

September 9, 2024

Comment Intake – Mortgage Servicing  
c/o Legal Division Docket Manager  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

**RE: Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties;  
Regulation X [Docket No. CFPB-2024-0024]**

To Whom It May Concern:

The Consumer Bankers Association, Independent Community Bankers of America, Mortgage Bankers Association, National Mortgage Servicing Association, and the Securities Industry and Financial Markets Association (the Associations) welcome the opportunity to comment on the Consumer Financial Protection Bureau's (the Bureau's) notice of proposed rulemaking (NPRM) *Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties*. Collectively, the undersigned associations represent all aspects of the mortgage finance industry, from originators, servicers, securitizers, and whole loan and Mortgage-Backed Securities (MBS) investors and offer our comments in the spirit of serving consumers well in a properly regulated financial services market.

The Bureau's proposal significantly changes the mortgage servicing provisions of Regulation X and discusses new possible obligations for serving borrowers with limited English proficiency. While we appreciate the Bureau's efforts to modernize Regulation X's loss mitigation framework to align with existing practices, the Bureau should establish regulatory measures to motivate borrowers to contact their servicers and pursue loss mitigation assistance as early in the delinquency as possible; borrower incentives to act quickly will enable mortgage servicers to produce successful outcomes for borrowers experiencing financial hardship through quality engagement. To achieve this goal, we believe it is important to collectively make the following points as the Bureau finalizes its proposal.

**1. Streamlined loss mitigation removes barriers to prompt servicer engagement with borrowers.**

The Bureau proposes a significant change with the elimination of the procedural loss mitigation application framework. This move is designed to create flexibility for servicers to assist delinquent borrowers in the loss mitigation evaluation process. In its place, the Bureau introduces the 'loss mitigation review cycle', a concept that allows distressed borrowers to receive timely assistance immediately upon request (also known as 'the hand-raise' concept). This change modifies the current dual-tracking protections by applying them earlier in the default process and adds a prohibition on servicing fees, and a more narrowly defined prohibition against advancing the foreclosure process during a loss mitigation review cycle.

The Associations welcome the Bureau's efforts to modernize Regulation X. The Associations have been vocal, longstanding advocates for modernizing the loss mitigation rules under Regulation X given the evolution of streamlined loss mitigation solutions. Implementing a durable regulatory framework will provide distressed borrowers with access to efficient and

effective loss mitigation solutions to preserve affordable homeownership. We welcome several improvements to the Regulation X framework, including removing prescriptive requirements, such as the "anti-evasion" rule, which provides servicers with the flexibility to assist borrowers more quickly. We also appreciate the Bureau's removal of an unnecessary early intervention notice that created confusion when borrowers performed under a forbearance agreement.

We also welcome the Bureau's efforts to implement the lessons learned from the COVID-19 pandemic. For instance, while we do not agree with the way the Bureau has proposed it here, we support the application of foreclosure protections earlier in the default process. The Bureau's continued deference to investor guidelines on loss mitigation options is also welcome as both a policy choice and legal matter. However, despite these positive changes, the Bureau's broad and undefined standards implementing the loss mitigation review cycle and the proposed corresponding dual tracking prohibitions do not fully achieve the desired policy objectives to simplify and streamline the loss mitigation process.

## **2. Both borrowers and servicers must engage in the loss mitigation process.**

To appropriately implement the lessons learned from the COVID-19 pandemic, there needs to be an alignment of incentives for the loss mitigation process to work for both mortgage servicers and borrowers. The loss mitigation review cycle concept omits essential requirements to motivate and obligate borrowers to engage with their servicers and with the loss mitigation assistance process as quickly as possible. Instead, lax standards require dual tracking protections and the proposed fee prohibition to be given automatically upon a borrower's request.

The Bureau argues that, in addition to modernization, mortgage servicers need strong, new incentives to quickly complete accurate loss mitigation reviews to prevent unnecessary consumer harm. This argument is unsupported by evidence to conclude these "incentives" will result in better loss mitigation outcomes for borrowers. Indeed, the Bureau does not identify any residual systemic concerns about servicers engagement in the NPRM to provide the basis for its concern but instead implements a proposed fee prohibition that is strictly punitive to servicers and investors.<sup>1</sup> The Bureau must recognize that existing authorities – statutory, regulatory, or investor contracts – require that mortgage servicers owe a duty of care to distressed borrowers to preserve affordable homeownership and that foreclosure remains the option of last resort.

To that end, the Bureau conflates providing the opportunity to pause foreclosure earlier in the loss mitigation process with a borrower's efforts to begin and complete the loss mitigation review process. The Associations are concerned that implementing the Bureau's proposal would create perverse incentives that would adversely affect borrowers and the mortgage markets. For the loss mitigation process to work, it is the *borrower* who must engage with the servicer and be an active participant in the loss mitigation process by submitting information required to receive an evaluation and executing any necessary documents to implement a

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<sup>1</sup> Beyond modernization, the Bureau does not highlight a policy concern or cite its complaint data base to highlight a growing consumer harm to warrant the need for the loss mitigation review cycle concept or its associated prohibitions.

loss mitigation option. The Proposal does not incentivize or promote a borrower's engagement with their servicer and instead permits borrowers – however inadvertently - to fruitlessly prolong the loss mitigation process and their delinquency rather than reach a timely outcome.<sup>2</sup>

**3. The Bureau must balance the costs and benefits of regulatory changes on credit access and mortgage assistance.**

Finally, the Bureau must aim to balance the costs and benefits of regulatory changes. Regulation X should balance the legitimate needs of protecting borrowers and prolonged foreclosure processes affect access to homeownership. Mortgage loan pricing reflects the regulatory costs and risks of both lending *and* servicing. As regulatory burden increases, the cost of credit increases, negatively affecting access to homeownership. Undue regulatory risks related to loss mitigation requirements could cause servicers and/or investors (especially those interested in purchasing Private Label Securities or growing that market) to participate in fewer loss mitigation programs or avoid participating in the market altogether. Low-to-moderate income borrowers, or those with lower credit scores more likely to experience financial hardship and become delinquent, will bear the greatest burdens. For the reasons noted above, the Bureau's proposal falls short of achieving this balance.

We are also concerned there is a lack of a serious cost/benefits analysis to achieve the balance the final rule requires. For instance, the Bureau's Language Access proposal is overly broad, vague on key operational details and as proposed, does not appear to provide many benefits to borrowers relative to the cost. This proposal is operationally infeasible and would disincentivize and inhibit the sale of mortgage servicing rights. We encourage the Bureau to collaborate with industry stakeholders to gain a deeper understanding of how to effectively address the needs of the LEP community.

In conclusion, the Associations share the Bureau's overarching goal of ensuring distressed borrowers facing financial hardship receive timely and accurate loss mitigation assistance from their servicer to stay in their homes. Many of the associations plan to comment individually in addition to these collective comments and we look forward to working with the Bureau to address these concerns.

Sincerely,

Consumer Bankers Association  
Independent Community Bankers of America  
Mortgage Bankers Association  
National Mortgage Servicing Association  
Securities Industry and Financial Markets Association

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<sup>2</sup> In addition, the Bureau also proposes several improvements to the loss mitigation determination and early intervention notices, which include the identification of investors (owners/assignees) and should be removed. Identifying the investor provides little benefit to borrowers as servicers are accountable to their investors or guarantors for following the waterfalls to which the borrower would be directed. This requirement would introduce significant operational challenges for servicers and create confusion.