to these borrowers who are exiting forbearance but not moving quickly to permanent loss mitigation. This has occurred even though the options available for COVID-19 hardships have been in place since at least the middle of last year.

These data are consistent with reports from the field that loan servicers are not properly implementing systems. As reflected in Appendices A and B, advocates for borrowers are experiencing significant issues in helping their clients access COVID relief options. They reflect the experiences of advocates across the country regarding challenges communicating and

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<sup>51</sup> Consumer Financial Protection Bureau, [Complaint Bulletin](#) 4 (May 2021).

<sup>52</sup> See, e.g., Black Knight, [Mortgage Monitor](#) March 2021 Report at 8 (May 3, 2021), (showing more FHA loans in forbearance than GSE loans despite FHA’s significantly smaller market share).

<sup>53</sup> See Appendix C: HUD Neighborhood Watch Data.

<sup>54</sup> Black Knight, [Mortgage Monitor](#) March 2021 Report at 4, 8 (May 3, 2021), (showing a leveling off of seriously delinquent loans while forbearance plans trend downward).

improper denials of loss mitigation options. These systematic problems with servicer implementation will take time to address.

Furthermore, while streamlining may, for some borrowers, mitigate the risks of facing foreclosure after a forbearance, it is important to recognize that there is no consistent policy on streamlining that currently applies to loans held in private label securities (PLS) or in portfolios. Borrowers with these mortgages may have to complete full loss mitigation applications to access relief and, thus, may encounter the same problems and challenges faced by borrowers in the last crisis.

The Bureau should issue a rule under Regulation X providing a 120-day cushion for borrowers exiting COVID forbearances and should consider extending the rule to other types of forbearances. Moreover, given the number of borrowers exiting forbearance, including in the private market, and given that many of the moratoria are soon expiring, the Bureau should issue an immediate guidance or Interim Final Rule making that interpretation clear.

The Bureau's proposed approach, which provides a system-wide pre-foreclosure review period to December 31, 2021, will not provide the same tailored protection for all borrowers exiting COVID forbearances. While it will provide some additional time for borrowers exiting forbearances at particular points in 2021, it does not provide any protection until the effective date, and it provides no protection after December 31, 2021.

The Bureau expressed concern about whether an individualized grace period approach might be too difficult for servicers to administer. However, the proposed exemptions ("off ramps") the Bureau sought comment on would likely require more effort by servicers to implement than the 120-day cushion. Servicers should be able to put a foreclosure hold on an account for 120 days from the end of a forbearance, just as they can put a foreclosure hold on an account while it is in forbearance. In any event, both the grace period approach and the use of off ramps require individualized review.

The pre-foreclosure review period is not structured to incentivize loss mitigation during the review period. It simply creates a time period within which there are no foreclosures, but it does not, as it currently stands, incentivize loss mitigation. Moreover, this approach risks a calamitous spike in foreclosures on or near January 1, 2022. If the servicing industry does not efficiently resolve the loans in serious delinquency by December 31, 2021, there may be an extreme spike in foreclosures just as homeowners lose any breathing room to resolve their payment issues. The 120-day cushion does not risk a similar spike because it provides a window to resolve delinquency at the end of each loan's forbearance period.

While the Bureau's proposal covers borrowers who are not in forbearance, according to data relied upon by the Bureau, the vast majority of those borrowers have delinquencies that started prior to the pandemic. Those borrowers are very seriously delinquent and likely need help from a housing counselor or lawyer to address their long-standing issues. Further delay alone does not help.

**c. If the Bureau adopts the proposed December 31, 2021 pre-foreclosure review period, it must revise the rule to substantially enhance homeowner protections.**

If the Bureau adopts the proposed pre-foreclosure review period, we urge specific steps to create meaningful incentives for loss mitigation. The Bureau should not adopt the exemptions or off



ramps it has sought comment on, as they give the impression of a foreclosure pause until the end of the year while providing easily abused loopholes for earlier foreclosure starts. All off ramps should include a firm and durable loan modification offer to borrowers that complies with the streamlined modification and early intervention requirements we propose below. We also recognize the need for a well-designed off ramp for vacant and abandoned properties. Well-structured off ramps will encourage loss mitigation rather than just providing unstructured time during which loss mitigation may or may not occur.

In addition, the Bureau must take steps to avoid a wave of foreclosures before the effective date of the final rule. Relying on current supervision and examination guidance is insufficient on its own to prevent wrongful foreclosures. One important step the Bureau should take to mitigate this risk is to withdraw the April 2020 Joint Agency Guidance, restoring borrowers' rights to receive crucial information.

**i. The Bureau should not adopt the specific off ramps that it referenced in its proposal.**

The off ramps that the Bureau has suggested for comment create significant risks that servicers will claim they are entitled to initiate foreclosure, even without any meaningful communication with the borrower or meaningful attempts at loss mitigation.

First, the Bureau asks about an off ramp allowing foreclosure if the servicer “has completed a loss mitigation review of the borrower and the borrower is not eligible for any non-foreclosure option.” This first off ramp says nothing about notifying the borrower of this loss mitigation review, and, therefore, a borrower may believe she is protected from foreclosure until December 31, 2021, without knowing that an off ramp applies. In addition, evidence from the Great Recession and from government note sales,<sup>55</sup> as well as from current borrower experiences, demonstrates that loss mitigation reviews are often incomplete or inaccurate. The proposal does nothing to protect against this. As we describe elsewhere in this comment, written notice of a denial is crucial to allow a borrower to appeal such a decision if it is improper, or prepare for next steps if there is no basis for an appeal.

Even if these procedural issues were addressed, there is a significant timing issue. Borrowers, under this proposal, may be reviewed for loss mitigation options before they have recovered from financial hardship. In these cases, where borrowers were evaluated before they were ready, servicers could avoid the pre-foreclosure review limitation, and borrowers who would have been eligible for assistance after their hardship was mitigated could instead end up in foreclosure.

The Bureau recognizes this issue and is rightfully concerned. The proposal states:

*[T]he Bureau is concerned that such an exemption could inadvertently prevent some borrowers from having an opportunity to meaningfully pursue foreclosure avoidance options before foreclosure referral. For example, the Bureau is concerned that such an exemption might not account for situations where a borrower's eligibility changes within a relatively short period of time, as may*

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<sup>55</sup> See, e.g., Consumer Financial Protection Bureau, [Supervisory Highlights Mortgage Servicing Special Edition](#) at 7 (June 2016); National Consumer Law Center, [Opportunity Denied](#) (May 2016).

*happen during this particular economic crisis, as certain businesses may begin to reopen or open more completely based on when different State and local jurisdictions make adjustments to their COVID-19-related restrictions.*<sup>56</sup>

The Bureau's concern here is well-founded. If a servicer is to be permitted to initiate a foreclosure during the pre-foreclosure review period based on an exemption for borrowers who were determined to be ineligible for all options, the servicer must first be required to send a written denial notice stating the specific reasons for denial, identifying the owner or assignee and any insurer for the loan (making clear which investor rules apply, as discussed elsewhere in this comment), and notifying the borrower that they have 30 days to either appeal the denial or, if circumstances have changed, reach out to the servicer to discuss streamlined options or apply for all available options.

The second off ramp the Bureau asks about also poses the risk of giving the servicer complete control without assuring any concrete protections for the borrower. It allows the servicer to avoid the pre-foreclosure review period if it "has made certain efforts to contact the borrower and the borrower has not responded to the servicer's outreach."

Here also, the Bureau's reservations should be heeded.

*[A]dopting this type of exemption could potentially lead to the exact harms this proposal seeks to limit, and some borrowers could be subject to dual tracking or foreclosure without being given a meaningful opportunity to consider foreclosure avoidance options. In particular, the Bureau is concerned that the same borrower-related concerns discussed above could also increase the likelihood that a borrower does not respond to servicer outreach.*<sup>57</sup>

We have grave concerns that an off ramp that allows servicers to proceed if it meets some limited threshold of contact will lead to pro forma compliance and no meaningful opportunity for loss mitigation.

