MORTGAGE BANKERS ASSOCIATION

December 6, 2023

Mr. Ashwin Vasan
Associate Director
Office of Research, Monitoring, and Regulations
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Upcoming Rulemaking to Modernize the Loss Mitigation Rules of Regulation X

Dear Mr. Vasan:

The Mortgage Bankers Association (MBA)[1] welcomes amendments to the mortgage servicing rules of the Real Estate Settlement Procedures Act and its implementing regulation, Regulation X. We greatly appreciate the Bureau's recent engagement with MBA. As mentioned, please accept these insights and policy recommendations for the Bureau's consideration before a proposed rule is published.

The MBA has been a strong and longstanding advocate for modernizing the loss mitigation rules under Regulation X. Loss mitigation practices have significantly evolved since the mortgage servicing rules were first implemented in 2014 and the Bureau is wise to consider proposing some changes. The COVID-19 pandemic has demonstrated the need to create a durable regulatory framework that allows mortgage servicers to deliver effective relief to all borrowers facing financial hardship. To do so, the Bureau must remove unnecessary barriers that impede the borrower's loss mitigation experience and maintain the current focus on procedural rights.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 300,000 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 over 2,200 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.

I. The Evolution of Loss Mitigation Practices and the Case for Modernization

The Bureau's servicing rules were designed after the wave of foreclosures largely attributable to the 2007 – 2009 Great Recession. They reflect the dominant loss mitigation paradigm at the time, primarily the Home Affordable Modification Program (HAMP). HAMP was a document intensive program that required a paper chase from the borrower and difficult evaluations by the servicer. Consequently, borrowers often failed to complete the packages necessary for relief, and some servicers struggled to implement portions of the program at scale.

The CFPB's loss mitigation rules reflect this experience. They create rigid evaluation paradigms that make it difficult for servicers to offer streamlined loss mitigation options or an initial period of forbearance without a formal evaluation of the borrower's financial circumstances. While the CFPB rules are appropriately focused on process rights rather than entitlements to investor outcomes, these rules often drive how investors and government guarantors design their loss mitigation solutions, inhibiting the adoption of innovative loss mitigation offerings.

Regulation X was crafted to ensure that servicers provided sufficient protections to borrowers to avoid foreclosure and worked for those borrowers that actively engaged with their servicer. That said, modification offerings, the loss mitigation toolbox, and technology have advanced significantly over the years to enable streamlined solutions and long-term forbearance plans, neither of which were initially contemplated by the Bureau. It is therefore appropriate to amend Regulation X's rigid standards to better reflect evolving loss mitigation practices and minimize borrower confusion and reduce servicer costs and operational risks.

We are grateful that both the Bureau, as well as the Director's own public statements[2] recognize the need to 'simplify and streamline' the mortgage servicing rules per its June 2023 blog post. We appreciate the Bureau's responsiveness to MBA's own petition in May requesting amendments to Regulation X to preserve many of the COVID-19 loss mitigation flexibilities available to borrowers and mortgage servicers.[3] These COVID-19 flexibilities were important in allowing servicers to help close to 8 million borrowers through forbearance and post-forbearance workouts.[4] We offer the following thoughts to hopefully guide the process of revising the existing framework.

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[2] Director Chopra, The CFPB Intends to Identify Ways to Simplify and Streamline the Existing Mortgage Servicing Rules, Consumer Financial Protection Bureau (June 15, 2023), available at https://www.consumerfinance.gov/about-us/blog/the-cfpb-intends-to-identify-ways-to-simplify-and-streamline-the-existing-mortgage-servicing-rules/

[3] Mortgage Bankers Association, Request to Conduct Rulemaking on Regulation X Early Intervention Requirements and Loss Mitigation Procedures (May 5, 2023), available at https://www.consumerfinance.gov/rules-policy/petitions-rulemaking/mortgage-bankers-association/

[4] Mortgage Bankers Association, October Loan Monitoring Survey (Nov. 20, 2023), available at https://www.mba.org/news-and-research/newsroom/news/2023/11/20/share-of-mortgage-loans-in-forbearance-decreases-to-0.29-in-october.

