No. 25-5887

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHERINE PALAZZO and PETER HACKINEN,
on their own behalf and on behalf of other similarly situated persons,

Plaintiffs-Appellants,

vs.

NATIONSTAR MORTGAGE LLC and
FEDERAL HOME LOAN MORTGAGE ASSOCIATION,

Defendants-Appellees.

On Appeal from the United States District Court for
the Western District of Washington
Case No. 2:24-cv-00444-BJR
Honorable Barbara J. Rothstein

Brief of *Amici Curiae* Mortgage Bankers Association and the Chamber of Commerce of the United States of America in Support of Appellees and Affirming the District Court Order

Sam Bragg, *Counsel of Record*
ALSTON & BIRD LLP
2200 Ross Ave., Ste. 2300
Dallas, TX 75201
Telephone: (214) 922-3400
sam.bragg@alston.com

Nanci Weissgold
ALSTON & BIRD LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Telephone: (202) 239-3300
nanci.weissgold@alston.com

David Boyer
ALSTON & BIRD LLP
One Atlantic Center, Ste. 4900
1201 West Peachtree Street
Atlanta, GA 30309
Telephone: 404-881-7000
david.boyer@alston.com

Counsel for the Mortgage Bankers Association and the Chamber of Commerce of the United States of America

Justin Wiseman
MORTGAGE BANKERS ASSOCIATION
1919 M. Street NW
Washington, DC 20036

Counsel for the Mortgage Bankers Association

Janet Galeria
Matthew P. Sappington
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062

Counsel for the Chamber of Commerce of the United States of America

CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1(a), a*mici curiae* Mortgage Bankers Association and the Chamber of Commerce of the United States of America each states that it is a non-profit corporation that has no parent corporation. No publicly held corporation owns 10% or more of the stock of the *amici*.

AUTHORITY TO FILE

Amici curiae file their brief with leave of Court under Federal Rule of Appellate Procedure 29(a)(3), as requested in the accompanying Motion for Leave to File.

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IDENTITY AND INTEREST OF *AMICI* AND COMPLIANCE WITH RULE 29[1]

The Mortgage Bankers Association (MBA) is a national association representing over 2,200 members of the real estate finance industry. For more information, visit https://www.mba.org/. MBA is interested in this case because the outcome will directly impact its members, the finance industry more broadly, and the consumers whom MBA serves.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no counsel for any party authored this brief in whole or in part, and that no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution to fund the preparation or submission of this brief.

INTRODUCTION

The Fair Debt Collection Practices Act (FDCPA) does not apply to consumers' choice to pay a fee in exchange for the expedited delivery of payoff statements—a service that mortgage servicers have long provided and that consumers expect and demand. Appellants and their *amici curiae* ask this Court to find otherwise based on two out-of-circuit cases. Those courts mistakenly found that convenience fees or "pay-to-pay" fees were impermissible under the FDCPA based on now-withdrawn guidance from the Consumer Financial Protection Bureau (CFPB). Applying those decisions would be legal error, contravene industry norms, and deprive consumers of their freedom to contract.

BACKGROUND

I. MORTGAGE SERVICERS OFFER EXPEDITED DELIVERY OF PAYOFF STATEMENTS TO MEET CONSUMER DEMAND.

Consumers can elect to pay mortgage servicers fees in exchange for ancillary services that are not related to debt collection. Such fees are recognized across the mortgage industry, including by government agencies. *See, e.g.*, Single Family Housing Policy Handbook 4000.1,

Appendix 3.0, Fair Housing Association (Nov. 26, 2025)[2] (permitting fees for "transmittal of payoff statement via facsimile"); Alternative Mortgage Servicing Compensation Discussion Paper (Sept. 27, 2011)[3] at 6 (noting mortgage servicers "are also entitled to certain ancillary fees," including "charges for issuing payoff statements"); 8-ER-1561–1563 (explaining that expedited service fees are consistent with mortgage industry standards).

