

June 23, 2015

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MSR Task Force  
Conference of State Bank Supervisors  
1129 20th St, NW, 9th Floor  
Washington, DC 20036

Re: CSBS Proposed Prudential Regulatory Standards - Non-Bank Mortgage Servicers

The National Reverse Mortgage Lenders Association (“NRMLA”) is the national voice of the reverse mortgage industry. With over 300 member companies and over 2,000 member delegates, NRMLA serves as an educational resource, policy advocate and public affairs center for lenders and related professionals. NRMLA was established in 1997 to enhance the professionalism of the reverse mortgage industry. Our mission is to educate consumers about the pros and cons of reverse mortgages, to train lenders to be sensitive to clients' needs, to enforce our Code of Ethics and Professional Responsibility,<sup>1</sup> and to promote reverse mortgages in the news media.

### ***Introduction***

On March 25, 2015, a Mortgage Servicing Rights Task Force of the Conference of State Bank Supervisors (the CSBS) – a trade association representing state mortgage banking regulators - proposed for public comment a series of Prudential Standards for the Non-Bank Mortgage Servicers they license and regulate (the “Proposal”). Comments on the Proposal are due on June 23, 2015.

The Proposal establishes both a Baseline set of requirements or standards that would be applicable to all such entities, and for more complex and substantial entities, and in addition, Enhanced Prudential Standards.

In fashioning its Proposal, the trade association stated that, to the extent they concluded it was possible to do so, they based their proposed standards in a particular area on existing standards of other applicable or relevant regulators or what they perceived to be generally accepted industry best practices.

Importantly, for our purposes, their proposal makes no express distinctions between entities servicing or subservicing forward and reverse residential mortgage loans.

Key examples of proposed Baseline Standards applicable to all such entities are the following:

- Required Minimum Capital—Base net worth of \$2.5 million with an escalator of 25 basis points times the unpaid principal balance of the serviced portfolio. This is based on the FHFA proposed standard for FHFA for Fannie and Freddie, that was finalized by FHA on May 20, 2015, and that becomes effective for all agency seller-servicers, with respect to operational requirements, on September 1, 2015, and with respect to financial requirements, on December 31, 2015.
- Liquidity - 3.5 basis points of the entire servicing portfolio.

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<sup>1</sup> <http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx>

- Data Standards - based on the CFPB's Mortgage Servicing Rules with respect to a required five day retrieval deadline in response to a request by a mortgagor to a servicer for serviced loan transactions details and servicing notes, among other data categories.
- Corporate Governance – based on Ginnie Mae's requirements, including a required report by the servicer's independent public accounting firm.
- Servicing Transfer Requirements - based on the CFPB's Mortgage Servicing Transfer Rules (CFPB Bulletin 2014-01), in combination with three similar rules of FHFA applicable to Fannie and Freddie seller-servicers (FHFA Advisory Bulletin 2014-06).

Examples of proposed Enhanced Prudential Standards include additional Capital requirements, based in part on the risk profile of and loan types in the servicing portfolio; stress testing requirements; and a requirement that the servicing entity have a so-called "living will" and recovery (from hardship) plan.

### *Initial Comments*

NRMLA appreciates the opportunity to comment on the Proposal. The CSBS also posed a series of questions in relation to and with the Proposal, and we re-state and respond to those questions further below.

While we do recognize and acknowledge the regulatory authority of CSBS members over non-bank mortgage servicers, initially we note that we are concerned that, as a trade association, CSBS itself is neither a legislative nor a regulatory body. This raises several issues in our view. First, issues of fundamental due process do abound with a trade association making state-based mortgage banking policy that is normally the purview of legislative bodies.<sup>2</sup> Second, this raises an issue of the authority of the CSBS itself to issue or propose such standards. And finally, we have concerns over the consistency, cohesiveness and coordination of such a rule, and how it may take form, develop and be implemented across multiple states.

For these reasons, and given that many of the issues that the Proposal is designed to address are already addressed in other regulatory or administrative requirements, we respectfully request that any action upon the Proposal be both highly circumscribed and only issued in the form of examination / audit guidelines for state regulatory examination staff.

