MBA®

MORTGAGE BANKERS ASSOCIATION

June 16, 2025

The Honorable Russell Vought
Acting Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Re: Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X; Rescission [Docket No. CFPB-2025-0014]

Dear Acting Director Vought:

The Mortgage Bankers Association[1] (MBA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (Bureau or CFPB) proposed recission of the 2021 COVID Real Estate Settlement Procedures Act (RESPA) Rule in Regulation X (COVID-Related Amendments).[2] We believe that the flexibilities allowed under the COVID-Related Amendments have been immensely helpful to borrowers and the mortgage servicing industry. The provisions creating the exception to the anti-evasion clause provide a critical mechanism for delivering streamlined loss mitigation options – not only to those directly impacted by COVID-19, but to a broader group of borrowers in need of timely[3] It is

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 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 more than 2,000 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] Consumer Financial Protection Bureau, Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X; Rescission (May 16, 2025), available at https://www.federalregister.gov/documents/2025/05/16/2025-08643/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement.

[3] Consumer Financial Protection Bureau, Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X at 88 (June 28, 2021) available at https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing_final-rule_2021-06.pdf ("The loan modification option offered need not be made available exclusively to borrowers experiencing a COVID-19-related hardship to qualify for the anti-evasion exception. A loan modification option can

therefore useful to maintain these flexibilities until the CFPB is able to comprehensively modernize Regulation X.

At a general level the Bureau must implement the lessons learned from the pandemic to achieve essential policy objectives and preserve many of the COVID-19 loss mitigation flexibilities made available by investors and guarantors to mortgage servicers to assist borrowers.

Mortgage servicers are the most important conduit for relief for distressed borrowers. Any changes to Regulation X must ensure that servicers have the resources to provide borrowers with timely and durable assistance to avoid foreclosure and protect investors and guarantors. Any proposed changes to Regulation X must be accompanied by a comprehensive cost benefit analysis to determine if the actual benefits to the borrowers are not outweighed by the resources need to implement the changes, the associated compliance costs, and the downstream increased cost of servicing. Consistent with President Trump's memorandum on housing costs, aspects of Regulation X should be evaluated to ensure that they do not impose excessive costs on consumers during a time of heightened housing affordability challenges and a housing supply crisis.[4]

MBA recommends that the Bureau retain the COVID-related exceptions to the anti-evasion clause until it amends Regulation X to incorporate the recommendations below and streamline loss mitigation on a permanent basis. MBA does not object to the rescission of the COVID-related early intervention live contact requirements or the COVID-related procedural safeguards (both of which expired in 2022). MBA continues to recognize the benefits of the national standard created by Regulation X. As always, we stand ready to work with the Bureau to protect consumers, remove barriers, and promote affordable and sustainable homeownership.

Recommendations for Modernizing Regulation X

MBA has long advocated for modernizing the Regulation X loss mitigation rules.[5] These changes, which promise to bring significant benefits to the market, can be accomplished through targeted revisions to the existing Regulation X framework, which include removing the anti-evasion clause to allow streamlined loss mitigation and making other corresponding adjustments to the rule.

Loss mitigation practices have significantly evolved since the Bureau first implemented the mortgage servicing rules in 2014. The current rules reflect the dominant loss mitigation

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qualify for the anti-evasion exception if it is made available to borrowers experiencing a COVID-19-related hardship as well as other borrowers.").

[4] White House, Memorandum on Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis (Jan. 20, 2025), available at https://www.whitehouse.gov/presidential-actions/2025/01/delivering-emergency-price-relief-for-american-families-and-defeating-the-cost-of-living-crisis/.

[5] Mortgage Bankers Association, RE: Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties; Regulation X (Sept. 9, 2024), available at https://www.regulations.gov/comment/CFPB-2024-0024-0078.

paradigm at the time, the Home Affordable Modification Program (HAMP). HAMP was a document-intensive program that required a paper chase from the borrower and overly complex procedural hurdles for the servicer. The current rules have embedded the outdated HAMP framework into a permanent feature of mortgage law. These rigid evaluation requirements make it difficult for servicers to implement streamlined loss mitigation options.

As the COVID-19 pandemic has demonstrated, Regulation X needs a durable regulatory framework that allows mortgage servicers to implement effective loss mitigation that protects investors. The COVID-Related Amendments introduced temporary servicing requirements and flexibilities in response to the COVID-19 pandemic. These amendments included additional early intervention live contact requirements, new procedural safeguards prior to initiating foreclosure, and exceptions to the Regulation X anti-evasion clause,[6] thereby allowing servicers the flexibility to offer COVID-19-related loan modifications and payment deferrals without first requiring borrowers to submit a complete application for loss mitigation. In light of the lessons learned during the COVID-19 pandemic, we urge the Bureau to consider expanding the flexibilities provided by the COVID-Related Amendments and remove the anti-evasion clause in its entirety. By removing the anti-evasion clause, servicers would be empowered to offer streamlined loss mitigation options without first requiring a complete application. This change would facilitate more efficient processing across all loss mitigation options (whether or not made available to COVID-impacted borrowers), thereby benefiting borrowers by providing quicker access to relief and aiding servicers in managing their portfolios effectively. This urgency cannot be overstated. Such flexibility allows servicers to protect investors in any market conditions while maintaining strict compliance controls within the Bureau's regulations.
Accordingly, we encourage the Bureau to amend Regulation X to remove unnecessary barriers that impede the servicer's ability to efficiently mitigate losses for investors/guarantors and keep borrowers in their homes. Targeted revisions that preserve the existing application framework, provide protections earlier, and establish clear and reasonable parameters for servicers to determine when foreclosure protections begin and end based on an incomplete loss mitigation application are necessary to accomplish these goals. To create this flexibility within the existing loss mitigation framework under Regulation X, the Bureau should:

1. **Eliminate the anti-evasion clause:** Remove this clause to empower servicers to offer loss mitigation options to borrowers without needing a complete application, thereby enabling efficiencies in servicing and enhanced opportunities for borrower assistance;

2. **Update Foreclosure Protection Requirements:** In addition to the existing foreclosure protections required upon receipt of a complete application (which the borrower would be entitled to only once per delinquency cycle), add a foreclosure protection requirement any time a servicer offers a borrower a loss mitigation option

[6] The anti-evasion clause of Regulation X prohibits a servicer from offering a borrower a loss mitigation option based on an incomplete loss mitigation application. Barring certain enumerated exceptions, a servicer is first required to collect a complete loss mitigation application from a borrower before they are permitted to offer a loss mitigation option to a borrower. 12 C.F.R. § 1024.41(c)(2)(i) (2021).

based on an incomplete application (which could be offered multiple times per delinquency cycle); and

3. **Define Clear Endpoints for Protections:** If an offer is made based on an incomplete application, end foreclosure protections at the earlier of the offer's expiration, the borrower's declination of the offer, or the borrower's failure to perform in accordance with the terms of the offer.

It is in the best interests of borrowers and mortgage servicers to create an operationally feasible framework that ties foreclosure protections directly to borrower engagement while deferring to evolving investor guidelines. Implementing an efficient regulatory framework that removes unnecessary hurdles gives distressed borrowers access to effective loss mitigation solutions to preserve affordable homeownership and help borrowers achieve positive outcomes.

Conclusion

Thank you for your consideration of these comments – we look forward to working with you and your staff. As always, we welcome the opportunity to meet with you to discuss our recommendations and concerns. Please contact me at (202) 557-2878 and pmills@mba.org or my colleague Kaitlin Hildner at (202) 557-2933 at khildner@mba.org.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association