One of those services is the expedited delivery of a payoff statement. Payoff statements reflect the amount a consumer would need to fully pay off their existing loan. That amount may include accrued interest and any outstanding fees or expenses related to the loan. It captures a specific amount at a specific point in time.

Consumers may request payoff statements for several reasons, including because they are selling a home or refinancing a mortgage. Although mortgage servicers are required to provide certain payoff statements within seven business days after receiving a written request

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[2] *Available at* https://www.hud.gov/sites/default/files/OCHCO/documents/40001-hsgh-Update-17.pdf.

[3] *Available at* https://www.fhfa.gov/document/alternative-mortgage-servicing-compensation-dp.

from the consumer, they are *not* legally required to deliver payoff statements on an expedited basis (*i.e.*, in fewer than seven days). Mortgage servicers nevertheless offer this ancillary, optional service—and its accompanying fee—because consumers expect and demand it. A seven-day wait can be inconvenient, so consumers are willing to pay a fee in exchange for a faster delivery—just like they could do in a variety of other contexts, ranging from the delivery of food to furniture and beyond.

To meet consumer demand, mortgage servicers invest significant resources into building out the systems and processes needed to deliver accurate, expedited payoff statements. 8-ER-1560–1561; 8-ER-1570. A mortgage servicer must account for the outstanding balance of a loan, accrued interest, any fees owed by the consumer in connection with the loan, and any refunds owed to the consumer. *Id.* The systems and processes that produce an expedited payoff statement must account for those factors and other complexities related to the loan, and the mortgage servicer must invest in the infrastructure necessary to deliver the statement on an accelerated timeline as requested by the consumer. *Id.*

II. CONSUMERS KNOWINGLY AND VOLUNTARILY PAY FOR EXPEDITED DELIVERY OF PAYOFF STATEMENTS.

Because of the costs of implementing these systems, mortgage servicers generally charge fees for providing expedited delivery of payoff statements. *See* 8-ER-1550; 8-ER-1565-1566. But in doing so, mortgage servicers make clear to consumers, including Appellants, the amount that they will be charged if they elect expedited delivery[4] and require that consumers consent to that fee.[5] As such, mortgage servicers provide payoff statements on an expedited basis only when consumers (1) affirmatively request expedited delivery; and (2) knowingly consent to the associated fees.

III. THE EXPEDITED DELIVERY OF PAYOFF STATEMENTS IS UNRELATED TO DEBT COLLECTION.

Mortgage servicers do *not* deliver payoff statements on an expedited basis as part of their debt-collection practices.[6] That is, a mortgage

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[4] *See* 8-ER-1621 (expedited-delivery fee was disclosed in writing); 11-ER-2325 (expedited-delivery fee was disclosed by interactive voice response).

[5] *See* 11-ER-2325 (expedited-delivery order required consent to fees); 8-ER-1568-1569.

[6] The instant case does not arise in the context of default servicing. *Amici*'s brief does not attempt to address the situation where a consumer requests an expedited payoff statement in the course of default servicing (e.g., to resolve an ongoing debt collection dispute).

servicer is not collecting or even attempting to collect a debt from a consumer when responding to the consumer's request for the expedited delivery of a payoff statement. Rather, the mortgage servicer is providing an ancillary service that is unrelated to collecting a debt.

Within the mortgage industry, it is understood that the expedited delivery of a payoff statement is not an attempt to collect a debt from a borrower. After all, it is the *consumer* who is affirmatively requesting information from the mortgage servicer when they ask for a payoff statement on an expedited basis, not the mortgage servicer affirmatively requesting or demanding payment from the consumer.

ARGUMENT

I. EXTENDING THE FDCPA TO EXPEDITED-DELIVERY FEES WOULD CHILL INNOVATION BY MORTGAGE SERVICERS AND DEPRIVE CONSUMERS OF THEIR FREEDOM TO CONTRACT.

