MORTGAGE BANKERS ASSOCIATION

November 28, 2022

Comment Intake Mortgage – Refinances and Forbearances RFI
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2022-0059
CFPB Request for Information Regarding Mortgage Refinances and Forbearances

To Whom it May Concern:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to respond to the Consumer Financial Protection Bureau's (CFPB or Bureau) request for information (RFI) regarding mortgage refinances and forbearances.[2] MBA and our member companies share the broader goal of the RFI to ensure that refinancing opportunities are broadly accessible and regulatory or other barriers do not unduly impact access to affordable and sustainable mortgages. Refinancing allows borrowers to lower their monthly payments or utilize the equity in their homes. For 2020 and 2021 combined, over 16 million refinance loans were originated, based on data from the Home Mortgage Disclosure Act (HMDA). While these were record levels of originations there were likely borrowers who did not refinance their loans for a variety of reasons.

MBA supports ways to facilitate mortgage refinances for consumers who would benefit from refinancing. Expanded streamlined refinances, with appropriate consumer protections, is one potential way to extend the benefit of refinancing to more consumers. We recognize that regulatory changes and rulemaking take time. Even though refinancing opportunities are unlikely to be a large part of the market in the near term given the current rate environment, we support efforts to improve the process ahead of the next falling rate environment. The median monthly principal and interest payments on purchase applications have risen over 40 percent since the end of 2021, based on data from MBA's Purchase Application Payment Index (PAPI), so there will be borrowers who will benefit from refinancing into lower rates when the opportunity returns.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 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 2,100 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] Request for Information Regarding Mortgage Refinances and Forbearances, 87 Fed. Reg. 58487 (Sept. 27, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-09-27/pdf/2022-20898.pdf.

Additionally, we share the Bureau's goal of reviewing the loss mitigation experiences during the COVID-19 pandemic and evaluating the efficacy of widespread forbearance as a possible "first option" going forward. Currently, the MBA is producing a comprehensive Future of Loss Mitigation review that considers many of the questions in the RFI. We will share that work product with the Bureau soon. We offer the following thoughts below on the key issues the Bureau should consider as it evaluates both the lessons learned from and unique circumstances of the pandemic.

While enabling streamlined refinances and future loss mitigation is an important goal, the pressing issues currently facing borrowers today are housing affordability and sustainability in this environment of higher rates, still-elevated home prices, and a lack of housing inventory. MBA urges the Bureau to prioritize reforms that will lower loan manufacturing costs generally and take a broader look beyond those considerations applicable only to refinances. We encourage the Bureau to focus on areas where their regulations add costs to the loan manufacturing or servicing process, particularly with diffuse or unclear consumer benefits.

I. Barriers to Refinancing and Ways to Facilitate Beneficial Refinances for Consumers with Smaller Loan Balances

The Bureau seeks input on the barriers that prevent consumers, particularly borrowers with smaller loan balances, from refinancing when interest rates decline. The RFI cites the high costs of refinancing as one constraint. While some of these costs are proportional to the loan amount or property value, many are fixed costs or constant overhead expenses that do not change based on the size of the loan. Given that many costs are fixed irrespective of the loan size, some small mortgage loans will be unprofitable, and others will be significantly less profitable (or require a higher rate) and therefore less likely to be made. For example, although the typical loan costs for a 30-year mortgage were lower for a lower-priced home than a higher-priced home between 2018 and 2020 ($3,145 versus $4,236), the costs constituted a higher amount relative to the loan amount (4.5 percent versus 1.7 percent).[3] Given the differences in profitability, limits on pipeline capacity and consistency of costs, lenders must incur opportunity costs to originate small mortgage loans.

The Bureau's rules can also negatively impact other loan options that allow consumers similar benefits to certain refinances. For instance, the Bureau may want to consider the effect of its current rules with respect to smaller balance subordinate liens. Subordinate liens, by their nature, are more likely than first liens to be smaller mortgages. For many consumers in the current rate environment, subordinate liens are a more affordable option for accessing home equity than refinancing the entire balance of a low-rate first mortgage as part of a cash-out transaction. Subordinate liens are also often less costly than unsecured loan options. Thus, we urge the

[3] *Financing Lower-Priced Homes: Small Mortgage Loans*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF POLICY DEVELOPMENT AND RESEARCH, https://www.huduser.gov/portal/portal/sites/default/files/pdf/Financing-Lower-Priced-Homes-Small-Mortgage-Loans.pdf (October 2022).

Bureau to consider policies that would facilitate beneficial subordinate mortgages for consumers seeking smaller loan balances.[4]

Similarly, the servicing rights attached to small mortgage loans are generally not attractive to investors. Servicers face high fixed overhead costs from staffing, facilities, technology and compliance irrespective of the size of the loan serviced. Since servicing is traditionally paid for as a percentage of the unpaid principal balance (UPB), the smaller payout from servicing small balance loans makes the servicing rights in the aggregate unattractive from a market perspective.

In sum, while technology offers promise to reduce fixed costs and provide process automation, a static regulatory regime imposes costs that will remain. To illustrate, the median APR for 30-year mortgage loans on lower-priced homes between 2018 and 2020 was 107 basis points over the average prime offer rate (APOR), compared with 26 basis points above prime for more expensive homes.[5] The Bureau could play its part in addressing this differential by looking at its rules with a view towards maintaining crucial, statutorily mandated consumer protections while making marginal changes that lower manufacturing costs, reduce servicing costs, or create more incentives to originate smaller balance loans.[6]

A. Qualified Mortgage Rule Impacts to Smaller Balance Loans

The Bureau should review the extent to which the Qualified Mortgage (QM) rule raises manufacturing costs on small balance loans. The Bureau's own assessment of the rule concluded that lenders give up profits to originate small balance loans, which is a not a long-term solution but rather a symptom of the problem.[7] The RFI specifically asks whether the Ability-to-Repay Qualified Mortgage (ATR-QM) rule should be amended to encourage beneficial refinances while preserving important protections for consumers. The QM statute governs the allowable points

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[4] For example, many of these such smaller loan balances are more likely to be higher-priced mortgage loans (HPMLs). TILA requires certain HPMLs to be underwritten based on a costly full interior appraisal, even if the loan amount is less than the general interagency guidelines for less costly alternatives. We urge the Bureau to review the TILA interior appraisal requirement and use its relevant authority to allow reasonable, less-costly alternative valuation methods for smaller mortgages, including HPMLs, consistent with existing interagency valuation guidelines.

