February 7, 2025

Ms. Amy Hennen
Acting Assistant Commissioner for Policy
Office of Financial Regulation
1100 Eutaw St. Ste. 611
Baltimore, MD 21201
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Re: Proposed Changes to Maryland Regulations .02 and .04 Under COMAR 09.03.06 Mortgage Lenders

Dear Assistant Secretary Hennen,

The Structured Finance Association (SFA),[i] the Maryland Mortgage Bankers and Brokers Association (MMBBA),[ii] the Mortgage Bankers Association of Metropolitan Washington,[iii] the national Mortgage Bankers Association (MBA),[iv] the Housing Policy Council,[v] the American Fintech Council,[vi] and SIFMA[vii] appreciate the opportunity to comment on the emergency amendments to Maryland Regulations .02 and .04 under COMAR 09.03.06 (the "**Regulations**"). In concert with the Regulations, the Office of Financial Regulation (OFR) issued industry guidance (the "**Guidance**")[1] explaining its intent to implement the OFRs understanding of the holding in *Estate of Brown v. Ward*, 261 Md. App. 385, 396 (2024) decided by the Appellate Court of Maryland.[2]

I. Executive Summary

We thank the OFR for its consideration of our comments and recommendations and welcome the opportunity to discuss the points outlined below.

The plain language of the Mortgage Lender Law ("**MLL**") and the Installment Loan Law ("**ILL**") do not apply to assignees. Prior to the Guidance, the licensing requirements of both the ILL and the MLL was applied by the OFR exclusively to original creditors and primary market participants,

[1] https://www.labor.maryland.gov/finance/advisories/advisory-ind-licensingreqsmorttrustsemergreg25.pdf.

[2] https://www.courts.state.md.us/data/opinions/cosa/2024/1009s23.pdf.

such as brokers, lenders, and servicers. The OFR did not require secondary mortgage market purchasers of loans, trusts, and other securitization vehicles to obtain licenses in Maryland. However, the Guidance would appear to require licensing for all subsequent assignees, including whole loan purchasers, trusts and other special purpose entities, absent an exemption.

The OFR's interpretation of the *Estate of Brown* opinion, as set forth in the Guidance, expands the scope of these statutes in a manner not contemplated by the Maryland legislature. The *Estate of Brown* decision addressed home equity lines of credit that were specifically made pursuant to Maryland's Credit Grantor Revolving Credit Provisions ("**OPEC**"). Relying on dicta, the OFR issued Guidance, based on its expansive interpretation of *Estate of Brown*, that subjects all assignees of residential mortgage loans to licensure under the MLL or the ILL, unless exempt.

The OFR's interpretation is an abrupt departure from how Maryland has historically regulated secondary market assignees of residential mortgage loans. The *de facto* retroactive effect of the OFR's implementation of the Guidance and emergency Regulations is antithetical to the normal procedures regarding changes in policy and law, and the approach deprives the secondary market the advance notice and time it needs to obtain the requisite licenses. In almost all instances, a state legislature enacts a licensing requirement ***with a prospective effective date***, which in some instances would be implemented by a state agency such as the OFR after giving the impacted parties ample time to obtain licensure. While the OFR has suspended enforcement of the Regulations until April 10, 2025, the Regulations apply to impacted entities as of January 10, 2025. Therefore, other Maryland regulators, the Maryland Attorney General, and private plaintiffs could seek to enforce the Guidance prior to April 10th, leaving unlicensed holders of Maryland residential mortgage loans in a precarious limbo.

Some sectors of the secondary market have responded by excluding Maryland loans from whole-loan bulk purchases and residential mortgage-backed securities transactions, with some investors declining to purchase securities with any Maryland loans in the collateral pool, and the situation could begin to impact the availability of credit to Maryland consumers if, as feared, originators cease making certain residential mortgage loans in Maryland because of the lack of available investors. This licensing requirement creates a logistical nightmare for the secondary market, especially securitization trusts, and unless the OFR's Regulations and Guidance are withdrawn, it could adversely impact the availability of credit to Maryland consumers.

In the absence of a legislative mandate, the OFR appears to have significantly expanded the holding of the intermediate Maryland appellate court without any support from existing Maryland statutes, without full consideration of if and how currently existing entities could comply, without any input from impacted stakeholders and policymakers, and without providing any prior notice. We respectfully urge the OFR to withdraw its Guidance and Regulations to reevaluate and avoid the growing peril to the Maryland residential mortgage market. If the OFR is unwilling to accept this recommendation, it should delay this rulemaking's implementation date by at least a year to allow time to permit the legislature and stakeholders a sufficient opportunity to analyze the impact of the Guidelines and determine alternative solutions.