II. Principles of Modernization

Amendments to the mortgage servicing rules will have significant consequences to market participants. Their impact may even be detrimental if the Bureau pursues efforts to mandate forbearance, credit suppression, or prohibit late fees. To ensure the changes lower costs, strengthen home retention and improve the borrower experience, MBA believes the Bureau should preserve well-established principles that have guided the recent improvements to the current framework:

a. **Regulation X should balance the legitimate needs of borrowers and the impact that regulation could have on credit access and mortgage assistance.**

   The Bureau's regulations should represent a careful balance between the necessity of protecting borrowers in distress and the reality that regulatory risks and costs impact access to homeownership. Mortgage loan pricing reflects the regulatory costs and risks of both lending and servicing. As regulatory burden increases, the cost of credit increases, negatively impacting access to homeownership. Undue regulatory risks related to loss mitigation requirements could cause servicers and/or investors (especially those interested in purchasing Private Label Securities or growing that market) to participate in fewer loss mitigation programs or leave the market altogether. Needlessly restrictive rules can prevent servicers from acting quickly to assist borrowers in widespread crisis situations caused by natural disasters, the pandemic and other events.[5] Unnecessary restrictions and risks also discourage the industry from developing innovative loss mitigation solutions to assist borrowers in distress.

b. **Regulation X should protect borrower's procedural rights, rather than dictate investor loss mitigation outcomes.**

   Regulation X should remain focused on the process by which a borrower requests and is evaluated for loss mitigation assistance. This allows for consistent borrower experiences in terms of process while appropriately reflecting that the loan investor or guarantor is responsible for determining the

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[5] These risks are well illustrated by the very recent audit report by the Department of Housing and Urban Development's (HUD) Office of Inspector General (OIG) regarding the loss mitigation options that mortgage servicers provided to borrowers with FHA-insured loans after their COVID-19 forbearance ended. The OIG report measured loan servicers technical compliance with HUD's rapidly changing loss mitigation guidelines throughout the COVID-19 pandemic rather than the positive outcomes that servicers helped borrowers to achieve. The technical and overly complicated nature of loss mitigation rules poses even greater risk to mortgage servicers than the iterative implementation of the COVID-19 loss mitigation waterfall that used existing tools within FHA's toolkit. Without simple loss mitigation rules, the Bureau lessens the ability of participants to be similarly responsive in future disaster situations. Office of Inspector General, Department of Housing and Urban Development, Servicers Generally Did Not Meet HUD Requirements When Providing Loss Mitigation Assistance to Borrowers With Delinquent FHA-Insured Loans (June 13, 2023), available at, https://www.hudoig.gov/reports-publications/report/servicers-generally-did-not-meet-hud-requirements-when-providing-loss.

loss mitigation options and terms that provide a better return than foreclosure. Furthermore, focusing on procedural rights is the most effective way of ensuring that borrowers have a fair opportunity to engage with servicers and be evaluated for available loss mitigation options.

c. **Borrower contact and consent are fundamental requirements to successful loss mitigation.**

The Bureau's rules must encourage borrowers to contact their mortgage servicer. Borrowers engaged with their servicer are currently informed on how loss mitigation works and the expectations for performance, including when a borrower receives a forbearance and transitions to a permanent solution. These rules should be designed to ensure that borrowers understand the benefits of contacting their servicer, and the consequences of not doing so.

III. Policy Recommendations

The Bureau must create a flexible loss mitigation framework that can weather different challenges and market conditions. A durable framework must provide flexibility that allows mortgage servicers to deliver timely relief to borrowers facing financial hardship in any market, while maintaining strict compliance controls with both the Bureau's regulations and applicable investor guidelines. Creating such a framework preserves – not diminishes - important borrower protections that are vital to ensuring borrowers receive a fair opportunity to avoid foreclosure.

Amendments to the mortgage servicing rules must be operationally feasible and aligned with investor guidelines. Moreover, the servicing rules should ensure that distressed borrowers receive common sense and clear communications from servicers. Yet, the loss mitigation policies and available solutions today are growing increasingly complex and are subject to change.

A modernized framework must recognize the evolving approaches to borrower outreach that ultimately improve outcomes for distressed borrowers. Advancements in technology allow borrowers to engage their servicer through numerous methods of communication. A borrower can request loss mitigation assistance through multiple channels via phone, online self-service web portals, in-person, email, or through text. Once engaged, servicers follow prescribed processes to evaluate a borrower for available options to find the appropriate and affordable solution based on the information available and required per the investor or guarantor guidelines. Servicers' technology systems have adopted the current rules-based approach to evaluating borrowers for loss mitigation options under a hierarchy or waterfall. Otherwise known as a "sequential review," a servicer essentially reviews a borrower for each loss mitigation option individually and in a prescribed order. The COVID-19 pandemic highlighted the need to ensure that servicers can rapidly communicate and deliver relief to borrowers and that regulatory communication requirements don't inadvertently contribute to borrower confusion.

