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## CONFERENCE OF STATE BANK SUPERVISORS

March 16, 2015

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1275 First Street, NE  
Washington, DC 20002

Re: Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)  
Docket No. CFPB-2014-0033  
RIN 3170-AA49

Dear Ms. Jackson:

The Conference of State Bank Supervisors<sup>1</sup> (CSBS or state regulators) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed *Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, collectively referred to as the Mortgage Servicing Rules.

State regulators recognize the CFPB's continued commitment to consider amendments to the Mortgage Servicing Rules reflects the Bureau's ongoing engagement with banks, the mortgage servicing industry, consumer advocacy groups, and other stakeholders to build a better regulatory framework for mortgage loan servicers. We appreciate the Bureau's efforts to improve the rules and ensure that adequate protections are in place for homeowners, community institutions are able to service their customers' mortgage loans, and that servicers have straightforward standards. State regulators encourage the CFPB to continue this heightened level of monitoring and engagement with stakeholders on the Mortgage Servicing Rules going forward.

### **AMENDMENTS TO THE SMALL SERVICER DEFINITION**

CSBS appreciates the CFPB's ongoing efforts to limit the impact of the Mortgage Servicing Rules on small servicers. The small servicer definition provides meaningful regulatory relief to many relationship-based community banks throughout the country. As the Bureau has noted, approximately 98 percent of community banking institutions with less than \$2 billion in total assets meet the small servicer definition. State regulators believe that exempting smaller depository institutions from many of the

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<sup>1</sup> CSBS is the nationwide organization comprised of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. State banking regulators supervise nearly 5,200 state-chartered financial institutions. Further, most state banking departments also regulate a variety of non-bank financial services providers, including mortgage lenders. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision of their regulated entities and to develop regulatory policy. CSBS also provides training to state banking and financial regulators and represents its members before Congress and the Federal financial regulatory agencies.

Mortgage Servicing Rules' provisions appropriately recognizes the natural alignment of community bank servicers and their borrowers, and that these exemptions encourage community banks to continue servicing loans in a high quality, customer-focused manner.

State regulators support the CFPB's proposed amendments to the small servicer definition. Specifically, amending § 1026.41(e)(4)(iii)(A) and adding a new category of transactions with § 1026.41(e)(4)(iii)(D) would allow community bank servicers to voluntarily service seller-financed real estate on behalf of their depository customers without the risk of unintentionally losing their small servicer exemption. CSBS believes that these proposed changes reasonably amend the small servicer definition to include community banking organizations that would otherwise qualify for the small servicer exemption. State regulators appreciate the Bureau's attempts to ensure that the intended recipients of the small servicer exemption continue to benefit from this targeted relief.

More broadly, state supervisors believe that meaningful community bank regulatory relief is best achieved through a holistic approach that uses both quantitative and qualitative factors to define which institutions are community banks. While bright line quantitative thresholds, whether asset-based, or in this case, servicing volume-based, are useful aids in identifying community institutions, they should not be the sole criteria for deciding regulatory relief. Regulators should view quantitative factors alongside a set of qualitative criteria to provide more appropriate regulatory relief.

State regulators believe a definitional approach that defines community banks using both quantitative and qualitative characters is a better policymaking framework for providing regulatory relief. Policymakers would be better able to provide relief to qualifying institutions that meet an agreed upon community bank definition, rather than writing rules that seek to exempt community banks based on a highly prescriptive list of criteria. The latter approach will inevitably fail to capture the broad universe of unique circumstances and local market conditions that lead community banks to employ diverse business practices.

In the context of the Mortgage Servicing Rules, a community bank definition would give the CFPB a simpler path to providing community bank regulatory relief. For example, the CFPB could choose to apply the small servicer definition to all institutions defined as community banks. Instead of requiring community banks to comb through their servicing portfolios to determine if each and every one of their serviced loans meets the small servicer exemption requirements, such institutions would benefit from immense regulatory relief if they were granted smaller servicer status by virtue of meeting a predetermined community bank definition.

