strength in members.

March 16, 2015

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

Dear Ms. Jackson:

On behalf of the New York Credit Union Association, I am writing this letter to comment on aspects of the Bureau's proposed amendments to its mortgage servicing rules. The clarification of successor in interest rights is welcomed. This is a surprisingly complex area of law and additional guidance would help servicers comply with loss mitigation rules. In contrast, the Bureau's proposal mandating that servicers reach out to a co-borrower on a delinquent loan even though another co-borrower has filed for bankruptcy would be of minimal value to consumers and problematic for servicers.

Federal law protects certain successors in interest to real property by prohibiting the application of mortgage payment acceleration clauses against certain categories of successors, such as spouses. The CFPB argues convincingly that potential successors should also be given information and loss mitigation options regarding delinquent property to the same extent as the previous owner. Access to this information, the Bureau argues, will help a successor decide what to do with the real estate and ultimately make the disposition of such property more efficient and transparent. For many of the same reasons, estate executors and administrators should be given the same explicit access as successors to mortgage information.

By way of background, when Congress passed the Garn-St. Germain Act in 1982, the legal rights to be given to successors to real property had already been grappled with for more than one hundred years by state courts and legislatures. New York was one of the earliest states to pass legislation stipulating that an outstanding mortgage debt on real property passed to a successor should be paid by the sale of the property without resorting to the ancestor's estate except where a testator expressly or impliedly directs otherwise in his will (4 A.L.R.3d 1023 12[d]). Today, "[i]t is the express policy of the state that encumbrances on property of a decedent are not chargeable at first instance against the assets of the estate." In re Estate of Griffith, 702 N.Y.S.2d 789, 791 (Sur. 2000).

Where an estate provides for no heir to property, an executor has wide discretion to determine how best to dispose of real property and financial institutions have broad authority to provide executors with mortgage information. See, generally White v. Emigrant Indus. Sav. Bank, 131 N.Y.S. 311 (2d Dep't 1911), *aff'd* 205 N.Y. 571. Consequently, the rights of successors and executors can't be considered in isolation. The responsibilities of the latter will be directly impacted by the decisions of the former.

1021 WATERVLIET-SHAKER RD. * ALBANY, NY 12205 * P.O. BOX 15118 * ALBANY, NY 12212-5118
(518) 437-8100 * (800) 342-9835 * FAX (518) 437-8500 * WWW.NYCUA.ORG

Consider this scenario, similar to one recently experienced by a New York State credit union, in which a credit union member died. His will provides that the family home is to be given to his son. At the time of his death, the member has an outstanding mortgage on the property. The member named his daughter as executor of the estate. Under New York law, an executor has the right to all relevant information related to the estate, but the property will only become part of the estate if the son decides not to assume responsibility for the mortgage. The CFPB's proposal provides that, once proper documentation is provided, the son – the successor – should be contacted by the credit union and given the right to explore loss mitigation options even though he has not yet decided to take legal title to the property. However, the CFPB's regulation does not provide corresponding rights to an executor even though it is the executor who may ultimately be legally obligated to dispose of the property.

To avoid this inconsistency, the final regulation should give executors the same rights as successors to mortgage information until the successor assumes legal responsibility for the property. The Bureau's goal of a more expeditious, transparent and collaborative mitigation process would be advanced since executors would have adequate time to consider how best to dispose of real property and how to pay off the outstanding mortgage. Servicers would benefit because this bright line rule will make it easier for servicers to know what their responsibilities are regarding mortgaged property.

The CFPB should also provide a safe harbor for servicers that provide information to successors and executors. A safe harbor will provide servicers with additional assurance that they can provide access to account information without being drawn into contentious legal disputes.

Finally, to avoid any confusion about legal rights and responsibilities, the CFPB should specify the documentation required of individuals claiming to be successors in interest to real property. The use of a uniform affidavit would avoid disputes about what constitutes adequate evidence that a person is a successor in interest. A surrogate court's letters appointing the executor would constitute sufficient proof that an individual is authorized to receive account information.

A problematic part of this proposal involves the treatment of co-borrowers in bankruptcy. Currently, if a co-borrower on a delinquent loan has declared bankruptcy, a servicer does not have to attempt to make live contact with any of the borrowers even if they have not filed for bankruptcy. Under these amendments, the live contact exemption would no longer apply to co-borrowers who have not declared Chapter 7 bankruptcy.

The consumer benefit of this amendment will be minimal while the threat of sanctions against servicers accused of violating automatic stay mandates will be substantial. At its core, the "live contact" provisions are designed to ensure that servicers inform borrowers of loss mitigation options and facilitate dialogue. It is highly unlikely that a co-borrower on a delinquent loan will be unaware of discussions taking place in bankruptcy proceedings about the disposition of mortgaged property they own. As a result, the relevant parties will be aware of loss mitigation options even without direct servicer contact.

In contrast, it is highly likely that a servicer obligated to make live contact with a co-borrower will inadvertently contact a borrower in bankruptcy. For example, in a situation where a married spouse has

filed for bankruptcy and lives with her spouse who has not, a servicer would have to attempt to talk to one spouse while advoiding any discussion with the other. Any failure to do so may lay the groundwork for a claim that the automatic stay has been violated. Furthermore, the distinction the CFPB is proposing to draw would result in replacing a rule that is straightforward and easy to apply with one that invites fact-specific case distinctions.

The CFPB is proposing that this regulation take effect 280 days after it is finalized. This timeline is too short. For example, modifications to forced place insurance notifications must be coordinated with vendors who will need to update software requirements. In addition, changes regarding the treatment of successors will have to be incorporated into servicing procedures and training provided to employees on the bankruptcy changes. All of this work requires time and effort on the part of credit unions and their servicing centers. These amendments should not take effect for at least a year and a half after they are finalized.

Sincerely,

William J. Mellin
President/CEO
New York Credit Union Association