MBA recommends the Bureau:

a. Retain the Complete/Incomplete Application Framework with Reforms

The Bureau can sufficiently protect borrowers with appropriate safeguards while maintaining the current complete/incomplete application framework (the "Application Framework"). Regulation X has firmly established a loss mitigation application process for borrowers to request assistance from their servicer. An application should be an objective standard that clearly triggers important consumer protections to avoid foreclosure, while the servicer reviews the consumer for available options. Importantly, as we've stated in previous letters**, a borrower's request for forbearance or a short-term repayment plan should not be considered an application.**

Importantly, the 'Application Framework' provides the flexibility necessary to protect borrowers while making servicing obligations clear. Generally, Regulation X defers to investor guidelines to define the information necessary for a borrower to submit a complete application. The deference is appropriate as each investor or guarantor defines the documentation, valid hardship reason, and eligibility standards for each loss mitigation solution. This flexibility is critical as available loss mitigation solutions move further away from full financial evaluations and more towards 'streamlined' options that provide rapid and appropriate relief.

The 'Application Framework' creates obligations on servicers through an appropriate lens of "reasonable diligence" to collect the necessary information to evaluate the borrower for all available loss mitigation solutions. Preserving alignment with the existing loss mitigation practices reinforces the relationship between a servicer and a borrower, a contractual relationship defined through traditional standards of offer and acceptance.

While we recommend preserving the general complete/incomplete application framework, certain reforms to the existing structure are needed, such as allowing servicers to establish certain reasonable entry points for borrowers to submit loss mitigation applications. Additionally, the concept of a loss mitigation application and the corresponding process should better align with a borrower's expectations and facilitate a positive borrower experience. **For example, neither a borrower's verbal request for a forbearance nor a servicer's discussion with a borrower regarding paying the amount owed over a short period of time should be considered the submission of an application as this may often confuse the borrower**. An application should be reserved for permanent changes to the loan terms, which a forbearance does not.

A complete departure from the 'Application Framework' would force servicers to operate under two different, overlapping federal and state loss mitigation regimes at the same time – which would lead to significant borrower confusion. Several states (including but not necessarily limited to CA, NV, NY, and WA) have created their own loss mitigation requirements that are aligned with Regulation X's complete/incomplete framework. Removing the incomplete/complete application framework will result in significant consumer confusion as servicers would be required to send conflicting notices to comply with two inconsistent processes.

The Bureau could revise the existing Application Framework to streamline the process of providing relief to borrowers by:

i. **Remove or Revise the Anti-Evasion Clause to Facilitate "Streamlined" Loss Mitigation**

To facilitate "streamlined" loss mitigation, the anti-evasion clause must be removed or, at the very least, revised. Investors and guarantors continue to embrace loss mitigation solutions that do not require a full financial evaluation.

Servicers can often address borrower hardships quickly and efficiently with ready-to-go options provided by mortgage loan investors, without requiring a borrower to endure the formal loss mitigation application process. Servicers should be able to terminate the Regulation X loss mitigation process when a borrower accepts such an option.

The anti-evasion clause has enumerated too many exceptions to the evergreen standard that a servicer must exercise reasonable diligence to evaluate the borrower for all loss mitigation options available. The classic example of a loss mitigation solution that doesn't squarely fit within the current framework includes the Government Sponsored Enterprises (GSE) Payment Deferral. Eligible borrowers who have resolved a prior hardship and are able to resume making their contractual payment should be able to resolve their delinquency efficiently without having to undergo a document-intensive review process for "all available options." Flexibility within Regulation X is necessary for servicers to deliver effective relief regardless of the borrower's hardship (temporary or permanent) or the solution required (deferral or modification).

