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National Association of Federally-Insured Credit Unions

August 13, 2020

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Interim Final Rule on the Treatment of Certain COVID-19 Related Loss Mitigation

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the CFPB's interim final rule regarding the treatment of certain COVID-19 related loss mitigation options under the *Real Estate Settlement Procedures Act* (RESPA) and Regulation X. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 121 million consumers with personal and small business financial service products. NAFCU appreciates the bureau's efforts to reduce regulatory burdens for credit unions seeking to accommodate their members during the COVID-19 pandemic. While the interim final rule is helpful, there are still unnecessary regulatory hurdles for consumers with loans owned by Fannie Mae or Freddie Mac, the government-sponsored enterprises (the GSEs), who cannot qualify for deferral and may need a disaster modification instead.

A Common-Sense Approach to Deferrals

As of July 14, 2020, an estimated 53,000,000 U.S. mortgages are in active forbearance, representing nearly \$900 billion in unpaid principal amounts.¹ The number of loans in active forbearance has decreased in the past weeks as many areas in the country have reopened and people have returned to work. However, the numbers of COVID-19 cases and related deaths are climbing in some areas of the country, breaking records set in the spring. Additional state- or region-wide shutdowns may be imminent, which would likely result in additional furloughs or unemployment for consumers and an increase in forbearances.

As areas reopen, credit union members are returning to work and seeking to resolve the delinquency that has accumulated during the period of forbearance. Despite a potential increase in both requests for forbearance and members seeking to restart payments, credit union resources are still limited as staff are still working from the safety of their homes in most states. The CFPB's interim final rule makes clear that the GSE-created deferral option, and options like it, can be

¹ Black Knight, *Loans in Forbearance Decline for Third Consecutive Week to Lowest Rate Since May at 4.12 M*, (July 17, 2020) <https://www.blackknightinc.com/blog-posts/loans-in-forbearance-decline-for-third-consecutive-week-to-lowest-rate-since-may-at-4-12m/>.

offered by mortgage servicers without the burden of obtaining a complete loss mitigation application and conducting an evaluation of the borrower for all available options. Removing the requirement to obtain a complete loss mitigation application that addresses all potential options is a common-sense adjustment to the rule's requirements in light of the limited capacity of credit unions and their member-borrowers.

Regarding notice, the CFPB should not institute additional notice requirements. Credit unions should be permitted to provide a notice under current section 1024.41(c)(2)(iii) regarding short-term payment forbearance programs. This notice requirement allows credit unions to offer the option and follow up with a notice. Further, as interpreted by existing comment 5, this notice provides all critical information for the borrower, including the legal implications of the deferral and the borrower's opportunity to complete their loss mitigation application and seek alternative loss mitigation options. No additional information is necessary and new notice requirements will only burden credit unions and delay the resolution of these delinquent accounts.

The Need to Address Disaster Modifications

While the interim final rule is tremendously helpful in easing mortgage servicers' ability to offer deferral payment options, it does not go far enough. The CFPB should issue an additional or amended interim final rule that also addresses disaster Flex Modifications offered by the GSEs. The GSEs allow servicers of their loans to offer loss mitigation options in a "waterfall." A borrower's first option to resolve delinquency is to simply reinstate the mortgage by repaying the entire past due amount. The second option is to enter into a repayment plan to cure the delinquency by paying additional money on top of the regular monthly payment. Only if the borrower cannot qualify for these options is payment deferral offered.

The GSEs' deferral programs allow homeowners who can resume regular monthly payments to defer up to twelve months of missed payments to the end of their mortgage term, without accruing any additional interest or fees.² These deferral programs offered by the GSEs require minimum information to qualify. Generally, to be eligible for payment deferral, borrowers must report (but not document) a financial hardship resulting from COVID-19 impacting their ability to make payments, confirm their ability to continue making full monthly contractual payments going forward, and confirm their inability to reinstate the mortgage loan or afford a repayment plan to cure the delinquency.³ Servicers must obtain minimal information about the borrower's financial situation in order to make the determination as to the borrower's eligibility including the reason for the delinquency, whether it is temporary in nature, and whether the borrower has the ability to repay.