II. Comments and Recommendations

a. The MLL and ILL Do Not Apply to Assignees

We respectfully submit that the OFR cannot by regulatory fiat create a licensing mandate that is not supported by Maryland's statutes. The MLL only requires a license for a "mortgage lender" which is defined as any person who: (1) is a mortgage broker; (2) makes a mortgage loan to any person; or (3) is a mortgage servicer. Md. Code, FI § 11- 501(k)(1). Similarly, the ILL is confined to the maker of installment loans and brokers and does not apply to assignees. Md. Code Ann., Fin. Inst. § 11-303. An assignee of a loan is not included in the definition of a lender. Stated differently, a regulator's interpretation of a statute is legally erroneous where the "interpretation is inconsistent with the plain and unambiguous language of the statute." *Comptroller of Md. v. FC-GEN Operations Invs. LLC*, 482 Md. 343, 379 (2022); *Md. Small MS4 Coal. v. Md. Dep't of the Env't*, 479 Md. 1 (Md. App. 2022). The plain language of the MLL and the ILL prevent the OFR from issuing any guidance or regulations which would seek to regulate assignees. As discussed below, the Appellate Court of Maryland's ruling in the *Estate of Brown* case is premised on the licensing requirement of CL § 12-915 and does not support the unduly expansive interpretation put forth by the OFR. An agency cannot issue an interpretation if an interpretive rule's alleged "clarification" of a rule is in fact creating a new obligation on a regulated party that would otherwise not exist. *Md. Dep't of the Env't v. Cty. Comm'rs*, 465 Md. 169, 287; (2019) (Getty, J., dissenting) (it is improper to "permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation") (quoting *Kisor v. Wilkie*, 588 U.S. 558, 575, 139 S. Ct. 2400, 2415 (2019)).

b. The *Estate of Brown* Case Does Not Require the Sweeping Changes Reflected by the OFR's Guidance and Regulations

While the court in the *Estate of Brown* case discusses the common law rule that an assignee steps into the shoes of a creditor, that additional analysis is *dicta*, and not part of the holding of the case. The court discussed and quoted *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 153 (2021), which stated, "the assignee of a mortgage loan generally has the same rights and responsibilities as its assignor …." *Estate of Brown v. Ward*, 261 Md. App. 385, 416-17 (2024) (quoting *Nationstar Mortg. LLC v. Kemp*, 476 Md. at 174). This rationale is used to, for the first time, expand the licensing requirement found in OPEC to apply it to assignees and does not stand for the proposition that assignees must be licensed under the MLL or the ILL generally. As previously noted, the plain language of the MLL and the ILL precludes this interpretation.

The *Estate of Brown* case involved a HELOC, which further included a specific election in the note stating that "This loan is made under Subtitle 9, Credit Grantor Revolving Credit Provisions of Title 12 of the Commercial Law Article of the Annotated Code of Maryland." *Estate of Brown v. Ward*, 261 Md. App. 385, 397 (2024). The court reviewed the licensing requirement of OPEC, which states, "[a] credit grantor making a loan or extension of credit under this subtitle is subject to the licensing, investigatory, enforcement and penalty provisions of [the ILL] … [and/or] … [the MLL]." Md. Code Ann., Com. Law § 12-915; *Estate of Brown*, 261 Md. App. at 412-13. The appellate court of Maryland held that the licensing requirement contained in OPEC applied to assignees of revolving credit plans. *Estate of Brown*, 261 Md. App. at 422.

The court's holding is limited to an interpretation of OPEC, and specifically, the licensing requirement of CL 12-915. Indeed, in rejecting various arguments raised by the appellees, the court expressly stated that it was of no import that the MLL does not impose an independent licensing obligation on an assignee because the "licensing argument is founded **entirely** on the Credit Grantor Revolving Credit Provisions subtitle. Specifically, [the argument] **relies on CL § 12-915 as the source of the licensing obligation**." *Id.* at 422 (emphasis added). While this analysis is itself wrong – nothing in the OPEC statute actually imposes this purported assignee licensing obligation – even under its logic there is no basis to extending it more broadly to mortgage loans. The court acknowledged that, without CL § 12-915, a trust would not need a license and stated, "[t]he conclusion that a trust merely owning a defaulted mortgage loan is not a 'mortgage lender' within the meaning of [the MLL] does not answer the question of whether a trust might be subject to the licensing requirements imposed on a 'credit grantor' by a different statute." *Id.* at 422. Thus, requiring a license for assignees under the MLL, independent of a licensing requirement under CL § 12-915 is contradictory to the holding of the case. We respectfully submit that OFR's interpretation goes beyond the decision in *Estate of Brown* and exceeds the statutory authorities granted by the legislature. As such, OFR should withdraw the Guidance and Regulations and work with stakeholders to address the issues that prompted the Department to issue them.

