Preface and capsule summary for the following white paper submitted by
Texas Land and Mortgage (TL&M) regarding
Proposed Regulatory Prudential Standards for Non-Bank Mortgage Servicers by CSBS

In the white paper which follows, Texas Land & Mortgage responds to the CSBS proposal by explaining in detail the basis for positions which state that:

It is a substantive mistake with adverse impacts to require “baseline prudential standards” to apply to non-bank mortgage servicers at a level which treats them much the same as highly-capitalized banks or highly capitalized mortgage companies, especially in such cases where the loan or mortgage servicers are not lenders or note-holders and instead are only subservicers. (A non-bank note servicer who did not make the actual loan and who has no collateral interest in the note is defined as a “subservicer”, as opposed to a servicer who actually made the loan or owns the servicing rights.) Proposed requirements need to be modulated in order to maximize efficiencies without adversely affecting consumer protections and at the same time not impose unnecessary, regulatory burdens on the subservicers and threaten the viability of their businesses.

TL&M has taken an urgent interest in CSBS’s Proposed Regulatory Prudential Standards For Non-Bank Servicers because we fear the outcome as outlined would have a detrimental impact on our industry, just as the Safe Act did. Once again, many have told us that this regulatory standard is not applicable to the subservicing industry, however, according to the statement in the Executive Summary (“Once adopted by state regulators, these standards will represent regulatory requirements for state-licensed non-bank mortgage firms”), Texas does not distinguish between a servicer and subservicer. By default, we would be included, with no distinction, with the big servicing companies that do purchase MSRs.

TL&M strongly avers that there should be at least two categories of exemptions from these proposed standards: (1) a servicing exemption and (2) a loan type exemption, the details of which are:

Create a Servicing Exemption: A subservicer is a vendor for hire. It performs the servicing duties for the note holder. As long as the subservicer or affiliates do not own the MSRs, an exemption should be created because the subservicer does not own any MSR assets.

Create a Loan Type Exemption: Reg X RESPA 1024.2(b) outlines the requirements for a note to be considered a Federally Related Mortgage Loan and exempts Non Federally Related Mortgage Loans based on situations found in 1024.5(a). Because many of the TL&Mmembers are developers, provide seller-financing, and originate and service unimproved property, and because Texas defines an unimproved residential lot in its definition of Mortgage Loan (see Texas Finance Code §180.002(18)&(20)), an exemption for non-federally-related mortgage loans must be created or else a vacant lot will get caught up in these costly servicing regulations unnecessarily.

An adverse outcome would be that, if and when these small subservicers leave the industry, borrowers and consumers would be deprived of the kind of personal attention and customer care provided to them by these subservicers who know their customers and who can assist them with their needs, including providing information to them directly about their loans. This level of customer care is a far cry from the large, corporate note-servicer enterprises who cannot provide such service because of sheer numbers.

It is very important to note that in the run-up to this proposal by CSBS, the actual proposal, and the request for responses and answers to 11 questions, private business (mortgage servicers) have not been involved in the process at the dialogical level. While having the opportunity to submit written responses and answer a set of calculated questions is appreciated, it is very important to recognize that after the June 23, 2015 comment deadline, the private sector should be allowed to participate in the dialogical process by which these proposed rules (and the responsive comments) are evaluated and vetted. There is a great deal at stake in the outcome of this process. Businesses could be destroyed and borrowers/consumers could be adversely affected if it is not done properly. The best course for the best result is to involve professionals in the industry in the dialogical process after the comment deadline.

TL&M's responses to questions as submitted by CSBS

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

Servicers (subservicers) under baseline standards should not be required to do so on top of all the other requirements already being imposed at the state level. These detailed reports as now required are already comprehensive. If there are consumer complaints, the state regulators can investigate them. Texas Land and Mortgage is not providing this answer as applying to enhanced standards.

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

No. The net worth requirement already is unnecessary because the mortgage subservicer is only serving to pass-through funds to the lender. A realistic bond is the only needed requirement.

(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?

There is no increased risk when the mortgage subservicer is only serving as a pass-through conduit for the flow of funds from the borrower to the lender.

