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Comment Intake  
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]**

Dear Director Chopra,

The Independent Community Bankers of America (ICBA)<sup>1</sup> welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (CFPB or Bureau) notice of proposed rulemaking (NPR) that seeks to make it easier for mortgage borrowers that are experiencing payment difficulties. While the proposed rulemaking offers changes that should not affect a vast majority of small servicers<sup>2</sup>, the Bureau’s proposal would substantially challenge many of the provisions of Regulation X. Among other proposals, this NPR generally implies that servicers need strong additional incentives to complete accurate loss mitigation reviews to prevent consumer harm, overhauls existing loss mitigation rules, and requires new possible obligations when servicing borrowers with limited English proficiency (LEP).

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<sup>1</sup> The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation’s community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America’s community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers’ financial goals and dreams. For more information, visit ICBA’s website at [icba.org](http://icba.org).

<sup>2</sup> Regulation Z § 1026.41(e)(4)(ii) defines the term “small servicer” as a servicer that either: “(A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; (B) Is a Housing Finance Agency, as defined in [24 CFR 266.5](#); or (C) Is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor . . .”

While ICBA appreciates the explicit acknowledgment that these changes will generally not affect small servicers,<sup>3</sup> there remains a broad industry-wide concern that these proposed changes fail to balance the legitimate needs of borrowers facing hardship with how burdensome regulatory costs impact credit access and mortgage assistance. Excessive costs and regulatory burdens will also likely impact small lenders and servicers seeking to expand their mortgage servicing business and may result in trickle-down regulatory pressure that directly impacts small servicers facing an already-challenging regulatory environment in the mortgage space.

In general, ICBA supports the modernization of loss mitigation rules under Regulation X. Ensuring that a borrower is well-positioned to get back on track to making payments and avoiding the costly and complex foreclosure process is in everyone's best interests. Community banks, a vast majority of which are small servicers, work closely and diligently with their customers to secure the best possible outcome for the lender/servicer and the consumer.

The Bureau's efforts to modernize the servicing process include, broadly speaking, four main components. They propose to:

- Ensure borrowers receive the information they need for loss mitigation in languages they understand.
- Stop dual tracking and limit fees.
- Reduce delays by streamlining paperwork requirements.
- Improve borrower-servicer communications.

## General Comments and Recommendations

Unfortunately, the Bureau's approach to modernization raises several concerns and proposes broad and undefined standards that we believe will fail to achieve favorable policy outcomes for both consumers and servicers. **We therefore make the following observations and recommendations:**

- I. **With regard to language access, we argue that the proposal is overly broad.** Among other requirements, servicers would be required to translate specified documents into Spanish and into other languages upon a borrower's request. As proposed, these requirements are vague on key operational details and unclear about the cost and subsequent benefits to consumers. We argue that, except for all but the largest servicers, these requirements would be operationally infeasible and would disincentivize servicing and the sale of Mortgage Servicing Rights. Smaller servicers that are even substantially larger than the regulatory definition of "small servicer" would be disproportionately impacted by these requirements. There needs to be a robust cost-benefit analysis and a separate rulemaking track for this specific proposal.

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<sup>3</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_mortgage-servicing-nprm-proposed-rule\\_2024-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-nprm-proposed-rule_2024-07.pdf), p. 104.

II. **The Bureau should provide more clear parameters regarding dual tracking protections.** As currently proposed, the loss mitigation review cycle starts following a borrower's request for assistance and closes once the borrower is current or two "procedural safeguards" have been met; that is, when it is clear no loss mitigation options remain, or the borrower has been unresponsive for ninety days. In effect, the process for loss mitigation is an open and undefined period of time during a borrower's default and necessitates the application of dual tracking protections upon a borrower's request. The Bureau needs to address any ambiguity in the rules that create operational and compliance dilemmas for mortgage servicers working in the consumers' best interests.

One example could include revising the definition of a request for loss mitigation assistance; in other words, a borrower should make an affirmative request for assistance versus a servicer having to determine whether any contact with a borrower constitutes a request for assistance.

III. **Provide appropriate exceptions to halting the foreclosure process.** The Bureau should build exceptions for foreclosure actions that are court-ordered, borrower requested, or necessary to preserve the statute of limitations, including mediation.

IV. **Simplify all notice requirements and encourage borrowers to contact their servicers – not loan owners.** Both the early intervention and loss mitigation determination notice include requirements to identify investors and list all loss mitigation options available. These requirements should be removed. The identification of the investor provides little benefit to consumers as servicers are accountable to their investors or guarantors to follow the waterfalls the consumer would be directed to. This requirement would however introduce significant operational challenges for servicers and would increase confusion. Likewise, the Bureau should encourage the borrower to contact their servicer, not the owner or assignee of the borrower's loan, for a list of available options.

V. **Conduct a thorough cost-benefit analysis regarding these proposed changes,** including industry outreach that will help determine how small lenders and servicers may be impacted by the proposed changes. This may entail revisiting the definition of a small servicer and pursuing actions to expand its so that servicers exceeding the regulatory definition are not subject to the same requirements as the largest servicers. ICBA would welcome that conversation with the Bureau and other stakeholders.

ICBA looks forward to working with the Bureau on this important issue in the coming months.

Sincerely,

Tim Roy  
Vice President – Housing Finance Policy