If OFR decides to issue revised guidance and regulations, it should confine its interpretation to the holding of the *Estate of Brown* case: loans which make an election to be governed by OPEC. In order for a loan to be subject to OPEC, the lender ordinarily makes a written election to do so in the agreement, note, or other evidence of the extension of credit. *See* Md. Code Ann., Com. Law § 12-913. As the facts of *Estate of Brown* demonstrate, the HELOC at issue contained such an election, which read, "This loan is made under Subtitle 9, Credit Grantor Revolving Credit Provisions of Title 12 of the Commercial Law Article of the Annotated Code of Maryland." Thus, under the plain reading of the case, only loans which make an OPEC election, via a statement in the note, would be subject to the holding of the case.

The precedential value of the *Estate of Brown* case is further limited because the appellees "d[id] not argue that [the trust] qualifies for any of the express exemptions set forth in [the Credit Grantor] subtitle or in the related provisions of the Financial Institutions Article." *Estate of Brown*, 261 Md. App. at 415. As a result, the OFR can provide clarity and assurances that trusts and other secondary market participants are not within the scope of the holding. For example, the Maryland Mortgage Lender Law exempts "[a]ny bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of this State or the United States or any other-state bank having a branch in this State" Md. Code Ann., Fin. Inst. § 11-502(b)(1). Such exemption also applies to subsidiaries and affiliates of exempt institutions. *Id.* A trust, which generally has a federally chartered depository institution trustee, which acts on behalf of the trust that holds the loans, should be considered within the scope of the exemption. Illustrating this, on January 31, 2025, OFR issued similar guidance stating that "trusts created by [exempt] corporate instrumentalities of the Government of the United States are themselves corporate instrumentalities … and therefore are not subject to licensure by OFR."[3] There is no reason OFR cannot issue further supplemental guidance to provide assurances that other secondary market participants are within the scope of these various exemptions. In considering exemptions, the role of federal preemption is paramount. For example, in *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007), the Supreme Court of the United States noted the state licensing and registration requirements at issue in that case expressly exempted national banks from their application. As the Supreme Court explained, that exemption for national banks was "not simply a matter of the [state] legislature's grace…. For, as the parties recognize, the [National Bank Act] would have preemptive force, *i.e.*, it would spare a national bank from state controls of the kind here involved." *See also* OCC Interpretive Letter 1167. We respectfully submit that the OFR lacks the authority to require national bank trustees to act as qualifying individuals related to the licensing of trusts. The Regulations attempting to establish as much are preempted and warrant reconsideration.

c. The Retroactive Effect of the Guidance and Regulations Is Improper

"[A]dministrative agencies do not possess unfettered discretion to issue policies through whatever procedure they choose. [The Maryland Supreme Court has] noted repeatedly that an

[3] https://www.labor.maryland.gov/finance/advisories/advisory-ind-licensereqmorttrustcorpinst.pdf.

administrative agency's discretion should be limited where it (1) changes existing law, (2) applies new standards retroactively, or (3) creates rules of widespread application." *Balt. City Bd. of Sch. Comm'rs v. City Neighbors Charter Sch.*, 400 Md. 324, 360-61 (2007) (Raker, J., dissenting); *see also CBS, Inc. v. Comptroller of Treasury*, 319 Md. 687, 695 (1990) ("rulemaking … procedure[s] add[] an aspect of fairness when an agency intends to make a change in existing law or rule. That fairness is produced by prospective operation of a new rule and by the public notice, public hearing, and public comment processes that accompany rulemaking").

