November 29, 2023

The Honorable Rohit Chopra
Director Consumer Financial Protection Bureau (CFPB)
1700 G Street, NW Washington, DC 20552

Re: CFPB's Upcoming Rulemaking on Regulation X Loss Mitigation Rules

Dear Director Chopra:

The Housing Policy Council ("HPC")[1] is pleased the Consumer Financial Protection Bureau ("CFPB" or "Bureau") is developing proposals to "simplify and streamline"[2] the existing mortgage servicing rules under the Real Estate Settlement Procedures Act ("RESPA") and its implementing regulation, Regulation X.

HPC agrees that the mortgage servicing rules in Regulation X need substantial revision, as evidenced by the various adjustments and adaptations implemented since the rule's inception. As the CFPB contemplates this rulemaking, HPC is providing suggestions on the framework and substance of the Regulation X mortgage servicing and loss mitigation rules. This letter is divided into three parts:

- Part one provides an executive summary;
- Part two discusses the principles that ground HPC's recommendations for the rulemaking; and
- Part three includes HPC's top priority recommendations for this rulemaking.

I. Executive Summary

There is a tension in the current Regulation X rules that HPC hopes this rulemaking will address and resolve.

On the one hand, the CFPB has recognized that investors[3] should establish eligibility and qualification criteria for loss mitigation options. This approach has served borrowers well. Since the implementation of Regulation X in January 2014, government and private investors have developed and refined numerous loss mitigation options that have helped struggling borrowers. As a result, the

[1] HPC is a trade association comprised of the nation's leading mortgage lenders, servicers, mortgage insurers, and title and data companies. HPC advocates for the mortgage and housing finance 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 promoting of lending practices that create sustainable home ownership opportunities leading to long-term wealth-building and community-building for families.
[2] https://www.consumerfinance.gov/about-us/blog/the-cfpb-intends-to-identify-ways-to-simplify-and-streamline-the-existing-mortgage-servicing-rules/.
[3] In this letter, we use the term "investor" to represent the entity with authority to determine what loss mitigation options will be available to borrowers, what the eligibility criteria for those options are, and what the terms will be. The Bureau should remain mindful that this entity could be a loan's investor, its owner, its insurer, or its guarantor, including Fannie Mae and Freddie Mac (the GSEs) and government agency insurers, such as the Federal Housing Administration (FHA).

industry was well-positioned to respond quickly and effectively, under difficult circumstances, to the demands created by the COVID-19 pandemic and the CARES Act.

On the other hand, some elements of the loss mitigation procedures established by Regulation X have impeded the implementation of investor loss mitigation programs and created borrower confusion and frustration. For example, the current rules prohibit a servicer – with some limited exceptions – from offering a borrower a loan modification based on an "incomplete application." While the CFPB has indicated that the question of whether an application is "complete" depends on the investor-defined rules for each loss mitigation program, enforcement of Regulation X has not deferred to the investor rules. Instead, the rules have been interpreted to prohibit a servicer from offering a borrower a loss mitigation with limited information, if the borrower might qualify for other loss mitigation programs based on additional information.

The problem with this facet of the rules became particularly obvious during the COVID-19 pandemic when the GSEs – among others – developed programs to provide relief to borrowers based only on quality right party contact, but Regulation X arguably required servicers to try and collect documents in case the borrowers might be eligible for other GSE loss mitigation programs.

The principles and specific proposals set forth in this letter are designed to resolve this tension in the current Regulation X loss mitigation rules. In particular, HPC recommends that the CFPB reaffirm the responsibility and authority of investors to: (i) establish loss mitigation programs, (ii) decide what documents and information are required (thereby eliminating the terminology and distinction between complete and incomplete applications in the current rules) and (iii) permit a servicer to offer a borrower a loss mitigation plan, in accordance with the investor's eligibility criteria, at which point the servicer is not obligated to offer additional alternatives (thereby eliminating the anti-evasion rules). If adopted, HPC's proposals would provide servicers with the flexibility necessary to help borrowers while still holding servicers accountable to investor requirements.