[5] *Financing Lower-Priced Homes: Small Mortgage Loans*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, exhibit 14.

[6] For example, the Bureau should consider studying the efficacy of RESPA and TRID requirements for refinances and the impact on consumer pricing for borrowers, specifically small mortgage loan borrowers and the impact on refinancing.

[7] Ability-to-Repay and Qualified Mortgage Rule Assessment Report, BUREAU OF CONSUMER FINANCIAL PROTECTION, https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf, (January 2019), Section 5.4 (The Bureau previously released an assessment of the QM small dollar exemption and found the current rules did not discourage small dollar lending. This conclusion is based on a lender survey in which most lenders responded that their firms have a practice of waiving certain fees to keep loans under the points and fees QM limit. This shows that the QM small dollar loan exemption is not working as intended. This survey takes place in a market where small dollar originations are a very small part of the lending market. Lenders giving up profit is not sustainable as the long-term answer. In a tightening housing market and rising-rate environment, lenders will be disincentivized from making small dollar loans if the only way to do so is to incur opportunity costs or losses. Given this, a reexamination of the QM rule on small dollar lending is warranted.).

and fees to the size of the loan.[8] While the Bureau is constrained by the statute as to the general construct, it has authority to make regulations that adjust the thresholds to account for smaller loan sizes.[9] Accordingly, MBA encourages the Bureau to consider reforms to the Rule's points and fees requirements tailored to the small loan threshold. When presented with an application that exceeds the points and fees limit, creditors are placed in a situation where they must deny the loan, absorb a loss, or make a non-QM loan that is subject to a less liquid secondary market and also presents heightened litigation risk if the borrower defaults. These options create difficult choices for those that might originate small loans, which can have a disproportionate impact on low-to-moderate-income borrowers seeking these loans.[10]

For loans originated in 2022, the small loan threshold was $114,847, whereas the average loan size for loans originated in 2022 was $343,729 for a home purchase loan and $296,139 for a refinance loan, based on MBA's analysis of the HMDA data. Given this large disparity and the increasing fixed costs of loan production, we believe the small loan threshold is artificially low.[11] While the Bureau has raised the threshold, these adjustments have been insufficient to keep pace with rising home costs. Accordingly, the loan size threshold for exceptions to the 3 percent points and fees threshold should be increased to a more reasonable level.[12]

The Bureau should also consider changes to the QM small loan exemption tiers to loans under $114,847. The ATR-QM Rule contains an exemption that allows proportionately higher points and fee limits for smaller mortgage loans.[13] Although the dollar amount of the loans in each tier is indexed to inflation, this does not capture the full suite of economic factors that affect the price of housing and secondary market executions. These tiered amounts should be changed to increase with rising interest rates and underlying housing costs, which may rise faster than inflation. In addition, the cap on points and fees in each tier should be set as a percentage, not by a dollar amount of points and fees. Currently, lenders within some tiers are penalized for lending an amount on the lower end of that tier. For instance, a lender originating a $68,908 loan is capped at the same dollar amount of points and fees as a lender originating a $114,846 loan. These changes will make small mortgage loans more attractive to lenders.

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[8] 15 U.S.C. § 1639c.

[9] Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6408, 6528-6533 (Jan. 30, 2013), available at https://www.govinfo.gov/content/pkg/FR-2013-01-30/pdf/2013-00736.pdf.

[10] *Financing Lower-Priced Homes: Small Mortgage Loans,* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, page 12. (In addition to the QM points and fees challenges that small loans pose, smaller loan mortgage applications are generally more likely to be denied. Nearly 40 percent of loan applications for lower-priced homes were denied between 2018 and 2020, compared with fewer than 13 percent of applications for more expensive homes. The likelihood of denial is strongly impacted by borrower credit score, particularly at specific thresholds like 580 and 620.).

[11] Mortgage Bankers Association, *RE: Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z)*, Sept. 16, 2019, available at https://apps.mba.org/pdf/RE_Qualified_Mortgage_Definition_Under_TILA_09_19.pdf (showing MBA previously advocated for addressing the law small loan threshold).

[12] Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA, and Qualified Mortgages), 86 Fed. Reg. 60357, 60357-60364 (Nov. 2, 2021), available at https://www.govinfo.gov/content/pkg/FR-2021-11-02/pdf/2021-23478.pdf

[13] 12 C.F.R. § 1026.43(e)(3) (2021).

Another area for the Bureau to review is the refundable single premium mortgage insurance. Investors are hesitant to exclude the applicable portion of the premium from the QM test because the CFPB has not defined the terms “pro-rated/pro rate”. If the CFPB clarified that policies which are refundable from inception to conclusion meet the pro rata standard, consumers would not be shut out from purchasing these policies due to the inclusion of the premium in the QM points and fees threshold.

Additionally, the Bureau should consider reviving the QM points and fees cure provision that expired on January 10, 2021. [14]A cure provision would give lenders confidence in lending at or near the applicable points and fees cap knowing that if a calculation or other error was made that puts the loan over the relevant cap, such an error could be fixed, and the loan could retain its QM status. The consumer benefits of reviving this points and fees cure provision would likely extend beyond small dollar refinances, but such benefits may be heightened for smaller dollar loans given lenders have relatively less room for error on such loans.

Lastly the inclusion of affiliate fees in the points and fees cap can penalize efficiencies gained by use of affiliated companies that are particularly meaningful on small balance loans. While we recognize that this requirement is in the statute, the Bureau should consider how it impacts small mortgage loans or refinances.

B. Loan Originator Compensation Rule

The Bureau should also make changes to the Loan Originator Compensation (LO Comp) rule to help consumers and reduce regulatory burden. In some instances, loan originator compensation restrictions may serve as a disincentive to loan officer participation in small mortgage lending, particularly for certain products that might be particularly beneficial for low-to- moderate income borrowers. For instance, the rule is not clear on whether varying LO compensation between a purchase and refinance is permissible. Loan purpose is not a clear term or condition of the loan, nor is it one that a loan officer could credibly manipulate under a proxy analysis. Nevertheless, the Bureau has declined to make clear that such variation is explicitly permissible. Doing so would allow for lower costs on refinances generally which would benefit all consumers, but particularly those with smaller balance loans where higher manufacturing costs create disincentives.

