HOUSING POLICY COUNCIL

MORTGAGE BANKERS ASSOCIATION

November 6, 2020

Kathy Kraninger, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20052

RE: Escrow Repayment

Dear Director Kraninger,

On behalf of our members, the Mortgage Bankers Association (MBA)[1] and Housing Policy Council (HPC)[2] are writing to request the Bureau revise 12 C.F.R. § 1024.17 to expressly permit servicers to include, in annual escrow statements, an option for the borrower to repay in lump sum any escrow shortages or deficiencies that are equal to or greater than one month's escrow account payment. More immediately, we request the Bureau provide reliable guidance to servicers that confirms they can communicate to borrowers that lump sum payment is an option without running afoul of Regulation X.

In its most recent Supervisory Highlights, the Bureau noted that some servicers sent borrowers annual escrow statements that listed two options borrowers could choose for repayment: (1) equal monthly payments over a 12-month period or (2) a lump sum payment.[3] Because lump sum repayment was not enumerated in 12 C.F.R. § 1024.17(f)(3)(ii) or (f)(4)(ii), the Bureau deemed inclusion of this option as a violation of Regulation X. Since the issuance of the Supervisory Highlights, the CFPB has informally indicated that borrowers should be allowed to repay escrow shortages in a lump sum and that servicers may accept a lump sum repayment, thus acknowledging that this method of repayment is indeed an option, which aligns with long-standing interpretation and understanding of these provisions. It is counterintuitive therefore to prevent servicers from informing their borrowers of this option on the escrow statement.

In order for borrowers to fully understand avenues they may use to resolve escrow shortages or deficiencies, it is important to include information either on or with the annual escrow statement that calculates such a shortage to avoid borrower confusion and for tracking and proper allocation of borrower payments.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

[2] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families.

[3] CFPB, *Supervisory Highlights*, pp 15-16, Issue No. 22 (Summer 2020).

We believe that the best long-term solution is to address the underlying regulation to explicitly allow servicers to include a lump sum repayment option on the escrow account statement so borrowers understand their options and choose the option that best fits their needs. Such clarification would confirm long-standing interpretation and understanding of these provisions, prior to the Bureau's statements in the Supervisory Highlights. In addition to avoiding an increase in the monthly payment amount, there are other benefits to borrowers for repaying the amount in full, particularly in states that require payment of statutory interest on escrow. Given that many borrowers have historically preferred and utilized this method of repayment, the Bureau should not prohibit a servicer from informing its customers of all available repayment options. We therefore respectfully request the Bureau amend 12 C.F.R. § 1024.17(f)(3)(ii) and (f)(4)(ii) to permit a servicer to offer borrowers the option—at their discretion—of repayment of an escrow shortage or deficiency in lump sum on the annual escrow statement. Attached are our suggested revisions to the regulation to make this clarification and confirm long-standing understanding.

We recognize that a regulatory change will take time. Servicers are responding to the Bureau's Supervisory Highlights and need advisory guidance in the interim. We therefore respectfully request the Bureau clarify in writing that a servicer can accept a lump sum repayment from a borrower and that such communications can include written, verbal (inbound or outbound calls), online educational material, and online account pages.

CONCLUSION

We appreciate the Bureau's willingness to work with the industry to ensure that borrowers understand that repayment in lump sum of any escrow shortage or deficiency greater than one month's escrow is <u>not</u> a requirement while providing borrowers who prefer to fully their escrow account with a onetime lump sum payment the ability to do so.

Suggested Revisions to 12 CFR 1024.17
Revisions in Red

12 CFR 1024.17

(f) Shortages, surpluses, and deficiencies requirements –

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(3) Shortages.

(i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it;

(B) The servicer may require the borrower to repay the shortage amount within 30 days; or

(C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has, at a minimum, two possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it; or

(B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

In addition to the above courses of action, the servicer may offer, but shall not require, the borrower the option of repaying in a lump sum payment.

(4) Deficiency. If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

(i) If the deficiency is less than one month's escrow account payment, then the servicer:

(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments. In addition to the above courses of action, the servicer may offer, but shall not require, the borrower the option of repaying in a lump sum payment.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the federally related mortgage loan documents.

(5) Notice of shortage or deficiency in escrow account. The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.