II. HPC's Principles for a Regulation X Mortgage Servicing Rulemaking

HPC offers these principles to guide the Bureau's amendments and adjustments to the Regulation X mortgage servicing rules. These principles are based on the original purpose of the loss mitigation rules, how the rules have operated in practice, and the developments in mortgage servicing and loss mitigation over the last decade.

a. The Bureau should reaffirm and reinforce the bright line distinction between: (1) Regulation X's focus on servicing processes and procedures and consumer protections; and (2) the investors' responsibility to establish eligibility criteria and features of loss mitigation options.

As stated in the preamble to the original Regulation X mortgage servicing rule, the purpose of the loss mitigation rules is two-fold: (1) establish appropriate expectations for loss mitigation processes/procedures for borrowers and for owners or assignees of mortgage loans and (2) ensure that borrowers have a full and fair opportunity to be evaluated for available loss mitigation options before suffering the harms associated with foreclosure. In enacting the rule, the CFPB considered two approaches to loss mitigation: (1) establishing processes to facilitate actions by market participants or (2) mandating outcomes of loss mitigation. The CFPB wisely refrained from mandating specific loss mitigation programs or outcomes. The Bureau was concerned that an attempt to mandate specific loss mitigation outcomes would impede innovation. The vastly superior loss mitigation programs and

practices that have been deployed effectively over the last decade are a clear testament to this approach. The CFPB should maintain this critical distinction.

The rule should better recognize investor program hierarchies and eligibility criteria. Most hierarchies involve sequential reviews rather than a review for "all options" or similar mandate. The rule must allow these hierarchies to work as intended, and the investor rules must comply with the core consumer protection requirements of the rule. To that end, the Bureau should acknowledge that each loss mitigation program reflects a specific set of terms and conditions and that these are reflected in the hierarchy of loss mitigation programs that each investor makes available. As such, a borrower's circumstances will dictate whether they satisfy the eligibility terms for each program and the borrower will not be eligible for each and every loss mitigation program in perpetuity.

b. Regulation X should better reflect existing practices and permit refinements to existing or development of new loss mitigation programs, which could include (i) removing the concepts of complete vs. incomplete application and short-term vs. long-term programs and (ii) allowing separate and distinct paths for home retention and non-home retention options.

Some concepts of Regulation X are causing a more complicated and confusing process for the borrower and servicer alike. Piecemeal updates and the heavy reliance on the exceptions to the anti-evasion requirement over the years are unsustainable and a strong indication that revisions to the law are necessary to create a more long-lasting and durable regulatory framework. The "complete application" concept has proven to be inconsistent with modern loss mitigation programs; the difficulty is compounded by the CFPB's treatment of an "incomplete application." Investors tailor solutions to borrower situations and the reasons for delinquency, and the program eligibility and documentation requirements can be substantially different across programs. The complete/incomplete application framework can frustrate a servicer's ability to offer borrowers relief in a timely and efficient manner and often does not align with actual loss mitigation programs.

Additionally, the reliance on the terminology "short term" loss mitigation to refer to both short forbearance plans and repayment plans is not accurate and fails to distinguish between two types of loss mitigation (one a permanent solution that resolves the outstanding delinquency and one a temporary form of assistance that allows suspension of payments and therefore permits a continuation of the delinquency).

In general, the concept of the anti-evasion clause does not work as planned (evidenced, in part, by the mounting exceptions to it).[4]

Finally, requiring that home retention and non-home retention options be treated equally and through the same procedural framework ignores the fundamental difference between the two categories and can result in borrowers losing out on opportunities with little corresponding benefit. The current regulation also does not allow for a non-retention option based on a borrower's express preference. The Bureau has an opportunity to refine the concepts in the regulation to better align with existing practices and recognize a borrower's ability to make an educated choice in the path they wish to follow.