Borrowers who need further relief can apply to be reviewed fully under the formal Regulation X process. Any risk that borrowers will not be aware of this option can be mitigated by requiring a brief notice informing the borrower that a full review remains an option when applicable.

ii. **Adjust Certain Notice Requirements to Prevent Borrower Confusion**

The Bureau should adjust the rules to prevent having to send borrowers notices in situations that don't make sense. The primary example are the Early Intervention notices that shouldn't be sent to borrowers who are on forbearance, performing under a loss mitigation option, or are otherwise already engaged in the loss mitigation process. Sending these notices creates unnecessary confusion and poor borrower experience.

iii. **Provide Clear, Reasonable Triggers to Start and End Protections if the Bureau Prohibits Dual Tracking Upon Receipt of an Incomplete Application**

We understand the Bureau may be considering amending Regulation X to require protections based on an incomplete application, rather than a complete application. If such a change is contemplated, the regulation must provide clear and reasonable triggers to begin and end those protections. For example, if servicers must provide dual-tracking protections upon receipt of an incomplete application, those protections should end at specific milestones, such as:

- When a borrower has not completed the application within 30 days despite the servicer's reasonable diligence in completing the application.
- When a borrower has been offered a loss mitigation option but has not accepted it within the required timeframe; or
- When a borrower has been reviewed and denied for all loss mitigation options and any applicable appeal period has expired.

This would appropriately protect borrowers, especially because existing protections -- such as the requirement for a borrower to be at least 120 days delinquent for a servicer to refer a borrower to foreclosure and the prohibition against dual tracking upon receipt of a complete application -- would continue to apply.

This approach would provide a clear and reasonable manner of ensuring that protections apply earlier than receiving a complete application, while encouraging continued borrower engagement. If an application is incomplete, the borrower would be required to provide sufficient information to be reviewed for a streamline option and would either respond to a streamlined offer before the deadline or complete their application to maintain protections.

Moreover, servicers must be given a reasonable time to implement required borrower protections. There must be a reasonable application of the rules with sufficient time to place foreclosures on hold. If the Bureau requires protections to begin at an earlier stage of the loss mitigation process, it must recognize that it is not possible for servicers to implement protections instantly when a borrower requests assistance. Servicers need a reasonable amount of time to recognize a request for assistance and trigger those protections—including communicating those protections to outside counsel when necessary. Due process and fundamental fairness require the Bureau not to enact regulations with which compliance is impossible. Servicers should be allowed at least three business days to place foreclosure holds.

Finally, the loss mitigation process must not permit indefinite foreclosure avoidance. The loss mitigation process, including foreclosure protections during loss mitigation, should not provide a means for borrowers to forestall foreclosure indefinitely. This ultimately does not benefit a borrower who is not eligible for loss mitigation assistance.

Failure to prevent a never-ending loss mitigation review cycle may significantly harm borrowers by dramatically impacting the cost and availability of consumer credit. Investor appetite for loans will diminish without the servicer's ability to foreclose when a borrower cannot reasonably repay the debt. Access to affordable housing will be further limited by restricting supply artificially. There must be guardrails in place. To that end, we strongly support maintaining the 'one bite at the apple framework' per delinquency[6] or limiting the number of times the borrower may request assistance.

b. Maintain Credit Reporting Standards of Accuracy and Clarity

The Fair Credit Reporting Act (FCRA) requires data furnishers (servicers) to accurately report a consumer's credit information to a credit reporting agency. We do not support efforts by the Bureau to take steps to make permanent or expand the temporary protections created by the CARES Act within Regulation X.

The Bureau should not place blanket limits on credit reporting or a mortgage servicer's obligation to report accurately as a furnisher of data, subject to a few limited exceptions. The ability to assess credit risk is a bedrock component of the housing finance system and is key to ensuring affordable credit access for consumers and preserving safety and soundness of investors and guarantors. Efforts to permanently suppress *accurate data* will have detrimental effects on our industry and the borrowers we support by distorting credit models, raising prices, and creating a more inefficient and costly market.

Moreover, the Bureau could create legal and regulatory risks if it enacts credit reporting regulations that are not clear, well-defined, and aligned with both the legal obligations created by the FCRA (including that information furnished be accurate, complete, and substantiated by the furnisher's records at the time of furnishing) and standard data reporting formats (Metro 2). Regulations that use a subjective or vague phrase like "negative credit reporting" would introduce confusion and inconsistent reporting that may be unsupported by furnisher records and be considered inaccurate under the FCRA. This would unnecessarily increase risk across the entire industry unless the regulations are clear, adhere to FCRA requirements, and consider Metro 2 credit reporting guidelines.