(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?

A mortgage subservicer who is only a pass-through conduit for funds between the borrower and lender only needs sufficient liquidity to meet payroll and meet the other direct expenses of the business. This subservicer has no potential outlays for private label and GSE-backed paper. If the mortgage subservicer's business should fail, the notes and notes-servicing could be acquired and handled by another subservicer with no loss or risk to the borrower. The actual lender would be able to require the subservicer to be bonded to protect any cash in transit as it flows from the subservicer to the lender.

(5) What is a reasonable ownership percentage threshold to trigger a change in (a) (sic) control event?

Ownership control is only an issue if control cedes to persons or parties who are not properly registered or certificated, in which state regulars could impose an appropriate cure. Stating a percentage is not an applicable issue for subservicers complying with baseline standards if those standards are realistic in recognizing that the mortgage subservicer is only a flow-through conduit for funds.

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

Enhanced standards certainly should not apply to subservicers who are not the actual lenders. And enhanced standards should not apply to smaller seller-financers who are their own note servicers but whose loan volume does not approach the scale of large, non-bank, mortgage companies who service their own loans and have a claim on collateral. The threshold number where the loan volume would require compliance with advanced prudential standards for seller-financers needs to be significantly high so that evaluation categories nine through 12 would be useful and applicable. More study is needed to determine that threshold trigger point. TL&M's members involved in seller-financing do not engage in volumes that are significant enough to warrant forced compliance with enhanced standards.

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

Absolutely. The Baseline Standards which require anything more than confirming that a mortgage subservicer has the cash flow and assets to operate efficiently and pay the (monthly) expenses to continue providing the service would be too severe. There is no additional protection for the borrower/consumer to require the mortgage subservicer to have an inordinately high liquidity or warehouse of capital.

(8) What is a reasonable transition period to implement the baseline standards? Are there specific standards that would require additional time to implement?

It all depends on what those baseline standards are. If they go beyond requiring a mortgage service simply to be able to pay expenses and keep the business operating, then they are too high, and any length of time isn't applicable. Additional time wouldn't help if the mortgage servicer were forced to meet impossible levels of liquidity or capital requirements.

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

In order to transition to both baseline standards and enhanced standards, at least a year would be required, but that timeframe would depend upon which actual standards would ultimately be adopted and required.

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

Servicers and subservicers who would fall under the requirements of enhanced standards would have their warehouse and advance facility borrowing contracts/capacity suffer severe stress, perhaps even to the point of threatening business viability depending upon the rigor of the requirements.

(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?

A company large enough to be required to comply with enhanced standards could and would establish its self-determined capital adequacy methodology in its own self-interest of survival and prosperity. A prescribed, risk-weighted capital adequacy measure could be inappropriate or a mismatch for the situation of a particular company.

A white paper regarding

PROPOSED REGULATORY PRUDENTIAL STANDARDS FOR NON-BANK MORTGAGE SERVICERS

as initiated by the

Conference of State Bank Supervisors (CSBS), Washington, D.C.

Submitted by:

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Response submitted to:

MSR Task Force
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Response to the CSBS
PROPOSED REGULATORY PRUDENTIAL STANDARDS FOR NON-BANK MORTGAGE SERVICERS
By the Texas Land Developers Association (TL&M)

EXECUTIVE SUMMARY

While there is agreement with the some views expressed in these “proposed regulatory standards” such as the statement that non-bank mortgage servicers can provide efficiencies for consumers and for the market, it is a substantive mistake with adverse impacts to require “baseline prudential standards” to apply to non-bank mortgage servicers at a level which treats them much the same as highly-capitalized banks or highly capitalized mortgage companies, especially in such cases where the loan or mortgage servicers are not lenders or note-holders and instead are only subservicers.[1] Proposed requirements need to be modulated in order to maximize efficiencies without adversely affecting consumer protections.