The original impetus for the LO Comp rule was to protect consumers from steering. In the current regulatory environment, the harm associated with steering – borrowers agreeing to a loan they do not understand and cannot repay – is less likely than when the LO Comp rule was first adopted due to the rule itself, as well as other regulatory actions adopted following the passage of the Dodd-Frank Act. Additionally, the Bureau’s TILA-RESPA Integrated Disclosure (TRID) rule made mortgage terms and costs easier to understand by heightening disclosure requirements. Together, these regulations reduce the risk of steering by shielding consumers from unsuitable mortgage loan products and ensuring they are aware of the costs of credit. While these regulatory developments have reduced the risk of steering, the LO Comp rule still places strict limits on

[14] 12 C.F.R § 1026.43(e)(3)(iii), (iv) (2021).

certain practices that would result in lower consumer costs that should be rethought in some contexts.

1. Allow for Lower Compensation for Bond Loans

The LO Comp rule is understood to forbid varying compensation for different loan types or products. Housing Finance Agencies (HFAs) are usually state-run agencies that provide favorable terms on loans to low- and moderate-income prospective borrowers. They are also referred to as "bond loans" because they are sometimes funded by state bond issuances or made with other forms of public backing. HFA programs are particularly important for families who are often underserved or face affordability constraints under market interest rates and terms. These programs provide participants with much-needed lower interest rates or access to down payment assistance, often along with housing counseling and financial education, encouraging responsible homeownership in a well-regulated manner.

However, the assistance provided through these programs is not without costs. The robust underwriting, tax law-related paperwork, yield restrictions, and other program requirements make HFA loans more expensive to produce. HFAs also frequently cap lender compensation at levels below what a lender typically receives on a non-HFA loan. Covering these expenses is particularly difficult given that many HFA programs include limits on the interest rates, permissible compensation, and other fees that may be charged to borrowers. Prior to the LO Comp rule, lenders would address this challenge by paying loan originators a smaller commission for an HFA loan than for a non-HFA loan. The inability to do so today reduces the ability of companies to offer HFA loans, particularly when producing these loans results in a loss. The Bureau should address this dilemma through an exemption in the LO Comp rule for HFA loans. Allowing variable compensation for HFA loans would increase access to affordable credit without sacrificing consumer protections.

2. Allow for Penalties for Loan Originator Errors

The LO Comp rule currently prevents companies from holding their employees financially accountable for losses that result from mistakes or intentional noncompliance with company policy when they make an error on a particular loan. As it stands, a loan originator who is responsible for an error may not bear the cost of that mistake. Originators receive the same compensation regardless of whether their actions violate lender policy or cause an error – even when the mistake causes a demonstrable loss to the lender. This result runs directly contrary to the central premise of the Dodd-Frank Act amendments to TILA that led to the LO Comp rule – compensation at the loan level is the most effective way to incentivize loan originator behavior.

The inability to tie compensation to the quality of a loan originator's work on a given loan severely restricts the creditor's ability to manage its employees and disincentivizes future errors. Effectively, the creditor is left with two extreme options: fire the loan originator or pay him or her full commission despite the error. This binary choice does not serve the interests of consumers, creditors, or loan originators. Rather, greater accountability on the part of loan originators will incentivize them to reduce errors and consistently comply with regulatory requirements and company policy, leading to a safer and more transparent market for consumers. Allowing reductions in compensation in response to originator errors would incentivize compliance with TILA and other consumer protection regulations. Incentivizing good market behavior is clearly a beneficial result for consumers and will result in lower costs.

C. Communication and Collaboration with Federal Regulators

To the extent it can, the Bureau should communicate and collaborate with other federal regulators such as FHA and FHFA. Doing so will improve information sharing, promote consistency across similar workstreams, and create less duplication of efforts. For example, recently, FHA published a RFI asking similar questions concerning the current availability of small mortgage financing, barriers and disincentives to small mortgage lending transactions, changes to policies or processes that would encourage origination of more FHA-insured small balance mortgages, and considerations regarding liquidity provided through securitization.[15] The Bureau should look to responses to that RFI as it works to better understand the refinancing barriers for borrowers with smaller balance mortgages.

Overall, given the current cost environment and challenging housing market, we urge the Bureau to focus its attention on the issues highlighted above even if some have less of a direct impact on refinancing.

II. Targeted and Streamlined Refinances

Streamlined refinancing is one tool to reach borrowers who might not know they can refinance but would benefit financially. It also creates efficiencies that are valuable in high refinance volume environments to allow for larger pipelines to refinance more, eligible borrowers. In a low-rate environment, streamlined refinancing helps borrowers at risk of delinquency and default by lowering their monthly payments. In general, we support streamlined refinances as an option for lenders and borrowers and believe that any changes to enable streamlined refinances should include consumer protections that ensure the refinance is beneficial to the consumer. Rules encouraging streamlined refinancing must be effective in all environments, including periods of rising and falling interest rates, as well as increasing and decreasing home prices. MBA believes the Bureau should draw lessons from the FHA Streamlined Refinance Program and pursue regulatory changes to enable widespread streamlined refinancing, while ensuring that it delivers benefits.[16]

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[15] Request for Information Regarding Small Mortgage Lending, 87 Fed. Reg. 60186 (Oct. 4, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-10-04/pdf/2022-21047.pdf.

[16] While we support greater access to streamlined refinances or amendments to other rules, discussed above, that would require regulatory change, support for this prospective change does not constitute MBA taking the position that such a regulation or other activities would be constitutional in light of the current funding structure of the Bureau. *See* Cmty. Fin. Servs. Ass'n of Am. Ltd. v. Consumer Fin. Prot. Bureau, 51 F.4th 616 (5th Cir. 2022).

The FHA's streamlined refinancing model is an example of a streamlined refinancing program that has helped borrowers.[17] In order to qualify for a FHA streamlined refinance, borrowers must be current on their payments, have made at least six payments on the existing mortgage, and result in a net tangible benefit to the borrower with at least a 0.5 percentage rate decrease. Borrowers still must pay the closing costs of the refinance, but may not need to verify income, go through a full credit check, or have a home appraisal.[18]

Some of the ATR factors that lenders must consider before offering a refinance should not have to be considered under a streamlined refinance program. Currently, the ATR rule requires a lender to make a reasonable, good faith determination of the borrower's ability to repay a loan. Lenders must consider eight factors when making this determination.[19] If the consumer protections of the FHA program are adopted, borrowers who receive a streamlined refinance will have a lower P&I payment than their current loan. Lenders furnishing a streamlined refinance should not have to consider the borrower's income or employment status. The documentation requirements to verify these factors slow down the approval process for borrowers who have already shown the ability to make larger payments.