We respectfully submit that the manner in which the OFR promulgated the Guidance and Regulations is highly problematic and exposes the secondary market to the risk of costly litigation and potential unwarranted liability as well as obstacles to exercising its remedies in connection with the Maryland loans that are currently held. While the OFR stayed the enforcement of the Guidance and the Regulations until April 10, 2025, the Guidance and Regulations took effect immediately upon their release on January 10, 2025, which does not give entities the requisite time to obtain the mandated licenses. Consequently, purchasers and assignees of Maryland residential mortgage loans, including passive trusts in residential mortgage-backed securities – which have up to this point not been required to be licensed in Maryland – are facing great uncertainty with respect to their obligations in light of the newly mandated licensing requirement. This is especially true if the Guidance is meant to apply retroactively to all loans purchased prior to the announcement. While the OFR has paused enforcement, that stay does not prevent other Maryland regulators, the Attorney General's office, or courts from taking actions that could impair existing pools of Maryland loans held in the secondary market. Allowing the Guidance and Regulations to remain in effect under these circumstances creates too much uncertainty and deprives secondary market holders of due process.

d. Both Originators and Secondary Market Participants Will Withdraw from the Maryland Market and Mortgage Loans Will Become More Expensive for Maryland Residents.

We are also deeply concerned about the impact of the Guidance and Regulations on the cost and availability of certain forms of residential mortgage credit in Maryland. Our organizations have received credible reports from our members regarding industry participants reducing or suspending their purchases of Maryland loans and excluding them from bulk loan purchases and securitizations, as well as investors declining to purchase securities backed by even one Maryland loan. We have heard that certain originators are no longer making Maryland loans.[4] Consequently, due to the reduced liquidity for Maryland loans in the secondary market, we expect some Maryland consumers to incur higher borrowing costs when they purchase homes or refinance existing loans. Further, there are indications that key secondary market arbiters are alarmed by the OFR's Guidance. For example, on January 16, 2025, the rating agency KBRA released a statement indicating that the OFR's actions could pose a roadblock to securitization and expressed concern about the new licensing requirement for passive trusts. KBRA noted, in relevant part, that "a literal reading [of the Guidance] could impair the viability of securitization financing for Maryland loans." In short, borrowers in Maryland will lose access to several sources of consumer credit and the remaining available consumer credit will be priced at a premium.

We acknowledge the OFR's January 31, 2025 "Supplemental Guidance for Mortgage Trusts Made by Corporate Instrumentalities" which reaffirms that Fannie Mae, Freddie Mac, and Ginnie

[4] *See* Inside Mortgage Finance, PHH Pauses Non-Agency Mortgage Originations in Maryland, February 7, 2025 *available at* https://www.insidemortgagefinance.com/articles/233368-phh-pauses-non-agency-mortgage-originations-in-maryland?v=preview

Mae and their trusts are not subject to licensure by the OFR. However, this supplemental guidance is unhelpful to the secondary market because, unless exempt, secondary market purchasers of Maryland mortgage loans who sell loans to Fannie Mae and Freddie Mac and include Maryland mortgage loans in RMBS transactions issued or guaranteed by Fannie Mae, Freddie Mac, and Ginnie Mae must still be licensed—and would be in breach of their representations and warranties to these entities, and be in violation of their seller/servicer contracts, in the absence of such license. Additionally, in an updated release issued on February 3, 2025, KBRA acknowledged the OFR's January 31, 2025 supplemental guidance, but expressed concern, indicating that "[t]he specific exclusion of non-Agency loan programs from the January 31 release is concerning, and a literal reading could impair the viability of securitization financing for Maryland loans in the non-Agency markets. Some market participants have discussed whether the rule applies to common law trusts or to statutory trusts, and whether federal preemption considerations for trustees subject to Office of the Comptroller of the Currency (OCC) oversight apply. The outcomes remain uncertain."