A payment deferral is not available if the borrower cannot resume regular monthly payments at the same level going forward. This could happen if the borrower takes a different job that pays less or is no longer furloughed but is offered reduced hours. If a borrower in this situation sought to begin payment on their loan, a mortgage servicer would offer the next option in the waterfall: a

² See, Fannie Mae Lender Letter (LL-2020-07)(July 15, 2020); Freddie Mac Bulletin 2020-28 (July 15, 2020).

³ *Id.*

disaster Flex Modification.⁴ In certain disaster circumstances, including the COVID-19 pandemic, the GSEs do not require additional information or documentation to consider a borrower for a Flex Modification.⁵ A mortgage servicer can determine their eligibility based solely on the information obtained to consider them for a deferral and a review of the mortgage servicer's own records.

As stated in the CFPB's interim final rule, Regulation X generally requires servicers to obtain a complete loss-mitigation application before evaluating a mortgage borrower for a loss-mitigation option.⁶ Regulation X also states that a borrower's completed loss mitigation application must be evaluated for all options potentially available to the borrower.⁷ Delaying the determination as to a borrower's qualification for this Flex Modification where no additional paperwork or information is needed is unnecessary, burdensome for credit unions, and ultimately harmful to borrowers as delinquent amounts continue to accumulate.

The bureau's comment 2 to paragraph 41(b)(1) makes it clear that a loss mitigation application comes into existence when the borrower "provides information the servicer would evaluate in connection with a loss mitigation application." Where a borrower that has been evaluated for a deferral and denied due to insufficient income to resume regular monthly payments, it is likely the borrower has provided income information the servicer would evaluate in connection with a loss mitigation application, which would establish an incomplete application under section 1024.41 of Regulation X. Comment 1 to paragraph 41(c)(2)(i) suggests that a servicer can offer a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application; however, that only applies where the offer is not based on any evaluation of information submitted by the borrower. Because the borrower must establish eligibility for a Flex Modification in the same manner they would for a payment deferral, it is not at all clear that this exception would apply.

Without that exception, credit unions are placed in the position of having to obtain a complete application with supporting documentation for all potential loss mitigation options available to the borrower. The process to complete a loss mitigation application for all potential options can be lengthy, difficult, and stressful for both borrowers and credit unions. Further, given the state of the pandemic, it may be especially burdensome given the number of government offices and businesses that may be closed and unable to provide needed information and documentation. It would be in the best interest of borrowers and credit unions if the interim final rule were expanded to address not only payment deferral programs, but also loan modification programs such as the GSEs' Flex Modification program where no additional information is needed to make a determination as to the borrower's eligibility to qualify. This will help credit unions transition as many borrowers to a current status as quickly and seamlessly as possible.

⁴ *Id.*

⁵ This special treatment for disaster-related modifications does not apply in certain specific circumstances, such as the mortgage being subject to an approved short sale. *See*, Fannie Mae Servicing Guide, § D2-3.2-06: Fannie Mae Flex Modification (09/18/2018); Freddie Mac Single-Family Seller/Servicer Guide § 9206.6 (July 1, 2020).

⁶ *See*, 85 Fed. Reg. 39055, 39056 (June 30, 2020).

⁷ *See*, 12 C.F.R. § 1024.41(c)(1).

Bureau of Consumer Financial Protection

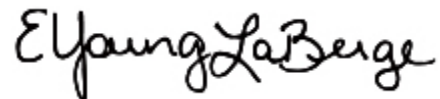
August 13, 2020

Page 4 of 4

Conclusion

Thank you for issuing the interim final rule and providing important guidance and regulatory flexibility for credit unions seeking to offer payment deferral programs in a fast and compliant manner. However, the same guidance and flexibility is needed for modification programs to ensure credit unions can assist their borrowers in the same manner. If you have any question or concerns, please do not hesitate to contact me at (703) 842-2272 or elaberge@nafcu.org.

Sincerely,

A handwritten signature in black ink that reads "E Young LaBerge". The signature is written in a cursive, flowing style.

Elizabeth M. Young LaBerge
Senior Regulatory Counsel