NATIONAL ASSOCIATION OF MORTGAGE FIELD SERVICES
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Mr. David Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Protections for Borrowers Affected by the COVID-19 Emergency under the Real Estate Settlement Procedures Act, Regulation X. Docket No. CFPB-2021-0006; RIN 3170-AB07

Dear Acting Director Uejio:

NAMFS appreciates the opportunity to submit comments regarding the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed amendments to Regulation X. We are the oldest and largest Mortgage Field Service trade association. Our members provide services at properties in delinquency/default to support the mortgage default industry. They consist of field service providers, select servicers, software companies and other ancillary services and many of these firms/companies are small and/or minority-owned businesses. These entities have been negatively impacted financially from the extended moratoriums, directly and indirectly affecting thousands of jobs. Our organization has been supportive of the actions the Bureau has taken prior to this latest proposal. We urge the Bureau to consider the recommendations below, which we feel balance the benefit to the economy while still accomplishing the Bureau's goals.

Pre-Pandemic Delinquent Borrowers

Foreclosures were at historically low volumes when the Covid-19 national emergency was declared in March 2021. The volumes at that time were at ~50% of historic averages (excluding the housing crisis period). Of the 412,000 delinquent borrowers in April 2021, that are not in an active forbearance, 194,000 are pre-pandemic defaults, according to a recent Black Knight report. A sizeable portion of pre-pandemic borrowers in default have not made a mortgage payment for a significant period of time. These borrowers are taking advantage of the system to the detriment of others, when it is clear the pandemic had no bearing on their default. This fact was understood and contemplated by the Biden administration when, on January 21, 2021, the Homeowner Assistance Fund was created within the American Rescue Plan Act of 2021. Specifically, Section 3206 (c)(1) excludes funding for individuals experiencing financial hardship prior to January 21, 2020. Congress, and the

Biden administration, both understand that there is no logic in providing Covid-19 related assistance to those who clearly did not experience financial hardship from the virus.

Recommendation: Exclude pre-pandemic defaults from the proposed Reg X actions apart from those that have entered loss mitigation prior to the current moratorium expiration of June 30, 2021.

Borrowers Unaffected by Covid-19, directly or indirectly

As previously stated, extending protections to borrowers who have not been affected by the virus, directly or indirectly does not advance the Bureau's mission and, in fact, is counterproductive because it sends the wrong message, rewards bad behavior and diverts resources from where they are truly needed. This fact has already been acknowledged by both Congress and the President. It is not only our associations, but the general mortgage paying public, lenders, homeowners' associations, neighborhoods, local governments, and municipalities that are all negatively impacted when these bad actors are rewarded. Our members are constantly responding to calls from each of those groups wondering when foreclosure proceedings are going to recommence. Many borrowers who are planning on being foreclosed upon are not paying association dues, not paying property taxes, are not maintaining their home, and are potentially causing blight. These borrowers, by and large, are the same borrowers who are not responding to servicer contact. They simply have no intention of saving their homes. The borrowers that did not suffer any loss of income due to the pandemic have had the full opportunity to save up to reinstate their loans. As Congress and the President recognize, those that have not suffered should not receive assistance. Assistance deservedly belongs to those that have been affected, and only those that have been affected.

Recommendation(s): Exclude borrowers that cannot demonstrate financial hardship related to the pandemic and amend the definition of "financial hardship" as contained in section 1024.31 to the following:

> Financial Hardship shall be defined as applying to those that can demonstrate a financial loss from 2019 to 2020 in an amount greater than 10% for those making less than $90,000.00/year, and 15% for those making more than $90,000.00/year or for couples making more than $150,000/yr. Financial loss can be considered direct, if the borrower lost employment, or indirect if the borrower owned a business that lost revenue due to the Covid 19 pandemic.

Reverse Mortgages where the borrower is deceased

For reverse mortgages, where the borrower is deceased, the default cannot be cured. Thus, these reverse mortgages fall into two categories: a) situations where the heirs/estate want to sell the property, which they can easily do in the existing home sale market and b) situations where there are no heirs or estate, or the heirs do not want the property. In the first situation, the heirs are granted at least 6 months after the death of the borrower to pay the loan in full and most estates have no interest in remaining open longer than they need to be open. Thus, extending the moratorium on these loans is not needed. In the second situation, the delay in foreclosure is oftentimes a burden on the heirs and/or neighbors who feel compelled to maintain the property, pay taxes and pay HOA dues. At the same time, the servicer is continuing to pay for inspections and winterizations on a property that is likely upside down. Allowing such properties to sit and languish is a lose-lose proposition for all parties involved along with the loss of potential inventory and how this can impact overall affordability.