Borrowers should only receive a streamlined refinance if it would lead to lower principal and interest monthly payments by the borrower than under the previous loan. Streamlined refinancing without such protections can lead to borrowers paying a higher monthly payment. As identified in the Bureau's RFI, this may include the need to limit ATR exemptions to rate and term streamline refinances, with limited "cash out" solely to finance closing costs.

The CFPB should establish a defined minimum period between refinances to prevent churning. Churning occurs when borrowers refinance their loans repeatedly. This leads to the borrower receiving small decreases in their monthly payments while excessive fees are added onto their loan balances. This process has the potential to strip borrower equity with each successive transaction, and the additional fees can eventually push the borrower into an "underwater" position in which he or she owes more than the value of the home if there is movement in home values or LTV requirements are relaxed. Because churning causes abnormally fast prepayments of existing mortgages that serve as collateral for securities, investors in these securities do not earn their expected yields. This dynamic reduces investor demand for the relevant securities and lowers the prices investors are willing to pay, which leads to higher required yields on the securities and, in turn, higher mortgage interest rates.

Moreover, the opportunity for a borrower to receive a streamlined refinance should not be limited to the initial originator or incumbent servicer. The Bureau has made it a priority to enhance competitive opportunities in the mortgage market to ensure borrowers can take

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[17] Handbook 4000.1, FHA Single Family Housing Policy Handbook, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FDEDERAL HOUSING AGENCY, https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsgh-062022.pdf (June 2022), pg. 444.

[18] FHA refinances do not allow financing of these closing costs like other guarantors and investors. It is an open question as to whether it is necessary for the closing cost of the refinance to be paid up front rather than as part of the UPB given the economic situation of FHA borrowers, and one that FHA should consider.

[19] 12 C.F.R. § 1026.43(c)(2) (2021).

advantage of differing opportunities.[20] To ensure borrowers benefit from competition in the streamlined refinancing space, other lenders should be allowed to offer competitive streamlined refinancing opportunities to borrowers, even if they did not originate or are not servicing the existing loan.

Finally, our members consistently note that better education regarding refinancing is needed. Better education and dissemination of financial literacy information regarding the refinance process could resolve many issues as consumers often say they didn't think they could refinance due to their credit scores, weren't aware of what options are available to them, or what are the benefits of refinancing. Better education toward understanding available refinancing opportunities will help eliminate many refinancing barriers.

III. Potential New Products to Facilitate Refinances

Automatic refinance mortgage ("auto-refi" mortgages) and one-way adjustable-rate mortgages ("one-way ARM") are two potential products that provide for automatic or streamlined refinancing in the future when certain market conditions are met. The Bureau notes that these types of products could spur more refinancing since little or no action is required of the consumer. The Bureau is requesting feedback on the benefits and drawbacks of auto-refi mortgages and one-way ARMs and whether creditors could feasibly market these products[21].

Overall, the MBA supports ways to simplify and encourage the use of the refinancing process when conditions are beneficial for the borrower. However, the one example of an auto-refi mortgage the RFI references raises concerns the Bureau should further evaluate. In particular, the Bureau provides an example of how an auto-refi mortgage could be structured. Under the model, an auto-refi would be triggered when a 0.50 percent interest rate reduction and a 7.5 percent payment reduction minimum can be achieved. When the auto-refi is triggered, a new loan replaces the old loan and the servicing, credit, and collateral risks do not change hands. [22]

At first glance, an auto-refinance mortgage appears to be an attractive option for consumers. It promises to ease the administrative hassles[23] often cited by borrowers by reducing documentation requirements. Additionally, some borrowers cannot (or believe they cannot) meet

[20] Dir. Chopra, Promoting Competition in Our Financial Markets (July 11, 2022), CONSUMER FINANCIAL PROTECTION BUREAU, available at https://www.consumerfinance.gov/about-us/blog/promoting-competition-in-our-financial-markets/.

[21] The Bureau references auto-refi mortgages and one-way ARMs in the same section of the RFI, noting that these products have similar features. However, our response focuses primarily on automatic refinance mortgages, as the one-way ARM product has similar drawbacks with regard to higher upfront costs due to a negative correlation with rates for the investor but may not run into the same issues with higher costs due to higher prepayments. This also assumes the current securitization structure where a refinanced mortgage must be purchased out of the security while a ARM would remain in an ARM security.

[22] *See* Kanav Bhagat, *Extending the Benefits of Mortgage Refinancing: The Case for the Auto-Refi Mortgage* (Oct. 6, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3927174.

[23] *See Id.* at 18 (Under this auto-refi product design, there are no income, liquidity, credit score, employment, or LTV requirements to be met and therefore the ability of homeowners to refinance will not be impacted by the economic cycle beyond the level of the mortgage rate).

the financial preconditions required to qualify for a refinance, and others fail to refinance due to, the costs, or the complexity of determining when refinancing is optimal. The case for an auto-refi mortgage purports to eliminate many of these burdens.

However, as the Bureau appropriately notes in its RFI, there may be impediments or risks with this product if consumers lack comfort with the concept or creditors find it difficult to price, competitively market, and sell these products on the secondary market. We discuss some of these difficulties below.

First, it is hard to see how there would be capital markets demand for these products; and the lack of secondary market liquidity and MBS investor interest likely would limit the development of auto-refi mortgages and/or one-way ARMs. This proposal would disrupt a pricing subsidy that small balance loans currently enjoy by dramatically increasing the prepayment speeds of small balance loans in securities. Currently small balance loans get a premium price to be put in “spec pool” securities because they are less likely to prepay. Automatic refinances would eliminate this and result in higher prices for consumers with small balance loans. It is also worth noting that attempting to include these new products in the secondary market environment would likely pose several operational challenges for issuers as well as servicers. It is unclear if the existing framework and associated processes could accommodate these products, and difficulty integrating them could potentially further reduce their desirability.

The proposal also proceeds from the basic and correct assumption that automatic refinances would result in more efficient prepayment models, allowing bond buyers to appropriately price the risk of prepayment. The RFI notes that bond holders would likely require a higher coupon to be interested in a security with a known but much higher prepayment rate. However, beyond suggesting that government subsidies be utilized, the proposal does not answer how higher rates to consumers on the front end will solve affordability challenges, nor does it quantify the expected premium paid for the option to get an auto-refi mortgage.[24] Absent significant explicit government support, auto-refi mortgages would necessarily be more expensive for consumers at time of origination. Finally, by virtue of their design, these costs would also seem to fall on less sophisticated consumers. The Bureau should carefully evaluate who would likely seek out an auto-refinance loan; a fixed rate loan with no automatic prepayment would be cheaper.