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[4] HPC Letter to the CFPB RFI on Mortgage Servicing, November 28, 2022.

c. The regulation should define the action(s) that a borrower must take to invoke consumer protections and what events would trigger those protections to end.

As noted above, a key purpose of the loss mitigation rules is to provide a borrower with a full and fair opportunity to be evaluated for available loss mitigation options before foreclosure. We firmly support such a purpose, and we believe the rule must be clear on the actions that would initiate such a protection from foreclosure (and any other consumer protection) as well as the measures that would terminate those protections. Currently, the protections are triggered upon the submission of a "complete loss mitigation application." If the Bureau is to remove the complete/incomplete application framework, it must replace that with a clear and unambiguous trigger based upon a borrower's good faith attempt to seek assistance. The circumstances and events that result in termination of the protections also must be clear and unambiguous.

d. The regulation should provide a straightforward loss mitigation process that borrowers can understand and servicers can execute.

Regulation X must provide a clear loss mitigation process that borrowers can understand and servicers can execute. The borrower's understanding of the loss mitigation review process, actions they must take, and the triggers to begin and end consumer protections is paramount. Any consumer communications and notices required under the rule should focus on the critical information a consumer needs to take action to pursue assistance.

III. HPC's Priority Recommendations for the Rulemaking

Based on the principles stated above, HPC provides the following recommendations for the Bureau's Regulation X rulemaking.

a. The Bureau should remove and replace the complete/incomplete application framework, and the rule should continue to defer to investor requirements.

As discussed above and in previous communications with the Bureau, there is substantial evidence that, as currently structured, the complete/incomplete application framework frustrates the purpose of the Regulation X mortgage servicing provisions, creating borrower confusion and impediments to assistance. Further, the complete/incomplete application framework does not align with current loss mitigation program rules, many of which require little to no documentation. For these reasons, the Bureau should consider removing and replacing the complete/incomplete application framework. In replacing this framework, the Bureau must establish clear triggers for consumer protections to begin and end and continue to defer to investor guidelines and eligibility criteria.

The loss mitigation rules must have a clear and explicit standard that aligns with existing practice (as determined by investor guidelines) to trigger the servicer obligation to initiate consumer protections. The trigger must be an identifiable action that a borrower undertakes, that mortgage servicers can operationalize, and borrowers can understand, to proactively exercise their rights. This standard must generate a record (or evidence) of action that would mark the beginning of the loss mitigation process and would trigger certain obligations for servicers and protections for borrowers. We discuss the need for clear standards for consumer protections in more detail below.

Regulation X should continue to defer to investor guidelines regarding what information or documentation a servicer should collect and when to collect it in relation to the investor's specified review process and hierarchy. We understand that some are recommending that the Bureau create a list of documents that are presumed to constitute a complete application, such as reasonable proof of household income and an attestation of the borrower's hardship. We oppose this idea. While servicers should generally be expected to obtain any information needed to evaluate borrowers for available loss mitigation options, we believe Regulation X should remain silent as to the specific information necessary to evaluate a borrower and to trigger protections.

Regulation X should continue to recognize and defer to investor guidelines to determine the eligibility criteria for a particular option and any documentation necessary for evaluation. As demonstrated over the history of Regulation X, specified documentation requirements will directly conflict with various loss mitigation programs, both today and as they evolve, and the regulation would be misaligned with the purpose of Regulation X – to provide processes and consumer protections. As we have experienced, when a loss mitigation program does not require documentation, but a servicer is nonetheless required under Regulation X to attempt to collect a complete application, special exceptions or waivers are often required to comply with the regulation.

b. Regulation X loss mitigation rules must recognize investor hierarchies and eligibility criteria.

The Bureau has long recognized the role of the Regulation X loss mitigation rules is not to mandate specific programs or outcomes, but rather to establish processes to facilitate action by market participants to provide mortgage borrowers a reasonable opportunity to be evaluated for options that may be available to them. The regulation must recognize the wide variance amongst investor hierarchies, including that most entail *sequential* reviews of loss mitigation options (also sometimes called hierarchies or waterfalls). The practical impact of this, is that generally investors requires that a borrower is evaluated for one loss mitigation option at a time. The regulation should continue to defer to investor guidelines and allow servicers to evaluate a consumer for loss mitigation options whenever and however the investor requires or allows.

