MORTGAGE BANKERS ASSOCIATION

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MARYLAND MORTGAGE BANKERS ASSOCIATION

March 16, 2015

Mr. Jedd Bellman
Assistant Commissioner, Enforcement and Compliance
Division of Financial Regulation
Department of Labor, Licensing and Regulation
500 North Calvert Street, Room 402
Baltimore, MD 21202
Jedd.Bellman@maryland.gov

Re: Notice of Proposed Action [15-071-P]

Dear Mr. Bellman:

The Mortgage Bankers Association (MBA)[1] and the Maryland MBA (MMBA)[2] appreciate the opportunity to comment on this regulation and the two week extension provided by your office. This is an important issue at both the national and state level as Maryland's proposed servicing transfer regulations will set a negative precedent at a time when there are ongoing efforts to create a unified consensus on the oversight of mortgage servicing transfers.

As an initial matter, the proposed regulation notes that "there is no corresponding federal standard" to this proposed action. However, to the extent that it attempts to address consumer facing concerns, this proposed regulation is generally duplicative of the obligations imposed on servicers by the Bureau of Consumer Financial Protection (CFPB) through its servicing transfer bulletins—which require reporting of data on

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 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 extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field.

[2] Founded in 1949, the Maryland Mortgage Bankers Association is an organization committed to helping its members conduct business and ensuring the continued strength of the real estate finance industry and mortgage lending field. We possess a steadfast dedication to promote ethical business practices and integrity-based lending. We continually strive to help our members provide superior financial loan services to residents of Maryland and expand homeownership statewide.

significant servicing transfers[3]—and the new CFPB Servicing Rule's requirements to maintain policies and procedures to ensure the timely and accurate transfer of data when transferring servicing. The CFPB's Bulletin, as well as their supervision and enforcement efforts, is particularly focused on loans being transferred while in the loss mitigation process, as is this proposed regulation.

It is also important to note that both Fannie Mae and Freddie Mac, under conservatorship of the Federal Housing Finance Agency (FHFA), have reporting requirements around servicing transfers in addition to the ability to block transfers. While these entities are not regulators, as guarantors they bear the greatest risks if a servicer failure occurs and are highly incentivized to pay close attention to servicing transfers. Indeed, both GSEs and their prudential regulator have announced they will roll out additional requirements in this space in 2015.[4]

Additionally, there are discussions ongoing at the Conference of State Bank Supervisors (CSBS) concerned with the possible operational risk posed to state licensed independent mortgage servicers by growth through servicing transfers. CSBS has consulted with stakeholders, including MBA, during this process, and we support this important and collaborative work of state regulators. We believe that this comprehensive process should be completed before Maryland imposes a separate reporting regime, which will serve as an incentive for other states to create divergent requirements that will ultimately add to consumer costs.

If this regulation proves to be burdensome and imposes significant costs or additional risk, it could have a negative impact on Maryland's consumers. It could also harm Maryland's credit-worthy middle class families that depend on the federal housing programs to take advantage of the market's historically low rates to buy or refinance a home. For example, loans made through the Veterans Administration to veterans are secured by securities through the Government National Mortgage Association (GNMA). So are Federal Housing Administration (FHA) loans that are traditionally utilized by first time homebuyers or those lower down the credit spectrum. One unique feature of a GNMA security pools is that they do not allow a transferor servicer to take loans out of the pool that is being moved but rather require that the entire pool be transferred.

Thus, a buyer would not be able to isolate their Maryland regulatory risk by only acquiring loans from other states. FHA and VA lenders would be forced to evaluate their appetite for making, acquiring or servicing these loans in the first place since they would be unable to create a special process for transferring their Maryland loans.

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[3] "As part of its efforts to focus supervisory attention on the topics described above, the CFPB will, in appropriate cases, require servicers engaged in significant servicing transfers to prepare and submit written plans to the CFPB detailing how they will manage the associated consumer risks. The CFPB will use these plans to assess consumer risk and inform further examination planning. Servicers do not need approval from the CFPB before moving forward with servicing transfers unless specifically required to do so (e.g., by a consent order)." 79 FR 205 63299. (Accessible here: http://www.gpo.gov/fdsys/pkg/FR-2014-10-23/pdf/2014-24194.pdf.)

[4] FHFA released capital and liquidity standards for comment that are available here: http://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Proposed-Minimum-Financial-Requirements-for-Enterprise-Seller-Servicers.aspx. Operational requirements are also likely forthcoming.

Finally, the right to service a mortgage is a valuable piece of the mortgage transaction and requires a deep and liquid servicing market. It is a key revenue driver in mortgage banking and serves as a natural hedge to cyclical mortgage production income. For many independent mortgage bankers, MSRs are the major asset on their balance sheet and ensure that servicing independent mortgage banks have "skin in the game." For banks and credit unions, the servicing relationship provides an important source of additional financial product sales. Regulation that devalues this asset or makes it more difficult to transfer will impact the entire mortgage value chain, with the effects eventually being felt by the consumer through increased costs at origination.

