Nonbank Mortgage Regulation - Misconceptions & Background

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Misconceptions

Misconception: *Regulation of nonbank mortgage companies is lax or non-existent.*

- As the primary regulator of nonbanks, states have broad licensing, examination, investigation, and enforcement authorities. Prudential standards, including financial capacity (i.e., net worth/capital and liquidity), governance, and risk management requirements, are also a matter of state law enforced by state regulators.[1]
- The Nationwide Multistate Licensing System and Registry (NMLS) maintains the licenses or registrations of the more than 556,000 mortgage loan originators operating in the United States.[2]
- States conduct multistate supervisory exams through NMLS's supervisory component, the State Examination System (SES).[3]
- FHFA and Ginnie Mae establish capital, liquidity, and operational standards for nonbanks, and along with federal housing agencies, subject their nonbank counterparties to extensive program compliance requirements.
- These federal agencies examine and stress test nonbank mortgage companies, and effectively determine if a nonbank can participate in the respective agency mortgage market.
- The CFPB enforces consumer protection laws and regulates financial products and services, including mortgages.

Misconception: *Federal agencies lack the necessary authority and tools to mitigate the risks associated with nonbank mortgage servicers.*

- Under existing authorities, federal agencies have significant options to mitigate risk at nonbank mortgage companies and throughout the mortgage market.
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Misconception: *Nonbank mortgage servicers lack capital and loss-absorbing capacity.*

- The tangible shareholders' equity of the top 50 nonbank servicers has increased 155% since 2019 and 6.4% in the past year.[4] Nonbank mortgage companies have remained resilient and weathered interest rate increases and challenging operating conditions over the last two years.

Misconception: *Because nonbanks are illiquid and financially fragile, they are reliant on financing that can be withdrawn in times of stress.*

- The unrestricted cash of the top 50 nonbank forward mortgage servicers has increased 221% since 2019 and 11% in the past year.[5]
- Total cash to assets ratio has increased from 2.3% to 5% over the past five years.[6] Increased cash positions reflect high earnings retention and stability of funding sources reflective of current operating needs.

Misconception: *A government liquidity fund is needed to protect consumers if a nonbank mortgage company goes bankrupt.*

- Establishing a federally administered liquidity fund to support insolvent nonbank mortgage companies is premature without first exploring improvements to federal

housing finance programs and Ginnie Mae program requirements for counterparties.
- Targeted improvements to federal programs, particularly Ginnie Mae-focused reforms, can enhance the resilience of the nonbank mortgage sector and consumer protections.
- Ginnie Mae, with any necessary support from Congress, should enact reforms that facilitate loan-level removal of nonperforming mortgages from pools, create a mechanism for private market financing of Ginne Mae advances, and limit lengthy servicing advance requirements when borrower payments are not received – similar to existing Fannie Mae and Freddie Mac programs.
- These reforms would relieve cost and operational pressures on Ginnie Mae servicers, promoting operational resiliency, decreasing the incentive for concentration, increasing the value of Ginnie Mae mortgage servicing rights (particularly in times of stress), and expanding the number of market participants. These reforms could also encourage additional private sector investment in the nonbank mortgage market in stressful economic conditions.

Background

The mortgage market has changed dramatically since the financial crisis.

- Today’s regulatory climate, credit environment, product profile, and market structure are much different from those that existed during the 2008 financial crisis.

- Banks significantly reduced their involvement in the mortgage market after the financial crisis, due to regulatory and market changes.
- Nonbank mortgage companies stepped in to serve consumers. They now service 68%[7] of federal-guaranteed mortgage loans and 53% of all mortgage loans outstanding.[8]
- States, as the primary regulators of nonbank mortgage companies, saw the sector’s potential for growth and the need to advance supervision of the industry in a coordinated manner. The resulting creation of the Nationwide Multistate Licensing System (NMLS) significantly improved oversight of the mortgage market, increasing

professionalism and accountability and weeding out bad actors.[9]
- The ability-to-repay and qualified mortgage rules ensured the loose underwriting standards and risky product features of the crisis and pre-crisis years did not reemerge.

States adapted their oversight and supervision as nonbank mortgage companies expanded to meet the needs of American homebuyers.

- States are the primary regulators of nonbank mortgage companies, with broad licensing, examination, investigation, and enforcement authorities.[10]
- In 2009, CSBS and the American Association of Residential Mortgage Regulators (AARMR) established the Multistate Mortgage Committee (MMC) and framework for multistate exams.
- In 2020, states added the State Examination System (SES) supervisory component to facilitate multistate supervisory exams through NMLS.
- In 2021, the CSBS Board of Directors approved for state adoption Nonbank Mortgage Servicer Prudential Standards, establishing new capital, liquidity, and corporate governance requirements for nonbank mortgage servicers.[11]
- Nonbank mortgage servicers licensed in at least one state that has adopted the model prudential standards collectively service 99% of the nonbank mortgage market by loan count.
- In 2023, states launched the One Company, One Exam initiative, a multistate supervisory process focused on enhancing exams for the country’s largest nonbank mortgage firms.

Nonbanks are a significant source of mortgage credit, serving a broad range of homebuyers, including underserved communities.

- Nonbanks have increased their market share of government-guaranteed mortgages from 13% in 2009 to 90% today, becoming a significant source of mortgage credit for first-time homebuyers, low- and moderate-income consumers, veterans, and communities of color.[12]
- Of government-guaranteed mortgage loans made by nonbanks in 2021, 44% were made to minority borrowers. And of conventional loans made by nonbanks in 2021,

33% were made to minority borrowers. These percentages were significantly higher than percentages of mortgage loans made by banks or credit unions in 2021.[13]

Endnotes

1. Mortgage Companies - State Authorities.
2. CSBS 2023 Annual Report.
3. State Examination System.
4. CSBS analysis of NMLS Mortgage Call Report data
5. CSBS analysis of NMLS Mortgage Call Report Data
6. CSBS analysis of NMLS Mortgage Call Report Data
7. Recursion Co, “Agency Mortgage Company Monthly Update”, May 2024.
8. Inside Mortgage Finance; NMLS Mortgage Call Report data.
9. NMLS At 15 Years: How the SAFE Act Transformed a Market.
10. Mortgage Companies - State Authorities.
11. Nonbank Mortgage Servicer Prudential Standards.
12. FFIEC Home Mortgage Disclosure Act data; Urban Institute, “Housing Finance at a Glance, A Monthly Chartbook”.
13. An Assessment of Lending to LMI and Minority Neighborhoods and Borrowers, Urban Institute.

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