



October 9, 2012

Mr. Richard Cordray, Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: CFPB-2012-0034

Dear Director Cordray,

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) August 10 proposed rule amending Regulation X. NCSHA supports CFPB's efforts to increase consumer protection in the mortgage servicing industry. However, we feel that some of the provisions of the proposed rule will be overly costly to smaller servicers, including government agencies such as HFAs. Consequently, we ask you to eliminate the provision that would require servicers to respond to requests for information or error resolution requests that are received orally, and instead only require servicers to respond to such requests when they are submitted in writing.

Furthermore, we recommend that CFPB reconsider its proposal to mandate that contact information for state HFAs be included on the written notice that servicers would be required to send borrowers after they miss a payment. Also, we urge you to allow servicers to purchase force-placed insurance coverage for homebuyers that cannot or do not demonstrate they have coverage, as long as the servicer tries in good faith to determine if the borrower has coverage. Lastly, we suggest that you set an effective date for this rule that will provide servicers, particularly small servicers and governmental agencies, including HFAs, adequate time to adopt the changes called for in the proposed rule.

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. Though they vary widely in their characteristics, including their relationship to state government, HFAs share a common mission of supporting affordable housing lending help to those who need it.

State HFAs are most widely known for their safe and sound first-time homebuyer lending programs, which have provided a reliable source of affordable mortgage money for working families over many decades in strong and weak economies. Through a combination of

low-cost financing, prudent underwriting, homebuyer counseling, down payment assistance, and proactive servicing, HFAs have established a long record of high homebuyer lending performance, noted for its low delinquency and default rates. In addition to their lending activities, some HFAs also perform the servicing duties on the home loans they have financed.

Remove the Provision Requiring Servicers to Respond to Oral Requests

Under current law, mortgage servicers are expected to reply promptly to “qualified written requests” from borrowers seeking information about their home loans or notifying servicers of potential errors. The proposed rule would establish timelines by which servicers would have to acknowledge and meet such requests, and would also require servicers to respond to requests made orally. CFPB explains in the rule that it decided to allow borrowers to make requests for information and notices of error orally because it has found that most borrower requests are generated orally and because requiring such notices to be issued in writing, “serves as a barrier that unduly restricts the ability of a borrower to have errors resolved.”

NCSHA understands CFPB’s desire to support consumers’ efforts to make requests of and lodge complaints with their mortgage servicers. Despite this, we still have concerns about allowing official requests to be made orally. As CFPB itself notes, many servicers have previously stated that allowing requests for information and notices of error to be filed orally will make it difficult for them to track and monitor these notices. While written requests may increase the burden on borrowers, they also infuse a sense of certainty in the process. Written requests provide servicers with documentation of the specifics of the borrower’s complaint that can be used to both track the progress of their response and ensure that they provide borrowers with the exact information they sought.

In contrast, oral requests do not lend themselves easily to documentation and are prone to misunderstandings between borrowers and their servicers. While CFPB allows servicers the leeway to develop their own systems for tracking borrower notices, many of the methods that could be utilized to better track oral requests, such as taping phone conversations, may be cost-prohibitive for small servicers and some HFAs. Furthermore, during every interaction with a borrower, servicer personnel would be required to make a judgement call as to whether or not the borrower had made an official request. Many servicers may feel the need to treat almost all conversations with borrowers as official requests so as to avoid potential liability. This would further tax many small servicers’ resources. Consequently, while we support efforts to increase servicers’ responsiveness to borrowers, we believe that the information request and error resolution timelines outline in the proposed rule should only be required when borrowers submit a written request.

Remove HFA Contact Information from Foreclosure Prevention Information Statement

HFAs will always be willing to assist struggling homeowners in their states. However, requiring servicers to include state HFA contact information on the notices that CFPB proposes servicers send all borrowers who are late in making a payment may misdirect borrowers away from entities and individuals that may be better able to assist them while also increasing the number of borrowers contacting HFAs even though those HFAs will only be able to provide limited assistance to many of those borrowers. HFAs typically finance and service a relatively small proportion of all the loans made in their states, so getting to the right counselors and servicers quickly may not be best served by referring borrowers to their state HFAs.

Furthermore, because the foreclosure prevention information statement requirement would apply to nearly all first-lien mortgages, including those owned by investors, the statement would be required to list contact information for the HFA in the state where the home is located, regardless of where the borrower actually resides. While there are some exceptions, HFAs generally provide assistance only for owner-occupied homes.

Allow Servicers to Purchase Force-Placed Insurance When They Act in Good Faith

CFPB proposes to prohibit servicers from charging a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance. In addition, servicers must send a notice to borrowers at least 45 days before they begin charging the borrower for force-placed insurance, and again at least 15 days before. If, after the 45-day period since the initial notice was sent, the servicer still has reasonable basis to believe the borrower has allowed their hazard insurance to lapse, they may purchase force-placed coverage and charge the borrower accordingly. However, if the borrower is later able to demonstrate that they had renewed or purchased insurance during the 45-day notice period, HFAs will have to reimburse the borrower whatever costs they paid for the forced-place coverage.

NCSHA agrees that steps need to be taken to protect borrowers from being unnecessarily enrolled in high-cost force-placed insurance policies. However, the proposed rule's requirements would put many servicers in the precarious position of being unable to purchase insurance for a home with a mortgage they are servicing even though they have good reason to believe it is uninsured.

Under the proposed rule, HFAs and other servicers would have to wait at least 45 days, depending on when they send out their initial notice, to purchase insurance for the home, even if the policy has already expired or been cancelled. During this time period, many HFAs and other servicers may feel compelled to purchase force-placed insurance, even if they cannot charge the borrower, to protect themselves from the possibility the home may incur damage. This could substantially increase costs for servicers. We urge you to allow servicers to purchase

force-placed coverage when they have reasonable basis to believe the borrower does not have insurance and they have made a good faith effort to contact them.

In addition, if borrowers are later able to demonstrate that they had in fact been insured during the 45-day period, but failed to inform their servicer, under the proposed rule the servicer would have to reimburse them for whatever charges they paid for force-placed coverage. In such cases, servicers would be compelled to pay for the costs of the force-placed coverage even though they had a reasonable basis to believe the borrower had let their coverage lapse and the servicer attempted to contact the borrower to remedy the situation. In short, servicers will have to incur substantial financial costs through no fault of their own. We ask that servicers not be forced to reimburse consumers for forced-place premiums if the servicer had a reasonable basis for purchasing the coverage.

Provide Adequate Time for Servicers to Implement Rules

Lastly, we request that CFPB set an effective date that gives servicers a sufficient amount of time to implement the changes required by this rule. As the Bureau notes, the final servicing rules are expected to be released around the same time as new CFPB rules on mortgage originating. For those entities that perform both lending and servicing, ensuring compliance with both rules could prove to be a complicated undertaking, and it may take some time to ensure proper compliance.

In addition, we ask that CFPB use its authority to provide an extended implementation period for small servicers, and that you also allow HFAs to take advantage of the extended timeframe. As we mentioned in our comments on CFPB's proposed rule amending Regulation Z (CFPB-2012-0033), HFAs and small servicers face many similar challenges. As instrumentalities of government, HFAs face many of the same resource limitations as small servicers. Also, HFAs' strong record of customer service testifies to their desire to act in the borrowers' best interest.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman", with a long horizontal flourish extending to the right.

Garth Rieman

Director of Housing Advocacy and Strategic Initiatives