Technical Comments:

MBA and MMBA believe that a simple notice framework as part of a centralized reporting mechanism could give states the operational regulatory insight they are seeking without forcing servicers to adhere to a balkanized landscape of different reporting requirements. We believe that the proposed Maryland standard introduces interesting concepts as part of the efforts to achieve a multi-state consensus and offer the following technical comments on the proposed regulation in that spirit:

- MBA and MMBA note that the one of the notice requirements is conclusory, assuming that a servicer will have to add staff in response to a servicing transfer by requiring a servicer to report "the total number of additional staff that has been or will be hired in order to service the transferred loans." We believe that this is an unfair assumption given that the reporting threshold covers both non-performing and performing loan transfers and is not high enough to assume that this will be the case in every servicing transfer. We suggest that this provision be removed, or in the alternative, the regulation instead require a servicer to estimate the additional staff it will hire in response to the servicing transfer only if it is planning to do so.

- The 60 day reporting window does not allow for precise reporting and will lead to reporting of inaccurate data. The population of loans being transferred during a bulk transfer is subject to change throughout the period before the transfer date due to loans paying off, failing due diligence or being stricken from the loan population by the transferee servicer. We would suggest that regulation be amended to generally require notification prior to the transfer. Barring this change, we would respectfully suggest that the rule be amended to require notice 15 days prior to the transfer date. This is the date required by RESPA for the servicer "goodbye letters" and there is generally a more reliable and known loan population at this point.

- The regulation introduces a data collection burden and raises privacy questions through its request for Maryland borrowers' FICO scores. As an initial matter, a FICO score is often not on the servicing system and can be difficult to find and report 60 days ahead of time. It is also not apparent what the provision of this private personal information would add to the regulation. The proposal already requires reporting of multiple delinquency metrics which would indicate the default servicing population and general information that would indicate the size of proposed transfer. Thus, the rule exposes private information about the borrower to risk of a security breach with little benefit back to the regulator.

- There are significant questions about how this regulation defines certain terms. These concerns are particularly acute given that these terms will be inserted into the section that applies to all Maryland Mortgage Lender regulation.

    - MBA and MMBA note that the Maryland Bankers Association raised issues in their March 4, 2015 letter on this regulation with how "loan modification" and "loss mitigation option" are defined. We share their concerns and urges that their suggestions be adopted.

    - In addition to layering a reporting burden on servicers that are licensed in Maryland, this regulation could have a significant and unexpected impact on other businesses and organizations that operate here. The proposed bill defines "mortgage servicing right" in Maryland's regulations going forward by linking it to the activities that define a "mortgage servicer." This is inconsistent with common usage of the term "mortgage servicing right" or "MSR" and longstanding industry understanding of the term.[5] Consequently, it could be read to capture businesses that are not mortgage servicers.

      For instance, this regulation appears to cover those that take action to secure the property under its definition of "mortgage servicer." Many servicers use vendors to perform these property preservation functions and thus a change of property preservation vendors would appear to be a change in servicer for the purpose of this regulation. It also appears that a change in insurance tracking vendors would be captured by this definition.

      While the proposal may exclude these from the reporting burdens,[6] we believe these revisions to Maryland's general mortgage lending regulations will stretch the definition of mortgage servicer beyond the common understanding of the term. A mortgage servicer or subservicer, for these purposes, is the entity required to collect payments and remit them to the appropriate party. MBA urges that proposed section (26)(d)

[5]Put simply, the mortgage servicing right is a contractual agreement where the right, or rights, to service an existing mortgage are sold to a party to collect mortgage payments monthly, set aside taxes and insurance premiums in escrow if necessary and forward interest and principal to the investor in exchange for a fee or other compensation.

[6] The regulation specifically imposes the reporting requirements on defined "transferee" and "transferor" servicers and limits these to "licensed mortgage servicers." Given that property preservation or other vendors would presumably not be currently licensed as mortgage servicers, they would not be required to report. If this understanding is incorrect, MBA would urge that the definition is clarified to ensure that the reporting burden is limited to those that transfer servicing and actually collect and remit payments.

be removed and that this definition be further modified to reflect the business understanding of the role and functions of a "mortgage servicer" and re-proposed to allow for comment.

Conclusion:

MBA and MMBA appreciate the extension provided and opportunity to offer comments on this regulation. While we understand and respect the concerns motivating this effort, we believe that a multi-state consensus servicing transfer solution will provide the most efficient result for businesses while retaining the ability of state regulators to supervise the financial condition of their servicer licensees. This proposed standard, with some technical corrections, offers conceptual building blocks that should be part of the ongoing discussions with the Conference of State Bank Supervisors. However, if the Division proceeds, we request a that there be a substantial implementation period to allow the industry adequate time to develop appropriate internal policies and procedures, as well as time to perform necessary programming and systems changes.

Please feel free to contact Justin Wiseman, Director of Loan Administration Policy at (202) 557-2854 or jwiseman@mba.org or William Kooper, Associate Vice President of State Government Affairs and Industry Relations at (202) 557-2737 or wkoooper@mba.org with any questions you may have.

Respectfully,

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