The Proposal by CSBS notes that, in its 2014 Annual Report, the Financial Stability Oversight Council (FSOC) identified the rapid growth in non-bank mortgage servicers as a market development that warranted heightened risk management and supervisory attention. FSOC ***recommended*** that state regulators work together to develop prudential and corporate governance standards for non-bank mortgage servicing companies, in collaboration with the CFPB and FHFA. The Proposal states that: "Following FSOC's recommendation, state regulators, through CSBS, launched an effort to evaluate options for prudential regulatory standards for non-bank mortgage servicers. This effort has included extensive research and engagement with a variety of industry and regulatory stakeholders." However, the Proposal does not outline with specificity how the CSBS coordinated with the CFPB and FHFA, nor does

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<sup>2</sup> We note that some states have administrative procedures rules or even ethics prohibitions on state agencies lobbying for certain types of legislative changes.

it document or publish the extensive research it undertook or which industry or regulatory stakeholders with which it engaged in crafting the Proposal. Respectfully, while we trust that all of this information is documented, it also should be fully published in detail.

In any event, we note that the recommendation of FSOC is not a federal agency requirement, nor legislation enacted by Congress.

Please find below our more specific comments on the Proposal.

#### *Definition of Servicer*

As discussed herein, we are concerned that the Proposal does not contain certain and exact definitions, especially on the most fundamental issue of what constitutes a “servicer” such that an entity would be subject to the provisions of the Proposal. The Proposal states that state regulators propose and seek public comment on a baseline set of prudential standards to be applied to **all non-bank mortgage servicers licensed by and operating in the states** (emphasis added).

The Proposal goes on to state that non-bank mortgage servicing companies specialize in the following servicing functions:

- Calculating, collecting, and transmitting a mortgage loan borrower’s principal and interest payments;
- Managing mortgage escrow accounts;
- Collecting insurance claims;
- Distributing servicing advances;
- Managing delinquent mortgage loans;
- Assessing loans for modification and other loss mitigation activities;
- Overseeing foreclosure proceedings; and
- Managing and/or facilitating the sale of real estate owned (REO) following foreclosure.

Non-bank mortgage servicing companies perform these functions on behalf of mortgage loan owners and guarantors, be they financial institutions, private investors, Ginnie Mae, or government sponsored enterprises (GSEs) such as Fannie Mae and Freddie Mac. Non-bank mortgage servicers may also have additional business lines, such as loan origination and warehouse lending.

The manner in which a servicer is defined under state mortgage banking statutes and regulations varies from state to state. We note that as defined under many state statutes, the definition of servicer would include in some instances a sub-servicer that does not have direct contractual responsibilities for making servicing advances or the other items that a servicer is contractually obligated to perform. In other instances, a servicer would include only or primarily the master servicer or owner of mortgage servicing rights (or MSRs). We believe that any attempt to impose capital, liquidity and other standards on non-bank mortgage companies must be clearly articulated in order to give industry stakeholders the benefit of a meaningful opportunity to comment upon such a proposal. Respectfully, the Proposal falls short on this very fundamental definitional issue. It is for this reason that we request that, before the CSBS moves forward with this Proposal, that it provide a more detailed draft upon which NRMLA and other industry stakeholders can provide more meaningful, detailed and constructive comments.

#### *Due Process and Administrative Procedures*

We note here that prudential standards are those typically reserved for depository institutions. The public policy reasons for such standards for depository institutions is that such institutions' liabilities (in the form of deposit accounts) are insured by the federal government. Much of the Proposal seems to be based on the CSBS' idea or notion that state regulators must protect the public from potential insolvency of non-bank mortgage servicers. Such a motivation is faulty for multiple reasons, but we offer only two here. First, non-bank mortgage servicers do not have the benefit of any federal depository insurance, and thus should not be burdened with such "bank-like" capital standards. Further, for non-banks, there is already a very well-recognized and established liquidation process, and that is through the bankruptcy courts. Creditors of non-banks are already subject to and very comfortable with the bankruptcy process. To inject additional, different and not well-defined rules into non-bank servicer liquidation processes could severely upset the financing and capital markets surrounding and supporting mortgage servicing. Next, if state regulators perceive potential consumer harm due to possible non-bank mortgage servicer capital shortages or liquidity problems, we submit that such potential consumer harm is already more than adequately addressed by very detailed and robust mortgage servicing rules issued by the CFPB.

In any event, we note that the Proposal, as outlined above, unlike other regulatory proposals upon which we have commented, does not contain and lacks sufficient detail on some very important, basic and fundamental items that would normally afford us an ample opportunity to more fully comment.