ABOUT TL&M

Texas Land & Mortgage is a subsidiary of the Texas Land Developers Association and consists of real estate investors, real estate agents, developers and mortgage servicers who are located primarily in South Texas but also are involved in other areas of the state. TL&M members are committed to business practices which conform to municipal, county, state and federal statutes and regulations, including either being or using professional service providers (in-house and outsourced) involving legal issues (attorneys), accounting, banking, finance, engineering, note servicing, and public relations, including processes involving Residential Mortgage Loan Originators (RMLOs). TL&M members also use seller-financing as an important business model.

Many of our members service their own notes as the servicing industry evolved, however, and with those changes, more regulation was required. Many note holders chose to stop servicing their own notes and hired a subservicer. The members of TL&M do not buy mortgage servicing rights (MSR).

In the past our members were ensured the Safe Act would not apply to their type of industry because most of the property they develop, sale and service is vacant land or not a

1 Henceforth a non-bank note servicer who did not make the actual loan and who has no collateral interest in the note will be identified as a “subservicer”, as opposed to a servicer who actually made the loan or owns the MSR.

federally related mortgage loan. However the exemption did not materialize and our members have been left with the compliance burden of the Safe Act and Dodd Frank Act.

We have taken an urgent interest in CSBS's Proposed Regulatory Prudential Standards For Non-Bank Servicers because we fear the outcome as outlined would have a detrimental impact on our industry, just as the Safe Act did. Once again, many have told us that this regulatory standard is not applicable to the subservicing industry, however, according to the statement in the Executive Summary ("Once adopted by state regulators, these standards will represent regulatory requirements for state-licensed non-bank mortgage firms"), Texas does not distinguish between a servicer and subservicer. By default, we would be included, with no distinction, with the big servicing companies that do purchase MSRs.

Call to Action

The TL&M call to action would is to further define two areas: (1) the type of servicer doing the servicing, and (2) the type of note being serviced.

Create a Servicing Exemption: A subservicer is a vendor for hire. It performs the servicing duties for the note holder. As long as the subservicer or affiliates do not own the MSRs, an exemption should be created because the subservicer does not own any MSR assets.

Create a Loan Type Exemption: Reg X RESPA 1024.2(b) outlines the requirements for a note to be considered a Federally Related Mortgage Loan and exempts Non Federally Related Mortgage Loans based on situations found in 1024.5(a). Because many of the TL&Mmembers are developers, provide seller-financing, and originate and service unimproved property, and because Texas defines an unimproved residential lot in its definition of Mortgage Loan (see Texas Finance Code §180.002(18)&(20)), an exemption for non-federally-related mortgage loans must be created or else a vacant lot will get caught up in these costly servicing regulations unnecessarily.

SCOPE AND APPLICABILITY

The proposed standards, if implemented in rule or law, would make several changes, many of which would be detrimental to business, to markets, and to consumers, and would threaten the efficiencies and benefits of mortgages involving loan originators and seller-financers whose size and activities would place them in the “baseline prudential standards” regulatory category.

The CSBS does not recognize the other areas of note servicing. It would be appropriate to identify all divisions to ensure the proposed regulation would be applicable to all. The Nationwide Mortgage Licensing System & Registry (NMLS) identifies and defines note-servicing divisions as follows:

> **Wholly Owned Loans Servicing** – Servicing of loans where the servicer retains all ownership rights.
>
> **Loan Servicing Under MSR’s** – Servicing of loans where the servicer owns only the Mortgage Servicing Rights.
>
> **Loan Servicing by Subservicers** – Servicing of loans where the owner of the loan or MSR may, rather than servicing the note itself, hires a vendor to take on the servicing duties.

Although the MSR market was the reason behind this regulation, its effect would cause the subservicer (who does not participate in the buying and selling of mortgage servicing rights) to be the unintended target, resulting in the subservicer becoming a casualty.

This white paper is outlined to review each of the proposed eight baseline standards and four enhanced standards and identify their impacts on consumers, wholly-owned loan servicers, subservicers and lenders (as note holders, hard money lenders or seller-financers).

Many of these proposed standards are duplicates of regulations already in place through Regulation Z (TILA), Regulation X (RESPA), Gramm-Leach-Bliley Act (GLB) and Texas SML. Non-bank servicers and subservicers essentially comply with all current applicable regulation. It is a false to assume that without the CSBS regulation, the non-Bank servicer would remain unregulated or under regulated.