e. Risks to Maryland Consumers Are Not Just Theoretical

We respectfully submit that, unless the OFR adopts the recommendations in this letter, Maryland consumers could pay more for their loans or face the specter of losing access to some forms of credit altogether. The enactment of the Georgia Fair Lending Act (GFLA), O.C.G.A. §7-6A-1 *et seq.*, passed on April 22, 2002, and effective on October 1, 2002, is instructive because the unintended effect of the statute was the complete freezing of residential credit markets in Georgia. As originally enacted, the GFLA placed restrictions and prohibitions on three distinct categories of loans, namely, "home loans," "covered home loans," and "high-cost loans." Importantly, the GFLA originally defined "creditor" to include purchasers, assignees and servicers, meaning such down-stream or secondary mortgage market participants were subject to the GFLA. GFLA was plagued with ambiguities that created uncertainties for the secondary market, especially for RMBS transactions. In January 2003, the credit rating agency Standard & Poor's ("S&P") announced it would stop rating mortgage-backed securities in Georgia because of the uncertainty surrounding potential liability under the act. S&P's decision extended to securitizations of virtually all loans in that state. The two other major credit rating agencies, Moody's and Fitch also declared that the law would limit their ability to rate mortgage-backed securities in Georgia. Shortly thereafter, most mortgage lenders announced that they would stop doing business in Georgia due, in large part, to their inability to include Georgia loans in RMBS transactions. As a result, virtually the entire secondary market withdrew from Georgia until the legislation was amended with important clarifications.[5] Once the amended GFLA took effect on March 6, 2003, mortgage lending recommenced in Georgia. The amended GFLA did not have retroactive effect to the original October 1, 2002, implementation date, and for years loans originated under the original statutes (*i.e.*, October 1, 2002 through March 5, 2003) were considered unsalable in the secondary market.

The GFLA sent shockwaves through the mortgage industry, from rating agencies to purchasers and lenders. So too here, OFR's Guidance calls into question not just assignee liability, but the very enforceability of loans held by trusts who have never been required to have a license. As KBRA's letters indicate, the secondary market remains skeptical as to the viability of Maryland loans, even after OFR's supplemental January 31 guidance. Without adequate assurances, the uncertainty regarding the ability to rate Maryland loans and the reluctance of investors to purchase

[5] *See* Inside Mortgage Finance, GSEs Also Appear to Have Withdrawn From Georgia, March 3, 2003 *available at* https://www.insidemortgagefinance.com/articles/171641-gses-also-appear-to-have-withdrawn-from-georgia?v=preview. *See also* GAO report number GAO-04-280 at 86, https://www.gao.gov/assets/gao-04-280.pdf.

loans will in turn decrease the availability of credit in the market, which will in turn drive up costs to consumers because lenders will attempt to recoup their costs through various measures, including raising interest rates on their loans.[6]

f. The Regulations Do Not Adequately Address the Impracticality of Licensing

The Regulations make three amendments to the existing regulations for Mortgage Lenders:

1. Defines a "passive trust" as a trust that: (i) acquires mortgage loans that are serviced by others; (ii) does not make mortgage loans; (iii) is not a mortgage broker or mortgage servicer; (iv) receives all periodic mortgage loan payments through a mortgage servicer; and (v) is not engaged in the day-to-day servicing of mortgage loans.
2. Updates the definition of a "principal officer" for licensing purposes for passive trusts to include either: (i) the trustee; or (ii) if the trustee is not a natural person, a person who would be deemed a principal officer of the trustee.
3. Simplifies the net worth requirement for licensing purposes so that a passive trust whose only assets will be mortgage loans which it does not yet hold will be deemed to satisfy the net worth requirement at the time of application if the passive trust provides evidence that it holds or will hold sufficient assets to satisfy the net worth requirement within 90 days of licensure.

Despite the changes made by the OFR in the Regulations to provide a mechanism to license passive trusts, it is not feasible for such entities to become licensed in Maryland. It is simply not possible for passive trusts, which have no dedicated employees or net worth, to comply with the extensive list of licensing requirements imposed by the Regulations. Passive trusts do not employ a "principal officer" let alone a person with three years of experience in the mortgage lending business. Bank trustees and their officers do not customarily participate in the state licensing process on behalf of their clients. Trusts are often created only a few weeks before the closing of a securitization and, even if a rapid license approval process were possible, the trusts would not be able to provide the multitude of documents required for licensing such as audited financial statements, policies and procedures, sample documents, a surety bond, and other documentation that would not exist for a passive vehicle with no assets, employees, or business presence. Further, for existing trusts that hold Maryland loans, the governing trust documents cannot be easily amended to retroactively license the trust, and the sheer number of such trusts make any effort to do so impractical. To avoid these complications, industry participants may choose to simply exclude Maryland loans from future securitizations.