- ii. At a minimum, any off ramp related to attempting to contact a borrower must involve the actual offer of a streamlined loan modification made with sufficient contact attempts.**

The Bureau should not adopt an off ramp that allows servicers to evade the pre-foreclosure review period merely based on the fact that a servicer has not established contact with the borrower. Such an exemption would incentivize less rigorous, ineffective contact attempts. Any off ramp related to attempts to contact the borrower must directly facilitate resolving delinquent loans and enhancing access to sustainable loss mitigation. Anything less than giving borrowers a full opportunity to avoid foreclosure will undercut the purpose of the pre-foreclosure review period.

Specifically, before a servicer can claim an exemption from the pre-foreclosure review period based on having attempted to contact the borrower unsuccessfully, the Bureau should require servicers to extend a streamlined loan modification offer that complies with the Bureau's rules

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<sup>56</sup> 86 Fed. Reg. at 18864.

<sup>57</sup> 86 Fed. Reg. at 18865.

for streamlined offers (as described below). If the servicer does not have complete and finalized costs and figures for the P&I payment or the post-modification UPB when it makes the streamlined offer, it should provide an estimate of the terms and monthly payment. The streamlined offer should involve a full escrow analysis and a path for resolving any shortage. The key aspect to this offer, however, is that it must be one the borrower can accept and thereby resolve the delinquency.

Once a servicer sends the streamlined offer and resumes reasonable diligence efforts, if a borrower responds by asking to be reviewed for all options, then the servicer must evaluate the borrower for all available loss mitigation options and provide a denial notice for any options for which the servicer reviewed the homeowner but found the homeowner did not meet the requirements.

The borrower should have 30 days to accept the streamlined offer or to make an appeal if the borrower disagrees with the terms being offered. If the borrower does not accept the offer and does not make an appeal within the 30 days, the servicer would be permitted to initiate foreclosure. However, the offer should be durable in that the borrower should still be able to accept the offer after foreclosure is initiated. The particular terms of the offer, of course, may change due to added interest and other amounts; however, it should be available for acceptance even during the foreclosure process.

With the streamlined offers, as described above, borrowers should also be notified that they may apply for additional loss mitigation options and be provided information about any other options that may be available (including information about what is available with a complete application). Servicers should be required to make significant attempts to contact the borrower in order to convey the streamlined offer, including at least four telephone calls at different times of day and two letters conveying the streamlined offer. Such outreach efforts should be required to occur on or after June 1, 2021.

If the Bureau will establish any exemption to the pre-foreclosure review period related to a borrower having been determined ineligible for loss mitigation, it is crucial that the borrower be sent a written denial notice outlining the options for which the borrower was found to be ineligible and the specific reasons for the denial. There should be a 30-day appeal window after the servicer sends the denial notice before a servicer may elect to initiate foreclosure. This addresses the problems with invisible loss mitigation reviews, as described in section (3). Borrowers need to be informed that they were found ineligible for all options, so that they can prepare to move on, or appeal if the determination is incorrect. Moreover, servicers should be required to comply with all other aspects of Regulation X before they can claim an off ramp related to a borrower having been found ineligible for all options. As discussed above, servicers must satisfy all early intervention and reasonable diligence requirements, and offer a streamlined modification compliant with the anti-evasion rule requirements, including, but not limited to, the requirement to reduce the borrower's payment.

**iii. The Bureau should establish an off ramp for vacant and abandoned properties.**

Regardless of its decision regarding the off ramps discussed above, the Bureau should also establish an off ramp for vacant or abandoned properties. In the preamble of the NPRM, the Bureau points out that the loss mitigation rule applies only to loans secured by the borrower's principal residence and states that "if the borrower has abandoned the property securing the loan,

depending on the facts and circumstances and applicable law, the property may no longer be the borrower's principal residence."<sup>58</sup> Such a statement does not give servicers the clarity they need to determine whether they must comply with the pre-foreclosure review period for a vacant or abandoned property. Vacant or abandoned homes that do not go through foreclosure risk blighting the community. The longer a property sits empty, the greater the chance it will deteriorate and attract crime, and the more harm it will cause its neighbors, its investors, the local tax base, and neighborhood property values.

The Bureau must ensure that this off ramp is specific and clear enough so that servicers use it in appropriate cases. The Bureau should ensure that the definition adopted for vacant property adequately protects against occupied properties qualifying under the exemption. The Bureau could defer to definitions already existing in state law or, in a state without a definition, by using the Uniform Law Commission's proposed definition in the Uniform Home Foreclosure Procedures Act.

The Bureau should require the servicer to send a letter to the property address as well as any other known address for the borrower when it believes a property to be vacant or abandoned and intends to initiate foreclosure. This would provide an opportunity for a borrower to contest whether the property is vacant or abandoned if she disagrees.

**iv. The Bureau must address the incentive for early foreclosures created by its proposal.**

For any rule the Bureau finalizes, the Bureau must take specific action to address the gap created by the delayed effective date of the final rule. The inherent delay of an effective date associated with this rulemaking creates incentives for servicers to take action to foreclose, where investor rules allow, before the rules become mandatory. This concern is especially acute with PLS-held and portfolio loans that are not subject to any COVID-related foreclosure restrictions and that do not make information about loss mitigation options publicly available. By creating an incentive to hasten foreclosures on PLS and portfolio loans, the Bureau's proposal risks substantial harm to the populations it is trying to protect.

The Bureau recognizes that increased incentives to initiate foreclosure early may be an issue, but believes its supervision and examination authority will limit any problems. It notes in the proposal:

*The proposed approach also could encourage some servicers to make the first notice or filing before any final rule becomes effective. The Bureau notes that, consistent with the April 1, 2021 Bulletin "Supervision and Enforcement Priorities Regarding Housing Insecurity," it will be paying particular attention to heightened risks to consumers needing loss mitigation assistance in the coming months as the COVID-19 foreclosure moratoria and forbearances end.[138] In particular, as noted in the Compliance Bulletin, the Bureau intends to look at a servicer's overall effectiveness at helping consumers manage loss mitigation,*

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<sup>58</sup> 86 Fed. Reg. at 18867.

*along with other relevant factors, when using its discretion to address violations of Federal consumer financial law in supervisory and enforcement matters.*<sup>59</sup>

This statement, however, provides no clear directives or prohibitions. In essence, it tells servicers what they already know, which is that mortgage files are subject to examination and that existing rules and protocols must be followed. It does not, however, prevent servicers from initiating foreclosure when applicable statutes and regulations allow them to do so. It does not outline or reference any penalties for accelerating foreclosures in advance of the effective date of the proposed rule.

Moreover, the *Supervision and Enforcement Priorities Regarding Housing Insecurity* guidance that the Bureau references is also silent on whether foreclosures that are otherwise allowed by law are somehow contrary to the servicer's obligations.<sup>60</sup> The guidance discusses what is required by Regulation X, but it does not impose additional requirements on the servicer. It does not impose obligations on PLS or portfolio loans that are not subject to additional loss mitigation rules. And, as explained above, ramped-up supervision and enforcement are not meaningful unless the April 2020 Joint Agency Statement is withdrawn, so that servicers' loss mitigation obligations under Regulation X are restored to their full force.

Finally, supervisory examination processes cannot provide assistance for borrowers who are facing problems in real time. These assessments may occur years after the borrower faced foreclosure. A reminder to servicers about the Bureau's functions may promote some improved behavior, but it is of little use to the borrower who is actually facing an accelerated foreclosure - or to one who loses her home.

The Bureau needs to be decisive and recognize that the necessarily delayed effective date several months into the future may cause significant problems for homeowners in the meantime. One way to fix this gap is to immediately issue an IFR or guidance limiting foreclosures during this period or imposing a 120-day post-forbearance grace period. Such measures would provide borrowers with time before foreclosure and avoid a quick termination of a short-term forbearance followed by foreclosure.

**v. The Bureau must provide protection for borrowers who exit forbearance after December 31, 2021.**

No matter what rule the Bureau adopts, it needs to provide protection for borrowers on and after January 1, 2022. If the Bureau adopts the pre-foreclosure review period approach, then we urge it to adopt the 120-day cushion that we discussed above so that it is effective on January 1, 2022. Specifically, borrowers would receive a pre-foreclosure review period that ends on the *later* of December 31, 2021, or 120 days after the end of forbearance, so that borrowers exiting forbearance toward the end of or after the pre-foreclosure review period also would be adequately protected.