Recommendation: Exclude reverse mortgages where the borrower is deceased.

Borrowers Who are Unresponsive to Servicer Outreach

An often ignored or misunderstood fact is that many borrowers will simply bury their heads until there is a foreclosure action pending, at which time such borrowers finally initiate contact. One lesson learned during the Great Recession and that is currently playing out today is that delinquent borrowers are far more likely to contact their servicer when some type of action is being taken. During the moratoriums and as part of the guidance provided to avoid negatively impacting borrowers, many servicers have not ordered inspections of properties that are in forbearance. In a delinquent situation and based on the state of the mortgage, our association members may be asked to contact the borrower as part of their inspection of the property to ensure compliance with the investor/insurer guidelines (HUD, FNMA, FMHLC, VA). In some situations, they may provide a contact letter to bridge the communication gap. Whether it is because our members are direct providers of services who are local or because the initiation of a delinquency inspection or foreclosure notice resonates more than pre-foreclosure communications. Once foreclosure proceedings are commenced, many states have mandatory mediation procedures, which create yet another loss mitigation opportunity for borrowers. The foreclosure process plays an important role in the loss mitigation process, and the Bureau should allow the system to fulfill that role if all previous efforts by the servicers to contact those borrowers to date have failed.

Recommendation: Exclude all unresponsive borrowers from the Bureau's proposal. However, once a delinquent borrower makes contact, an automatic 90-day loss mitigation hold must be placed on that loan. If the borrower is, in good faith, attempting to obtain a positive loss mitigation result, another 90- day hold must be placed on the loan. All such borrowers are still subject to the proposed definition of "Financial Hardship" listed in recommendation 2.

Data Does Not Support Potential Surge of Foreclosures

The Bureau refers to the possibility of "millions of foreclosures" if the moratorium is not extended. However, the data contradicts those numbers. A recent report predicts 500,000- 700,000 foreclosures once the moratoriums end. Daren Blomquist, Chief Economist at Auction.com, predicts 1.1 million over two years post-moratorium. Dividing the 1.1 million over two years predicted by Auction.com would equal the historical average, not a "wave of foreclosures." Additionally, the Black Knight March Mortgage Monitor shows an improvement in mortgage payment and a record low number of delinquencies. This report also believes with the improving employment numbers that there could yet be further reduction in delinquencies. Finally, the MBA's 2021 Q1 report shows substantial improvement in delinquency, even when including mortgages in a forbearance, with the single largest decrease ever quarter over quarter. The suggested recommendations provide an appropriate safety net and will elongate foreclosure starts, eliminating any overwhelming number of foreclosures, which aligns with the intent of the Bureau.

Additionally, the housing market and home affordability could benefit as inventory will be created. People that do get foreclosed upon in most cases should be able to sell their home prior to the foreclosure sale. The sale in the current market may also result in their walking away with equity as RealtyTrac reports that 80% of homes have at least 20% equity. While not ideal, this is certainly a more viable strategy today than the 2008 Housing Crisis and does not mean that a foreclosure will result in homelessness.

ATTOM Data Solutions recently released a report showing that the average foreclosure timeline is significantly elevated (857 days) (https://www.attomdata.com/news/market-trends/foreclosures/attom-datasolutions-2020-year-end-u-s-foreclosure-market-report/). The fact is that delinquent borrowers will have ample opportunity to access the equity in their homes. Unlike the Great Recession, there will not be a "wave" of foreclosure sales, but instead an easing of the current housing market, providing most a perfect opportunity to move into something more affordable. Those that will not have such financial stability upon exiting are the homeowners that the Bureau can focus its full resources upon.

Constitutionality of Actions

NAMFS has had several conversations with other legal trade associations that believe that there may be questions on the constitutionality of the actions taken. As a point of reference, we would point to recent court decisions as it relates to the CDC Eviction Moratoriums.

NAMFS appreciates the Bureau's interest in receiving public comment. We thank the Bureau for consideration of our comments and recommendations.

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