Retroactive Application of OFR's Proposal Appears Infeasible: An initial estimate from vendor data shows that there are at least 9,000 existing securitization trusts with loans from Maryland. Even if some trusts are exempt under OFR's supplemental guidance, the estimate does not include the number of individual entities that hold mortgage loans as investments, which could number in the hundreds or more. As a general matter, securitization trusts are designed to be static vehicles and generally are not equipped to do things such as retroactive licensing. The duties of a securitization trustee are typically spelled out specifically in the trust's organizing documents, and trustees generally cannot act outside the bounds of those documents without specific direction from noteholders and indemnification rights, among other things. Entities have

[6] *See* Zvi Bodie e*t al.*, Investments, 16 (McGraw-Hill 8th ed. 2009) (the ability to sell loans increases credit availability). *See also* Office of the Comptroller of the Currency, Comptroller's Handbook: Mortgage Banking, 12 (Feb. 2014), *available at* https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/chmortgage-banking.pdf.

also raised concern about the capacity of Maryland authorities to license such a large number of entities in a short timeframe. As a practical matter, the licensing of as many as 9,000 new entities under a novel licensing requirement presents tremendous operational challenges for the Conference of State Bank Supervisors (CSBS). As the organization with ownership of the Nationwide Multistate Licensing System (NMLS), the sudden nature of the OFR's guidance, even with a delayed compliance date, will require CSBS to ramp up operations and prepare staff to process this large volume increase. Public facing instructions and other materials such as procedures and frequently asked questions will also be needed. At this stage of implementation, a review of the Maryland pages of NMLS.org offers no specific information on how trusts are to comply with OFR's guidance,[7] even though OFR directed entities to contact the NMLS for assistance with licensing. CSBS must be part of any process to scale up licensing requirements.

Forward Application is Also Challenging: The Regulations require any assignee of Maryland mortgage loans to become licensed, absent an exemption. However, in the securitization process, loans may pass through multiple entities – sometimes for very short periods of time – before it becomes owned by the securitization trust. For example, a securitization "depositor" may only hold a loan for moments, as it is a legal entity set up to convey loans from originators into a securitization trust. This would not only increase the burden on secondary market participants but also on the state of Maryland.

It is unlikely that OFR has adequate staffing to process the multitude of applications that would need to be approved by April 10, 2025. Such a large change in licensing process typically calls for a delay in effective date for two years or more, not mere months. *See, e.g.*, 2020 Cal ALS 163; 2020 Cal SB 908; 2020 Cal Stats. ch. 163 (passing the California Debt Collection Act in 2020 but allowing a two-year period for applications such that the law was not operative until January 1, 2022).

g. Additional Time is Needed to Allow Policymaker Input

In order to avoid the negative consequences discussed above, that could result from the January 10 effective date of the Guidance, and given the fact that there is no legislative mandate from existing Maryland statutes to license the secondary market, we respectfully submit that the OFR should withdraw or, at minimum, pause the effective date of the Guidance and Regulations and allow the legislature to analyze the impact of the OFR's actions and devise reasonable legislative alternatives. We understand there may be a legislative alternative to the *Estate of Brown* decision and the Guidance and Regulations. In the interim, we urge the OFR to consider withdrawing or postponing the effective date of the Guidance and Regulations.

h. Licensing of Passive Trusts Does Not Enhance Consumer Protection

The licensing of passive trusts does not enhance consumer protections while placing substantial, if not insurmountable, burdens on the secondary market. In fact, as described below, passive trusts have no dedicated employees, are not capitalized, and in the case of common law trusts, which are often used in RMBS transactions, are not even considered stand-alone entities. The licensing of passive trusts achieves no marketplace benefits, and adding an extra level of oversight and supervision to these entities is unnecessary. The OFR exercises sufficient oversight over the residential mortgage industry in Maryland. The OFR licenses mortgage originators, brokers, mortgage loan originators, and servicers. Additionally, FHA, VA, Ginnie Mae, the GSEs, and warehouse lenders all exercise regular counterparty oversight, established minimum financial

[7] https://mortgage.nationwidelicensingsystem.org/slr/SitePages/DynamicLicenses.aspx?StateID=MD.

standards, and require regular financial reporting. Licensing of trusts does not suddenly close a perceived gap in this vast oversight regime and offers no additional consumer protections. Thus, OFR can withdraw its Guidance and the Regulations without jeopardizing Maryland borrowers.