There will be a need for ongoing COVID protections after December 31, 2021. Although COVID-19 cases have decreased, the virus is still infecting tens of thousands of people every

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<sup>59</sup> 86 Fed. Reg. at 18666.

<sup>60</sup> See [Bulletin 2021-02: Supervision and Enforcement Priorities Regarding Housing Insecurity](#), Consumer Financial Protection Bureau (March 31, 2021).

day; moreover, throughout the pandemic, COVID case numbers and the severity of economic upheaval have fluctuated rather than decreased steadily. As a result, we still cannot know the scope of the issues that are coming.

Because of this economic uncertainty, the GSEs, FHA, VA, and USDA all continue to allow for borrowers to start forbearance plans now that may extend for twelve months. The government-insured lenders specifically allow for borrowers to start forbearance until June 30, 2021. The GSEs have imposed no deadline on when forbearances can begin. As a result, borrowers will be in COVID-19 forbearances well into 2022. The Bureau should not set an artificial end date to its COVID post-forbearance protections but should instead tie them to the nature of the hardship. As with government-backed loans, COVID hardships should yield COVID protections regardless of any pre-established timeline.

Data show that mortgage servicers will continue to face relatively high numbers of borrowers in default well into 2022. As discussed above, loans held in Ginnie Mae securities contain a disproportionate share of the loans that are in forbearance, and over 900,000 of these loans are seriously delinquent. Moreover, as noted above, the numbers of seriously delinquent loans are not resolving fast enough to ensure that protections will be unnecessary by the end of the year. And while all of the government-insured programs have had loss mitigation options in place for borrowers for almost a year, the number of seriously delinquent loans is not decreasing at a rapid rate. It will take a long time for all of these borrowers' delinquencies to be resolved.

#### **vi. Specific Questions Posed by the Bureau**

We respond below to specific questions posed by the Bureau regarding the proposed pre-foreclosure review period.

1. The Bureau has requested comment on whether to base the length of the pre-foreclosure review period on the length of delinquency, such as temporarily extending the number of days a borrower must be delinquent before the servicer may make the first notice or filing. While we favor an individualized grace-period approach that permits initiation of foreclosure only 120 days after the end of a forbearance period, basing the end of the pre-foreclosure review period on the number of days of delinquency provides the borrowers with the longest hardships with the weakest protections. Moreover, on its own, such a policy does not promote loss mitigation prior to foreclosure. Regardless of the length of delinquency, borrowers need to know they have options and have time to communicate with their servicer to make a post-forbearance loss mitigation plan. Simply tying the start of foreclosure to the length of the delinquency is most harmful to the most vulnerable homeowners and also fails to promote loss mitigation.
2. The Bureau also seeks comment on whether the extended review period should end on a date that is based on when a borrower's delinquency begins or forbearance period ends, whichever occurs last. Our recommendation to adopt a 120-day post-forbearance grace period prior to the first notice or filing does just that, recognizing that timelines should be based on an individual borrower's situation while promoting time to pursue loss mitigation. We key our suggestion to when the forbearance ends to provide a period for

loss mitigation prior to the start of foreclosure. In contrast, a policy based on when a delinquency begins does not serve the purpose of promoting loss mitigation and, as noted above in the previous question, may tend to provide less assistance to borrowers who need it most.

3. The Bureau asks whether the end date of the pre-foreclosure review period should be adjusted based on any change to the foreclosure moratoria for government-backed loans. While the Bureau's special review period should not end earlier than the government-backed mortgage loan moratorium, we do not expect, and do not currently support, a moratorium ending later than the end of this year. If the government-backed moratorium is extended by a month or two, the proposal to end the pre-foreclosure review period by the end of the year should not be extended. Rather, the Bureau should adopt the approach recommended in these comments and adopt a pre-foreclosure review period that is the *later* of December 31, 2021 or 120 days after the forbearance ends. This will give homeowners whose forbearances end toward the end of the year or after that the time to access loss mitigation without extending a blanket rule that might delay assistance for others who might only respond once the foreclosure starts.
4. The Bureau solicits comments on whether borrowers would be sufficiently protected if the special pre-foreclosure review period only applied to borrowers who first became delinquent in 2020 or 2021 or entered a forbearance program before the effective date of any final rule. The Bureau states that it initially concludes that the proposal should apply to all delinquent loans, regardless of when the delinquency first occurred, because the potential consumer harms addressed by the rule would exist for all delinquent borrowers. We very strongly agree. A significant subset of homeowners who have faced COVID hardships were already delinquent before COVID and the new hardships exacerbated the situation. Others faced a hardship pre-COVID and have not been able to resolve it even if there were not new developments during the pandemic (many things became harder during the pandemic and for some homeowners resolving the hardship may have been what was affected). Some homeowners have faced hardships during the pandemic but have not made forbearance arrangements with their servicers. While none of these groups are the majority of seriously delinquent homeowners right now, they all are groups that are especially stressed by the current financial climate and should be provided with every reasonable opportunity to avoid foreclosure. Including them in the pre-foreclosure review period is essential. The off ramps we recommend in these comments, including vigorous outreach, streamlined loan modification offers and certain other notices, would increase the chances that a homeowner might be able to find a workable home retention solution. All delinquent homeowners should be able to benefit from these policies.
5. The Bureau observes that because the proposed special pre-foreclosure review period is in a subsection that would not be applicable to small servicers, these servicers would still be bound by the regular pre-foreclosure review period, but not the one created in this rule. The Bureau states its belief that small servicers generally are able to move more slowly toward foreclosure because they often are not subject to outside investor

requirements. It also observes that they often already engage in high-touch loss mitigation. While smaller servicers may have more flexibility and do more high-touch loss mitigation, homeowners need time before the start of foreclosure to access loss mitigation no matter the size of their servicer. Most homeowners seeking loss mitigation, including those exiting forbearances, will already have exhausted the 120 days in the original pre-foreclosure review period and will immediately be facing foreclosure. Yet, the entire purpose of the review period, and the dual tracking protections, is to provide a chance to get into a payment solution prior to foreclosure. Borrowers serviced by small servicers, just like other borrowers, need a chance to make arrangements before foreclosure begins. While some of them may receive more outreach due to the initiative of their servicers, many will need the post-forbearance period to devote to communicating with their servicer. Even if servicers reach out earlier, homeowners will vary widely in their level of engagement prior to the end of foreclosure. The Bureau should adjust its proposal to include small servicers in this special pre-foreclosure review period. While some homeowners with small servicers may not need this extra time, many likely will.

## **Conclusion**

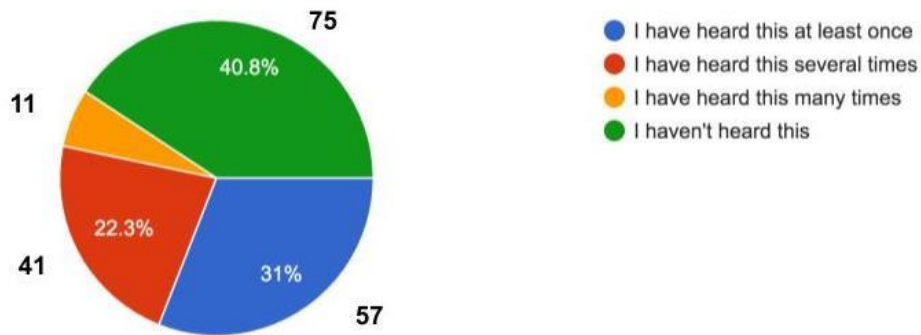
The unprecedented economic hardship faced by millions of homeowners during this moment requires swift and decisive action to protect against the risk of significant harm. Servicers are not prepared to provide the necessary loss mitigation tools to the waves of borrowers exiting forbearance over the coming months. Time and systems are needed to ensure that loan modifications and deferrals can be implemented for as many borrowers as can afford to resume making payments, even at a reduced level. We commend the Bureau for its attention to these issues and look forward to further engagement in order to incentivize loss mitigation and prevent a surge in avoidable foreclosures. If we can provide additional information, please feel free to contact Alys Cohen, [acohen@nclc.org](mailto:acohen@nclc.org).