The regulation should clearly acknowledge and allow for each investors' unique eligibility criteria. Loss mitigation options may expire, or borrowers may become ineligible for an offering due to any number of factors, including the number of missed payments, the borrower's income, the loan to value ratio, or other factors. For example, assume a servicer offers a borrower a loss mitigation option based on the investor's eligibility criteria and the borrower does not accept the offer. If, at a later point in time, the borrower changes their mind and would like that original option, it may no longer be available – either because the offer expired or the borrower no longer meets the eligibility criteria. If the regulation is to address such circumstances, there must be a recognition that what is once offered to a borrower may not be available at a later point in time.

c. Regulation X should permit liquidation-only reviews with safeguards.

In some cases, borrowers are simply not interested in retaining homeownership for various reasons (sometimes unrelated to financial hardship). Forcing these borrowers to participate in the full loss mitigation process does not benefit them—and, in fact, can make it more difficult for them to reach the outcome they want. We recommend allowing servicers to review borrowers for liquidation-only options upon the borrower's request. Again, we fully appreciate—and share—the philosophy that

borrowers facing financial hardships should be reviewed for opportunities to retain homeownership. However, we believe that the Bureau can safeguard borrowers by:

- Permitting such reviews only upon customer request; and
- Requiring servicers to notify consumers that they may opt to proceed through the full loss mitigation process.

d. The Bureau should abandon the anti-evasion clause and replace it with clear standards and triggers that initiate consumer protections.

We understand the CFPB is contemplating new types of consumer protection practices during the loss mitigation review process[5] in addition to maintaining the existing prohibition on dual tracking. Under the current rule, the prohibition on dual tracking is implemented once the borrower submits a complete application to the servicer. If the Bureau replaces or reforms the complete/incomplete application framework, and as it considers additional consumer protections, we ask the Bureau to implement **clear and unambiguous** triggers to initiate such protections.

HPC recommends that the prohibition on foreclosure activity begin when a borrower provides to their servicer the minimum amount of information or documentation required by the investor to open a mortgage assistance review.[6] This could include the start of a loss mitigation interview with a confirmed quality right party contact or the receipt of a loss mitigation application, such as the Mortgage Assistance Application or Uniform Borrower Assistance Form. As under the current regulation (under the "receipt of loss mitigation application"), the request from the borrower needs to come directly to the servicer. The updated rule must define "directly to the servicer" in this context to mean that the borrower needs to contact their servicer through the servicer's loss mitigation intake channels, which may include a physical mail address, website, telephone number, mobile application, or other dedicated electronic platform. Further, the rule should apply protections only when a borrower both requests assistance and affirmatively agrees to take the steps necessary to pursue such assistance, if additional borrower action is necessary. Servicers must document the request for assistance as evidenced by notations in the servicing system of record and in accordance with the established policies and procedures of the servicer and investor (which are required under current Regulation X, 12 CFR 1024.38).

The new rule should permit the servicer to identify the acceptable points of entry for borrowers to request assistance to officially trigger the dual tracking prohibition, so long as the points of entry are reasonably accessible and understandable to borrowers. It is not feasible for financial institutions to permit borrower contact through components of the organization that do not service mortgage loans and that are not equipped to handle borrower requests for loss mitigation assistance (e.g., at a bank branch). This framework would direct the borrower to communicate with personnel who are knowledgeable regarding loss mitigation options and who have the operational access to loan servicing systems necessary to process the request and assist the borrower. This would establish a clear,

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[5] White House Statement on October 16, 2023.

