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Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
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Via Electronic Submission

RE: Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X
Proposed Rule, Request for Public Comment
Docket Number: CFPB-2021-0006

HOPE, (Hope Enterprise Corporation / Hope Credit Union / Hope Policy Institute) is a Black- and Women-owned credit union, a nonprofit loan fund, and a policy and advocacy organization. A Treasury-certified Community Development Financial Institution (CDFI), HOPE serves Alabama, Arkansas, Louisiana, Mississippi and Tennessee – a region that is home to more than a third of the nation’s persistent poverty counties.

HOPE exists to ensure that all people regardless of where they live, their gender, race or place of birth have the opportunity to support their families and realize the American Dream. Since 1994, HOPE has generated over \$2.9 billion in financing that has benefitted more than 1.7 million people. From the New Markets Tax Credit, to Hurricane Katrina, the Great Recession/Housing Crisis and COVID19, for over a quarter century HOPE has worked closely with government and bank officials to forge policy and programmatic responses to the challenges facing historically underserved people and places.

HOPE works to increase access to affordable financial services for communities that are often underserved and over-looked. Of HOPE’s 35,000 credit union members, seventy-four percent (74%) have household incomes below \$50,000 and eight out of 10 are people of color. Our branches are located in areas with less public, private and philanthropic investment, with 86% in counties where the majority of the residents are Black. One-third of our branches are located in counties that have been in deep poverty for more than three decades, and one out of five are in located in towns situated in the Mississippi Delta, three of which have no other depository institution.

Mortgage lending is a key component of HOPE’s strategy to close the racial wealth gap in the Deep South. Over the last ten years, HOPE’s mortgage portfolio nearly quadrupled from nearly \$34 million in 2010 to \$127 million at the end of 2020. In 2020, 86% of HOPE’s mortgage

loans were made to people of color, primarily Black borrowers, and 83% were made to first time homebuyers. Importantly, HOPE accomplishes this impact through responsible mortgage lending, as reflected by a charge off rate of fifteen basis points in 2020. HOPE retains the large majority of its loans in portfolio, not selling it on the secondary market. While HOPE engages a servicer to assist with routine maintenance of loan payments, HOPE staff work hand in hand with the servicer and borrowers, particularly those encountering financial struggles.

Prior to COVID-19, Deep South communities were already dealing with the pre-existing crises of racial and economic inequality. The current triple threat of the health, economic and social justice crises is the convergence of centuries of policies and practices that have extracted, discriminated and under invested in Deep South people and communities. As the nation seeks to recover from COVID-19, Deep South communities, especially communities of color, are now even more precariously situated on the brink of economic and social devastation. Policy decisions made today have the opportunity to break, rather than repeat and worsen this cycle of inequity.

Key among these decisions will be the protections afforded to people struggling to hold on to their homes, particularly borrowers of color and low-income borrowers who are among the hardest hit by COVID-19's health and economic impacts. These are the same borrowers who have also been most likely bypassed for other types of relief that might help them stay afloat.

This comment highlights the following points:

1. Deep South people and places most economically vulnerable prior to the pandemic, were most heavily impacted by it, and most likely to be passed over by relief measures,
2. Preventing unnecessary foreclosures is critical to preserving Black homeownership, and prevent widening of the racial wealth gap, and
3. Proposed amendments to Regulation X are a helpful start, and need clarity.

Deep South People and Places most Economically Vulnerable Prior to the Pandemic, were Most Heavily Impacted by it, and Most Likely to be Passed over by Relief Measures

Prior to the pandemic, the Deep South was home to some of the highest rates of liquid asset poverty in the country, meaning the households did not have the resources to manage an unexpected income loss. The percentage of Deep South families without the cushion to weather a financial emergency is greater than the national average, and the racial disparities are striking. Over 60% of Black and Latino families are liquid asset poor compared to 40% of white families.¹ The most economically fragile households prior to the economic shock of COVID-19 were the ones most impacted by it. In the late summer of 2020, in each of HOPE's Deep South states, over 50% of Black households had experienced a loss of employment income.² For Latino households, 70% in Arkansas and nearly 90% in Mississippi had experienced such a loss since the start of the pandemic.³

The unemployment rates have not abated either, particularly for Black and Latino workers in the Deep South. As of January 2021, more than 4.1 million people had filed for unemployment since the start of the pandemic.⁴ By comparison, throughout the duration of the Great Recession, the

Deep South lost half a million jobs.⁵ Even though Black unemployment rates in the region had largely returned to pre-pandemic levels, the disparities were still quite vast and the post-recession gains have been wiped away by the pandemic. As of February 2021, Mississippi, Tennessee, and Louisiana had a nearly 12% Black unemployment rate.⁶ The Great Recession provides important lessons about the trajectory of recovery for this crisis. The three Delta states in our region – Arkansas, Mississippi, and Louisiana – took significantly longer to recover than the US as a whole.⁷ Mississippi, for example, did not reach its re-precession job levels until a decade later, in October 2019.