Lenders would also need to price in the increased risk due to the inherent information asymmetry. The borrower is the one best positioned to understand their future life circumstances and a borrower who is electing to pay extra for a loan option that automatically refinances may be doing so out of a belief that their risk characteristics would make it difficult for them to qualify for a less expensive, traditionally underwritten refinance. After all, why pay extra when they could, in theory, pay less and then refinance if it was financially advantageous in the future? [25] Lenders would have to be aware of this risk and perhaps assume greater possible delinquency

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[24] Estimates of the value of the consumer’s refinance “option” and its automated cost vary based on market volatility, but it is clear that such a mortgage would be more expensive.

[25] This concern might be alleviated if all refinances were streamlined or otherwise automated.

on these loans—delinquency that would not be offset by the benefits of the automatic refinance for reasons discussed below.

Moreover, if there is a catastrophic loss of income then the auto-refi payment reduction may be insufficient in preventing defaults. For example, while an auto refi will certainly improve a borrower's monthly payments, the reduction achieved is unlikely to prevent a default in such a case, particularly in light of the typical payment reduction that modifications try to achieve. Traditional loss mitigation procedures are best placed to help borrowers in circumstances that require substantial payment assistance. MBA is working to align loss mitigation solutions among the agencies by using existing tools to address the challenges of the pandemic, including implementing streamline solutions such as forbearance, payment deferrals/partial claims, and modifications with principal deferment and terms up to 480 months. Aligning loss mitigation policy allows servicers to effectively educate consumers on the options available, consistently offer the consumers flexibility to identify their best solution and resolve their hardship timely. We discuss this further below.

In sum, MBA supports beneficial refinances provided the structuring and pricing of these products benefit consumers and allow for creditors to competitively market, price and sell on the secondary market. Streamlined refinances may be a solution worth exploring, while auto-refinances present many difficult uncertainties and challenges that would be difficult to overcome.

IV. Forbearances and Other Loss Mitigation

The collaboration and coordination between federal regulators, insurers, and guarantors, and their partnership with mortgage servicers to implement solutions for consumers facing financial hardship, was crucial during the COVID-19 pandemic and should continue. The hard work and nimbleness of the servicing industry enabled over 7.5 million borrowers to enter a forbearance program and other loss mitigation options while implementing complex policy and regulatory changes without clear guidance.[26] Continuing the success the industry saw during its response to the pandemic long-term, including broader adoption of streamlined loss mitigation options, is essential. The Bureau can be an invaluable partner by creating a more straightforward and flexible regulatory framework that facilitates the continued collaboration between policymakers and the mortgage industry to create a loss mitigation playbook for future market events.

Industry and policymakers should continue to study the impact of the COVID-19 pandemic on the market and consumers before completely endorsing the repayment flexibilities of the pandemic, particularly self-attestations of hardships and extended terms for forbearance. The COVID-19 pandemic was a unique event that saw unprecedented national economic support and stimulus in response to a public health crisis. Accordingly, the lessons learned by the Bureau

[26] Mortgage Bankers Association, *September Loan Monitoring Survey*, Oct. 17, 2022, available at https://newslink.mba.org/wp-content/uploads/2022/10/MBA-Loan-Monitoring-Survey-Briefing-Materials-September-2022.pdf.

from the crisis should reflect that critical context and not assume the same circumstances in the future.

A. Create a Clear and Flexible Loss Mitigation Regulatory Framework Informed by the Lessons Learned from the COVID-19 Pandemic

The Bureau should consider rulemaking efforts to facilitate and improve streamlined loss mitigation procedures when a consumer qualifies for a short-term or long-term loss mitigation solution.[27] Although we discuss specific issues and solutions in greater detail below, modernizing the loss mitigation regulatory procedures will also allow the Bureau to advance the three principles of loss mitigation the industry has taken away as the primary lessons learned from the COVID-19 pandemic.

1. Three Principles of Loss Mitigation Reinforced by the COVID-19 Pandemic

Simplicity, standardization, and sustainability are the three principles the federal regulatory agencies, insurers, and guarantors should consider when crafting loss mitigation policies that emerge after the COVID-19 pandemic. While the relevant agencies, investors, and guarantors are the appropriate entities to update loss mitigation options if required, it is important that the Bureau's role in establishing procedural rules enables their beneficial innovations. We thus encourage the Bureau to consider these principles when pursuing any rulemaking to update Regulation X. These principles also suggest that the Bureau eliminate areas of ambiguity and inconsistency around the use of incomplete applications within the existing detailed regulatory framework that has been in place since 2014. These complex rules further complicate how servicers structure their processes and create unnecessary barriers to consumers obtaining relief.

First, loss mitigation policy should be **simple**. Low barriers to entry help consumers receive assistance quickly and encourage engagement with servicers. Loss mitigation policy should thoughtfully consider ways to reduce or eliminate unnecessary barriers to help consumers qualify for a loss mitigation option or reduce consumer confusion. For example, the CARES Act required servicers to offer forbearance upon a consumer's attestation of a COVID-19-related hardship. This allowed servicers to quickly assist consumers during the public health crisis.

On the other hand, complex and often ambiguous rules increase risks to servicers and appear to provide minimal, if any, meaningful relief to consumers. Such issues concern what constitutes a "loss mitigation application," when a loss mitigation application can or must be considered complete by a servicer, what loss mitigation options are "available" to a particular borrower, and when a servicer is permitted to offer a borrower some form of streamlined relief—regardless of

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[27] As noted above, while we recognize that many of the issues discussed below would require regulatory changes to Regulation X, our support for this prospective change does not constitute MBA taking the position that such a regulation or other activities would be constitutional in light of the current funding structure of the Bureau. The Bureau should carefully evaluate these issues and proceed only where it has the authority to do so. *See* Cmty. Fin. Servs. Ass'n of Am. Ltd. v. Consumer Fin. Prot. Bureau, 51 F.4th 616 (5th Cir. 2022).

whether it is short or long-term in nature. We encourage the Bureau to engage with the industry to identify these ambiguities and work to eliminate them through formal rulemaking.