[6] A mortgage assistance review is an industry standard process that servicers initiate when they receive a specific request from a borrower who is struggling to meet their mortgage obligation.

measurable entry point for servicers to recognize borrower requests and for borrowers to get the needed assistance and protections more quickly.

e. Consumer protections should not be endless.

To avoid abuse, Regulation X must acknowledge that borrower action is necessary and provide safeguards to prevent possible prolongation and abuse of the review period. Exploitation of the protections would drive up investor losses, which could dissuade investors from offering certain types of loss mitigation, and needlessly increase the cost of consumer credit. Specifically, the protections should end if:

(i) There has been no contact with the borrower[7] for a period of 30 days following a deadline for action (a deadline which has been communicated in writing to the borrower). This would create a 30-day buffer in addition to any other applicable deadline. For example, if a borrower has 14 days to respond to a loss mitigation offer, but does not respond, the borrower would have another 30 days to respond before the protections end;
(ii) The servicer has provided the borrower with at least 2 written notices to complete the request for assistance and despite the issuance of a final cure notice providing a final 30 days to provide the missing information and/or documentation, the servicer has not received the needed information from the borrower and therefore the servicer is unable to review the borrower for any loss mitigation solution pursuant to investor guidelines;
(iii) The borrower is more than two years delinquent. This would provide customers in financial distress with a generous period of time to begin participating in the loss mitigation process. As the Bureau has recognized, loss mitigation success rates decline as a loan becomes more and more delinquent. Industry data shows that after a two-year delinquency, it is highly unlikely that any homeownership solution can create a sustainable and affordable payment;
(iv) The borrower is not performing under their loss mitigation obligations that they have agreed to;
(v) The borrower has declined all available loss mitigation options; or
(vi) Based on an investor's hierarchy and eligibility criteria, the borrower does not qualify for any loss mitigation options and any appeals timeline has ended (as in the current rule).

Once consumer protections end due to any of the circumstances listed above, a borrower should not be able to trigger these protections again during the same delinquency. To be clear, a borrower could still engage in the loss mitigation process; however, consumer protections would only attach in subsequent reviews once the borrower accepts a loss mitigation option offered by the servicer (as opposed to earlier in the process as detailed above).

Clear triggers to initiate and end protections should motivate borrowers to engage with their servicer in good faith and take action to pursue loss mitigation assistance. Further, this framework eliminates the need for servicers to repeatedly turn protections on and off, which causes operational challenges and is confusing for borrowers. Without these safeguards and clear standards, the loss mitigation process could be protracted, which research demonstrates results in a lower likelihood of success for the borrower.

[7] Or agents of the borrower.

As the Bureau contemplates the triggers for the ending of consumer protections, we understand the Bureau may be considering modeling such triggers after the Bureau's temporary COVID-19 procedural safeguards. These safeguards introduced too much uncertainty and ambiguity to be effective, and thus went largely unused by servicers. Because of this lesson learned, we urge the Bureau to adopt more unambiguous standards, such as the ones listed above.

f. Regulation X must provide servicers with reasonable time and opportunity to implement protections.

The Bureau must make sure that servicers have an opportunity to comply with its requirements. It is impossible for any mortgage servicer to instantly implement loss mitigation protections when a triggering event occurs. In practical terms, a servicer must recognize the triggering event has occurred and issue the appropriate instructions regarding those protections, and the recipient must receive and act on those instructions. Servicers have leveraged technology to shorten this implementation period—but instantaneous protections will never be possible. Further, in some cases, a servicer has no control over whether a foreclosure proceeding goes forward—the decision may belong to a court or other third-party.

We believe that a regulatory provision such as the following would allow the Bureau to significantly reduce unnecessary regulatory burden and risk without materially impacting the important protections afforded to borrowers in distress:

§ 1024.41

[New Subsection] **Safe Harbors for Implementation of Protections.**

(1) When a borrower becomes eligible for the protections provided by paragraphs (f) and (g) of this section, a servicer shall implement those protections within two business days.

