



March 16, 2015

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

RE: **Docket No. CFPB-2014-0033**
Amendments to the 2013 Mortgage Rules under the Real Estate
Settlement Procedures Act (Regulation X) and the Truth in Lending Act
(Regulation Z)

Dear Ms. Jackson:

Thank you for the opportunity to comment on these important proposed rule changes.

The Center for Survivor Agency and Justice (CSAJ) is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence (IPV).¹ We develop transformative advocacy approaches that match institutional structures, organizational programs, and professional practices with IPV survivors' lived realities. These approaches guide our efforts to improve the work of attorneys, to organize communities, and to provide leadership on critical issues facing survivors and advocates across the country.

Economic abuse is a distinct yet common form of harm experienced by women in abusive relationships, and such economic abuse is a significant component in the system of tactics used by abusive partners to gain power and maintain control.² "Economic abuse involves behaviors that control a woman's ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency."³

The Consumer Rights for Domestic Violence Survivors Initiative is a national project of CSAJ, based on the understanding that partnerships between domestic violence and consumer rights advocates and attorneys are critical to achieving the joint goals of physical and economic safety for survivors. In the course of developing these partnerships, CSAJ has learned how difficult it can be for IPV survivors to work with a mortgage loan servicer and/or investors. These difficulties can result in an opportunity

¹ For more information about CSAJ, please see our website at www.csaj.org

² A. E. Adams, C. M. Sullivan, D. Bybee, and M. R. (2008). Greeson Development of the Scale of Economic Abuse. *Violence Against Women*, 14(5), pp. 563-588.

³ Id.

for the abuser to continue the pattern of control and abuse and may result in the survivor losing this valuable asset.

For example, it is a common situation for the survivor to be awarded the marital home in the divorce. However, if the mortgage loan is in the name of the abuser, then the mortgage servicer will often refuse to provide the survivor with information about the mortgage loan—even simple information such as the balance owing and whether there are monthly payments past due—even though the survivor is a legal owner of the property. Giving the abuser the sole access to necessary economic information perpetuates the dynamics of power and control inherent in abusive relationships.

It is also often the case that the survivor needs to request loss mitigation assistance, such as a loan modification, because of her changed economic circumstances after the divorce. However, when she seeks assistance from her mortgage servicer, she is often told that she cannot apply for loss mitigation without the participation of her spouse. This requires her to contact the abusive spouse and request his participation in the process. Needing his participation places the survivor in a position where she is vulnerable to additional abuse: she desperately wants to keep the house, where she is raising children and which may be her only significant asset, but also requires the assistance of her abuser to participate in the loss mitigation process. Requiring the abuser to participate in the process grants the abuser substantial power over the survivor, re-introducing the inequalities in power and control. Some survivors will accept the possibility of additional abuse in order to try to save their home; other survivors will choose to lose their home rather than be subject to the abuser's control again. Neither option is acceptable.

The current servicing regulations do not adequately address these situations. While important changes were made to address those situations involving the death of the homeowners in the amendments to Regulation X which were effective January 10, 2014, the regulations are conspicuously silent in situations involving divorce where many of the issues are the same.

We applaud the CFPB's proposal to extend protections to successors in interest as a result of divorce and firmly believe that these changes introduce important protections, especially for survivors of IPV. These changes are a very important step in the right direction.

However, we do have some concerns regarding the proposed amendments:

1. There is no enforcement mechanism until the successor in interest is confirmed as such. However, it is possible that there will be many problems before the successor in interest can even get to this step— including but not limited to the all too common loss of the documents, the servicer's inability to understand the divorce documents and thereby their misinterpretation of them.



2. The limited Request for Information option should be expanded to allow for a similar limited Notice of Error that can be enforceable as a borrower to permit those attempting to become a successor in interest to dispute the refusal to grant them successor in interest status.
3. Those seeking successor in interest designation should be given dual tracking protections. Under the proposed rules, the dual tracking protections do not become effective until confirmation of the successor in interest. Because it can take a substantial period of time to submit the necessary documents and for the servicer to acknowledge receipt of and process those documents, the failure to provide dual tracking protections during the initial period may very well mean that the house will be lost to foreclosure before successor in interest status is determined. Additionally, the servicers should be required to follow a timetable in making the determination regarding successor in interest. We would propose looking at the loss mitigation timetable that requires notices for an incomplete application, a complete application, and a deadline for review as a good reference for this concern.
4. Those applying for successor in interest status need to be given a written determination of the servicer's decision; not just oral notification. Additionally, the successor in interest applicant should also be provided with an appeal process similar to the loss mitigation appeal process or a Notice of Error process so they can appropriately challenge an inaccurate determination. As referenced above, the applicant should also have a private right of action to challenge an unfavorable determination.
5. Successors in interest should be allowed to submit a loss mitigation application and receive the protections under Regulation X, even if the prior borrower had submitted a loss mitigation application that was evaluated under the process.

The proposed regulations do not impose substantial new costs on the servicers. Most of the servicers have had to put a system in place for successors in interest already under the Fannie Mae and Freddie Mac guidelines. Additionally, the successor in interest determination can be placed within the loss mitigation context easily and does not require substantial resources beyond what loss mitigation already requires.

The potential benefits to the successor in interest homeowners are hugely important. For the successors in interest, particularly those who are survivors of IPV, they can obtain access to financial information, they can become full participants in the mortgage loan, and they can do so without re-opening themselves to an abusive partner. Most

importantly, these regulations can mean the difference between keeping the protection of their home and being exposed to the risk of homelessness and future abuse.⁴

Thank you for the opportunity to comment on these important amendments.

Sincerely,



Erika Sussman
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⁴ Women living in poverty are twice as likely to experience IPV and other forms of abuse. Vest, J.R., Catlin, T.K., Chen, J.J., and Brownson, R.C. (2002). Multistate analysis of factors associated with intimate partner violence. *American Journal of Preventive Medicine*. 22(3): p. 156-164.