These dramatic losses of jobs and employment related income are intertwined with the pandemic's devastating impact on Black-owned businesses and the extent to which they were left out of COVID-relief efforts.⁸ Nationally, between February and April 2020, more than 41% of Black-owned businesses closed, compared to 17% of white owned businesses.⁹ Due to historic disparities in access to capital to grow and sustain their businesses, Black and Latino owned business, just like the people in their communities, had far less of a cushion to withstand the economic shock.¹⁰

Despite the pre-existing financial fragility and the disproportionate economic impact on people of color, federal and state relief programs consistently failed to provide equitable access to recovery resources. As one example, within the Small Business Administration Paycheck Protection Program (PPP) program, businesses in which the owner is the sole employee were literally not eligible to access the PPP program for the first seven days of the program as billions of dollars were deployed. In the Deep South, 96% of Black and Latino-owned business fell into this category of businesses, as did 84% of white businesses.¹¹ Then, even when these businesses gained access, they were denied the full benefit by receiving artificially depressed PPP loan amounts underwritten based on net profit/loss rather than gross income. Similar inequities occurred in the deployment of CARES Act funded state-level relief efforts to support small businesses and local governments in the Deep South. In Tennessee's Small Business Relief Program, which provided direct payments to designated businesses, 90% of the relief funds went to white-owned businesses in the state.¹² The inability to access full relief to keep businesses open and people employed spillovers over into people's ability to make their housing payments.

Similar inequities were also found in the deployment of other types of CARES Act relief, including those directly related to housing. For example, an August 2020 survey by Fannie Mae found that borrowers struggling with their bills, lower income borrowers, and borrowers of color were less likely to be aware of COVID-related relief options.¹³ The survey found that over 56% of borrowers with incomes less than \$50,000 were unfamiliar with mortgage relief options, compared with 40% for those over \$50,000. Over 51% of Black borrowers and over 65% of Latino borrowers were unfamiliar, compared with 41% of white borrowers and 8% of Asian borrowers. Further, an Urban Institute study showed how delinquent borrowers in predominantly Black and Latino neighborhoods were less likely to be protected by CARES Act-forbearance options than white neighborhoods, even though homeowners in predominantly white neighborhoods were less likely to be delinquent.¹⁴

Data from the U.S. Census Pulse Survey provides a small glimpse of the struggles Deep South homeowners, particularly Black homeowners, faced in the midst of the pandemic. For the week

of June 4, Deep South homeowners faced higher levels of uncertainty than the rest of the U.S. about their ability to make the next month's mortgage payment.¹⁵ In the U.S., that week 43% of homeowners were highly confident they could make their next payment. Across the Deep South, it was just 37%, and in some states like Louisiana, only one in three homeowners was highly confident. The disparities widen when broken down by racial lines. See Table 1. In the Deep South, white homeowners were twice as likely to be highly confident of their ability to make next month's mortgage than Black households. This is a much wider disparity than in the U.S. as a whole. In some states, the disparity is even wider. In TN for example, nearly one in two of all white households (48%) were highly confident, compared to less than 1 in 5 (19%) of Black households.

Table 1: Percent of Owner-Occupied Households Highly Confident in their Ability to Make Next Month's Mortgage as of June 9, 2020

	Total	Black Homeowners	White Homeowners	Gap
Alabama	40%	24%	43%	19%
Arkansas	37%	14%	38%	24%
Louisiana	30%	24%	32%	8%
Mississippi	33%	17%	37%	20%
Tennessee	44%	19%	48%	29%
Deep South Average	37%	20%	40%	20%
U.S.	43%	34%	47%	13%

Source: U.S. Census, Household Pulse Survey, Week of June 4

The ramifications of the struggles during the pandemic still persist today as many homeowners, particularly homeowners of color, are less likely to recover as quickly or as robustly from the impacts of COVID-19. For example, by the end of 2020, Mississippi and Louisiana, the two states with the highest Black populations in the country, also had the two highest rates of past due mortgage loans in the country.¹⁶ As such, it is imperative that policies to help preserve homeownership through preventing unnecessary foreclosures are centered on the needs of these most economically precarious households.

