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Why the Bureau's Servicing Proposal is Problematic

Debunking Four Myths

In July 2024, the Consumer Financial Protection Bureau (the Bureau) proposed broad amendments to Regulation X's loss mitigation procedural framework for borrowers to request and receive assistance when facing financial hardship. The proposal also includes a prohibition on servicing and third-party fees, a ban on advancing the foreclosure process during loss mitigation reviews, and a conceptual outline of new requirements to expand language access to loss mitigation translations for limited English proficiency borrowers.

The Bureau's proposal is predicated on the false premise that servicers need additional incentives to review borrowers quickly and accurately, despite the success of loss mitigation during the COVID-19 pandemic, the existing rules that govern servicers' early intervention efforts with borrowers, and investor requirements for servicers to complete the foreclosure process in a timely manner. Below is a snapshot of MBA's response to the Bureau's proposal.

The core principles of reform must:

- ✔ Balance the legitimate needs of borrowers and the impact that regulation could have on credit access and mortgage assistance.
- ✔ Protect borrower's procedural rights, rather than dictate investor loss mitigation outcomes.
- ✔ Ensure borrower contact and consent are fundamental requirements for successful loss mitigation.

To do so, the Bureau must:

- ✔ Motivate borrower engagement in the loss mitigation process and provide clear and reasonable parameters for servicers to determine when dual tracking protections begin and end under the new "loss mitigation review cycle."
- ✔ Reinstate the "one review" framework by preserving Regulation X's existing "duplicative requests" standard for each delinquency cycle.
- ✔ Eliminate the foreclosure fee prohibition and recognize that certain costs can be passed to borrowers.
- ✔ Provide appropriate lead time and exceptions to halting the foreclosure process.
- ✔ Simplify all notice requirements and encourage borrowers to contact their servicers to discuss details about their loss mitigation review and available options.
- ✔ Conduct a separate rulemaking with proposed rule text and appropriate cost-benefit analysis to expand language access to borrowers with limited English proficiency.

MYTH VS. FACT ON SERVICERS' ROLE DURING LOSS MITIGATION

Myth 1: Regulation X reform is needed because regulatory noncompliance persists in the industry.

Fact: Delinquencies remain at all-time lows, in part because of servicers' compliance with consumer protections and investor loss mitigation guidelines that provide distressed borrowers with assistance. Servicers are complying with the existing regulatory framework, as evidenced by the fact that during the COVID-19 pandemic, servicers assisted more than 8 million borrowers in receiving forbearance assistance. Modernizing Regulation X is necessary because the current rigid document collection requirements make it nearly impossible for servicers to offer streamlined low- and no-document loss mitigation options to borrowers without running afoul of the current Regulation X requirements. Current market conditions highlight that loss mitigation approaches that were successful in the wake of the foreclosure crisis, such as reducing the interest rate to the current market rate to lower payments, are less successful in a rising interest rate environment, further supporting the need to modernize Regulation X. Changes in default servicing and market conditions have highlighted several areas where the prescriptive requirements under the 2013 Mortgage Servicing Rules may no longer be effective for borrowers or servicers and where more flexibility is needed to respond to future changes in the macroeconomic environment.

Myth 2: Servicers need more motivation to review borrowers for loss mitigation assistance.

Fact: The proposed amendments to Regulation X reflect the faulty assumption that servicers need more incentive to evaluate loss mitigation requests promptly and would disincentivize borrowers from engaging with their servicer and the loss mitigation process. The cost of servicing a non-performing loan is approximately $2,000, in contrast to the roughly $200 cost of servicing a performing loan. These costs increase the further into the foreclosure process a borrower proceeds, where servicers face additional penalties from investors — including the nonrecovery of fees — for failing to complete loss mitigation reviews quickly and extensive investor-specific state foreclosure timelines. Servicers largely bear the disproportionate cost of servicing nonperforming loans.

Thus, servicers already have strong incentives to promptly engage with borrowers and find an effective loss mitigation solution. Even in a significant home price appreciation environment, foreclosure remains the worst outcome for borrowers, servicers, and investors. In short, servicers do not profit from foreclosure, and prohibitions against fees and advancing the foreclosure process are unnecessary to incentivize servicers to quickly and accurately review borrowers for loss mitigation assistance.

Myth 3: The proposal incentivizes mutual engagement between servicers and borrowers.

Fact: The proposal incentivizes borrower disengagement. Requiring foreclosure protections to start automatically upon any borrower communication risks creating perverse incentives for borrowers to prolong their loss mitigation reviews by being unresponsive to their servicer and pushing off foreclosure. Loss mitigation is most effective when both the borrower and the servicer are actively engaged in finding the best solution to get back on track and retain their home. As proposed, borrowers may unintentionally trigger a loss mitigation review with casual inquiries, leading to unnecessary delays and creating situations where borrowers could be unaware they are in a formal process. Without clear borrower incentives to participate early, lengthy loss mitigation cycles can harm borrowers by extending delinquencies, eroding their home equity, adding systemic costs, and reducing a borrower's eligibility for specific relief programs, all without clear communication that a borrower requires assistance. Prolonged processes without borrower engagement could reduce available mitigation options in the long run and increase financial strain.

Myth 4: Banning all fees during loss mitigation protects borrowers.

Fact: The proposed fee prohibitions may increase borrower costs over time. Restricting fees could lead to increased mortgage rates or reduced access to credit, disproportionately impacting low-income and first-time borrowers. Moreover, while some fees, such as late fees, are often waived when a borrower completes loss mitigation, other fees are in place to encourage borrower engagement, as servicers incur costs when servicing a delinquent loan. For instance, investors require items to maintain the property, and the costs resulting from foreclosure and litigation activities are based on court rules. Investors and servicers rely on fee recovery to offset costs related to delinquent accounts. The long-term effect of banning the recovery of fees that are mutually agreed upon between the borrower and servicer creates a less competitive mortgage market to the disadvantage of borrowers

Read more member resources for servicers: **mba.org/servicers.**