MBA

MORTGAGE BANKERS ASSOCIATION

January 22, 2014

Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency Federal Reserve System
250 E Street, SW
Washington, DC 20219

Re: Statement of the Office of the Comptroller of the Currency Provided to the Subcommittee on Financial Institutions and Consumer Protection; Senate Committee on Banking, Housing, and Urban Affairs; "*Shining a Light on the Consumer Debt Industry;"* July 17, 2013

Dear Sir:

The Mortgage Bankers Association[1] (MBA) appreciates the Office of the Comptroller of the Currency's (OCC) ongoing efforts to balance the advocacy of consumers' rights while still performing its principal mission of protecting the safety and soundness of banks under its regulatory authority. On July 17, 2013, the OCC provided a written statement for the record, *Shining a Light on the Consumer Debt Industry* (Statement). In the Statement, the OCC highlighted best practices for debt sales. One of the recommendations in that document may have unintended accounting consequences to banks who sell charged-off assets, including mortgage loans.

Background

Banks frequently sell significantly past due or charged off debt instruments such as mortgages to those who specialize in loan collection or in troubled debt restructuring. This is done in order to minimize the ultimate charge off or to recover on loans previously charged off. The amount recovered increases the allowance for loan losses and ultimately increases bank capital by reducing future provisions for losses.

[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. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Page 14 of the Statement lists as one of the recommended "best practices" for selling debt the following:

> *No resale of debt* – limiting the ability of the third party to resell the debt to another entity. By not limiting the resale of debt, the bank does not control who ultimately will collect on "their" customers and the documentary paper trail may become corrupted over time, calling legal validity and ownership into question.

Financial Accounting Standard Board's Statement 166 (FAS 166) prescribes accounting for the sale of financial instruments like loans. It lists a series of criteria which must be met in order for a transfer of financial assets to qualify for sale accounting treatment. Paragraph 9. b. of FAS 166 (ASC 860-10-40-5b.) contains a criterion which requires:

> Each transferee (or, if the transferee is an entity whose sole purpose is to engage in securitization or asset-backed financing activities and that entity is constrained from pledging or exchanging the assets it receives, each third-party holder of its beneficial interests) has the right to pledge or exchange the assets (or beneficial interests) it received, and no condition both constrains the transferee (or third-party holder of its beneficial interests) from taking advantage of its right to pledge or exchange and provides more than a trivial benefit to the transferor (paragraphs 29–3329−34).

Thus, having a prohibition in a sale contract whereby the transferee is limited in its ability to resell the debt to another party would likely preclude the transferor from obtaining sale treatment under FAS 166.

MBA's Recommendation

MBA notes that the Consumer Financial Protection Bureau (CFPB) was created by the Dodd-Frank Act to protect consumers involved in financial transactions, including mortgage loans. It is charged with, among other functions, the regulation of debt collection practices. On November 12, 2013, the CFPB provided an Advance Notice of Proposed Rulemaking (ANPR) with a series of questions to respondents related to debt collection. Comments are due on or before February 10, 2014. Some of the questions in the ANPR relate to the OCC's concern about the documentary paper trail becoming corrupt over time in the case of sales of delinquent or charged-off debt.

MBA recommends that the OCC delete the "no resale of debt" provision from its best practices document and allow the CFPB to promulgate the rules governing debt collection practices. This would eliminate the unintended consequence in the best practices document that would preclude sale accounting treatment and allow banks to utilize sale as one of the many tools in their toolbox to collect delinquent and charged-off accounts.

MBA thanks the OCC in advance for considering our proposed solution. Any questions on this letter should be addressed to me at 202-557-2860 or jgross@MBA.org.

Sincerely,

James P. Gross
Vice President of Financial Accounting & Public Policy