Preventing Unnecessary Foreclosures is Necessary to Preserve Homeownership, and Prevent Widening of the Racial Wealth Gap

The vestiges of historic patterns of discrimination and the work that still remains to ensure fair housing opportunities are evident in the homeownership gaps between Black and white households in the Deep South. Disparities persist at every stage: originations, denials, pricing, and foreclosures.¹⁷ In each one of HOPE's five states, there is a 20% gap between Black and white homeownership.¹⁸ As just one reason why, in Mississippi, Black borrowers earning over \$150,000 experience a denial rate (34%) that is higher than for white borrowers earning between

\$31,000 and \$50,000 (21%).¹⁹ Mississippi's Black homeownership rate has not only not recovered from the Great Recession, it has steadily fallen every year in the decade since to its lowest point in 14 years.²⁰

HOPE fills these gaps and meets these challenges through mortgage loan products and practices designed to meet the needs of our borrowers and communities. These approaches include manually underwriting loans, considering nontraditional indicators of credit repayment history, and discounting deferred student debt. In addition, we offer a 100% loan-to-value product, as many low-wage earners have the cash flow for a monthly mortgage payment, but lack the ability to save for a down payment.

However, the pandemic has taken a toll on HOPE's homeowners. Only seven percent (99) of HOPE's mortgage loans are federally-backed and, thus, subject to the forbearance provisions required in the CARES Act. However, like many private lenders, HOPE has made similar forbearance programs available to all of our borrowers. Since the beginning of the pandemic, over a quarter (372) of HOPE's mortgage borrowers were placed in forbearance at some point. For context, in June 2020, the national rate of mortgages in forbearance was 8.55%.²¹ Currently, 10.6% (143) of HOPE's mortgage borrowers are in forbearance or deferment, a sign of the continued economic struggles. Of the 143 borrowers currently in forbearance at HOPE, 51 have been in forbearance for more than 12 months, and 44 have been in forbearance more than 6 months.

While HOPE's borrowers are in forbearance, HOPE continues to make escrow payments for those borrowers who are unable. Only about 25 borrowers have been able to continue making escrow payments during forbearance. In the coming months, this will create worry both for borrowers and lenders, as forbearance periods end and as borrowers still struggle to make ends meet. Whether the region, the industry, and mortgage borrowers are able to transition with the necessary resources and support will have significant impacts on the perseverance or loss of Black homeownership.

Proposed Amendments to Regulation X are a Helpful Start, and Need Clarity

HOPE is appreciative of the CFPB's work in addressing the challenges many borrowers who are facing hardships due to COVID-19 will confront as many forbearance programs plan to come to an end later this year. Understandably, the proposal seeks to apply lessons learned during the foreclosure crisis during the Great Recession, addressing the large wave of borrowers likely coming out of forbearance programs. Many of these borrowers will likely still be facing income losses and increased expenses. As conditions begin to improve overall, it is important to understand that economic recovery is often uneven, lagging for many of the communities that were facing challenges even before the pandemic. As discussed above, after the Great Recession, employment in Mississippi did not recover to pre-recession levels until the fall of 2019, more than 65 months after US jobs recovered, and only a few months before the COVID-19 pandemic erased all of those gains.²²

Pre-foreclosure review

The Bureau proposes a de facto moratorium with its proposed pre-foreclosure review period that extends arbitrarily to December 31, 2021. The fixed deadline pre-foreclosure review period projects an imaginary end to this crisis, which is contrary to the reality low-income borrowers are facing. Rather than the blunt hard stop as the CFPB proposes, a better approach would be a pre-foreclosure review cushion tailored to when borrowers actually entered and will exit forbearance. Specifically, borrowers would be better served by a 120-day grace period between the end of forbearance and prior to the initiation of a foreclosure proceeding in order to allow for loss mitigation efforts that take effect at the end of their COVID-19 related forbearance regardless of the date.

As the unprecedented economic effects of the pandemic persist, federal relief efforts to address those challenges have been sporadic. A large number of borrowers may be reaching the end of 18-months of forbearance in September and October, but others who may have felt the economic effects of the pandemic later may not be protected with the pre-foreclosure period ending December 31, 2021. For example, almost a third of HOPE borrowers (45) currently in a COVID-19 forbearance have been in forbearance less than six months, meaning they likely will not exit until well after December 31.