Extending the FDCPA to expedited-delivery fees would take it beyond its statutory reach—the collection of debts. Doing so would not only run afoul of the FDCPA's text and distort the general statutory scheme outlined by Congress for the regulation of mortgage servicing but also would chill innovation in the mortgage-servicing industry and harm consumers. FDCPA Section 1692f(1) prohibits "unfair or unconscionable

means to collect or attempt to collect any debt," including collecting amounts "unless such amount is expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1). The FDCPA does not prohibit fees paid in exchange for the expedited delivery of a payoff statement for at least two reasons.

First, as discussed above, the delivery of a payoff statement on an expedited basis is *not* the collection or even the attempted collection of debt. Courts nationwide agree. *See* 1-ER-9–10; *see also Palazzo v. Bayview Loan Servicing LLC*, 2024 WL 4361857, at *11 (D. Md. Sept. 30, 2024) ("The 'animating purpose' of the payoff statement clearly was to provide Palazzo with information on his mortgage account, not to demand payment. The fact that Bayview sent this statement at Palazzo's request is yet another reason why the payoff statement is not an attempt to collect a debt."); *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011) ("The statements were merely a ministerial response to a debtor inquiry, rather than part of a strategy to make payment more likely.").

Rather, the delivery of a payoff statement on a faster-than-required timeline comes in response to the borrower's request for expedited

delivery. As a matter of first principles, then, a mortgage servicer charging a fee in exchange for delivering a payoff statement on an accelerated timeline cannot constitute the collection or attempted collection of debt. Accordingly, the FDCPA's bar on "unfair or unconscionable means to collect or attempt to collect any debt" does not apply. The Court does not need to go further.

Second, even if the FDCPA did apply here (it does not), charging a fee for expedited delivery would fall under the statutory exception allowing for fees "permitted by law"—which includes state contract law. *See* 15 U.S.C. § 1692f(1); *see also Cappellini v. Mellon Mortg. Co*, 991 F. Supp. 31, 39–40 (D. Mass. 1997) (forbidding mortgage servicer from charging a fee "would be an unreasonable interpretation of the contracts"); *Krause v. GE Capital Mortg. Servs.*, 314 Ill. App. Ct. 3d 376, 387 (Ill. App. 2000) (permitting fees for ancillary services). Indeed, the phrase "permitted by law" does not contain any explicit limitation on the nature or sources of law that apply. That lack of limitation stands in contrast to the other exception pursuant to which a mortgage servicer may collect debts: where such amounts are "expressly authorized by the agreement creating the debt." That Congress chose to use the "*expressly*

authorized" qualifier as it relates to the debt-creation agreement—but not as it relates to "permitted by law"—confirms that "permitted by law" is broad and, accordingly, includes state contract law.

That makes good sense because there is no serious dispute that both state common law and state statutes permit legally enforceable contracts. *See, e.g.*, *Little Mountain Ests. Tenants Ass'n v. Little Mountain Ests. MHC, LLC*, 236 P.3d 193, 195 n.3 (Wash. 2010); ("[T]he common law preserves citizens' freedom to contract"); *Nesbit v. Gov't Emps. Ins. Co.*, 854 A.2d 879, 885 (Md. 2004) ("As a general rule, parties are free to contract as they wish." (quotations omitted)). State law allows two parties—like a mortgage servicer and a borrower—to enter an agreement under which one party will provide a specified service in exchange for a specified price. The "permitted by law" exception in Section 1692f(1) affirms—rather than limits—the freedom of consumers and mortgage servicers to enter lawful, enforceable contracts under state law. To hold otherwise would harm mortgage servicers and consumers alike. Faced with the specter of FDCPA liability, mortgage servicers would be unwilling to offer additional, ancillary services even though consumers wanted them, thereby depriving consumers of choice in the marketplace.

In sum, the Court should hold that (1) Section 1692f(1)'s prohibition of "unfair or unconscionable means to collect or attempt to collect any debt" does not apply to the expedited-delivery fees at issue in this case and (2) even if it does, the expedited-delivery fees are "permitted by law"—and, accordingly, are permissible—under the FDCPA. That will protect consumers' freedom to contract; maintain existing, lawful industry norms; and preserve mortgage servicers' autonomy to develop innovative services in response to consumer demand.