WHOM WOULD THESE PROPOSED RULES AFFECT?

TL&M's understanding of the proposed rules is that they would affect state-licensed, non-bank mortgage servicers, namely those who service residential mortgages for someone other than themselves.

Texas Finance Code 158.002 (6) defines a "Residential mortgage loan servicer" and means it is a person who: (a) receives scheduled payments from a borrower under the terms of a residential mortgage loan, including amounts for escrow accounts, and (b) makes the payments of principal and interest to the owner of the loan or other third party and makes any other payments with respect to the amounts received from the borrower as may be required under the terms of the servicing loan document or servicing contract.

Texas does not make a distinction between a servicer and subservicer nor does the CSBs in their executive summary. This is where our request for further definition of servicer and subservicer as its basis.

Proposed Regulatory Prudential Standards

1. Capital

Basel II and Basel III are based on the bank's purchase of MSR's and its effect on their capital rules. Where once Basel II would consider the risk weighted asset (RWA) of an MSR at 100%, now Basel III limits the amount of MSR's that can apply to Common Equity Tier 1 (CET 1) capital to 10%.

MSR's that fall within 10% threshold result in a RWA of 250%.

MSR's that fall above the 10% threshold carry a dollar for dollar capital charge.

If Basel III were applied to a non bank servicer acting as a subservicer with an MSR balance of $0.00. Then the Capital required would be $0.00

BASEL III	If MSRs ≤ 10% of CET1
MSR Treatment for Tier 1 Calculation	250% Risk Weight
MSR Balance	0.00
Risk Weighted MSR Balance	$0.00 x 250% = $0.00
Capital Required for "Well Capitalized Classification at 8% Tier 1 Risk Weight Asset	$0.00

If the $2.5 million capital non-bank servicer requirement were applied to bank servicers the result would be MSR's worth 12 million if at 250% risk assessment. That would be comparable to a bank with $125 million common equity tier 1(CET1)

BASEL III	If MSRs ≤ 10% of CET1
Capital Equity Tier 1	125,000,000.00
MSR Treatment for Tier 1 Calculation	250% Risk Weight
MSR Balance	$12,500,000.00
Risk Weighted MSR Balance	$31,250,000.00
Capital Required for "Well Capitalized Classification at 8% Tier 1 Risk Weight Asset	$2,500,000.00

Because a subservicer does not own the MSR assets, to require a subservicer to maintain the same capital requirement as a bank with a capital equity of 125 million would not be equitable. .

While reviewing the proposed regulatory prudential standards for non-bank mortgage subservicers we were reminded of the SEC "Net Cap" requirements for broker /dealers. Many of the standards proposed are much like the "Net Cap" rule. However, one main difference is that broker/dealers are required to maintain a base capital minimum starting in the thousands of dollars (the formula increases from there based on the risk of the business) compared to the proposal for non-bank subservicers' base capital minimum starting in the millions of dollars.

Broker/dealers earn a commission from the product into which they invest their clients' funds. Unfortunately, we have witnessed first-hand borrower funds being invested into products that yield a bigger commission for the broker/dealer so that the net cap could be met. The CSBS has recognized that non-bank subservicers earn "contractually established fee income" and therefore do not typically service on a "commission basis". Fee-based compensation does not breed an environment for corruption or manipulation.

What then is the rationale which states that broker/dealers would have to maintain a lower capital net-worth standard than the subservicer? Here is a compelling comparison (Cornell) documenting that requirements for non-bank subservicers would be substantially higher in comparison to capital requirements for larger, more financially-robust entities. See the "minimum requirements" section at http://tinyurl.com/pskgypb.