Second, loss mitigation policy should create opportunities for **standardization**. The post-COVID loss mitigation process should be clear and simple, thereby facilitating servicers' ability to offer consumers a consistent experience. While the CARES Act created a consistent forbearance framework, the agencies collaborated to address the operational challenges with as much alignment as possible to give consumers a consistent forbearance exit and loss mitigation experience regardless of their loan type. After the Bureau put out substantial guidance shortly after the passage of the CARES Act, the rules and expectations surrounding forbearance became mostly clear and simple.[28] Therefore, while the CARES Act did not cover privately owned mortgages, many servicers and investors nevertheless offered similar forbearance programs for impacted borrowers. A more standardized process across government agencies will promote consistency and simplify the process for servicers and the Bureau in educating consumers about the loss mitigation process and the options that may be available. However, standardization is not possible when the existing regulatory framework is ambiguous, confusing, and often subject to multiple interpretations.

Third, loss mitigation policy should help consumers achieve a **sustainable** outcome that provides investors and guarantors with a better financial outcome than foreclosure. MBA agrees with the CFPB that the goal of loss mitigation policy should be to provide consumers with the opportunity and the means to achieve financial stability. The COVID post-forbearance loss mitigation options allowed most consumers to get back on their feet quickly after forbearance. For example, the COVID forbearance period allowed consumers time to assess their financial circumstances and determine the extent of their COVID hardship. In addition, the standardized loss mitigation waterfalls – with streamlined deferrals and partial claims as the preferred post-forbearance options – empowered servicers to quickly and efficiently help consumers identify the best solution to resolve a consumer's financial hardship and bring the account current.

In sum, we believe the Bureau can use these principles as a roadmap to change the procedures in Regulation X to facilitate the loss mitigation programs and fulfill the missions of the GSEs and federal housing agencies to help consumers resolve their financial hardship and improve the consumer experience.

2. Improve the Consumer Experience Beyond the COVID-19 Pandemic

The Bureau should address several critical areas to help resolve potential inconsistencies in offering loss mitigation and forbearance options outside of the COVID-19 context. While our comments are limited here, the MBA's suggested revisions to Regulation X are in Appendix A.

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[28] While guidance in the form of joint statements from federal regulators or frequently asked questions is helpful, the Bureau should strive to enact a regulatory framework that only requires subsequent clarification through informal guidance. The mere fact that the Bureau had to issue this type of guidance in April 2020, more than six years after the rules went into effect, suggests that the broader framework ought to be reworked to be clearer and simpler. This will benefit both consumers and servicers alike.

The Bureau should enable effective and broader adoption of short-term forbearance by amending live contact, written notice, and acknowledgment letter requirements for consumers already on a short-term loss mitigation option. For example, unnecessary consumer confusion results when a borrower continues to receive the early intervention notice based on their delinquency status but is otherwise performing on a short-term loss mitigation option pursuant to agency, GSE, or private investor guidelines. Similarly, when certain borrower conversations with servicers must be treated as the submission of a loss mitigation application—regardless of whether that conversation results in the offer of a short-term forbearance or repayment plan—it often results in a confusing and seemingly contradictory experience for the consumer. Receiving an acknowledgment letter saying that your servicer has received your application, that it is incomplete, and that you should submit various documentation by a specified date is extremely confusing for a borrower who just agreed to a three- or six-month forbearance plan. Therefore, the Bureau should consider revising what it considers to be a "loss mitigation application" for purposes of Regulation X and allow servicers to specify the format of the information it needs to start the application process. Casting such a wide net unnecessarily imposes burdens and risks on servicers, while providing little to no benefit to the consumer.

Alternatively, the Bureau may consider removing short-term forbearance and short-term repayment plans altogether from what is considered to be a "loss mitigation option" for purposes of Regulation X. While this approach may seem extreme, it is worth noting that servicers would remain obligated to work with delinquent borrowers, to accurately convey the loss mitigation options that are available and provide information on how borrowers can apply for assistance. The primary impact of such an approach is to eliminate the acknowledgment letter requirement that causes more harm than good. In its place, the Bureau could institute more appropriate notice requirements that apply when a servicer makes an offer but do not confuse borrowers. MBA believes, however, that reducing the regulatory burden around offering short-term relief will result in better experiences and more positive outcomes for consumers.

This will create a better consumer experience and bring clarity to the industry, encouraging the broader adoption of forbearance as a short-term loss mitigation solution, particularly in response to emergencies. The Bureau can reduce unnecessary confusion for borrowers that occurs when mortgage servicers send regulatorily required letters seeking unnecessary documentation or they are required to complete unnecessary reviews by making clear expectations regarding the treatment of conversations and other interactions in early intervention as well as the rules around incomplete applications in general. The Bureau can also consider correcting the inappropriate assumption that a request for forbearance constitutes an "incomplete applications."[29]

Next, the Bureau should eliminate regulatory barriers that inhibit servicers' ability to offer borrowers quick and efficient streamlined programs that the federal regulatory agencies and GSEs have established. Expanding the options for offering long-term loss mitigation assistance

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[29] In order to promote clarity, the Bureau should also make clear that a foreclosure hold must be placed within a specified period of time after receiving a complete application rather than upon receipt, as it is impossible to expect a servicer to confirm the completeness of the application and notify their relevant counsel or trustees instantaneously.

will help borrowers in many contexts outside of COVID including borrowers impacted by disasters who especially need these programs and should not be subject to complex and burdensome application requirements. Currently, the anti-evasion clause in Regulation X arguably prohibits servicers from offering long-term streamlined loss mitigation options.[30] Over the last two and a half years, the Bureau enacted two exceptions to the anti-evasion clause in response to the pandemic so that servicers could offer COVID deferral and partial claim options and COVID modification options. While the Bureau expanded the exceptions to the anti-evasion clause to allow for streamlined post-forbearance options, it fell short of applying them to situations beyond COVID, such as disaster situations where the industry has consistently recommended, they apply.

We recognize that other non-COVID long-term streamlined loss mitigation products exist, such as the GSE Standard and Disaster Deferral. The Bureau's associated procedural regulations should be flexible enough to enable these options to work in all market conditions and regardless of the hardship for which they were intended to apply. Therefore, the Bureau should amend the existing regulatory framework and allow the agencies and private investors to continue implementing additional streamlined flexibilities. Furthermore, the CFPB should undertake efforts to ensure that all government counterparts at the state and federal level understand the laws that restrict mortgage servicers. Having state or, even worse, other federal agencies promulgate programs and directives that conflict with the CFPB's regulatory framework unnecessarily exposes servicers to confusing mandates and difficult decisions.