A 120-day grace period based on each borrower's forbearance period would better serve the purposes of a pre-foreclosure review for all borrowers. However, with either the 120-day grace period or the December 31, 2021 deadline, servicers should be required and incentivized to undertake meaningful loss mitigation efforts before initiating foreclosure, including incentivizing easy access to streamlined modifications. The exceptions, or off-ramps, to the proposed foreclosure moratorium in the Bureau's preamble are insufficient to ensure that servicers provide borrowers meaningful relief. We concur with the Center for Responsible Lending's recommendations for suitable off-ramps.

Moreover, the review period should be waived for delinquencies on vacant and abandoned properties. HOPE recommends that the definition of vacant or abandoned be tied to state law or, to the Uniform Law Commission's proposed definition in states without a definition. The exemption should ensure that steps should be taken to make sure that in order to be exempt from the pre-forbearance period, the vacant or abandoned status of the property has been documented, and that loss mitigation efforts have been exhausted. The proposed exemption for properties that are not principle residences would not adequately address this concern.

Other borrower safeguards

In addition to the pre-foreclosure review period, the proposal outlines three other requirements that will potentially facilitate a smooth transition from forbearance to stabilizing the borrower in order to avoid foreclosure. These requirements involve not only making sure that borrowers and servicers have time to work out solutions for coming out of forbearance, but also confirming that borrowers are informed of the options available to them for forbearance and foreclosure prevention.

The proposal's requirement that servicers affirmatively inquire about COVID-19 hardship for delinquent borrowers who are not in forbearance is an example of one of these provisions. This requirement is good for borrowers and should not be an undue burden on servicers who are making live contacts already required for delinquent borrowers. This is particularly important in addressing racial and economic disparities in access to information about available options, as already evident during the pandemic. Under existing rules, servicers are not required to initiate discussions on whether a borrower is experiencing a COVID hardship. When borrowers are obliged to initiate a discussion of COVID-19 hardship with their servicer in order to access forbearance through a streamlined process, this can be problematic. Many borrowers may not know that help is available. As stated in the proposed rule,

“[T]he Bureau is concerned that the circumstances facing borrowers due to the COVID-19 emergency, which may involve potential economic hardship, health conditions, and extended periods of forbearance or delinquency, may interfere with some borrowers' ability to obtain and understand important information that the existing rule aims to provide borrowers regarding the foreclosure avoidance options available to them.”²³

The challenges for borrowers in becoming informed and accessing foreclosure prevention options is also relevant to the proposed requirement that servicers list and briefly describe all loss mitigation options that are available to borrowers and how they can access them. The proposed rule does not replace the role of the servicer in evaluating the borrower's ultimate eligibility for any of the options. However, it also removes the barrier of borrowers having to follow the “waterfall,” successively refusing options in order to reach the right fit without knowing what is available. This will help ensure that borrowers are not steered into options that are not beneficial due to lack of access to information. The current process is set up such that only the servicers know the rules of the game, and borrowers are left to try to figure it out as they go along. This proposal goes a long way to ensure fairness in the marketplace with symmetrical access to information about possible available options.

Finally, the availability of a streamlined application process for loss mitigation and the corresponding protections laid out in the proposal will help borrowers who may not be able to easily produce all the documentation required for the reasons outlined by the Bureau above. As long as adequate safeguards are in place to protect against potentially harmful outcomes for borrowers, along the lines of what the Bureau proposes, a streamlined process will help servicers to process the projected large number of applications more quickly. The importance of this proposal as well as other COVID relief efforts that seek to help communities maintain housing stability throughout unprecedented public health and economic instability cannot be overstated.

As stated above, the Deep South communities served by HOPE, especially people of color, are now teetering even more precariously on the brink of economic and social devastation than before the pandemic. In order to be effective in protecting those who face the greatest risk of losing their homes, federal protections must address the challenges faced by borrowers of color and low-income borrowers. As we saw during the aftermath of the previous foreclosure crisis, policy decisions made today will have far-reaching implications for not only the current housing market, but also for racial wealth and opportunity for many generations to come.

For any questions or additional information in regards to HOPE's comments, please Hope Policy Institute's Sara Miller, Sr. Policy Analyst, sara.miller@hope-ec.org or Diane Standaert, Director, diane.standaert@hope-ec.org.

¹ Prosperity Now Scorecard, Liquid Asset Poverty, 2019, available at <https://scorecard.prosperitynow.org/data-by-issue#finance/outcome/liquid-asset-poverty-rate>.

² Sara Miller, "New Census Data on Employment Income Loss Underscore Magnitude of Financial Hardship in the Deep South from the Pandemic," Hope Policy Institute, Aug. 19, 2020, <http://hopepolicy.org/blog/new-census-data-on-employment-income-loss-underscores-magnitude-of-financial-hardship-in-the-deep-south-from-the-pandemic/>.