(2) In circumstances where a servicer does not have the authority to unilaterally prevent or delay a foreclosure sale, the servicer shall promptly request that the sale be prevented or delayed by the party with authority to do so. If such party denies or declines to act on that request, such a sale shall not be deemed a violation of paragraph (g) of this section.

g. The early intervention notice needs minimal modifications.

The CFPB should maintain that the purpose of the early intervention notice is to urge borrowers to contact their servicer and actively engage in loss mitigation. We do not oppose the recommendation that the early intervention written notice could include explicit identification of the investor of the loan, as such information is readily available to the servicer. However, this information may not be particularly useful to the borrower, especially in cases where the loan is pooled in and therefore owned by investors in a private-label security.

Regulation X should continue to require that servicers provide only a general description of the types of loss mitigation options that may be available. Prior to additional interaction with the borrower, the servicer will not know the borrower's circumstances to identify the program for which they will be

eligible. Therefore, it is not practical or useful to identify with specificity the exact options and programs prior to borrower contact. Further, such programs are often conditioned on many factors and attempting to detail those in a letter would likely increase borrower confusion without a corresponding benefit to the borrower in understanding their options. Also, providing specific option names (e.g., a "cap and extend mod" or "VASP") is not helpful or useful information for the average borrower, and furthermore, many private investors do not have such names for their programs, thus adding to the confusion. There is a substantial risk that a servicer's communication could be considered "deceptive" if it lists a specific option for which the borrower is later determined not to qualify based on information that the servicer does not have at the time the letter was sent (*e.g.,* occupancy status, property status). A general description of the types of options that *may* be available is the appropriate way to balance the need to provide borrowers with information and the risk of creating unnecessary confusion as well as UDAAP risk.

Finally, as we learned during the COVID-19 pandemic, servicers should not be required to send the early intervention written notice when a borrower is on a forbearance plan or performing on a loss mitigation option, such as paying under a trial payment plan. In these scenarios, written notices are likely to confuse, not assist, borrowers.

h. Servicers should provide notice to borrowers near the end of forbearance.

We agree with other commenters that Regulation X should require servicers to notify borrowers at least 30 days before the end of a forbearance period that they must take action to pursue permanent loss mitigation to resolve the outstanding missed payments. As with the early intervention written notice, servicers should be required to provide only a general description of the types of loss mitigation options that may be available and a general description of how to be reviewed for post-forbearance options, along with the required timeframe for action and consequences for failure to respond and act. Unlike during the COVID-19 National Emergency, no singular set of circumstances will determine eligibility and therefore, it is not practical or appropriate for the CFPB to require specific and detailed servicing call scripting to communicate with borrowers near the end of forbearance.

i. If the Bureau seeks to address language access in this rulemaking, the CFPB should develop model notices with a safe harbor for servicers.

We support the Bureau's (and other agencies') efforts to provide borrowers with limited English proficiency ("LEP") access to language assistance, if available. We have engaged and continue to engage with the federal agencies' efforts to assist LEP borrowers, and we appreciate and support this ongoing work. If the Bureau were to adopt LEP-specific communication requirements in Regulation X, we ask the Bureau to be mindful of the implications of these requirements for other aspects of mortgage servicing. If LEP guidelines are not structured carefully, we are concerned that they could lead to lead to unintended, negative impacts for these individuals, as well as higher costs and risks for servicers. Those increased regulatory risks and costs could create disincentives for both lenders and servicers to engage with customers in languages other than English.

Should the Bureau opt to include special servicing requirements for loans involving LEP borrowers, those requirements should be:

- Carefully crafted to avoid excessive burdens on servicers (for example, it is not possible to fully service loans in all the estimated 350+ languages spoken in the United States);
- Explicit in acknowledgement that it is permissible to include in the translated model forms some content in English, either because that content is required by other applicable law or is discretionary, and only the content that has been translated by the CFPB is the language required to be in the non-English language. For example, state laws (with few exceptions) will still require that a loan modification be recorded in English; and
- Explicit and clear on what is required. This includes clarity around both:
    - The obligation itself (e.g., if the Bureau opts to require that servicers translate documents, which specific documents must be translated? If the form has blanks, are they required to be filled in, or may the servicer simply provide a translated template that the borrower can reference?).
    - The event that triggers that obligation (e.g., the availability of an officially sanctioned translation, a borrower's stated preference to communicate in that language?).