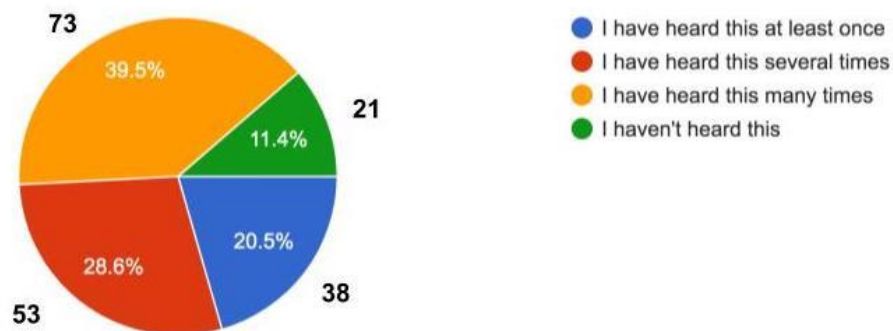
## Appendix A: Nationwide Survey of Homeowner Advocates National Consumer Law Center May 2021

The National Consumer Law Center conducted a nationwide survey of attorneys, housing counselors, and other homeowner advocates in May 2021. The 185 individuals responding to the survey assist homeowners in 31 states, including Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. The respondents include 94 housing counselors, 57 legal services attorneys, 14 private consumer attorneys, and 20 other advocates. Certain respondents did not answer every question, but each question received at least 180 responses. Those responses are reflected in the charts below.

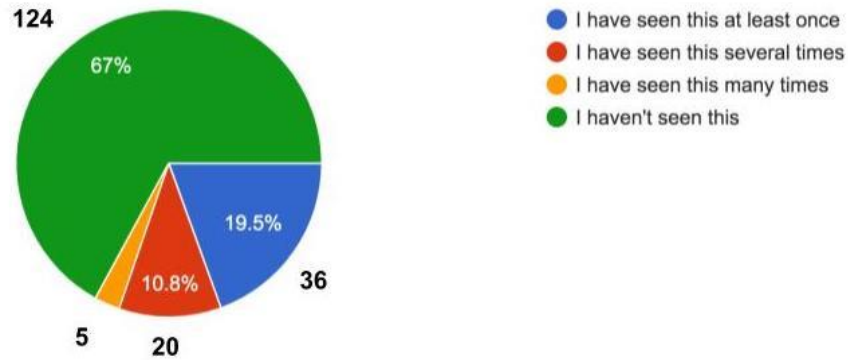
**Have you spoken to homeowners who were told by their servicer that they could not be evaluated for post-forbearance options while in forbearance? (184 responses)**



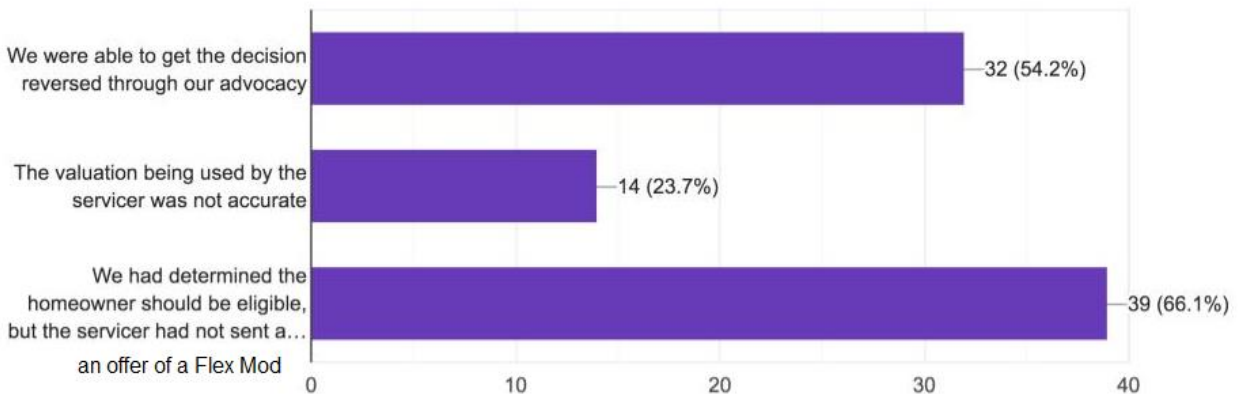
**Have you spoken to homeowners who have had difficulty reaching their "point of contact" by phone? (185 responses)**



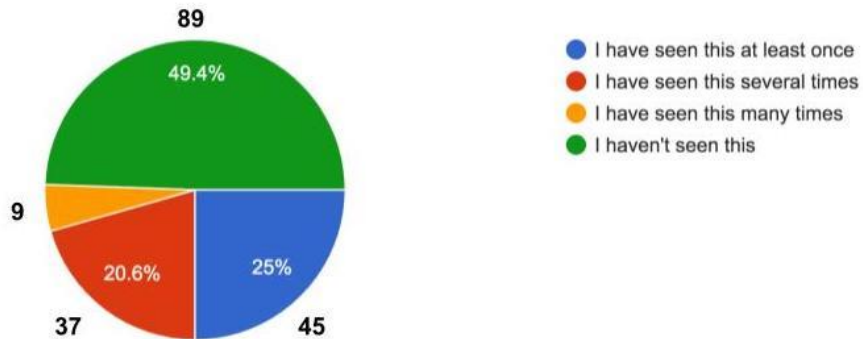
**Have you advised one or more homeowners who were wrongfully denied (or not offered, even when it should have been offered due to delinquency status) a Flex Modification for a Fannie or Freddie loan? (185 responses)**



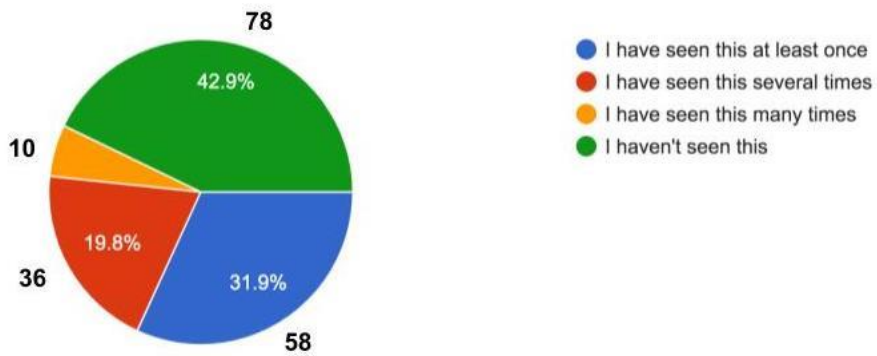
**If you answered "Yes" to having advised homeowners who were wrongfully denied for (or not offered) a Flex Mod, check all that apply (things that have happened in at least one case) (59 responses):**



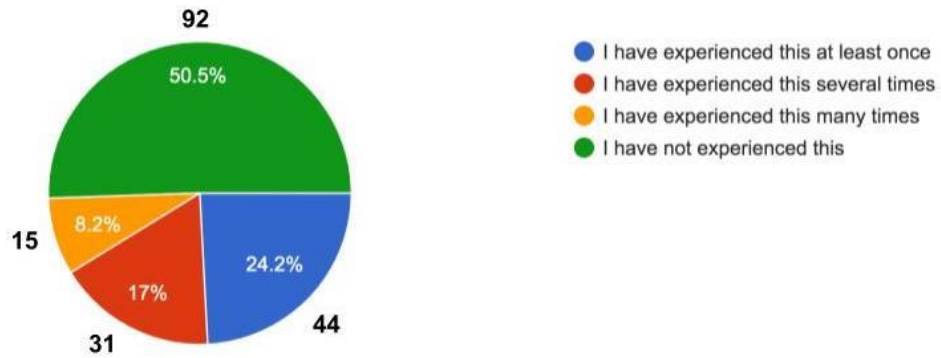
**Have you advised homeowners who exited forbearance without having received any information from the servicer about post-forbearance options? (180 responses)**