[6] 12 CFR §1024.41(i).

c. Keep Solicitations Outside the Scope of Regulation X

We do not support efforts to expand the scope of Regulation X to cover solicitations sent by a servicer to an unengaged borrower, such as FHA's Advance Loan Modification (ALM) or the GSE Flex Modification Solicitation. Expanding the scope of Regulation X's technical requirements to eligibility determinations for pre-approved loss mitigation offers would significantly impact consumer credit by substantially increasing regulatory costs, risks, and burdens. Such an expansion could also slow down the loss mitigation process substantially, which could impact a borrower's ability to successfully address their issues and minimize delinquency.

Importantly, extending Regulation X to preapproved solicitations would create significant borrower confusion. For example, borrowers would receive "denial notices" for options they never applied for. This is not unlike the confusion created during the pandemic when servicers were still required to treat forbearance requests as incomplete loss mitigation applications. Additionally, a denial letter for a proactive solicitation could discourage a borrower from applying for assistance. For example, a borrower may not be eligible for a GSE Flex Modification solicitation if they have not yet met the delinquency threshold. However, that same borrower could be eligible for a GSE Flex Modification if they apply for assistance and provide the information required for evaluation. Further, if a servicer determines eligibility for solicitation of a loss mitigation solution monthly, it's conceivable that an account would be ineligible for solicitation monthly. It would be impractical for the servicer, along with confusing and discouraging to the borrower, to send multiple "denial" notices for options the borrower never applied for.

The Bureau must encourage distressed borrowers to engage with their servicer. The negative impact of applying Reg X to preapproved solicitations would outweigh any potential benefit to borrowers. Borrowers can request a full review of loss mitigation options at any time and there is generally no significant difference between the terms of preapproved and "full review" loss mitigation product. Such an expansion would likely harm borrowers overall, as it would cause investors to participate in fewer pre-approved loss mitigation programs and/or offer them less frequently.

d. Provide Model Documents for LEP With a Safe Harbor

The servicing rules currently provide model clauses for the Early Intervention letter, along with a Spanish-language translation. As we understand, the Bureau is considering requiring servicers to translate mortgage documents into non-English languages. Such a policy would facilitate the next step in the Bureau's focus on Limited English Proficiency (LEP) to ensure borrowers are appropriately informed of their loss mitigation options after the Federal Housing Finance Agency (FHFA) and Federal Housing Administrations (FHA) recent decision to require lenders to collect language preference on the Supplemental Consumer Information Form.

The Bureau must establish model language for the selected non-English languages and provide a safe harbor to servicers who use them. To do so, the Bureau must clearly enumerate a limited number of non-English languages in which servicers must provide notices, identify a limited number of notices that must be sent in non-English languages, and clearly specify when a servicer must send notices in such languages.

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.

Further, the Bureau should not establish LEP requirements based on marketing or origination activity. Servicers acquire loans and/or mortgage servicing rights from many sources and may not know if the loan originator marketed in a particular language. Further, marketing activity in and of itself is not necessarily indicative of borrower's language preference. A lender broadly marketing in a particular language should not trigger broad requirements to provide translated documents to borrowers who don't even speak that language. If the Bureau intends to incorporate LEP requirements to Regulation X, we recommend that such requirements be limited to situations in which the Bureau has provided a model notice in a specific language *and* a borrower has made an affirmative request to the servicer to communicate in that language.

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Mortgage servicers strive to deliver timely and effective relief to struggling borrowers. We appreciate the Bureau pursuing the rulemaking process to modernize the loss mitigation rules of Regulation X to create a durable framework. Should you have any questions or wish to discuss further, please contact Brendan Kelleher at Bkelleher@mba.org.

Sincerely,

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

Discussion Questions

MBA appreciates our recent opportunity to discuss amendments to Regulation X. As a follow-up to our conversation, please see below responses to specific questions that we discussed.

1. **What if it takes more than 30 days to determine that a borrower is not eligible for any loss mitigation option?**

While a consumer's application for loss mitigation is incomplete, servicers act with reasonable diligence to complete the application. Thirty days is a reasonable period for consumers to complete their applications.

If a borrower remains engaged with their servicer, a servicer can evaluate a borrower for a streamlined loss mitigation solution within 30 days. (As noted above, a borrower's request for a forbearance should not be treated as a loss mitigation application.)

