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October 9, 2012

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

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

Re: Mortgage Servicing Proposals:

Truth in Lending Act – Docket No. CFPB-2012-0033¹ (RIN 3170-AA14) and
Real Estate Settlement Procedures Act – Docket No. CFPB-2012-0034² (RIN
3170-AA14)

Dear Consumer Financial Protection Bureau:

Please accept these comments on your proposed servicing regulations in the two separate dockets. This letter is from Kentucky Equal Justice Center. We are a statewide, non-profit legal advocacy program that represents the interests of low-income Kentuckians through impact litigation, legislative advocacy and administrative advocacy. We advocate for low-income Kentuckians on a variety of issues, including health, employment, immigration, consumer and housing. We work in partnership with legal services program around the state, and coordinate statewide task forces on a variety of topics, including consumer and housing law.

We frequently hear about the problems legal services advocates in Kentucky face when representing individuals trying to save their homes from foreclosures. We sometimes co-counsel with legal services attorneys on foreclosure and other cases. In addition, KEJC has been involved for a number of years advocating for changes in mortgage lending laws in Kentucky. We worked hard to ensure the passage of Kentucky's High Cost Loan Act, KRS 367.100 *et seq.*, and other reforms to the mortgage lending laws to protect our clients from unscrupulous and sometimes fraudulent actions on the part of mortgage brokers, lenders and servicers.

These state law changes alone have not been sufficient to protect Kentucky homeowners in the continuing foreclosure crisis. In the course of representing distressed

¹ 77 Fed. Reg 57319 (Sept. 17, 2012).

² 77 Fed. Reg. 75200 (Sept. 17, 2012).

homeowners, legal services attorneys in Kentucky encounter numerous problems with mortgage loan servicers, some of which these proposed regulations will address. We frequently hear these complaints - servicers who misapply loan payments, make demands for charges and fees that are often unjustified, and repeatedly insist that they have not received documents in support of applications for loan modification that have been successfully faxed numerous times. In addition, we hear complaints about servicers who proceed with foreclosure even though a loan modification application is pending, or inform homeowners that they qualify for loan modifications and then foreclose on their property anyway.

We very much appreciate the comprehensive approach that the CFPB has taken in these proposed regulations. There are many good aspects which will assist consumers in saving their homes from foreclosure. These benefits are outweighed, however, by the harm done by the limited loss mitigation provisions and the failure to include a catch-all provision in the error resolution rules.

The Bureau's helpful proposals include:

1. **Avoiding force placed insurance.** The affirmative proposal requiring servicers to pay premiums for property insurance from escrow accounts (even if the borrower is behind on the loan) to avoid force placed insurance (in proposed § 1024.37 of the RESPA regulations) is excellent. *However, the CFPB also should expand these protections to homeowners who do not have escrow accounts.*
2. **Better information management procedures.** Proposed § 1024.38, which establishes affirmative mandates on servicers for information management policies that require servicers to provide the borrower with the entire loan file upon request, will be extremely valuable (so long as the "entire loan file" is considered to include all of the payments on the loan from closing through the date of the request). *The CFPB should also affirmatively require servicers to provide borrowers with verification of the servicer's right to foreclose before initiating one.*
3. **Continuity of contact required.** The new and affirmative requirements in proposed § 1024.40 for dedicated contact personnel to be assigned to each borrower is good. It will be helpful for the contact to be required to have access to all relevant information about the borrower, and to be able to provide the borrower with accurate information about what she needs to do and her status. *Servicers should also be required to provide an electronic portal for communications with borrowers or their designated representatives, particularly for delivering documentation for a loan modification request. Conventional application procedures should still be available as well.*
4. **Early intervention efforts required.** Proposed 12 C.F.R. § 1024.39 requires servicers to make good faith efforts to notify delinquent borrowers of their loss mitigation options and provide information to the borrower about the foreclosure process. This is new and an affirmative requirement that will be helpful to homeowners. *The CFPB should also include a specific requirement that servicers provide detailed*

information about all of the loss mitigation strategies employed by the servicer, the eligibility requirements, and the steps required for homeowners to apply for these options.