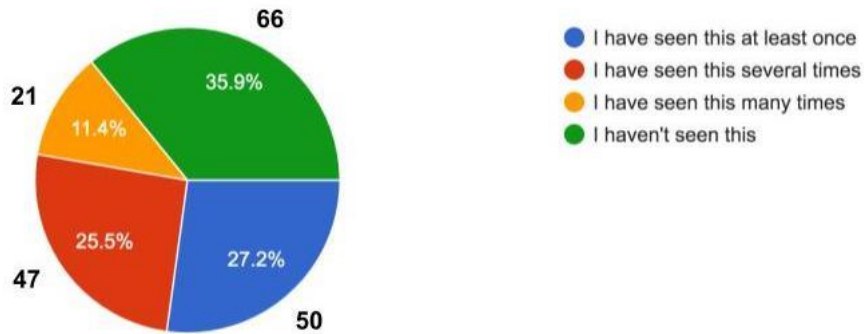
**Have you advised homeowners who exited forbearance without being notified that they could have extended the forbearance (when in fact, applicable investor rules should have allowed for additional months of forbearance)? (182 responses)**



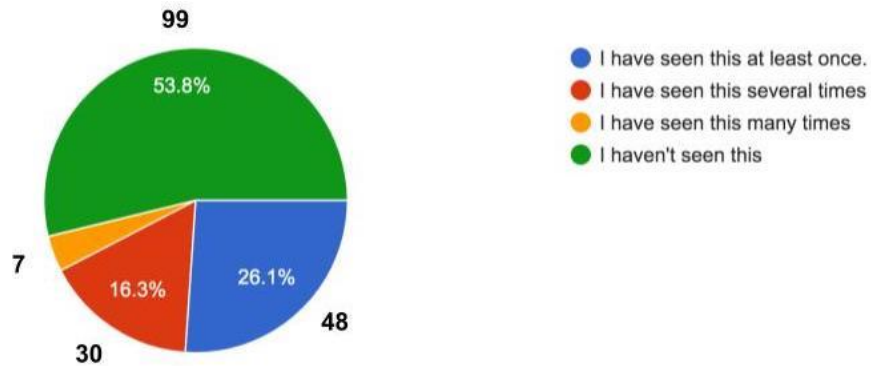
**Have you had interactions with a servicer "point of contact" during the pandemic in which the person you were speaking with did not seem to know which specific investor rules applied to this loan (eg, did not know it was an FHA loan, or owned by Fannie or Freddie) or did not convey accurate information about the options available from that investor? (182 responses)**



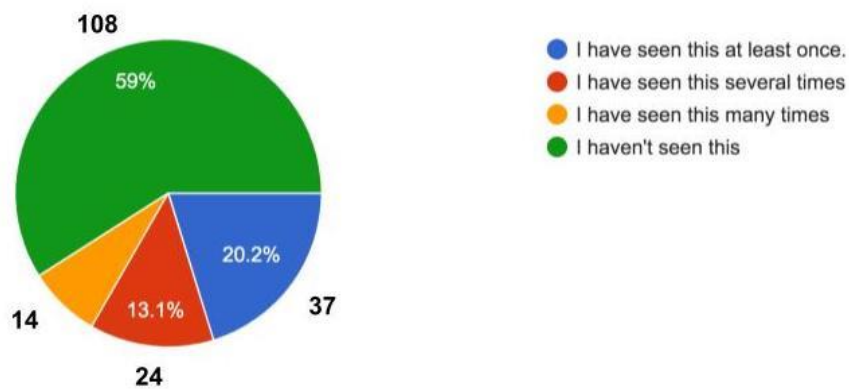
**Have you advised one or more homeowners who did not know when their forbearance was scheduled to end? (184 responses)**



**Have you advised homeowners who received an offer for a deferral (or partial claim, or similar option to put missed payments at the end of the loan), but were not informed by the servicer that other options (involving payment reduction) may be available? (184 responses)**



**Have you advised homeowners that received an offer for a deferral, faced a potentially significant escrow shortage that may cause the payment to increase substantially, and were not notified about the escrow shortage issue up front? (183 responses)**



## Comments from Respondents:

Some borrowers with private loans entered and/or extended forbearance plans after being told that the servicer would "work with them" to deal with the arrears but then learned that their only options were lump sum reinstatement or short-term repayment plan.

- Legal Services Attorney, California

I have found the "point of contact" to be illusory.

- Legal Services Attorney, New York

Some servicers of non-gov't-backed loans appear to be requiring full mod app-style packages in order to review a borrower for an extension of a forbearance. Not clearly forbidden under our state rules, but a pretty clear attempt to deter forbearance extensions.

- Legal Services Attorney, New York

I have seen instances where the borrowers were offered the forbearance as the only option and told they would be evaluated for other options at the end of the forbearance when borrowers wanted to be evaluated for all loss mitigation options at the time of the call.

- Housing Counselor, Washington State

For clarification of the above responses:

(1) all the questions to which I answered "I haven't seen this" is because all of my clients are still in forbearances, thus the substantive issue has not come up yet. Those answers should not be interpreted as meaning that I've run into the situation and the servicer acted correctly. (2) The questions asking whether I have spoken with any points of contact who did not know which investor rule applied was answered "I haven't seen this" solely because it seemed to be asking whether I had first-hand experience with such a conversation. Since I do not directly call servicers myself (because generally they are represented by counsel by the time client contacts us), I have not had such first-hand communications with a point of contact.

- Legal Services Attorney, NJ

The majority of our clients have not completed their forbearance plans so we have yet to see a lot of the outcomes.

- Housing Counselor, New York

I have had several clients that were not offered the deferral and were not aware of all their options.

- Housing Counselor, Missouri

I have seen homeowners offered a repayment plan or told to apply for a modification and also told that deferment or putting payments on the back end was NOT available.

- Legal Services Attorney, Connecticut

Many of the borrowers I speak with are not sure when their forbearance ends. Not sure if they forget or if it wasn't explained. Also, the majority of the clients assume that the shortage of escrow will be deferred along with interest and principal. They have no idea that they have to enter a repayment plan that will increase their payment. A couple of my clients received a 60 months escrow/repayment plan which prevented a payment shock.

- Housing Counselor, Arizona

The easy way out for the Servicer is the Deferral with no other options offered. The escrow issue is also a major mod problem.

- Private Consumer Attorney, North Carolina

Servicers we've interacted with are unsure what options will be available when the moratorium expires.

- Housing Counselor, Michigan

Recently [Servicer] tried to make my clients sign a Settlement Agreement & Release of Claims as a condition of receiving a Loan Modification on an FHA loan - in violation of FHA servicing guidelines.

- Private Attorney, Ohio

The biggest problem seems to be with the local lenders of regular loans that aren't government backed by any entity. They are playing by their own rules and not offering many resolutions.

- Housing Counselor, Pennsylvania

We have not had many clients seeking services in the past year but we have had 3 in the past month so things are starting to move again.

- Housing Counselor, New York

I have noticed that many servicers are making it very difficult to obtain their applications, instructions etc. to apply for a loan modification. It is as if it is a secret and many hoops must be jumped through in order to get a BLANK application with instructions. Getting the application should be the easiest thing to receive. Some lenders state that borrower must be requested, or create an account online, in order to get this elusive, blank document. Some claim it needs to be mailed to the borrower (many of our clients do not even have email, internet, fax machines, or scanners). Lenders [claim they] cannot just send it to me as the borrower's Housing Counselor who is assisting in preparing the package. Lenders [are] not able to provide a place on their website where I can retrieve this document either. I have been doing this for 7.5 years and there is no excuse for this sudden behavior. Reminds me of before CFPB guideline times. This must be corrected. It should take 2 seconds to get that document and information from all Servicers!

Also, the "single point of contact" is never available, does not answer emails or voice mail messages. I had a scheduled appointment with a servicer yesterday who never called me at appointment time. I have not spoken to one single point of contact in months. I just work with either customer service reps who get me to the correct, home retention department. I am able to navigate because I have experience processing loan modifications/home retention.

- Housing Counselor, Florida

The escrow balance is going to be really hard for New York. Taxes are too high over here.

- Housing Counselor, New York

I have seen a servicer try to deny a borrower a forbearance extension with an FHA loan when they were entitled to it. The servicer tried to state the extensions were only for Fannie Mae and Freddie Mac. I put in a complaint to FHA.

- Housing Counselor, New York

Personally my region is finding that people who were not in default pre-pandemic are not reaching out to our offices despite outreach efforts. I assume many people are still in [forbearance] and have not yet attempted to resolve the issue and once that happens we will have a lot of calls that have the exact issues stated above.

- Legal Services Attorney, New York

The Servicers are not sharing the options at this time for homeowners [regarding] what are their options after the forbearance.