If the Bureau is to revise the exceptions to the anti-evasion clause, we encourage the Bureau to do so in a manner that works for all market conditions and that doesn't specify the type of hardship that a program must be intended for or set rigid affordability standards. For example, the COVID streamline modification provisions that were enacted in 2021 allow a servicer to offer a streamline modification but only if the borrower's principal and interest payment decreases. Unfortunately, that is a difficult task in today's high-interest rate environment and may prevent some borrowers from getting a modification that creates a small but affordable increase in their monthly payment. Regardless and given the market volatility over the past two years, the Bureau should not assume that every consumer will be able to achieve the same outcome if regulations impose strict eligibility standards consistently. Long-term streamlined loss mitigation products – including deferrals, partial claims, and modifications – should be viable home retention options for borrowers regardless of their reason for hardship.

The Bureau should also refine the applicability of the existing requirements that servicers must exercise reasonable diligence to help borrowers complete a loss mitigation application. Specifically, the Bureau should eliminate the obligation when a borrower is on a short-term forbearance plan. In addition to not considering a conversation or interaction that leads to a forbearance plan offer to be an incomplete application, as discussed above, the Bureau should also make clear that servicers do not need to act with reasonable diligence to help a borrower complete an application while on a forbearance plan. Outreach near the end of such a plan is certainly necessary and important. However, the idea that a servicer should simultaneously have

[30] 12 CFR 1024.41(c)(2)(i) (2021).

to (a) help a borrower complete the application, while also (b) trying to determine eligibility for, and offer, a streamline loss mitigation option, is contradictory and confusing. Currently, Regulation X creates this uncertainty and causes tension between the obligation to help a borrower complete an application and the mortgage servicer's ability to qualify the consumer for and convert to a long-term streamlined loss mitigation option based on an incomplete application. Mortgage servicers and borrowers should never have to complete an unnecessary paper chase, especially when there is a long-term streamlined option available for which a borrower qualifies.

Finally, reducing unnecessary regulatory burdens will promote increased use of self-service technology. Technology and automation were instrumental in getting assistance and information to borrowers quickly. For example, many servicers developed self-service tools that allowed consumers to avoid submitting formal documentation to receive their initial forbearance. The agencies followed suit when developing their COVID-19 post-forbearance loss mitigation options. These tools were particularly effective in driving scalability during a sudden rise in defaults. The Bureau's support for a flexible regulatory structure will encourage mortgage servicers to continue to invest in the development of self-service technology.[31] Reducing the cost to service a mortgage loan is imperative when defaults rise, especially in today's environment where protecting the value of Mortgage Servicing Rights helps expand access to credit for first-time homebuyers and low-to-moderate-income consumers.

B. Automatic Forbearance or Automatic Loss Mitigation

While we support the Bureau's efforts to expand loss mitigation procedures, the Bureau lacks the authority to dictate specific loss mitigation outcomes, an outcome implied by some of the questions in this RFI. The Bureau is well-placed to educate consumers about the loss mitigation process and build trust between borrowers and servicers. Educating consumers and building trust between consumers and servicers should be a focus of the Bureau going forward.

The Bureau cannot set by rule the eligibility requirements properly determined by the relevant investors and guarantors, such as whether a program is automatic or does not require documentation or response to outreach. Existing regulation highlights the importance of knowledge and consent when qualifying a consumer for loss mitigation.[32] Contact and communication between a mortgage servicer and a consumer is a fundamental requirement of successful loss mitigation that helps keeps consumers in their homes.

Forbearance is designed to provide a pause on a consumer's regular payment. It is a temporary loss mitigation solution intended to facilitate servicers' engagement with consumers before potentially converting to a permanent loss mitigation option that can help reinstate a consumer's delinquent account. A conversation is necessary to educate a consumer on expectations to exit a

[31] Such innovation is crucial, as according to MBA's Servicing Operations Study and Forum the cost to service an individual loan is $240 as of 2021 and likely increasing. For reference, the average cost to service a performing loan is $171 and the cost to service a nonperforming loan is $1,487.
[32] 12 C.F.R. § 1024.39 (2021) (Early intervention requirements for certain borrowers).

forbearance. An unaware and unengaged consumer risks missing the necessary education to assess the best path to resolve their hardship.

Instead, the Bureau should continue to support and promote consumer education, as well consumer outreach and engagement – two strategies demonstrating why servicers were so successful in providing relief to consumers during the pandemic. Consumers' engagement with servicers helped keep consumers in their homes.[33] Servicers utilized various communication strategies to drive engagement and create a sense of urgency for consumers to make regular payments if they could or contact their servicers for help. These strategies included email, text messages, call campaigns, and web portals. With the Bureau's support and education encouraging consumer engagement, servicers attempting to contact and work with borrowers will be even more effective.

Consumer education is also a necessary component of a successful loss mitigation strategy. Many borrowers who missed their payments due to COVID-19 were first-time defaults. With less familiarity with loss mitigation procedures, it was critical to ensure that borrowers understood how the loss mitigation process worked, the options available, and potential risks. For example, borrowers needed to understand that the more extended the forbearance, the greater the delinquency, and the more difficult it would be to receive an affordable post-forbearance option with a payment reduction. Or, as we mentioned above, consumers needed to understand the expectations to properly exit forbearance and the options available to resolve a delinquency.

An example of the educational partnership that helped inform consumers on the loss mitigation options available included the CFPB-branded and industry campaign, "Not OK? That's OK." The MBA supports coordinated educational initiatives between industry and the CFPB that helps inform consumers on how loss mitigation works and helps drive consumers' engagement with mortgage servicers to receive loss mitigation assistance. Likewise, we also support additional education for those consumers who have equity in their homes and have exhausted home retention loss mitigation option. The Bureau should help consumers understand that the opportunity to sell their home can gracefully avoid foreclosure.

C. Requiring the Original Lender to Retain Servicing is Not a Viable Solution

While we support the Bureau's goal to facilitate greater payment relief for consumers, requiring the original lender to retain servicing is not the solution. As an initial matter, requiring the original lender to retain servicing rights would dramatically reshape the mortgage market. We struggle to find any statutory authority under which the Bureau could attempt to accomplish this. A robust secondary market relies on the ability to sell mortgage servicing rights and a strong MSR market lowers costs for consumers. Limiting or prohibiting the ability for lenders to sell mortgage servicing rights will reduce competition and raise prices to consumers, contrary to the Bureau's and the administration's objectives.

[33] Encouraging borrowers to work with their servicers will also help keep borrowers from contacting third party "foreclosure rescue" firms that can often charge unnecessary fees or are predatory scams.