We strongly recommend against the Bureau pursuing any LEP servicing requirements that apply based on the activity of a loan originator. For example, a requirement to provide translated disclosures, triggered by marketing in a particular language, would require that servicers track marketing practices for every loan they service – including those originated by other lenders. Servicers acquire loans from numerous sources and cannot prepare to fully service loans in all possible languages in which a loan originator may have done business.

To avoid these challenges, while assisting LEP borrowers, the CFPB could consider FHFA's SCIF standard for all loans, requiring that originators attempt to collect, and servicers retain, borrower language preference. We recognize, though, that requiring such an adoption is beyond the scope of a mortgage servicing rulemaking. Alternatively, the Bureau through its servicing transfer requirements (§ 1024.33) could put in place an explicit requirement that if a servicer has previously collected a borrowers language preference (whether through the SCIF or an alternative collection mechanism), that information must be included as part of a servicing transfer.

Beyond collection and retention of a borrower's language preference, the CFPB should consider encouraging servicers to include information about any available translation assistance that the servicer provides both on their websites as well as borrower documentation.

Lastly, to the extent the CFPB believes that certain Regulation X notices (e.g., the early intervention written notice) should be provided in other languages, the Bureau <u>**must**</u> produce model notices in those languages **and** provide a **safe harbor** for the use of such model notices. Under no circumstances should the Bureau require that a notice be mandated in a particular language if the CFPB has not previously published and made available a model form of that required notice in the relevant non-English language. If the Bureau cannot develop model non-English notices that it believes comply with its regulatory requirements, it would be fundamentally unfair to expect servicers to do so. To meet our shared goals of expanding homeownership opportunities to LEP consumers, the Bureau must be willing to take the reasonable step of guaranteeing that model language promulgated by the Bureau complies with the Bureau's own regulations.

j. Any limitations on credit reporting must be consistent with existing law and must be explicit regarding what information may not be included in the credit report.

It is our understanding that the CFPB is considering a requirement for servicers to suppress credit reporting during the loss mitigation review process.[8]

First, any limitation on credit reporting must be consistent with the Fair Credit Reporting Act ("FCRA") and furnishers' obligations under that law. FCRA and its implementing regulation and guidance require furnishers to maintain policies and procedures reasonably designed to promote certain objectives, including furnishing accurate information.[9] Accuracy means that the information a furnisher provides to a consumer reporting agency correctly reflects the terms of and liability for the account and reflects the consumer's performance with respect to the account.[10] Additionally, the law requires that a furnisher's policies and procedures must be reasonably designed to preserve the integrity of the furnished information. The information should be substantiated by the furnisher's records at the time it is furnished and should include all relevant information in the furnisher's possession about the account. If the Bureau were to require suppression of information for a certain period of time, the Bureau must clearly state how such suppression would still meet a furnisher's obligations to provide information that is accurate and has integrity.

Second, if the CFPB were to restrict credit reporting of mortgages undergoing loss mitigation, it must not use ambiguous standards, such as prohibiting servicers from reporting any information that is "negative." That is an undefined term, subject to interpretation by individual servicers, and it is unclear how servicers could fully comply with this requirement, particularly given that it is the credit reporting agencies that determine how reported information may impact someone's credit score or overall credit report. Indeed, of the many fields that are reported, Account Status is just one, while others include Scheduled Monthly Payment Amount, Special Comment code, Payment History Profile(s), etc. Avoiding any "negative" reportable information on a dynamic account such as a mortgage loan is a complicated endeavor. The Bureau must have clear definitions and standards that can be applied consistently across the industry, if it intends impose such an obligation. Additionally, the Bureau should work with the industry, including e-OSCAR and the credit reporting agencies to establish a requirement that does not conflict with Metro 2 reporting criteria.