- Housing Counselor, Michigan

Servicers have been downplaying and negatively describing to clients what a deferral would look like - "it is not for you" - "You will have a balloon at the end of the loan" etc.

- Housing Counselor, Massachusetts

We are seeing with all Servicers that the homeowner must be out of the forbearance before they will look at a workout. Secondly the escrow shortage is catching homeowners completely off guard, no mention from the Servicer rep about escrow until we bring it up.

- Other Nonprofit, Washington

I have spoken to homeowners who have been offered forbearance extensions with the promise of a deferral but they don't understand what it means. Also, they don't know that their mortgage payment will increase since they will have to pay the escrow shortage for the months in forbearance.

- Housing Counselor, Texas

Have seen issues in language where the SPOC does not speak the homeowner language and no alternative to help translate is given. Homeowner has had to get their own translator vs the SPOC transferring them to a Spanish speaking SPOC. Have seen this often with Spanish speakers and once with Asian dialect. Have continued to hear from all clients exiting forbearance, but unable to get deferral due to income, that they have to exit forbearance prior to a modification review. In my opinion this would only make a loan further delinquent and now allow the servicer to issue a [Notice of Default] since a forbearance is no longer in place to protect them against this while the homeowner is preparing documents for a modification review.

- Housing Counselor, CA

Working with servicers has been almost impossible. Not sure if they are not in office or just not answering - but we can't get ahold of most of them and neither can the clients.

- Housing Counselor, Oklahoma

Servicers trying to deny forbearance when borrowers are in default.

- Legal Services Attorney, New York

Now that the HopeLoan portal is not being used it would be very helpful if the servicers acknowledge the receipt of documents. Because services are once again saying they did not receive documents that we know were sent. A client was denied because of docs not received however we had the proof because our counselor had sent them through E-fax.

- Housing Counselor, Virginia



I have seen the servicers not give an explanation of the work out plan they use to deny a homeowner.

- Housing Counselor, Illinois

I have seen ridiculously expensive modification offers post forbearance, similar to the additional profits mortgage companies earn in a foreclosure. Historically redlined and BIPOC communities are being inundated with high bid offers, I think because these communities are more desirable than apartments and close quarters in cities. These market pressures are pushing my low income and BIPOC clients to consider (1) leaving New York and losing resilient community networks, (2) accepting a seriously overpriced modification offer, or (3) losing equity in the foreclosure process and losing their community.

- Legal Services Attorney, New York

## **Appendix B: Consumer Experiences: Examples from Homeowner Advocates and the CFPB Complaint Portal**

Americans for Financial Reform Education Fund  
May 2021

### **Borrower phone communication problems with servicers**

*Below are the stories of homeowners across the United States that experienced a range of issues trying to communicate with their servicers over the phone during the COVID crisis. Homeowners have been subject to long hold times, extensive back-and-forth, failure to honor appointment times, failure to properly communicate in their preferred language, rude representatives who relayed confusing, contradictory, and inaccurate information about their mortgage assistance options, and more. Borrowers experienced numerous problems communicating with their servicers by phone as they sought much needed mortgage assistance as a result of experiencing a COVID hardship.*

#### *New York, April 2021*

Ms. A, a homeowner in Bohemia, New York who primarily speaks Spanish, and her advocate faced great difficulty in requesting a forbearance on her FHA mortgage from the servicer Guaranteed Rate. Phone representatives were rude to Ms. A, gave confusing and contradictory information each time she called, and were not informed on COVID relief options for FHA loans. At one point, Ms. A and her advocate were completely unable to reach the Loss Mitigation Manager, and the preferred language representative they spoke to was not trained adequately to assist Ms. A with her situation. *(Ana Poppe, Long Island Housing Services)*

#### *Illinois, April 2021*

One Chicago homeowner and her attorney have had great difficulty getting in touch with the servicer and communicating with the servicer about post forbearance options to determine next steps, including long waits on the phone and extensive back-and-forth without resolution. *(Ainat Margalit, Legal Aid Chicago)*

#### *New York, February 2021*

Mr. R, a disabled homeowner living in Queens, was already extremely ill with cancer when the pandemic exacerbated his family's economic hardship. He called his servicer SPS to request mortgage assistance, and had to endure several months of back-and-forth where representatives told him conflicting information and offered inadequate assistance options. Even with the help of an attorney, Mr. R still has been unable to obtain assistance despite many phone calls and mail correspondence with SPS. He was already extremely ill, and now faces severe emotional distress that he and his wife, children, and grandchildren will be forced out of

the home they have lived in for two decades even after all of his efforts to proactively call SPS for help. (*Chris Newton, Queens Legal Services*)

### *California, February 2021*

Ms. C, a Mexican homeowner living in the Ventura County area who primarily speaks Spanish, faced difficult and unsympathetic representatives from SN Servicing Corporation who were unaware of what COVID relief options were available and failed to properly respond to her request for assistance. Even with an advocate, Ms. C had to wait on long holds and speak to hurried, uninformed, and rude representatives who did not properly communicate her options in Spanish. She had a three month forbearance, but the servicer began to threaten foreclosure after multiple denials to put the deferred payments on the back of the loan. SN only offered Ms. C an unaffordable repayment plan even though she was still underemployed due to the pandemic. Ms. C eventually sold her home to avoid foreclosure. (*Johanna Torres, California Rural Legal Assistance, Inc.*)

### *California, February 2021*

Ms. Y is a homeowner with a conventional home mortgage from Chase who wanted to acquire a forbearance. However, Ms. Y has been completely unable to get in contact with Chase. She submitted the necessary documents five times over two different media sites, but is still being told that the documents have not been received by Chase's home mortgage assistance office. Instead, Chase has asked Ms. Y, who does not have a car, to travel two miles to the nearest Chase office to fax the documents. Even after Ms. Y traveled to the office to fax the form, Chase's home mortgage assistance office claims it has not received the fax from a branch of their very own bank. (*CFPB Complaint #4107929*)

### *California, December 2020*

Ms. I is a homeowner with a disability living in Oakland. Over the course of two weeks, advocates called her servicer Celink 6-7 times in order to secure forbearance on her FHA reverse mortgage. Celink gave Ms. I's advocates significant difficulty in getting a forbearance offer, telling them that forbearance was not available for reverse mortgages at all. Celink only offered a 6 month forbearance after many phone calls and extended advocacy. (*Fanilla Cheng, Housing & Economic Rights Advocates*)

### *Connecticut, December 2020*

Ms. P, a Black homeowner in Windsor with a disability, was only offered 90 days forbearance from PHH on her FHA mortgage when she requested 180 days. Ms. P also faced great difficulty in contacting PHH over the phone to make her request, including representatives not calling back and making appointments they never followed through with, and only received her forbearance after many attempts with the help of her attorney. (*Sarah White, CT Fair Housing Center*)

### *Florida, October 2020*

Ms. N is a homeowner in Florida with an FHA mortgage who has suffered from severe medical conditions and was laid off from work at the start of COVID. Chase contacted her about putting her mortgage into a three month forbearance, and after the initial three months she called and successfully acquired another three month extension. She was told that the missed payments would be tacked to the back end of her mortgage. However, after the six months of forbearance, Ms. N called again and a Chase representative suddenly told her that she had never qualified for forbearance and owed all of her payments from the last six months. Chase also told her that they were selling her mortgage to a new bank so could not help her with her claims about qualifying for forbearance. Ms. N says that the situation has not been resolved and that Chase has been unresponsive. *(CFPB Complaint #3887318)*

### *Maine, June 2020*

When Ms. E, a homeowner in Portland, called Wells Fargo to request assistance on her FHA loan, she faced significant trouble getting through with constantly busy phone lines. Wells Fargo granted her 90 days forbearance and told her "When it comes time to repay, we'll review your financial situation and discuss options with you." *(Thomas Cox, Law Office of Thomas A. Cox)*

### *New York, May 2020*

Ms. W is a Black homeowner in Brooklyn who faced insurmountable difficulty trying to contact Specialized Loan Servicing about her PLS loan. Specialized Loan Servicing provided no answers to her questions via email and did not allow her to speak to a physical person. Ms. W received 90 days forbearance, but did not know what would happen at the end of that period because she has been completely unable to get in contact with her servicer and was not provided any information about what her options should be. *(Angella Davidson, NHS Brooklyn, CDC, Inc)*

