June 23, 2015

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

re: CSBS Proposed Framework for Prudential Regulation of Non-bank Servicers

The undersigned state mortgage banking associations (the Associations) appreciate the opportunity to comment on the Conference of State Bank Supervisors' (CSBS) proposed framework for prudential regulation (the Proposal) of independent mortgage (or "non-bank") servicers. This is a topic of interest and we appreciate that CSBS has taken the lead in this discussion and provided opportunities for feedback.

As an initial matter, the Associations question whether such prescriptive prudential regulatory standards for independent mortgage servicers are appropriate. Most aspects of the servicer/consumer relationship are already subject to strict regulatory standards with significant penalties. In the servicing space, the Consumer Financial Protection Bureau (CFPB) has promulgated and implemented extensive mortgage servicing rules that govern nearly every facet of the servicing relationship and cover all servicers — bank and non-bank, large and small.[1] In light of this, the Proposal rightly does not add additional *consumer facing* standards.

We applaud CSBS for their recognition that the CFPB rules provide comprehensive national standards for all servicers and that additional prescriptive standards in this space would be duplicative and burdensome. Indeed, the expensive demands of regulatory implementation and other factors have significantly increased the costs of servicing for both performing and non-performing loans and have further increased the cost of new originations.

Rather, this Proposal focuses on the *financial condition* of independent mortgage servicers and suggests "prudential" regulations. As you know, prudential regulation is generally understood to be the regulation of the banking sector by federal or state regulatory authorities to ensure that the banks are sufficiently capitalized and have sufficient liquidity. This often hands-on regime is justified by the fact that the regulated institutions receive insured deposits, have direct access to the payments system, and can turn to the government as a lender of last resort. This increased regulation is meant to counter the moral hazard of potentially higher risk-taking by banks due to their access to these unique government benefits.

Under that rationale, it is not clear that non-bank mortgage servicers require a prudential regulatory regime. Any regulation would not appear to be protecting a direct taxpayer or systemic financial stability interest, as non-bank mortgage servicers do not create systemic moral

[1] See 78 FR 10695.

hazard risk through insured deposits and access to the Federal Reserve's discount window or any lender of last resort. By contrast, non-bank mortgage servicers must meet the financial and operational standards imposed by their key public and private sector counterparties — the Department of Housing and Urban Development (HUD); the Government National Mortgage Association (Ginnie Mae); Fannie Mae and Freddie Mac (the GSEs); and other mortgage-backed securities investors. In order to do business with these counterparties, they must meet eligibility requirements set by the counterparties. Continued eligibility is contingent on ongoing monitoring of the entity's financial condition and their adherence to operational requirements. Indeed, the Proposal recognizes this relationship by incorporating many of these requirements into the baseline standards.

Turning to these baseline standards, should CSBS proceed with the Proposal, the Associations support the general approach taken by the baseline standards to leverage existing regulatory requirements or generally accepted business practices. Utilizing existing standards will make it easier for servicers to implement these requirements or report relevant metrics to their examiners. This will particularly benefit small servicers who may not have the resources or expertise required to navigate complex or overlapping regulatory requirements.

<u>The benefits of this approach will be lost, however, if there is a piecemeal implementation process or if these standards are changed when considered by the states for implementation</u>. Adoption of multiple and possibly contradictory standards/interpretations of acceptable levels of capital and liquidity or operational metrics will be extraordinarily expensive and confusing. This burden will be especially acute on those covered by the enhanced standards, as their company-specific plans are subject to the review and possible revision of every state regulator in which they operate.

Our members understand the fine balance between state and federal regulatory responsibilities. However, we believe that the topics covered by both the baseline and enhanced standards touch on common principles that are not likely to change nor have significant need for variation by state or region.

<u>In light of this, we urge CSBS to seriously consider how it might best achieve a uniform solution amongst their member regulators to implement the aspects of the Proposal that they finalize. Failure to do so will undermine much of the good work that has gone into crafting the baseline standards and the desired objectives of the enhanced standards</u>.

Finally, we believe that the Proposal needs to make clearer the types of activity that are going to be covered by the Proposal. Across our states, there is not a uniform framework for licensing servicers. Worryingly, the language of the Proposal suggests that it will apply to "all firms" that are licensed by a state regulator. State licensing laws vary significantly, and do not always apply simply to those that own the mortgage servicing rights (MSR) or are responsible for collecting and remitting or advancing payments to investors.

While we understand that different states have different views on what sort of conduct falls under their applicable licensing statutes, the proposed standards have been pegged to certain assumptions about business models, MSR ownership and financial responsibilities. Many states have general “mortgage banking statutes” and applying these standards to that population could capture loan originators and others that should not be subject to this Proposal. While many servicers have origination arms that are already covered by the GSE standards, applying this Proposal to smaller mortgage lenders that do not service could have very serious consequences or lead some to exit the business entirely. Failure to clearly define the entities that are covered by this Proposal could lead to unintended negative outcomes and may not make sense given the actual tasks or business model of the entity that is subject to state licensing.

The Associations would like to reiterate our appreciation for CSBS’ willingness to engage on this issue and consider stakeholder opinions. Going forward, we welcome the ongoing discussion of the underlying need for a prudential regulatory regime as well as the best ways to implement any standards that are promulgated. Continued productive engagement will lead to results that will minimize burdens and reporting costs for the businesses that make up our membership and allow them to continue to serve consumers well in our respective states. Please feel free to contact us with any questions you may have.

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Arizona Mortgage Lenders Association
California Mortgage Bankers Association
Colorado Mortgage Lenders Association
Connecticut Mortgage Bankers Association
Illinois Mortgage Bankers Association
Indiana Mortgage Bankers Association
Iowa Mortgage Association
Maine Association of Mortgage Professionals
Maryland Mortgage Bankers Association
Massachusetts Mortgage Bankers Association
Michigan Mortgage Lenders Association
Minnesota Mortgage Association
Mortgage Bankers and Brokers Association of New Hampshire
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