II. EXPEDITED-DELIVERY FEES ARE FUNDAMENTALLY DIFFERENT FROM CONVENIENCE FEES.

Appellants would have the Court disregard the FDCPA's text and rule that expedited-delivery fees are illegal "junk fees." That position is, as explained, atextual. It also springs from two inapplicable cases that were wrongly decided in any event: *Alexander v. Carrington Mort. Servs., LLC*, 23 F.4th 370 (4th Cir. 2022) and *Glover v. Ocwen Loan Servicing*, LLC, 127 F.4th 1278 (11th Cir. 2025).

Appellants' reliance on *Alexander* and *Glover* is misplaced for at least two reasons. *First*, both decisions involved convenience fees or "pay-to-pay" fees related to facilitating the consumer's loan payments, which the Fourth and Eleventh Circuits held were prohibited by the FDCPA.

But the fees here—fees for expedited delivery of payoff statements—are fundamentally different from convenience or "pay-to-pay" fees.[7]

Convenience fees are charged in exchange for the option to pay monthly mortgage loan payments online or by phone. *See, e.g.*, *Glover*, 127 F.4th at 1290. Because they are a fee to allow for expedited payment, they are sometimes referred to as "pay-to-pay" fees. *Id.* at 1283. By contrast, expedited-delivery fees are *not* related to facilitating a consumer's loan payments. Rather, they are what mortgage servicers charge for an ancillary service requested by the consumer. The two types of fees simply are not the same, and neither *Alexander* nor *Glover* is applicable here.

Second, *Alexander* and *Glover* were wrongly decided in any event. Both courts misread the FDCPA in concluding the statute forbade borrowers from voluntarily agreeing to pay fees in exchange for the services at issue in those cases. In each case, the consumers entered separate contracts to pay convenience fees to facilitate their monthly loan

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[7] As the district court correctly determined, "the fees at issue in this case are not prohibited by the FDCPA . . . because the activity at issue is not a communication related to collecting a debt." 1-ER-11. As such, the fees are not "incidental to the principal obligation" under the FDCPA. 15 U.S.C. § 1692f(1).

payments. But *Alexander* and *Glover* both incorrectly held that state contract law was insufficient to establish that the fees were "permitted by law." *Alexander*, 23 F.4th at 379; *Glover*, 127 F.4th at 1293. Rather, they held that to be "permitted by law," the fees needed to be expressly permitted by state or federal statutory law. *Alexander*, 23 F.4th at 377–78; *Glover*, 127 F.4th at 1294.

Both courts also improperly relied on now-withdrawn guidance from the CFPB. *See Alexander*, 23 F.4th at 378; *Glover*, 127 F.4th at 1289. In *Alexander*, the court relied on CFPB guidance explaining that certain fees violated the FDCPA in states where the fees were not expressly permitted by law. 23 F.4th at 378 ("After enforcement authority shifted to the CFPB in 2010, it subsequently issued guidance that also required express permission."). Similarly, the *Glover* court relied on CFPB guidance finding that fees violated the FDCPA unless they were expressly authorized by law. *See* 127 F.4th at 1288 (citing Pay-to-Pay Fees, 87 Fed. Reg. 39733, 39734 & n.19 (July 5, 2022)).

To start, the *Alexander* and *Glover* courts' reliance on the CFPB guidance was misplaced because the CFPB read an atextual requirement into the "permitted by law" exception. The CFPB guidance provided that

to be "permitted by law," fees had to be expressly permitted by statutory language. That is not what the statute says. When interpreting statutory language, courts cannot rewrite or add to that language. *See, e.g.*, *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461 (2002) ("Our role is to interpret the language of the statute enacted by Congress."); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54, (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."); *United States v. Locke*, 471 U.S. 84, 95 (1985) ("[T]he fact that Congress might have acted with greater clarity or foresight does not give courts a *carte blanche* to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do").