### *New York, April 2020*

Ms. Z is a homeowner in Brooklyn who has been completely unable to contact Specialized Loan Servicing about her PLS mortgage. She cannot reach anyone on the phone, and the servicer's website does not provide an avenue for answers to questions or for email correspondence. Because her loan is not federally backed and she cannot reach her servicer, she does not know what options she has, if any. *(Angella Davidson, NHS Brooklyn, CDC, Inc)*

### *New York, April 2020*

Ms. J is a white Hispanic homeowner in Dunkirk with an FHA mortgage from Key Bank. Ms. J faced difficulty in contacting Key Bank, as nobody was answering or returning calls. Once she finally got in touch with Key Bank, they told her she could not qualify for any assistance because she had a junior lien on her property. *(Andrea Cooper, Chautauqua Opportunities Inc)*

### *Massachusetts, April 2020*

Ms. V, a homeowner who primarily speaks a language other than English living in Boston, was offered an unreasonable payment plan on her mortgage. PNC was difficult to contact to begin

with, first refusing to speak with her and then making her wait 40 minutes to get through on the phone. PNC eventually granted Ms. V a 90 day forbearance, and both on their website and in a phone conversation said that she would have the chance to put the deferred payments on the back end of her loan or extend the term. However, Ms. V received a letter from PNC saying that she would owe \$13,000 in three months despite the fact that she was still laid off. *(Nadine Cohen, Greater Boston Legal Services)*

## Borrowers improperly denied or offered wrong COVID loss mitigation options

*Below are stories of homeowners being improperly denied for COVID loss mitigation options. Some borrowers were told a lump sum repayment or unaffordable repayment plan was their only option to get their mortgage back on track after forbearance. Several borrowers were not considered for streamlined options or even informed of the existence of loss mitigation options that would lower their monthly payments even when the servicing rules for their loan allow for such review after forbearance.*

### *Georgia, April 2021*

Ms. W, a homeowner in Atlanta, was nearing the end of forbearance on her Fannie Mae mortgage when Chase sent her a letter offering deferral but with no mention of payment reduction options. Chase gave Ms. W and her advocate the impression that if she didn't take the deferral, her only other option would be a lump sum payment. *(Jennifer Rentenbach, Atlanta Legal Aid)*

### *Georgia, April 2021*

The servicer Shellpoint failed to offer Ms. C, a homeowner in Atlanta with a Fannie Mae mortgage, any post forbearance options at the end of her forbearance, despite the fact that Fannie Mae rules require unsolicited offers of the Flex Modification to be sent out at a certain point after a forbearance ends. Shellpoint told the attorney representing Ms. C that, contrary to Fannie Mae's policy, the borrower could not be offered a Flex Modification until she called in to review her financial information with her SPOC. However, the SPOC was never reachable and did not return phone calls or emails, nor did Shellpoint make any attempts to reach out to the borrower to discuss loss mitigation options. Shellpoint finally offered a Flex Modification to Ms. C only after the attorney escalated this problem to Fannie Mae. *(Rachel Scott, Atlanta Legal Aid)*

### *Georgia, April 2021*

Ms. B, a homeowner in Atlanta, was denied a Flex modification for her Freddie Mac mortgage. The denial was based on an over-inflated value, which was not disclosed to Ms. B until her advocate requested that information. Ms. B's advocate was able to successfully appeal the value, but worries that the many borrowers without advocates will not know the reason for this type of denial and be unable to appeal. *(Rachel Scott, Atlanta Legal Aid)*

### *Puerto Rico, April 2021*

Ms. L, a homeowner in Puerto Rico with an FHA mortgage, was asked by Banco Popular to pay her full forbearance amount, in violation of HUD ML 2021-05 guidelines regarding FHA post forbearance options. Banco Popular's representatives had little to no knowledge of the standalone partial claim option. (*Janelise Torres Marrero, Legal Aid Clinic of Pontifical Catholic University of Puerto Rico*)

### *Washington, DC, April 2021*

Mr. K, a homeowner in DC with an FHA mortgage in active forbearance, affirmatively requested review for post-forbearance options but was denied that review by Carrington. The servicer's representatives, including supervisors, did not know about HUD ML 2021-05 guidelines on post-forbearance options, and told Mr. K he must exit forbearance before getting a loan modification option. On a separate call, Mr. K was told he could not be reviewed for post-forbearance options until he was in the last month of his forbearance (he had several months left in the forbearance term). Mr. K was also instructed to submit a complete loss mitigation packet instead of being reviewed for FHA streamlined options, including the streamlined standalone partial claim and modification. The Carrington online portal also provided information indicating that a loss mitigation packet would be required, despite acknowledging that the loan was an FHA loan. Carrington also used confusing language for scripted prompt questions that will likely cause loss mitigation reviews to go down the wrong track if homeowners call Carrington on their own to seek a post-forbearance solution. In short, the script requires the employee to ask, "Are you able to resume making your mortgage payments on time after the end of your forbearance?" The servicer requires a yes or no answer to this question. In this instance, the borrower's advocate tried to explain that he could afford to make some payment, but not at the current level. The representative said there was no way to accept that answer, and if he answered "No," he would be rejected for all options, despite the fact that FHA provides for streamlined payment-reduction modifications. The servicer representative also indicated that if Mr. K had been in default prior to the pandemic he might not qualify for post-forbearance options, in direct conflict with guidance in HUD ML 2021-05. Through his attorney's advocacy, Mr. K was eventually approved for a streamlined loan modification option, but Carrington failed to ask the borrower whether they could afford the modified payments or indicate that there were other options. (*Jennifer Lavalley, Legal Aid Society of DC*)

### *Pennsylvania, April 2021*

Ms. A was not reviewed for an extension or post-forbearance loss mitigation at the end of her six month forbearance on her FHA loan from Shellpoint for her home in Philadelphia. Instead, Shellpoint sent a pre-foreclosure notice advising her to apply for state assistance under a program that specifically excludes FHA loans. Ms. A is back to work and would like to resume making payments, but her servicer has yet to offer her any of the FHA streamlined loss mitigation options that would allow her to do so. (*Rachel Labush, Community Legal Services of Philadelphia*)

### *New Jersey, March 2021*

Ms. M, a homeowner living in New Jersey with a 3 month forbearance on her FHA mortgage from Wells Fargo, lost her job due to COVID and was left unable to pay her loan amount. Wells Fargo told her that she qualified for loan modification, but when she called, numerous representatives gave her confusing information and failed to clearly communicate to her what her options were. She asked to speak to a supervisor but was unable to reach one. Ms. M cannot afford to lose her home but Wells Fargo will not give her a clear answer about what will happen to her mortgage after forbearance. *(CFPB Complaint #4226342)*

### *Ohio, March 2021*

Ms. O is an African American homeowner living in Cincinnati. She had an economic hardship in early 2020 that caused her to fall behind on her mortgage payments shortly before the pandemic. After the pandemic hit, she had to stop working her job in healthcare because she is the primary caretaker for her elderly mother and could not risk exposing her to the virus, which exacerbated her hardship. When her situation improved, she reached out to her servicer U.S. Bank to be considered for COVID loss mitigation options, but the servicer required extensive financial documentation and a soft credit check. Instead of reviewing her for streamlined options, the servicer sent her a standard loss mitigation packet and required a full application to proceed. *(David Wovrosh, Legal Aid Society of Greater Cincinnati)*

### *California, March 2021*

Ms. Q is a homeowner with an FHA mortgage living in California. She was put into forbearance by Wells Fargo in 2020 with the assurance that her missed payments would be tacked onto the end of her mortgage. However, at the end of her forbearance in 2021, Wells Fargo told her that all of her missed payments were due immediately. Ms. Q lost her job due to COVID and only makes \$450 every two weeks from unemployment, but Wells Fargo is insisting she pays a lump sum of \$29,000. *(CFPB Complaint #4229969)*

