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May 10, 2021

David Uejio
Acting Director
Bureau of Consumer Financial Protection
1700 G St NW
Washington, DC 20552

RE: Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X, RIN 3170-AB07

Dear Acting Director Uejio:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to provide comments to the Bureau of Consumer Financial Protection (CFPB or Bureau) regarding proposed amendments to Regulation X to assist borrowers affected by the COVID-19 emergency. The proposed amendments seek to ensure that affected borrowers have an opportunity to evaluate all loss mitigation options prior to a foreclosure initiation. Among the proposed changes is a temporary COVID-19 emergency pre-foreclosure period extending until December 31, 2021. Additionally, the Bureau proposes to temporarily permit mortgage servicers to offer certain loan modifications to borrowers affected by COVID-19.

ICBA appreciates that the Bureau is being proactive in its concerns about the number of borrowers exiting forbearance in the coming months as they reach the maximum forbearance

¹ *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.*

With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, over \$4.4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

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term. It is critical that borrowers experiencing a COVID-19-related hardship are provided every reasonable opportunity to modify their mortgage and become current as the economy recovers. Achieving this goal means supporting both borrowers and servicers as they work together to avoid unnecessary foreclosures.

ICBA also thanks the Bureau for continuing to recognize that community banks – a vast majority of which meet the small servicer standard of 5,000 loans or less – maintain a business model that includes “high touch” customer service “that is designed to ensure loan performance and a strong reputation in local communities.”² It is appropriate that the proposed amendments would not subject small servicers, as defined by Regulation Z, 12 CFR 1026.41(e)(4), to the requirements outlined in the proposed rule.

Background

The proposed rule attempts to mitigate concerns that a record number of borrowers may exit forbearance later this year when they reach the maximum term of forbearance. The Bureau notes that, as of January 2021, there were more than 2.1 million borrowers in forbearance programs who were more than 90 days behind on their mortgage payments, and the concern is that many of them will still be experiencing financial challenges when their payments are set to resume. Moreover, the Bureau is concerned that a mass exodus out of forbearance may stress servicer capacity, resulting in delays, miscommunication, and errors processing loss mitigation efforts.

The proposed amendments to Regulation X would establish a temporary COVID-19 emergency pre-foreclosure review period prohibiting servicers from making the first notice or filing to initiate the foreclosure process until after December 31, 2021. This restriction is coupled with § 1024.41(f)(1)(i), which forbids a servicer from making the first notice or filing until the mortgage loan obligation is more than 120 days delinquent. The Bureau is weighing whether there are instances in which this proposed restriction may be waived, provided the servicer has completed a proper loss mitigation review of the borrower and concluded they are not eligible

² https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing_nprm_2021-04.pdf, p. 98.

for a non-foreclosure option. The servicer would also have to show they have made certain efforts to reach out to the borrower and that the borrower has not been responsive.

The Bureau also proposes to allow servicers to offer certain streamlined loan modification options to borrowers harmed by the COVID-19 pandemic in the event of an incomplete loss mitigation application. Certain criteria must be met, including safeguards that ensure the borrower is not harmed by the modification if they accept it in lieu of completing a standard loss mitigation application. More specifically, the borrower's monthly required principal and interest payment cannot increase; the modification cannot extend the loan term beyond 480 months; the servicer cannot charge a fee connected to the loan modification and must waive interest accrual if the modification involves a deferral of payments; and the borrower's acceptance of the loan modification must be tied to ending any preexisting delinquency on the mortgage loan.

The proposed rule would establish amendments regarding reasonable diligence and early intervention obligations. The goal is "to ensure that servicers are communicating timely and accurate information to borrowers about their loss mitigation options during the current crisis."³ This would require servicers to request and provide more specific information regarding whether and to what extent a borrower has been impacted by COVID-19. This includes but is not limited to providing relevant loss mitigation options, providing details about when their forbearance program ends, and providing information on any additional steps a borrower must take following the end of their forbearance program. Additionally, the proposed rule specifies that a "servicer must contact the borrower no later than 30 days before the end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation."⁴ These early intervention requirements would have a sunset date of August 31, 2022.

Small Servicer Exemption

As mentioned above, the proposed special pre-foreclosure review period, as well as the other proposed changes, would not apply to small servicers. The Bureau cites the 2013 RESPA

³ Ibid, p. 8.

⁴ Ibid, p. 9

Servicing Final Rule⁵ that recognizes that small servicers like most community banks have a “high touch” business model of customer service that ensures strong loan performance. Moreover, “small servicers tend to only service loans they originated or hold on portfolio, such that they are less likely to be subject to investor requirements that would obligate them to move forward with foreclosure referral even if the servicer determines that further delaying foreclosure to give a borrower additional time to pursue foreclosure avoidance options is appropriate.”⁶

ICBA Comments

ICBA believes it is critically important that borrowers negatively impacted by COVID-19 can continue to work with their servicers to have access to loss mitigation options appropriate to their situation, avoiding unnecessary foreclosures when possible. We appreciate that the Bureau is taking steps to ensure that large servicers continue to reasonably apprise borrowers of their loss mitigation options going forward and allowing servicers some flexibility by expanding the types of loan modifications they can offer. These are important steps that will hopefully ease most borrowers’ transition out of their forbearance plan in the coming months. Further, ICBA urges the Bureau to coordinate with the other banking regulators to ensure that community banks not supervised by the Bureau are not penalized by their respective regulators for adhering to this proposed rule.

ICBA appreciates that the Bureau recognizes that small servicers, particularly community banks, do generally adhere to the servicing standards outlined in the proposed rule. Community banks reliably serve their communities and typically only proceed with foreclosures as a last resort. Feedback from our member banks also indicates that community banks are experiencing much lower forbearance rates than the national average. They also report that the majority of loans

⁵ 2013 RESPA Servicing Final Rule, *supra* note 13, at 10843.

⁶ *Ibid*, p.98.

in forbearance have cured and successfully transitioned back to making regular payments on their loans.

As the Bureau moves forward with this rulemaking, we urge the Bureau not to become overly prescriptive with servicer requirements, to avoid raising servicing costs and inadvertently slowing down a mortgage market that has been one of the few bright spots during the economic crisis. To that end, home prices are at an all-time high, which should help prevent some foreclosures and perhaps represents an opportunity to sell if a homeowner is facing financial struggles due to COVID-19. Additionally, we encourage the Bureau to adopt exceptions to the requirements in instances of abandoned properties or where there is a high probability that an extended foreclosure moratorium will result in the degradation of a property's value.

ICBA favors an approach that fosters a positive and productive environment between borrowers and servicers, especially in the coming months. Servicers should be held accountable in their loss mitigation efforts, but they should also be enabled to work with borrowers efficiently and effectively. The proposed rule is a positive step in that direction.

We look forward to working with the Bureau as this process moves forward. Please direct any questions regarding this letter to the undersigned at tim.roy@icba.org

Sincerely,

Tim Roy
Director – Housing Finance Policy