³ Id.

⁴ Analysis of Bureau of Labor Statistics, Current Employment Statistics (State and Metro Area) and U.S. Department of Labor Office of Unemployment Insurance, UI Weekly Claims.

⁵ Sara Miller, "Deep South Job Losses due to COVID-19 likely to Far Eclipse those of the Great Recession," Hope Policy Institute, Apr. 21, 2020, <http://hopepolicy.org/blog/deep-south-job-losses-due-to-covid-19-likely-to-far-eclipse-those-of-the-great-recession/>.

⁶ Analysis of data from the Bureau of Labor Statistics and U.S. Census Current Population Survey accessed at <https://www.bls.gov/lau/ex14tables.htm>.

⁷ Sara Miller, "Deep South Job Losses due to COVID-19 likely to Far Eclipse those of the Great Recession," Hope Policy Institute, Apr. 21, 2020, <http://hopepolicy.org/blog/deep-south-job-losses-due-to-covid-19-likely-to-far-eclipse-those-of-the-great-recession/>.

⁸ See generally, Hope Policy Institute, Deep South Economic Mobility Forecast, <https://hopecu.org/deep-south-economic-mobility-forecast-2021/>.

⁹ Robert W. Fairlie, "The Impact Of Covid-19 On Small Business Owners: Evidence Of Early-Stage Losses From The April 2020 Current Population Survey," National Bureau of Economic Research, June 2020, https://www.nber.org/system/files/working_papers/w27309/w27309.pdf.

¹⁰ See e.g., Claire Kramer Mills and Jessica Battisto, "Double Jeopardy: Covid-19's Concentrated Health And Wealth Effects In Black Communities," Federal Reserve Bank of New York, Aug. 2020, https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses.

¹¹ Hope Policy Institute analysis of Statistics for Non-employer Firms by Industry, Sex, Ethnicity, Race, and Veteran Status for the U.S., States, and Metro Areas: 2017, Annual Business Survey Program.

¹² For information on the racially-biased funding formula, see NAACP Legal Defense Fund, Letter to Governor Bill Lee Re: Tennessee Small Business Relief Program, July 6, 2020, available at <https://www.naacpldf.org/wp-content/uploads/Tennessee-Letter-2020-07-06-1.pdf>.

¹³ Fannie Mae, National Housing Survey, "Covid-19: The Need for Consumer Outreach and Home Purchase/Financing Digitization," Aug. 2020, at page 1. <https://www.fanniemae.com/sites/g/files/koqyhd191/files/2021-04/covid19-consumer-impact-nhs-q22020.pdf>

¹⁴ Michael Neal and Caitlin Young, Urban Institute, "Delinquent Homeowners in Neighborhoods of Color Are Less Likely to Be Protected by Forbearance," Dec. 2, 2020, <https://www.urban.org/urban-wire/delinquent-homeowners-neighborhoods-color-are-less-likely-be-protected-forbearance>

¹⁵ U.S. Census Household Pulse Survey, Week June 4 – June 9, 2020: Table 2a. Confidence in Ability to Make Next Month's Payment for Owner Occupied Housing Units, by Select Characteristics.

¹⁶ Mortgage Bankers Association, 4Q 2020, Percent of Loans Past Due

¹⁷ Hope Policy Institute, "HOPE Submits Fair Housing Comments," Nov. 1, 2019, <http://hopepolicy.org/blog/hope-summits-comments-for-disparate-act/>

¹⁸ Id.

¹⁹ Analysis of Home Mortgage Disclosure Act 2019 denial and origination data accessed at <https://ffiec.cfbp.gov/data-browser/data/2019?category=states>

²⁰ Calandra Davis and Ed Sivak, Testimony before Mississippi Senate Housing Committee, Nov. 13, 2020, <http://hopepolicy.org/presentations/mississippi-senate-housing-committee-testimony/>

²¹ Mortgage Bankers Association, "Share of Mortgage Loans in Forbearance Increases to 8.55%," June 8, 2020, <https://www.mba.org/2020-press-releases/june/share-of-mortgage-loans-in-forbearance-increases-to-853>

²² Sara Miller, "Deep South Job Losses due to COVID-19 likely to Far Eclipse those of the Great Recession," Hope Policy Institute, Apr. 21, 2020, <http://hopepolicy.org/blog/deep-south-job-losses-due-to-covid-19-likely-to-far-eclipse-those-of-the-great-recession/>.

²³ Bureau of Consumer Financial Protection, “Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X” 12 CFR Part 1024 [Docket No. CFPB-2021-0006], April 2, 2021.