In addition, to the extent *Alexander* or *Glover* placed special weight on the CFPB's guidance, that, too, was erroneous. After *Loper Bright*, of course, courts are not permitted to defer to an agency's interpretation of even ambiguous language, *see Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024), and the government's position is not entitled to *Skidmore* deference where, as here, it does not reflect a consistent and contemporaneous understanding of the statute's reach, *see Bittner v.*

United States, 598 U.S. 85, 97 n.5 (2023) ("[T]he persuasiveness of an agency's interpretation of the law may be undermined by its inconsistency 'with earlier [agency] pronouncements'" (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944))).

Since *Alexander* and *Glover* were decided, the CFPB has affirmatively withdrawn the guidance on which the Fourth and Eleventh Circuits relied. *See* Interpretive Rules, Policy Statements, and Advisory Opinions; Withdrawal, 90 Fed. Reg. 20084-01 (May 12, 2025). In fact, although the CFPB filed in the district court an *amicus* brief in support of Plaintiffs (Dkt. 49-1 at 10), it later moved to ***withdraw*** that brief (Dkt. 112 at 1). The CFPB explained the about-face: "Because the CFPB's amicus brief in this matter advances an interpretation that the CFPB has otherwise withdrawn, the CFPB believes it is appropriate to withdraw its amicus brief here." *Id.* at 2. The district court granted that motion in part and permitted the CFPB to withdraw its brief "to the extent the brief discusses the now-withdrawn advisory guidance as published in the Federal Register on May 12, 2025 (90 FR 20084-01)." Dkt. 117. The CFPB's withdrawal of this guidance—including its

withdrawal in this very case—calls into question the persuasiveness of that guidance in the first place. *See Bittner*, 598 U.S. at 97 n.5.

Alexander and *Glover* therefore are inapplicable and unreliable, and this Court should not extend their suspect rulings to the expedited-delivery fees at issue in this case.

III. THE COURT SHOULD NOT INTERPRET TILA AND RESPA TO PROHIBIT FEES FOR WHICH CONSUMERS VOLUNTARILY CONTRACT.

Appellants also twist the meaning of TILA and RESPA to restrain parties' freedom to contract for ancillary services. But TILA and RESPA unequivocally do *not* prohibit fees paid in exchange for ancillary services that occur *after* the consummation of a closed end mortgage loan—including the expedited delivery of a payoff statement. *See Evanto v. Fed. Nat'l Mortg. Ass'n*, 814 F.3d 1295, 1297 (11th Cir. 2016) (explaining that a TILA disclosure is "a document provided *before* the extension of credit that sets out the terms of the loan" (emphasis added)). Here, Appellants already had consummated their loans when they requested expedited delivery of payoff statements, so the services they contracted for were *post*-consummation.

Accordingly, neither TILA nor RESPA impose the heavy-handed restrictions on the freedom to contract that Appellants and their *amici curiae* advance. Consumers benefit by having the choice to order expedited payoff statements, and the mortgage-servicing industry has adapted and invested to accommodate consumer preferences. Appellants' reading of TILA and RESPA not only misinterprets the statutes, but also would restrict consumer choice and upend mortgage servicers' significant investments in innovation and corresponding infrastructure.

CONCLUSION

For these reasons, *amici* respectfully submit that the judgment below should be affirmed.

Dated: April 13, 2026

By: */s/Sam Bragg*

Sam Bragg
ALSTON & BIRD LLP
2200 Ross Ave., Ste. 2300
Dallas, TX 75201
Telephone: (214) 922-3400
sam.bragg@alston.com

Janet Galeria
Matthew P. Sappington
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062

Counsel for the Chamber of Commerce of the United States of America

Justin Wiseman
MORTGAGE BANKERS ASSOCIATION
1919 M. Street NW
Washington, DC 20036

Counsel for the Mortgage Bankers Association

Nanci Weissgold
ALSTON & BIRD LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Telephone: (202) 239-3300
nanci.weissgold@alston.com

David Boyer
ALSTON & BIRD LLP
One Atlantic Center, Ste. 4900
1201 West Peachtree Street
Atlanta, GA 30309
Telephone: 404-881-7000
david.boyer@alston.com

Counsel for the Mortgage Bankers Association and the Chamber of Commerce of the United States of America

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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