CSBS Letter to Chairwoman Waters on Mortgage Servicing

Statements & Comments

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Waters,

On behalf of the Conference of State Bank Supervisors (CSBS),[1] I am writing in response to your August 5, 2021, letter to CSBS Chair Melanie Hall[2] calling for:

- An update to the Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act dated April 3, 2020 (Joint Statement), and
- Regulators "take other steps to provide vigorous oversight and encourage mortgage servicers to work with borrowers to avoid unnecessary foreclosures."

Thank you for your attention to this important issue. Since Congress passed the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act in 2008 requiring federal registration and state licensing of mortgage loan originators to take place through the CSBS Nationwide Multi-State Licensing System, CSBS and its state members have focused closely on protections for mortgage consumers and the requirements for industry that serves them. Throughout the pandemic, state regulators have worked with each other and with federal regulators to ensure that mortgage lenders and servicers are operating in a safe and sound manner and taking all possible actions to assist borrowers that have been negatively impacted by the pandemic. We appreciate the opportunity to update you on state supervisory activities, policy initiatives, past actions and plans going forward.

As you note, the Joint Statement was an undertaking of the Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, National Credit Union Administration, Office of the Comptroller of the Currency, and the states. Approximately one year after issuing the Joint Statement, the matter was again reviewed by the Federal Financial Institutions Examinations Council (FFIEC),[3] the CSBS Covid-19 Steering Group, and the CSBS Non-Depository Supervisory Committee. These reviews confirmed the states' original determination that the flexibility provided to industry during the pandemic did not restrict state regulators from reviewing mortgage servicer practices or inhibit state enforcement wherever necessary. State regulators will continue supervision and enforcement efforts as they engage in interagency discussions to update the Joint Statement.

State regulators have monitored the activities of mortgage originators and servicers throughout the pandemic and have acted responsively and decisively with expanded examination approaches, new policy, and public guidance. State actions to protect consumers and effectively supervise the mortgage industry fall into three very broad categories discussed more fully below. We believe that the states' dual mandate to protect consumers and ensure a healthy economic environment has been the appropriate approach throughout this historically difficult period.

Networked Supervision

Begun ahead of the current crisis, the states embraced Networked Supervision, a strategy that brings the fundamentals of sound oversight under a single concept. Leveraging its regulatory network, the states actively communicate as a federated unit and share information securely among regulators. Effective communication and information sharing is made possible through modernized technology platforms harmonizing and automating the licensing and examination fundamentals of state supervision. Under our One Company One Exam initiative, states join to conduct a single, comprehensive examination of institutions operating in multiple states. These coordinated examinations are facilitated by ongoing data collection and monitoring to identify institutions that exhibit higher risk or present the potential for consumer harm.

Robust information sharing is at the core of Networked Supervision, reducing gaps for regulators and streamlining supervision for institutions. Nowhere is information sharing more important than in mortgage supervision. Through information sharing states can "see" beyond state boundaries and identify practices taking place throughout the country that previously appeared only at the local level. We began comprehensive information sharing with the CFPB under the 2011 Information Sharing Memorandum of Understanding (MOU) and have established a similar MOU with the Department of Housing and Urban Development/Federal Housing Administration.[4]

Federal-state coordination would be greatly enhanced with similar supervisory information sharing mechanisms with the Federal Housing Finance Agency (FHFA) and the Government National Mortgage Association (GNMA). The inability to share information between the primary federal housing agencies and the state prudential mortgage regulators prohibits collaboration on appropriate standards, inhibits effective monitoring of the industry, and creates blind spots for supervision, consumer protection and enforcement. The Financial Stability Oversight Council has identified data gaps and challenges in information sharing and has consistently called for improved information sharing among state and federal regulators in its annual reports.

Information sharing is one of the most effective tools in supervising the industry, as has been proven from nearly a decade of information sharing, coordinated examinations and enforcement actions between the state system and the CFPB. The states welcome the opportunity to work with Congress to enhance this vital supervisory tool by clearly authorizing state and federal agencies to share information and coordinate on oversight.

Direct Supervision

CSBS provides regular briefings to both state and federal regulators on mortgage market demographics and trends in borrower issues and needs. Understanding which mortgage institutions exhibit the greatest risk allows the state system to focus its resources where the supervisory need is the greatest.

Since the onset of the COVID-19 pandemic, state regulators have focused significant examination attention on nonbank mortgage servicers. This includes providing guidance to consumers and servicers shortly after the onset of the pandemic, implementing CARES Act examination procedures, increasing examination focus on loss mitigation activities and compliance with applicable laws as well as coordinating multistate follow-up regarding material findings from both single-state and multistate examinations.

Beginning in late March 2020, the Multistate Mortgage Committee (MMC) initiated a monthly inquiry of the largest nonbank mortgage servicers to monitor financial capacity, liquidity, advancing obligations and forbearance data. This inquiry continues and provides a monthly snapshot of nonbank servicer financial condition and significant forbearance data resulting in more focused financial condition reviews.
While 2020 was an unprecedented year for originations and mortgage industry profitability, state regulators remain focused on ensuring all nonbank servicers maintain the financial capacity to adequately serve and assist consumers. Under the Dodd-Frank Act, state regulators are authorized to examine for compliance with federal consumer protection laws and rules, including the CFPB's Regulation X amendment to the Real Estate Settlement Procedures Act, which will go into effect August 31, 2021. Once the amended rule is effective, state regulators will review compliance with the new requirements in routine examinations and special investigations of mortgage servicers.

State regulators remain vigilant to any signs of unwarranted foreclosure activity or other consumer harm. States have increased monitoring during the one-month gap between the end of the foreclosure moratoriums and the effectiveness of the new CFPB rule. Any adverse activity detected will be immediately communicated to the MMC and state examination teams for field level follow up.

Supervision Policy

Through CSBS, the state system develops and implements policy for state mortgage regulators throughout the country. National-wide policy establishes uniformity, consistency, and transparency that benefits consumers, industry, and regulators. In addition to the April 3, 2020, Joint Statement, the state policy response during the pandemic includes:

- April 15, 2020 letter encouraging Congress to establish a liquidity facility to help ensure mortgage markets keep functioning.[5]
- June 4, 2020 CSBS/CFPB Consumer Relief Guide – Your Rights to Mortgage Payment Forbearance and Foreclosure Protection Under the Federal CARES Act.[6]
- June 4, 2020 CSBS/CFPB notice that mortgage companies navigating federally-backed mortgage lending and servicing requirements during the National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, must, among other things, abide by the CARES Act, federal regulations, and investor servicing guidelines.[7]
- July 2020 implementation of new state examination guidelines under the CARES Act focused directly on forbearance and foreclosure moratoriums.
- December 9, 2020 letter to the Federal housing agencies expressing state regulator concerns for borrower protections under Section 4022 of the CARES Act related to a nationwide foreclosure moratorium and requesting that prior to yearend the agencies come to consensus on the appropriate covered period for the forbearance benefit under Sec. 4022 and publicly communicate that consensus to avoid any further confusion.[8]
- December 18, 2020 notice to consumers of the approaching expiration of the forbearance benefit.[9]

On July 23, 2021, state regulators approved policy that establishes financial condition and corporate governance standards for mortgage servicers. The Model State Regulatory Prudential Standards for Nonbank Mortgage Servicers10 sets new standards covering capital, liquidity, corporate governance, internal and external audits, and risk management practices. Servicers with sound financial condition and good corporate governance are more likely to adhere to compliance and consumer protection requirements and provide sufficient infrastructure to assist troubled consumers with loss mitigation options.

Conclusion

State regulators are a first line of defense in borrower protection and market stability through supervisory activities, and are the only regulators monitoring nonbank mortgage entities for safe and sound operations. State regulators stand ready to continue working with Congress, federal regulator counterparts, and federal housing agencies to ensure consumer protection and the safety and soundness of the financial services system. We appreciate the opportunity to provide information about the important work in this area and look forward to answering any further questions you have.

Sincerely,

John W. Ryan
President & CEO

Cc:
The Honorable Patrick McHenry, Ranking Member
David Uejio, Acting Director, Consumer Financial Protection Bureau
The Honorable Jerome Powell, Chair, Board of Governors of the Federal Reserve
The Honorable Jelena McWilliams, Chairman, Federal Deposit Insurance Corporation
The Honorable Todd M. Harper, Chair, National Credit Union Administration
Michael Hsu, Acting Comptroller, Office of the Comptroller of the Currency

---

Footnotes

1 CSBS is the nationwide organization of banking regulators from all 50 states, American

Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. The mission of CSBS is to support the leadership role of state banking supervisors in advancing the state banking system; ensuring safety and soundness; promoting economic growth and consumer protection; and fostering innovative state regulation of the financial services industry. CSBS supports the state banking agencies by serving as a forum for policy and supervisory process development, by facilitating regulatory coordination on a state-to-state and state-to-federal basis, and by facilitating state implementation of policy through training, educational programs, and exam resource development.

[2] Also addressed to Acting Director Uejio, Chairman Powell, Chairman McWilliams, Chairman Harper, and Acting Comptroller Hsu.

[3] The Council is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau, and to make recommendations to promote uniformity in the supervision of financial institutions. In 2006, the State Liaison Committee (SLC) was added to the Council as a voting member. The SLC includes representatives from the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, and the National Association of State Credit Union Supervisors. Chairman, a voting member of the Council, is elected by the SLC members.

[4] Both MOUs found here: https://www.csbs.org/policy/agreementsother/cooperative-agreements

[5] https://www.csbs.org/newsroom/congress-should-establish-credit-facility-mortgage-servicers-and-reestablish-tag

[6] https://www.csbs.org/cfpb-and-state-regulators-guidance-mortgage-servicers-covid-19

[7] https://www.csbs.org/system/files/2020-06/CSBS-CFPB_Industry_Guidance_Forbearance.pdf

[8] https://www.csbs.org/newsroom/csbs-letter-borrower-protections-under-sec-4022-cares-act

[9] https://www.csbs.org/newsroom/statement-deadline-request-cares-act-mortgage-forbearance-remains-dec-31-2020

10 https://www.csbs.org/policy/research-data-tools/nonbank-mortgage-servicer-prudential-standards

CSBS

202.296.2840
newsroom@csbs.org
1129 20th Street, N.W., 9th Floor, Washington, DC 20036