### *Washington, December 2020*

Ms. J is an Indigenous homeowner living in Seattle and a veteran with a disability. She spent over nine months calling Evergreen Home Loans to request forbearance on her VA loan. She first contacted Evergreen in March of 2020, and they denied her request in violation of the CARES Act. Then when Ms. J had enough income to resume payments, Evergreen offered an unaffordable repayment plan. Even with her attorney's involvement and multiple escalations, Evergreen claims that they have no record of her forbearance request and is still refusing to offer a deferral or modification that will allow her to resume her regular payments that she can now afford. *(Anne Wallig, Northwest Justice Project)*

### *Connecticut, December 2020*

Ms. K is a Black homeowner living in Hartford with a Freddie Mac mortgage from Provident Funding who fell ill with the coronavirus in the spring. When she called her servicer for assistance, Provident provided Ms. K with 180 days forbearance and told her that they would put her payments at the end of her mortgage after forbearance. When she called the servicer at

the end of her forbearance they informed her that her only options were a lump sum payment or a plan that would increase her monthly payments by 50%, both of which are unaffordable and violate Freddie Mac policy. She was told a short sale was her only other option. The servicer also failed to offer her a streamlined Flex modification. After extensive advocacy, Provident agreed to offer her payment deferral, but other homeowners without such representation are in danger of losing their homes to foreclosure even when they can afford monthly payments. *(Sarah White, CT Fair Housing Center)*

### *Connecticut, December 2020*

Ms. V, a Black HECM heir, called Champion to request assistance to stay in her home during the Summer of 2020. Although Ms. V's financial situation had been impacted by COVID, she did plan to eventually purchase the property. When she called, Champion told her that there were no programs to assist her, despite that she was eligible for a COVID extension of HECM forbearance. In October 2020, Champion filed for foreclosure on Ms. V's occupied home in violation of the FHA foreclosure moratorium, which was in effect at the time of filing. Ms. V is now working on qualifying for a mortgage so she can purchase her home. *(Sarah White, CT Fair Housing Center)*

### *New York, November 2020*

Ms. J is a homeowner living in New York with an FHA mortgage from Chase. At the onset of the pandemic, she requested and was granted a three month forbearance. At the end of the initial three months, Ms. J requested and was granted another three month extension, and after that period she acquired a third three month extension. For all of these forbearance periods, Chase told Ms. J that her missed payments would be added to the back end of her mortgage. However, during the third forbearance period Ms. J suddenly discovered that unlike her regular mortgage payments, she owes these escrow payments immediately after the end of the forbearance period. Now Ms. J's monthly payments are going to skyrocket, which Chase never warned her about when entering forbearance. *(CFPB Complaint #3958803)*

### *West Virginia, May 2020*

Ms. Y is a homeowner living in Morgantown with an FHA mortgage from US Bank. She twice requested a 180 day forbearance. US Bank granted her 90 days forbearance both times. At the end of her second forbearance, US Bank also insisted that Ms. Y make her full forbearance payment on the 90th day, and has not provided the information that a Standalone Partial Claim or other streamlined options to reduce her payment may be possible. *(Michael Nissim-Sabat, Mountain State Justice, Inc.)*

### *New York, May 2020*

Ms. U is an African American homeowner with an FHA mortgage from Cenlar living in Long Island. Ms. U received a 90 day forbearance from Cenlar, and she has been told she will have to pay her owed balance back in full after her forbearance. *(Carmen Land-Wilson, Long Island Housing Services)*



## Problems with non-federally backed mortgages

*Below are the stories of homeowners with private non-federally backed mortgages who faced difficulty with their servicers over the past year. Borrowers who reached out to their servicers to ask for help staying in their homes were misled, refused evaluation for loss mitigation options,, refused forbearance, and had their credit scores harmed without justification. Such harsh and damaging practices by servicers towards homeowners who are struggling to stay afloat during the COVID crisis leaves homeowners at unnecessarily increased risk of foreclosure without improved loss mitigation procedures .*

### *Michigan, April 2021*

Ms. T is a homeowner in Michigan with a private mortgage from Wells Fargo. She was in forbearance and asked to be evaluated for a loan modification, which Wells Fargo told her couldn't happen while she was in forbearance. *(Sarah Bouck, Legal Services of South Central Michigan)*

### *California, April 2021*

Mr. Q, a homeowner living in California called his servicer SLS for mortgage assistance, and the representative told him over the phone that they would work with him to defer the arrears at the end of his forbearance on his private loan. However, SLS proceeded to send him a notice telling him his only post-forbearance options were lump-sum reinstatement, a 3-month repayment plan, or sale/deed in lieu of foreclosure, which is directly opposite of what he was told over the phone. *(Lisa Sitkin, National Housing Law Project)*

### *Pennsylvania, April 2021*

Philadelphia homeowners with mortgages serviced by Ocean Bank have been told Ocean Bank is not offering any forbearance or loss mitigation on non-federally backed loans. *(Michele Cohen, Senior Law Center)*

### *California, April 2021*

Ms. X is a homeowner in California with a conventional home mortgage from Wells Fargo. Ms. X attempted to refinance her mortgage with another lender in order to get a better interest rate, only to find out that she was unable to do so because Wells Fargo put her mortgage in forbearance unbeknownst to her. Not only was Ms. X barred from refinancing, but her credit report has been negatively impacted by months of forbearance she did not ask for and was unaware of. *(CFPB Complaint #4287213)*

### *Tennessee, April 2021*

Ms. E, a homeowner living in Tennessee who has suffered a COVID hardship, called her servicer Wells Fargo because she believed she qualified for forbearance on her conventional home mortgage. When she called, Wells Fargo put Ms. E on hold for two hours, and she has still been unable to figure out if she qualifies for forbearance or any other assistance. She even

faxed her request to the bank physically, but has yet to hear a response. (CFPB Complaint #4285496)

### *North Carolina, January 2021*

Ms. M has a conventional home mortgage with Chase, that was approved for forbearance. However, once she resumed her payments after the forbearance period, she noticed that she was being charged an extra \$140 late fee every month. When Ms. M asked Chase about the fee, they told her it was because she did not pay her mortgage for several months, referring to the months that she was in forbearance. Chase only agreed to waive one of the five \$140 fees and Ms. M was forced to pay the rest. (CFPB Complaint #4053809)

### *Minnesota, January 2021*

Ms. G, an elderly white homeowner in Minneapolis, is reported as delinquent on her credit report for her PLS mortgage from Rushmore despite that her inability to pay was due to COVID hardship. Ms. G was in delinquency from July to December of 2020, and applied for help at the end of that year. She was granted 90 days forbearance for January to March of 2021, and is only being reported for “pandemic protection” during that time. Ms. G has had difficulty effectively communicating with Rushmore, so she did not have the wherewithal to apply for help earlier, and does not know what, if any, loss mitigation options are available to address her delinquency. (Brittany McCormick, Mid-Minnesota Legal Aid)

### *New York, November 2020*

Ms. F is a small business owner whose business was severely affected by the COVID stay-at-home orders. She requested that her conventional home mortgage with Chase be put in forbearance, which Chase responded to by saying she had nothing to worry about and that any late payments would not show up on her credit report. However, after missing just one monthly mortgage payment Ms. F noticed that her credit report had gone down drastically. Ms. F was able to restart payments and become current, but she still has this late payment bringing down her credit report. She has contacted Chase numerous times and even been able to get Chase to drop the late charges on her mortgage but has been unable to rectify her misreported credit score. (CFPB Complaint #3969282)

## Appendix C: HUD Neighborhood Watch Data

The data below was pulled from HUD's Neighborhood Watch system,  
<https://entp.hud.gov/sfnw/public/>.

Month-End	Active Portfolio	Seriously Delinquent Loans	Total Delinquent Loans	Forbearance Actions
Apr-20	8,082,639	313,214	1,238,080	533,822
May-20	8,068,104	386,514	1,383,881	781,235
Jun-20	8,029,043	708,101	1,378,487	828,212
Jul-20	7,998,805	835,280	1,362,983	850,668
Aug-20	7,974,470	890,738	1,390,159	814,312
Sep-20	7,951,861	912,229	1,393,217	816,165
Oct-20	7,916,213	918,687	1,371,931	819,557
Nov-20	7,877,461	933,472	1,381,710	811,554
Dec-20	7,839,169	926,426	1,365,134	806,660
Jan-21	7,822,359	919,801	1,328,260	800,374
Feb-21	7,790,631	933,397	1,360,927	785,484
Mar-21	7,719,008	888,323	1,178,798	701,806