#### *Reverse Mortgage Sales and Servicing*

There are approximately 620,000 reverse mortgages being serviced today. Of that number, a substantial majority are FHA-insured HECM loans. Almost one-half of these loans are owned by Fannie Mae (although Fannie Mae discontinued purchasing such loans in 2010). The remainder of these loans are pooled into Ginnie Mae securities. FHA, Fannie Mae and Ginnie Mae each have capital and liquidity standards for reverse mortgage servicers that service loans under their programs.

As stated above, the Proposal goes on to state that non-bank mortgage servicing companies specialize in the following servicing functions:

- Calculating, collecting, and transmitting a mortgage loan borrower's principal and interest payments;
- Managing mortgage escrow accounts;
- Collecting insurance claims;
- Distributing servicing advances;
- Managing delinquent mortgage loans;
- Assessing loans for modification and other loss mitigation activities;
- Overseeing foreclosure proceedings; and
- Managing and/or facilitating the sale of real estate owned (REO) following foreclosure.

However, with a reverse mortgage, there is no:

- Calculating, collecting, and transmitting a mortgage loan borrower's principal and interest payments; or
- Managing mortgage escrow accounts.

Further, the following servicing activities are markedly different for reverse mortgages than that for forward mortgages:

- Collecting insurance claims;

- Distributing servicing advances;
- Managing delinquent mortgage loans;
- Assessing loans for modification and other loss mitigation activities;
- Overseeing foreclosure proceedings; and
- Managing and/or facilitating the sale of real estate owned (REO) following foreclosure.

Regarding any potential risks to consumers that the CSBS might articulate under a future proposal, we note that on a unit basis, over 95% of the reverse mortgages being serviced today are FHA-insured HECMs. Under FHA HECM regulations, if a mortgagee ever did not make payments to a mortgagor, HUD is required to and would step in to assure that a mortgagor receives his or her monthly payment or line of credit draw requests.<sup>3</sup> That is part of the benefit to HECM consumer mortgagors that FHA insurance provides under the HECM program.

The CSBS has not articulated in its Proposal specific and detailed reasons why the current capital standards for reverse mortgage servicers under FHA, Fannie Mae and Ginnie Mae guidelines and rules are not sufficient.

#### *Exclusion for Reverse Mortgages*

Given that most reverse mortgages are FHA-insured, that reverse mortgage servicers are already subject to multiple and robust capital, liquidity and operational requirements, that FHA-insurance protects consumers from servicer default, and there are current regulations in place to protect consumers (including CFPB and FHA servicing transfers rules), we respectfully request that any future further refined proposal by the CSBS on prudential standards for non-bank servicers exclude reverse mortgages.

#### *Enhanced Standards*

Subject to our comments above, we have the additional following comments.

With regard to reverse mortgages, the Proposal needs to more clearly and adequately define how and when a servicer might fall under the Enhanced Standards.

In the alternative to a blanket exclusion for reverse mortgages, which we would highly recommend and prefer, we submit that a 6% capital standard ratio is not appropriate given the current accounting treatment of FHA-insured HECMs placed in Ginnie pools as HMBS. There is an accounting interpretation that provides that HMBS should remain on the books of the seller/servicer. The HECM and HMBS programs are sponsored by several federal government agencies in order to assist senior citizens in their retirement, and we do not believe that additional capital standards should apply to the reverse mortgage servicing market at this time.

Further, the liquidity requirements under the Enhanced Standards are ambiguous (i.e., “management to have a methodology for liquidity needs for other activities”) and appear to be subject to subjective interpretation. Where the Enhanced Standards have a suggestion of a different capital level for different

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<sup>3</sup> See 24 CFR 206.117 and 206.121. In any event, we are not aware of instances under the HECM program where a servicer did not make payments to a borrower and thus HUD was required to step in to make payments to the senior consumer. If a state desires to impose capital standards on non-bank reverse mortgage servicers, it may do so, and several have done so, such as New York, Washington and Pennsylvania. Again, this is in the purview of state legislative bodies, and not a trade association.

types of loans, the types of loans or methods for determining that different standard are not spelled out. Thus, if the CSBS moves forward to apply the Proposal to reverse mortgages (which we ask it does not), it must specify what criteria will be used to determine if the Enhanced Standards will apply to a reverse mortgage serving company. We note also in this regard that reverse mortgages carry no regular monthly instalment repayment obligations on behalf of the borrower. In this vein, if defaulted or delinquent loans will require an Enhanced Standard, what criteria will be used to determine if and when a reverse mortgage is in default or “non-performing”? As you know, for instance, many reverse mortgages mature when last surviving borrower passes away. However, a maturity event under a reverse mortgage technically is not a default event. Further, as described elsewhere herein, most reverse mortgages on the market and being serviced today are FHA-insured HECMs. Maturity events are an expected and calibrated event for reverse mortgages, and for FHA-insured reverse mortgages, FHA insurance protects the loan investor against any so-called “cross over” risk, thus obviating the reason on this item for additional servicer capital standards.