Today's market demonstrates the importance of the ability to transfer mortgage servicing rights. The ability to retain and transfer mortgage servicing rights helps more lenders to compete and continue offering financing to consumers. The salability of these servicing rights also provides an income stream or asset that can serve as collateral in a time of rising rates. There is also specialization within the servicing market, with some servicers better equipped or more experienced working with borrowers in default. A bar on transferring servicing would eliminate this specialization, harming consumers and resulting in greater market inefficiencies.

Instead, the Bureau should focus on creating a flexible loss mitigation regulatory structure that will ensure mortgage servicers continue their efforts to foster innovation in the mortgage servicing market space through self-service technology. The correct regulatory structure will create a consistent consumer experience through the industry's continued efforts to appropriately align loss mitigation policy with the federal regulatory agencies and Government-Sponsored Enterprises.

V. Conclusion

Thank you in advance for your consideration of these comments. Should you have questions or discuss further, please contact me at (202) 557-2878 and pmills@mba.org or my colleagues Justin Wiseman at (202) 557-2854 and jwiseman@mba.org or Alisha Sears, at (202) 557-2930 and asears@mba.org.

Sincerely,

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

Appendix A
(Proposed Regulation X Changes)

I. Enable Effective Forbearance

a. Cancel Live Contact Requirements if a borrower qualifies for and is already performing on a short-term loss mitigation option

Citation	12 C.F.R. § 1024.39(a)
Proposed Language	**(a) Live contact.** Except as otherwise provided in this section, a servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. A servicer is not required to comply with 39(a) if a borrower is performing on a short-term loss mitigation option. Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate.

b. Remove the requirement to send the 45-day early intervention letter if a borrower is performing on a short-term loss mitigation option.

Citation	12 C.F.R. § 1024.39(b)(1)
Proposal	**(1) Notice required.** Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section no later than the 45th day of the borrower's delinquency and again no later than 45 days after each payment due date so long as the borrower remains delinquent. A servicer is not required to provide the written notice, however, more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 180 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent. A servicer is not required to comply with this paragraph while a borrower is performing on a short-term loss mitigation option.

c. Refine the definition of a "loss mitigation application" to eliminate conversations that borrowers do not consider to be an "application" and that cause unnecessary confusion

Citation	12 C.F.R. § 1024.31
Proposal	**Loss mitigation application** means a ~~an oral or written~~ request for a loss mitigation option that is accompanied by any information required by a servicer in the form

	required to ~~for~~ evaluate~~ion~~ the borrower for ~~a~~ all loss mitigation options available to the borrower.

II. Expand the Use of Streamline Long-Term Loss Mitigation Options

a. Expand the exceptions to the anti-evasion clause to allow servicers to offer loss mitigation options based upon evaluations of incomplete applications, provided that the options being offered comply with the requirements of the investor or insurer of the mortgage.

Citation	12 C.F.R. § 1024.41(c)(2)(i), (v), and (vi)
Proposed Language	**In general.** Except as set forth in paragraph (c)(2)(ii), (iii), (v), (vi), and (vii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application. **(vii) Streamlined Loss Mitigation** **(A).** A servicer may offer a borrower any loss mitigation option based upon evaluation of an incomplete application, as long as the servicer evaluates and qualifies a borrower according to the eligibility criteria determined by the investor or insurer of the relevant mortgage.

b. Require acknowledgment letters to be sent only if a borrower rejects a streamline offer.

Citation	12 C.F.R. § 1024.41(c)(2)(vii)(B)
Proposed Language	**(vii)(B).** If a servicer makes an offer pursuant to paragraph (c)(2)(vii)(A) of this section, the servicer is only required to comply with paragraph (b)(1) and (b)(2) of this section, as applicable, if a borrower rejects or fails to accept the offer made by the servicer. The timing requirements for complying with paragraph (b)(2)(i)(B) of this section apply upon receipt of the borrower's rejection or when the borrower's acceptance window expires without the borrower taking the necessary steps to accept the offered loss mitigation option. If the borrower fails to perform pursuant to the terms of the loss mitigation option offered pursuant to paragraph (c)(2)(vii)(A) of this section or requests further assistance, the servicer must immediately resume reasonable diligence efforts as required under paragraph (b)(1) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option and must provide the borrower with the notice required by paragraph (b)(2)(i)(B) of this section with regard to the most recent loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option described in

	paragraph (c)(2)(vii)(A) of this section, unless the servicer has already provided such notice to the borrower.

c. Remove the Reasonable Diligence Requirements for a complete application for borrowers moving from a short-term forbearance to transition to a streamlined permanent solution.

Citation	12 C.F.R. § 1024.41(b)(1) and 1024.41(b)(2)
Proposal	**(1) Complete loss mitigation application.** A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application, unless the borrower is performing on a loss mitigation option offered pursuant to paragraph (c)(2) of this section.
Citation	Comment 41(b)(1)-4.iii.
Proposal	A servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application and provides the borrower the written notice pursuant to § 1024.41(c)(2)(iii). If the borrower remains in compliance with the short-term payment forbearance program or short-term repayment plan, and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts until ~~near~~ the end of the payment forbearance program or repayment plan. However, if the borrower fails to comply with the program or plan or requests further assistance, or if the servicer and borrower are unable to bring the account current at the expiration of the program or plan through a blind or streamline loss mitigation option, the servicer must immediately resume reasonable diligence efforts. Near the end of a short-term payment forbearance program offered based on an evaluation of an incomplete loss mitigation application pursuant to § 1024.41(c)(2)(iii), and prior to the end of the forbearance period, if the borrower remains delinquent, a servicer must contact the borrower to determine if the borrower wishes to be evaluated for any available streamline options, if applicable, or complete the loss mitigation application and proceed with a full loss mitigation evaluation

III. Provide Sufficient Time for Servicers to Stop the Foreclosure Process and Determine Whether an Application is Complete

a. Require foreclosures to be placed on hold after a servicer receives a complete loss mitigation application, not when the application is submitted by the borrower

Citation	12 C.F.R. § 1024.41(f) and (g)

Proposal	**(f)(2). Application received before foreclosure referral.** ~~If a borrower submits a complete loss mitigation application~~ Within 5 business days of a servicer receiving a borrower's complete application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless: **(g) Prohibition on foreclosure sale.** ~~If a borrower submits a complete loss mitigation application~~ Within 5 business days of a servicer receiving a borrower's complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless . . .