COMMENT LETTER

Enhancing Prudential Standards for Nonbank Mortgage Servicers

October 9, 2020
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Dear Senators Crapo and Brown and Representatives Waters and McHenry:

As Congress continues to exercise its important oversight responsibilities over many aspects of the housing finance system, the Conference of State Bank Supervisors (CSBS) is writing to update you on recent efforts to protect consumers and enhance oversight of nonbank mortgage servicers. Specifically, we appreciate the opportunity to highlight recent CARES Act guidance issued by states and state efforts to enhance prudential standards for nonbank mortgage servicers.

Background on CSBS

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.

The state regulatory agencies that are CSBS's members are responsible for regulating a wide range of bank and nonbank financial companies, including nonbank mortgage servicers (servicers). Both in conjunction with our federal counterparts and as a state system, state regulators are continually working to enhance oversight of these companies who play a central role in the housing finance system.

State Role in Servicer Oversight

State regulators are the primary regulatory authority over nonbank mortgage servicers. This oversight spans credentialing, licensing, and examination authority. Because of this responsibility, state regulators have a significant interest not only in ensuring that these institutions treat their customers fairly, but also in holding these companies to robust financial requirements that enable them to continue to perform responsibilities fundamental to maintaining a sound mortgage market. Very early in the Covid-19 crisis, state regulators identified liquidity as a supervisory priority, seeking real time data and updates from nonbank mortgage servicers in order to actively monitor liquidity and other business operations.

The regulatory oversight of the mortgage market spans state and federal authorities. State regulators coordinate with their federal counterparts on servicer oversight. Principally, through participation on the Federal Stability Oversight Council (FSOC)[1], state regulators share information and discuss market insights with their federal counterparts to ensure better consistency and efficient oversight throughout the regulatory regime.

Consumer Guidance

To guide homeowners with federally-backed loans through the process of obtaining mortgage relief, CSBS and the Consumer Financial Protection Bureau (Bureau) released a Consumer Relief Guide with borrowers' rights to mortgage payment forbearance and foreclosure protection under the CARES Act[2]. The consumer relief guide details what homeowners need to know to get the help they need, including a summary of borrowers' rights under the CARES Act, steps to access mortgage relief and repayment options. This was an important addition to the CFPB's comprehensive consumer resource section of its website.

Servicer Guidance

In addition to consumer guidance, CSBS and the Bureau issued joint guidance[3] to assist servicers in complying with the CARES Act provisions granting a right to forbearance to consumers impacted by the Covid-19 pandemic. In addition to providing a statutory overview of the CARES Act protections related to forbearance and additional resources on how the CARES Act impacts other rules and regulations, the guidance contains specific FAQs based on observed or anticipated actions of mortgage servicers related to forbearance. The states and the CFPB believe it was important to establish the regulatory expectations early.

Exam Guidance

To complete the circle on CARES Act enforcement, state regulators issued exam guidance[4] for state examiners to evaluate the servicer's policies and procedures with respect to the forbearance requirements of the CARES Act. Examiners are asked to verify the direction provided in the servicer's policies and procedures comply with the requirements of the CARES Act, and do not steer borrowers away from requesting a forbearance plan or limit the amount of assistance a borrower is eligible to receive.

Proposed Prudential Standards for Nonbank Mortgage Servicers

Nonbank entities specializing in loan servicing have grown dramatically in size, complexity, and importance[5] in the post-crisis mortgage market, a dynamic that has been amplified in the intervening years and continues into 2020 with business models evolving significantly. To address these market trends, in 2015 the states began developing[6] baseline prudential standards and enhanced prudential standards for servicers.

The process for developing the standards has been thorough. After five years and significant feedback from industry and other stakeholders, CSBS issued the proposed standards for public comment on October 1, 2020[7].

The states have multiple goals for developing the prudential standards:

- First and foremost, to provide better protection for borrowers, investors, and other stakeholders in the occurrence of a stress event, in which adverse circumstances affecting one or a series of companies, or alternatively a wider market dislocation, could result in harm.
- Secondly, to enhance effective regulatory oversight and market discipline over nonbank mortgage servicers.
- Moreover, to improve transparency, accountability, risk management, and corporate governance standards no less stringent than standards proposed by federal government agencies.
- Finally, to provide state supervisors with standards to implement, examine, and enforce against.

The full Proposed Baseline Standards and Enhanced Prudential Standards can be found in the Appendix; below is a brief description.

Proposed Baseline Standards

The Baseline Prudential Standards (hereinafter, Baseline Standards) cover eight areas, including capital, liquidity, risk management, data standards and integrity, data protection (including cyber risk), corporate governance, servicing transfer requirements and change of control requirements.

For each of these eight areas, state regulators propose to leverage existing standards or generally accepted business practices. This approach is intended to make the transition as easy as possible as the industry should be familiar and compliant with existing standards. In areas lacking standards directly applicable to nonbank mortgage servicers, state regulators rely on generally accepted business practices to leverage widely available resources for implementation.
Additionally, the Baseline Standards will also serve as a starting point for Enhanced Prudential Standards and Heightened Supervisory Expectations (hereinafter, Enhanced Standards) for entities that require increased regulatory oversight.

Proposed Enhanced Prudential Standards
The Enhanced Standards will be applied to the following four areas: capital, liquidity, stress testing and living will/recovery and resolution planning. At a minimum, servicers subject to the Enhanced Standards (known as Complex Servicers) will be those servicers owning whole loans plus mortgage servicing rights (MSRs) totaling the lesser of $100 billion or representing at least a 2.5% total market share based on Mortgage Call Report (MCR)[8] quarterly data of licensed nonbank owned whole loans and MSRs.

Conclusion
As the pandemic continues and potentially exacerbates market forces already underway, state regulators will continue to exercise our oversight authority and the full range of our regulatory tools to ensure enhanced servicer oversight that protects consumers and promotes stability in the mortgage market. The states are committed to continued coordination and information exchange with the federal agencies. We look forward to working with you and your colleagues to ensure this industry operates in a safe and sound manner.

Sincerely,

John Ryan
President and CEO

Footnotes

[1]The FSOC, composed of federal and state financial regulators, was established by Dodd-Frank to monitor the safety and stability of the nation’s financial system, identify risks to the system, and coordinating response to any threats. FSOC has the authority to identify financial firms, financial market utilities and systemic payment, clearing, or settlement activities whose failure could potentially pose a risk to the financial system.
[2] Consumer Relief Guide—Your Rights to Mortgage Payment Forbearance and Foreclosure Protection Under the Federal Cares Act, May 15, 2020. https://www.csbs.org/mortgage-relief-coronavirus
[3] CARES Act Forbearance and Foreclosure, June 4, 2020.
[4] CARES Act Compliance Exam – Exam Procedures.
[5] These institutions currently service over half of the agency mortgage market and roughly 40% of the total $11 trillion single-family residential mortgage market.
[6] The states, working through the Mortgage Servicing Rights Task Force, a group of state regulators from California, Illinois, Massachusetts, Minnesota, Pennsylvania, New York, South Dakota, Texas, and Washington,

developed baseline prudential standards and enhanced prudential standards for nonbank mortgage servicers. Their proposal was updated with oversight from the CSBS Non-Depository Supervisory Committee (NDSC).
[7] CSBS press release announcing public comment of proposed standards.
[8] Nationwide Multistate Licensing System (NMLS) reports required under state statute or rule.

Appendix