### *Questions*

Subject to our comments above, we answer the CSBS’ questions as follows:

1. Should all non-bank mortgage servicers be required to have a full financial statement audit conducted by an independent certified public accountant?

*For consistency of operations and implementation, if the Proposal is made applicable to reverse mortgages, we would recommend any reverse mortgage servicer be subject to an independent audit.*

2. Should there be a 6 percent net worth requirement in addition to the minimum capital requirement plus add-on?

*If the Proposal is made more generally applicable to reverse mortgages, HECM loans serviced for Fannie Mae or placed into GNMA pools should not be subject to this requirement. In this regard, note that FHA-approved mortgagees, Fannie Mae-approved seller/servicers and Ginnie Mae-approved Issuers already are subject to adequate and robust capital standards.*

3. Is the Fannie Mae and Freddie Mac proposal to require more liquidity when delinquencies rates rise reflective of increased risk? What operational challenges does the standard create?

*If the Proposal is made more generally applicable to reverse mortgages, as stated above, we have concerns as to how delinquency, default and non-performing loans would be defined for reverse mortgages under the Proposal.*

4. How should state regulators approach formulating a prudential standard for liquidity, considering a firm’s potential cash outlays for both private label and GSE backed paper?

*If the Proposal is made more generally applicable to reverse mortgages, as stated above, such provisions by state mortgage banking regulators should be in the form of examination guidelines, and should be consistent with federal agency and enterprise guidelines already in place as interpreted and implemented by those agencies for the assets under consideration and being serviced.*

5. What is a reasonable ownership percentage threshold to trigger a change in control event?

*Many states already have change of control notification and approval requirements. We would not suggest an additional and different level or layer of change of control notifications or approval. However, if the Proposal is made more generally applicable to reverse mortgages, we would suggest a change of ownership reporting threshold **only**, and that this threshold be set at 25% of common voting rights only (and not investment or distribution rights).*

6. Which criteria should be used to determine the firms that are subject to enhanced prudential standards?

*If the Proposal is made more generally applicable to reverse mortgages, we suggest that if minimum capital and liquidity are exceeded by 20%+ that no further Enhanced Standards apply.*

7. Do any of the Baseline Standards threaten the viability of a servicer?

*Yes. The incremental capital, liquidity, compliance and risk management will be a major challenge for smaller institutions. Compensating and retaining the required level of management will be difficult. Some servicers will be unable to sustain their current model.*

8. What is a reasonable transition period to implement the Baseline Standards? Are there specific standards that would require additional time to implement?

*If the Proposal is made more generally applicable to reverse mortgages, a minimum of twenty-four months for new Capital and Liquidity requirements, and twelve months for the remainder of the Proposal except as noted below.*

9. What timeframes would be appropriate to implement each of the enhanced standards?

*If the Proposal is made more generally applicable to reverse mortgages, a minimum of thirty-six months for Enhanced Prudential Standards.*

10. What effect will the enhanced standards have on the warehouse and advance facility borrowing contracts/capacity of large servicers?

*If the Proposal is made more generally applicable to reverse mortgages, it will restrict financing to those who can meet the requirements. We need a more detailed proposal to more fully assess any other impacts.*

11. Is a prescribed risk-weighted capital adequacy measure more appropriate than a company established capital adequacy methodology for complex firms subject to enhanced prudential standards?

*If the Proposal is made more generally applicable to reverse mortgages, yes, we would agree with this approach in light of our comments above, particularly that there are other agency capital standards in place today for reverse mortgage servicers, and senior consumers are protected from servicer default via FHA insurance.*

### **Conclusion**

NRMLA appreciates the opportunity to comment upon the CSBS Proposal. As you can see from the foregoing, the servicing of reverse mortgages is unique, and different from forward mortgage servicing.

We trust that the CSBS will take this into account in its further deliberations on the Proposal, and will find our comments herein both helpful and informative. We look forward to your response and favorable action upon them.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'Steve Irwin', with a long horizontal flourish extending to the right.

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