All parties substantially involved in the mortgage lending business, and particularly those who interact with consumers, are licensed, either as originators, brokers, or servicers under the MLL. Md. Code Ann., Fin. Inst. § 11-501(k)(1). OFR already heavily regulates purchasers of mortgage servicing rights, *see* Md. Code Regs. 09.03.06.02(31)(b)(ii); 09.03.06.27, thus reaching those secondary market participants for which oversight may be needed. No additional benefit exists to the unnecessary burden of regulating and licensing the largely passive entities that purchase and securitize mortgage loans on the secondary market. This conclusion is settled law in Maryland. In a remarkably similar matter, reviewing whether foreign statutory trusts should obtain a license under Maryland's Collection Agency Licensing Act ("MCALA"), the Maryland Supreme Court outright rejected the notion and stated, "the foreign statutory trusts that own the mortgage loans in the cases *sub judice* do not have any employees or offices, do not have any registered agent, and do not have any specifically identified pursuit in the State of Maryland…. Therefore, it would be hard for this Court in the first instance to conclude that the foreign statutory trusts engage, either directly or indirectly, in the business of a collection agency when it is hard to deduce if these entities are even conducting 'business' …." *Blackstone v. Sharma*, 461 Md. 87, 118 (2018).

III. Conclusion

We respectfully submit that OFR's Guidance and Regulations erroneously expand the holding of the *Estate of Brown* case beyond loans that make an OPEC election—and create a retroactive licensing requirement for purchasers and assignees of residential mortgage loans that is not supported by existing Maryland statutory law. We urge the OFR to withdraw the Guidance and Regulations and allow policymakers and stakeholders an opportunity to resolve the issue starting with Maryland's 2025 legislative session. Pausing or withdrawing the Guidance and Regulations is also necessary to ensure due process to secondary market holders of Maryland mortgage loans and the continued stability of Maryland's mortgage market. We are concerned that absent a correction, investors will cease funding and purchasing Maryland loans, which will decrease the availability – and increase the cost – of credit in the market. The OFR should revise the Guidance and Regulations based on policymaker and stakeholder input, acknowledge the limit of *Estate of Brown*, and consider the existing statutory requirements of the MLL and ILL. At a minimum, the OFR should delay the effective date of the Guidance and Regulations to address these issues. The undersigned organizations look forward to working with OFR to address any concerns and fashion a solution that is practical while also protecting Maryland consumers and preserving their access to affordable financial services.

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We appreciate the opportunity to provide these comments. Should you wish to discuss any matters addressed in this letter further, please contact Dallin.Merrill@StructuredFinance.org.

Respectfully submitted by the following organizations:

American Fintech Council
Housing Policy Council
Maryland Mortgage Bankers and Brokers Association
Mortgage Bankers Association

Mortgage Bankers Association of Metropolitan Washington
SIFMA
Structured Finance Association

Appendix of authors

[i] The SFA is a consensus-driven trade association with over 370 institutional members representing the entire value chain of the United States securitization market. By facilitating responsible issuance and investing of loans and securities, the market provides trillions of dollars of capital to consumers and businesses in communities across the country. SFA members include issuers and investors, broker-dealers, rating agencies, data analytic firms, law firms, servicers, trustees, and accounting firms. While our members often have conflicting views and conflicting interests, our governance structure requires consensus from all stakeholder groups before taking an advocacy position on legislative or regulatory matters. As such, when we do provide feedback, we do so in a manner that reflects the view of the entire market ecosystem.

[ii] The Maryland Mortgage Bankers and Brokers Association (MMBBA) 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 in the state of Maryland. 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. On an on-going basis, the association provides our members with useful and informative continuing education programs, workshops, conferences and seminars to help them grow in their careers. We serve as an advocate for the mortgage banking industry, constantly staying abreast of key legislative and regulatory issues at the state and local levels while representing the interests of our members.

[iii] The Mortgage Bankers Association of Metropolitan Washington is the largest organization representing residential and commercial real estate finance industry professionals in the Washington, DC metropolitan area. Our 95 member companies include all elements of residential, commercial and multifamily real estate finance: mortgage companies, mortgage brokers, wholesale and correspondent lenders, commercial banks, life insurance companies, law firms, title companies, appraisal companies and other companies involved in mortgage lending and affiliated industries.

[iv] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 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 2,000 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.

[v] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.

[vi] A standards-based organization, the American Fintech Council (AFC) is the premier trade association representing the largest financial technology (Fintech) companies and innovative banks offering embedded finance solutions. AFC's mission is to promote a transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial services and encouraging sound public policy. AFC members foster competition in consumer finance and pioneer products to better serve underserved consumer segments and geographies. AFC's membership spans lenders, banks, payments providers, loan servicers, credit bureaus, earned wage access providers, and personal financial management companies.

[vii] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we

advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.