2. Liquidity

The baseline prudential standards requirement would not define a direct regulation for non-performing notes however, it does reference the Government-Sponsored-Enterprise (GSE) standard of 200 basis points for non-performing loans that exceed six percent of the portfolio. It then goes on to state: **"Since the liquidity standard will only provide liquidity for the servicing portfolio, the Baseline Standard will include a provision for management to have a methodology to determine the liquidity need for other activities. State regulators will have the ability to challenge your methodology and require additional liquidity if deemed necessary".**

This standard is the same as the GSE standard, ***except that*** with the additional liquidity, one could assume the state could add an additional, incremental charge of 200 basis points, or any other regulation it "deems necessary". This vague statement has no boundary, thereby allowing for the possibility of endless and no-boundary regulation for all involved, including liquidity to be held by the lender. If the regulators have the authority "determine the liquidity needs for other activities," it is probable that the lender could be involved to insure its own notes just like a GSE.

3. Risk Management

The main reason for the risk management standard is to measure, monitor and mitigate financial risk and changes to the assets being serviced. Subservicers do not own assets being serviced, therefore to require a subservicer to create and maintain such risk management would be an unreasonable requirement.

4. Data Standards

In our opinion, the CSBS interpretation of the CFPB's requirement of the 5,000-loan threshold is incorrect. The 5,000-loan threshold refers to a small servicer exemption where the servicer is also the note holder: *1026.41(e)(4) (A) servicers, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee.* Inasmuch as the CSBS is concerned with MSR's then the 5,000 small subservicer exemption would not apply. In fact, even supposing that one note was not originated or funded by the subservicing entity, then all notes serviced by that subservicer would be subject to Reg Z and Reg X where applicable (Comment 41(e)(4)(ii)-2.ii). Inasmuch as the subservicer business model is based on engaging with the note holder to be the vendor to complete servicing duties, then the small servicer exemption does not apply and the subservicer is already under all applicable Reg X and Reg Z requirements. This requirement would be redundant to the subservicer.

5. Data Protection, including cyber risk

The TL&M members understand the concern and need for data protection. As RMLOs we are required to follow the Gramm-Leach Bliley Act. Also, many of our members have made an internal business decision to disconnect the daily interaction of their loan servicing software communication with the internet. In addition to any internal controls such as employee confidentiality agreements

6. Corporate Governance

Members of TL&M comply with all state corporate governance requirements as well as internal controls such as employee handbooks, confidentiality agreement, due diligence on new hires and business relations with new investors, personnel training and licensed RMLOs to complete the MCR. Many of the TL&M members are not large corporations with extensive boards of directors. Many of the TL&M entities have boards of directors that consist of father and son because they are family-run businesses. For companies of this size, an audit report by an independent public accountant would not only be unnecessary but overkill. Annual tax filings would be sufficient if required overview of financials.

7. Servicing transfer requirements

A subservicer currently is under the CFPB's transfer requirements and complies with all applicable regulations.

8. Change of control requirements

All Texas entities must comply with Texas's Public Information Report where the owners or members of an entity must be listed annually. This record is public.

9. Stress testing

Small, non-bank subservicers which are closely-held companies and which would not be subject to enhanced standards would not have to be subjected or self-subjected to stress testing inasmuch as the note-pay-pass-through nature of the business puts neither the lender nor the subservicer nor the borrower at risk. The lender's risk (because of being the actual holder of the note and potential collateral claimant) is not enhanced by using a subservicer to handle payment collection and record keeping for the transactions.

10. Living wills and recovery and resolution plans

A subservicer (especially operating under baseline standards rather than enhanced standards) is not involved in property transfer or property ownership resolution and rather is only involved in payment processing and record keeping.

11. Reserves and valuation methodology

There is neither need nor justification for requiring a subservicer who is only a payment pass-through functionary to retain reserves or be the object of a valuation methodology.

12. Transactions with affiliates

Subservicers typically have no affiliates organically connected to the subservicer function, as is the case with TL&M members. If the lender for whom the subservicer is accepting payments, keeping records, and forwarding those payments to the lender, that function (transaction) will be covered by an agreement between the two parties.

IMPACT

Subservicer

Based on the capital and liquidity requirement alone the subservicer would be financially stressed. If funds received from the borrower are held in a trust account and are not comingled with other accounts then the capital and liquidity requirement has no basis. Forcing a subservicer to maintain a specific net worth or liquidity to ensure the subservicer has enough resources to stay in business has no impact on the borrower. The subservicer does not require large capital or liquidity to purchase MSR's.