5. **Periodic billing statements.** Proposed 12 C.F.R. § 1026.41 will require servicers of closed-end residential mortgage loans to send a periodic statement for each billing cycle, unless the loan is a fixed-rate loan and a coupon book is provided. This proposal follows the statutory requirements and will be beneficial to homeowners.

While these servicing proposals will advance homeowner interests, they do not justify the harm that will be done from the seriously problematic proposals on loss mitigation and error resolution.

Loss Mitigation. The proposal on loss mitigation – § 1024.41 – only mandates *procedures* rather than substantive requirements and even these procedures are only required for “servicers that offer loss mitigation options in the “ordinary course of business.” This proposal would also take a major step backward by permitting dual track – proceeding with the foreclosure process while evaluating the homeowner for loss mitigation. As it stands, this provision represents a major retreat from current law and many existing requirements. **For this reason, we request that the proposed rule on loss mitigation be withdrawn.** The CFPB needs to go back to the drawing board and consider anew both its authority (which it clearly has) and the dire need for meaningful, substantive loss mitigation requirements.

The proposed rule on loss mitigation fails to implement even the most basic lessons of the recent foreclosure crisis. At least the following issues must be specifically addressed and improved in the CFPB’s rules on loss mitigation:

- a) Specific home saving strategies should be mandated, with affordable loan modifications ranked first.
- b) Servicers should be required to undertake loss mitigation, including loan modification reviews and offers, prior to initiation of foreclosure.
- c) All servicers must be required to offer affordable, NPV-positive loan modifications to qualified homeowners facing hardship.
- d) Homeowners seeking assistance after a foreclosure has started should have their foreclosures paused while their files are reviewed, and if needed, appealed, in a timely fashion.
- e) Successful trial loan modifications must be automatically converted to permanent modifications by the mortgage servicer. Homeowners should not bear the financial burden of undue delay in conversion.
- f) Notification to homeowners regarding their status must be provided in writing.
- g) The error resolution procedures should include a basis for a homeowner to assert an error for the servicer’s failure to satisfy loss mitigation requirements, as well as a general catch-all, which will allow homeowners the ability to challenge servicer abuses in real time to save their homes.

Unless the CFPB can address these essential issues in their final rule, the loss mitigation rule should be withdrawn and reconsidered.

Error Resolution. The proposed rule on error resolution (§ 1024.35) is seriously flawed because it limits the grounds upon which a borrower can demand that servicers resolve errors to nine specific situations. This appears to be in violation of the clear mandates of Congress to expand homeowners' rights under the Real Estate Settlement Procedures Act (RESPA)'s when dealing with servicers. The proposed regulations do include better timing requirements and a prohibition on charging for responding to requests (as mandated by the changes to RESPA made in the Dodd Frank Act). However, there is no authority for the CFPB to eradicate the general catch-all that has long been in the law under the requirements for servicers to respond to Qualified Written Requests (QWRs). Indeed, the Dodd Frank Act changes added more general requirements on servicers to respond to errors relating to "servicer's duties."

The error resolution procedure must be expanded to include a general ground that covers any borrower request to avoid foreclosure or address other "standard servicer dut[y]". Without this change, this provision represents a retreat from current legal consumer protections – when additional mandates are clearly necessary to prevent inappropriate foreclosures. Retention of only the specific list—even if it is expanded somewhat—invites newer servicer abuses that circumvent the list.

In sum, we support the CFPB's proposals on most of the specific regulations, but we are seriously disappointed with the loss mitigation and error resolution proposed regulations. We ask that the loss mitigation regulation be withdrawn to be rewritten after more input from community groups, housing counselors, and others representing homeowners, and that the error resolution regulation be amended to include an essential catch-all provision, as the law requires.

Thank you for the opportunity to comment on these important proposed regulations. Please feel free to contact me at 502-333-6012 if you have any questions concerning these comments.

Sincerely,

/s/ Anne Marie Regan

Senior Staff Attorney
Kentucky Equal Justice Center