Once a borrower submits a complete application, Regulation X requires servicers to render a loss mitigation decision within 30 days unless additional documents or information are required from a third party. If a decision was not rendered within that period, Regulation X's dual-tracking protections would remain in place until the decision is issued or any applicable appeal period has expired.

2. **Wouldn't the foreclosure hold happen faster if it is triggered by, for example, a phone call where the borrower asks for assistance versus assessing whether a borrower completed an application?**

Yes, however, the Bureau must ensure that servicers have a fair opportunity to implement any applicable protections, along with clear, reasonable standards for expiration of those protections.

As discussed above, the Bureau could restructure Regulation X so that dual-tracking protections are triggered earlier in the process mitigation process (*e.g.,* by an incomplete application) provided that the rules provide servicers with the certainty as to when the foreclosure process can continue. Further, the Bureau must structure the loss mitigation process such that it cannot create indefinite or perpetual foreclosure protection.

As a reminder, instantaneous compliance with dual-tracking protections is not possible. To provide protections, servicers must recognize loss mitigation requests and (in many cases) communicate those requests to foreclosure counsel, who must then receive and act on those requests. It is patently unreasonable to expect an email in Arizona to result in a request for delay in a New York court proceeding on the same day. Servicers should be given at least three business days to put dual-tracking protections in place.

3. **Can you talk about the feasibility of providing more specificity on denial notices, like inputs used for DTI and LTV, for example, if those are pertinent to the loss mitigation option?**

Greater specificity on denial notices, such as DTI or LTV, is inadvisable. Such elements generally are no longer material to the loss mitigation denial reason(s) that would be provided to a borrower.

Broadly, tailoring denial notices to the specific investor-driven reasons a borrower may be denied for a loss mitigation solution is operationally unfeasible and will lead to unnecessary borrower confusion. Tailored notices may create the false impression that additional action by the borrower – such as paying off other debt or ordering an updated appraisal – can help the borrower qualify for a loss mitigation solution that avoids foreclosure. Tailored notices will be difficult for servicers to sustainably implement at scale and provide no consumer benefit.

4. **What are your thoughts on foreclosure protections beyond initiation and sale, such as restrictions on advancing the process if the process has already begun?**

We do not recommend expanding Regulation X's dual-tracking protections beyond the existing milestones of first notice/filing of foreclosure and foreclosure sale. The foreclosure process is dictated heavily by state law and largely outside the control of the servicer.

In many cases, servicers do not have the authority to unilaterally delay the foreclosure process and therefore cannot be mandated to do so. State foreclosure processes (set by state statutes and state rules of civil procedure) may require servicers to adhere to specific timelines, and a servicer's ability to foreclose on a loan may be jeopardized by failing to adhere to those processes. Servicers may be able to request that a third party (such as a court) provide a delay of these timelines, but those parties may decline that request or may not respond to a request in a timely manner. In other cases, foreclosure processes may be strictly controlled by state law, and courts may lack the authority to provide any delays or exceptions.

Expanding the servicing rules to additional foreclosure milestones could increase foreclosure costs for borrowers and should be avoided. Delays will increase foreclosure costs paid by borrowers, especially where foreclosure counsel must formally request that a civil authority delay the foreclosure process. In some states, a servicer must dismiss and restart foreclosure proceedings to provide a delay—which will result in accruing even greater foreclosure fees and costs.

5. How should the Bureau consider credit suppression, specifically in the context of natural disasters?

If the Bureau decides to treat "natural disasters" differently for any regulatory purpose, it must define that phrase with precision. We recommend that the Bureau follow industry practice and existing investor guidelines by looking to the declarations of the Federal Emergency Management Agency ("FEMA"). As a result, regulatory "natural disaster" protections should only be triggered when a borrower requests assistance and indicates that they have been impacted by a disaster that FEMA has declared as a "Major Disaster" eligible for FEMA Individual Assistance.

As a reminder, the Bureau could create tremendous legal and regulatory risks if it enacts credit reporting regulations that are not clear, well-defined, and aligned with both 1) the legal obligations created by the FCRA, including that information furnished be accurate, complete, and substantiated by the furnisher's records at the time of furnishing, and 2) standard credit reporting formats and guidelines (Metro 2).