Lastly, the Bureau should consider risks to the consumer of any credit reporting delay or suppression it may require. A consumer already having difficulty making their mortgage payment, and hence at risk of losing their home, should not be enabled to take on even more debt as a result of a limit on credit reporting. In the end, the resulting harm to the consumer could be at least as great as to the lender.

k. The Bureau should clarify what is (and what is not) an appeal.

We recommend that the CFPB adopt a clear definition of an "appeal" and distinguish that from a new loss mitigation request. A *new* request may be triggered only by a change in borrower circumstance and must be accompanied by the new information.

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[8] CFPB Blog Post on June 15, 2023.
[9] 12 C.F.R. § 1022.42.
[10] 12 C.F.R. § 1022.41.

HPC continues to believe that 14 days is a sufficient amount of time to appeal, and that time period does not need to be extended. Any further extension may actually have a detrimental impact on borrowers who are not eligible for a home retention option and need to move forward with the best non-home retention option for them.

I. Applying the loss mitigation rules to "blind offers" would cause substantial confusion without significant benefit.

As discussed above, HPC believes the trigger for the loss mitigation process and consumer protections under Regulation X must be based on a borrower request for assistance and a corresponding commitment to pursue such assistance. A "blind offer" submitted by a servicer does not involve a borrower-initiated request for assistance. The CFPB should continue to maintain this distinction, as it results in less borrower confusion and would be consistent with the overall framework proposed regarding the borrower initiating a request for assistance.

A denial notice should only be required for offers that are generated in response to the borrower's request for assistance. Borrowers should not be notified that they were reviewed and denied for an option they never requested. Such denials could confuse and discourage borrowers from proactively seeking other forms of assistance that might be available. Further, appeals of such a denial are highly unlikely to be fruitful and will unnecessarily delay the loss mitigation process. Requiring an appeal process for such offers would potentially discourage investors from blind solutions.

Finally, preserving the right to accept a blind offer is not likely feasible, as a borrower may no longer qualify once the borrower goes through any loss mitigation evaluation process and the original terms of the offer may no longer be relevant. Overall, applying the loss mitigation rules to "blind offers" will only result in substantial confusion without providing any material benefit.

Conclusion

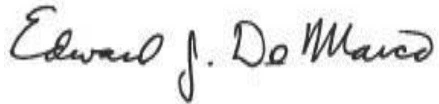
HPC appreciates the Bureau's initiative to reconsider and update Regulation X. As described in this letter, the basic challenge inherent in this exercise is achieving the balance set forth in CFPB's enabling statute, which requires its rulemaking to consider "the potential benefits and costs to consumers and covered persons [financial services providers], including the potential reduction of access by consumers to consumer financial products or services resulting from such rule."[11] Mortgage servicing rules need to give borrowers a meaningful chance to recover and retain homeownership while preserving mortgage investors' ultimate right to repayment and a claim on the property to pay off the mortgage, in case of default.

HPC believes the principles set forth in this letter, and the specific suggestions enumerated, would go a long way to bring greater clarity to mortgage servicing while striking this necessary balance. As HPC's members have demonstrated time and again, through natural disasters, the Covid-19 pandemic, and in isolated cases, mortgage servicers want to help borrowers facing financial difficulties remain in their home. Improving the rules surrounding default servicing will benefit troubled borrowers, improving the fairness and consistency of how they are treated, while bringing greater certainty to the investors, lenders, and servicers that put their capital at stake in making mortgage loans.

[11] 12 USC 5512 Section 102 b2(a)(i).

Thank you in advance for your consideration of these comments. We would welcome the opportunity to meet with you to discuss our recommendations and concerns. Please have your staff contact Matt Douglas at matt.douglas@housingpolicycouncil.org with any questions or to arrange further discussion.

Yours truly,



Edward J. DeMarco
President
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