The borrower's account would not be jeopardized in any way. As we have seen with the "big five", no one is too big to fail. Everyone is susceptible to economic stressed times. A capital or liquidity requirement would not ensure a subservicer's likelihood to stay in business. One would be naïve to assume that would be the only factor in causing a company to have to close its doors. If the subservicer is struggling the note holder would be the affected party. It would be his/her option to take business elsewhere. This is still a free enterprise economy. Texas Finance Code 158.055 to this is to require the servicer purchase a bond. That should be sufficient.

The following examples show the impact on various servicer portfolio sizes. (A live-calculable Excel spreadsheet is available at http://tinyurl.com/qhjz5w9 to calculate other scenarios):

Example A: 20 Million Portfolio

CAPITAL		Serviced Loans	Loan Count	Percentage	Unpaid Principal Balance
Base Net worth	$2,500,000.00	Current or less than 30 days	210	84.00%	$ 16,800,000.00
.25 escalator of upb	$1,500.00	30 to 60 Days Delinquent	50	8.50%	$ 1,700,000.00
TOTAL CAPITAL	$2,501,500.00	61 to 90 Days Delinquent	16	4.50%	$ 900,000.00
		91 or more Days Delinquent	10	3.00%	$ 600,000.00
LIQUIDITY		Total	286	100.00%	$ 20,000,000.00
3.5 Basis points (.035%) Total Protfolio	$7,000.00				
Total Liquidity	$7,000.00	Non Performing Notes	10	3.00%	

Possible additional liquidity for a portfolio over 6% non performing notes:	200 basis points like GSE	Possible state requirement for additional liquity for servicers with over 6% non performing notes
$ 20,000,000.00	2%	$400,000.00

Example B: 10 Million Portfolio

CAPITAL		Serviced Loans	Loan Count	Percentage	Unpaid Principal Balance
Base net worth	$2,500,000.00	Current or less than 30 days	205	84.00%	$ 8,400,000.00
.25 escalator of upb	$25,000.00	30 to 60 Days Delinquent	14	8.50%	$ 850,000.00
TOTAL Net CAPITAL	$2,525,000.00	61 to 90 Days Delinquent	15	4.50%	$ 450,000.00
		91 or more Days Delinquent	10	3.00%	$ 300,000.00
LIQUIDITY		Total	244	100.00%	$ 10,000,000.00
3.5 Basis points (.035%) Total Protfolio	$3,500.00				
Total Liquidity	$3,500.00	Non Performing Notes	10	3.00%	

Possible additional liquidity for a portfolio over 6% non performing notes:	200 basis points like GSE	Possible state requirement for additional liquity for servicers with over 6% non performing notes
$ 10,000,000.00	2%	$200,000.00

Example C: 5 Million Portfolio					
CAPITAL		Serviced Loans	Loan Count	Percentage	Unpaid Principal Balance
Base net worth	$2,500,000.00	Current or less than 30 days	226	84.00%	$ 4,200,000.00
.25 escalator of upb	$12,500.00	30 to 60 Days Delinquent	14	8.50%	$ 425,000.00
TOTAL Net CAPITAL	$2,512,500.00	61 to 90 Days Delinquent	12	4.50%	$ 225,000.00
		91 or more Days Delinquent	10	3.00%	$ 150,000.00
LIQUIDITY		Total	268	100.00%	$ 5,000,000.00
3.5 Basis points (.035%) Total Protfolio	$1,750.00				
Total Liquidity	$1,750.00	Non Performing Notes	10	3.00%	

Possible additional liquidity for a portfolio over 6% non performing notes:	200 basis points like GSE	Possible state requirement for additional liquity for servicers with over 6% non performing notes
$ 5,000,000.00	2%	$100,000.00

One issue has emerged which might place the financial system at risk and has increased in severity for non-bank subservicers. Banks service some 83 percent of the notes. The fact that some entities have gone to non-bank subservicers because they are more efficient does not make non-bank subservicers “bad actors”. On the contrary, because non-bank subservicers provide more economical servicing, the consumer is well-served because the lender does not have to charge as much interest. That is a fundamental principle in how the market works. The benefits of increased regulation would be more than offset by the increased cost to the lender and ultimately passed on to the consumer. The banks contracting non-bank servicing do not represent a sizable portion of the market. It is mostly private-money loans that are neither government insured nor guaranteed which are being served by non-bank subservicers.