#### **PROPOSED DEFINITION OF DELINQUENCY**

CSBS appreciates the Bureau's attempt to clarify the term "delinquency" by proposing a single definition that will apply throughout all of Regulation X's Mortgage Servicing Rules. State regulators understand the definition is meant to assist servicers as they seek to calculate the 120-day foreclosure referral waiting period. The CFPB has proposed the following amendment to § 1024.31 of Regulation X:

*Delinquency* means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow became due and unpaid, until such time as the outstanding payment is made.<sup>2</sup>

State regulators believe this definition is well-intentioned, but does not address events other than missed payments that may trigger an acceleration clause and push the loan into default. For example, conducting illegal activity on the property, violating hazardous substance restrictions, or abandoning the property may provide lenders an option to accelerate the loan and declare the borrower in default. The CFPB should broaden the proposed definition of delinquency to accommodate instances in which a servicer may declare a loan in default, accelerate the loan, and require payment of the loan in full.

State regulators appreciate the CFPB's ongoing efforts to minimize conflicts between the Mortgage Servicing Rules and existing state laws. The Bureau has acknowledged that there is a diversity of state laws that dictate how servicers are to apply payments received in the context of rolling delinquencies. For example, some states may mandate that servicers apply any payments received from a borrower to the furthest outstanding periodic payment, while other states may not require servicers to apply payments in this way. The diversities in state law reflect the reality that different servicing practices and processes may be warranted based on local market dynamics.

The CFPB has adequately addressed and illustrated how servicers that apply payments to the oldest outstanding periodic payment are to calculate the 120-day foreclosure referral waiting period in proposed comment 31 (Delinquency)-2 to § 1024.31:

*2. Application of funds.* If a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent borrower advances the date the borrower's delinquency began. For example, assume a borrower's mortgage loan obligation provides that a periodic payment sufficient to cover principal, interest, and escrow is due on the first of each month. The borrower fails to make a payment on January 1 or on any day in January, and on January 31 the borrower is 30 days delinquent. On February 1, the borrower makes a periodic payment. The servicer applies the payment it received on February 1 to the outstanding January payment. On February 2, the borrower is one day delinquent.<sup>3</sup>

However, CSBS believes that the CFPB should provide additional comments to § 1024.31 that include guidance to servicers who do not apply payments to rolling delinquencies in the manner described above. For example, some servicers may choose to initiate foreclosure proceedings if a loan is not current for 120 days irrespective of the number of periodic payments missed. Other servicers may accelerate a loan due to a breach of contract other than missed periodic payments. Servicers in such circumstances would also benefit from detailed guidance on how their practices would align with the

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<sup>2</sup> "Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)." Docket No. CFPB-2014-0033, pp. 403-404.

<sup>3</sup> *Ibid.*, p. 427.

CFPB's proposed definition of delinquency and the 120-day foreclosure referral waiting period. Additionally, examiners from other agencies charged with ensuring compliance with the Mortgage Servicing Rules would also benefit from enhanced guidance that illustrates how to calculate the 120-day foreclosure referral waiting period in different servicing contexts.

#### **CONCLUSION**

State regulators acknowledge the CFPB's heightened monitoring of the effects of the Mortgage Servicing Rules. The proposed amendments reflect the Bureau's ongoing commitment to engaging with a wide variety of stakeholders, including state regulators. CSBS supports the CFPB's proposed changes to the small servicer definition, as they would ensure community banks could service seller-financed real estate on behalf of their depository customers without risk of losing their small servicer exemption. State regulators also encourage the Bureau to enhance its proposed definition of delinquency to include other events that would trigger a default, as well as additional guidance that describes how entities with different servicing practices should calculate the 120-day foreclosure referral waiting period to align with the Mortgage Servicing Rules. State regulators appreciate the opportunity to comment on these proposed amendments and look forward to continued collaboration with the CFPB on the Mortgage Servicing Rules.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Ryan". The signature is fluid and cursive, with a large initial "J" and "R".

John W. Ryan  
President & CEO