The proposed capital net worth requirements in this proposal are blatantly unfair to all involved. It would ruin the small ubservicers for no other reason than they are small. How does that improve the financial markets? A small subservicer with less than one thousand notes will be placed at risk even though his net worth is well within the ratio of the a security trader or bank’s net worth.

The non-bank note subservicer is not like a bank. The non-bank subservicer does not hold the notes. He only collects the payments and transfers funds to the lender.

Lender

The Task Force states that a large and increasing share of mortgage servicing rights (MSR) have shifted out of commercial banks and into non-bank mortgage servicing companies due to capital rules making it too “expensive to retain”.

By implementing the eight categories for “standard” and 12 categories for “enhanced” baselines, these new regulations would result in the non-bank mortgage servicing companies to lose their MSR’s also because the cost would be too expensive to retain.

Servicing regulations on a subservicer would then cause such an increased financial burden that non-bank mortgage sub ervicers would have to terminate its servicing duties with the note holder resulting in the note holder being forced into an industry about which he or she might not be well-versed. Maintaining servicing compliance could result in such a burden that the possibility of it being done correctly would be very unlikely. This result could cause

- Incorrect Interest or decrease in principal calculation
- Late fee calculation
- Miscalculation of tax and insurance escrow causing an excess or loss. Escrow over two months excess is against compliance and not enough escrow would cause the borrower to have to come up with the shortage causing an economic stress on the borrower
- Coupon or periodic statements

If a note holder would thus be servicing its own notes and has less than 5,000 notes, he is then considered a small servicer. Small servicers are exempt from all Reg X RESPA requirements, therefore the borrower would not be entitled to many services, with one of the most important of those being loss mitigation.

Borrower

The note holder is not required to offer the borrower any loss mitigation options if he is servicing his own note. This circumstance, along with the services listed below that the note holder is not required to follow, would have a direct negative impact on the borrower:

- 1024.34 Timely escrow payments and treatment of escrow account balances
- 1024.35 Error resolution procedures
- 1024.36 Request for information standards
- 1024.38 General Servicing Requirements, procedures and requirements

- 1024.39 Early intervention requirements
- 1024.40 Continuity of Contracting
- 1024.41 Loss Mitigation Procedures

Reg X and Reg Z Loss Mitigation regulation will have to be followed, however, any special provisions allowing a borrower to catch up on payments which a non-bank servicer may have allowed in the past, would not be practiced any longer. The non-bank servicer would have to take a hard stance on non-performing notes which have exhausted all loss mitigations options to get them off the books so additional liquidity requirements will not be triggered.

This circumstance would be harder on the borrower and contradicts one of the goals the Task Force is striving to accomplish with these regulations.

SUMMARY

When the owner of a small note subservicer company in Central Texas (and a member of TL&M) saw these proposed regulations, he described the result as being “apocalyptic” for this industry's small, mortgage subservicer business. It not only would be unjustified, it would be unrealistic to assume that these small businesses would be able to achieve the levels of capitalization required by these proposed rules.

An additional adverse outcome would be that, if and when these small subservicers leave the industry, borrowers and consumers would be deprived of the kind of personal attention and customer care provided to them by these subservicers who know their customers and who can assist them with their needs, including providing information to them directly about their loans. This level of customer care is a far cry from the large, corporate note-servicer enterprises who cannot provide such service because of sheer numbers.

TL&M reiterates in this summary its call to action in two critically-important areas: (1) the type of servicer doing the servicing, and (2) the type of note being serviced.

(1) Create a Servicing Exemption: A subservicer is a vendor for hire. It performs the servicing duties for the note holder. As long as the subservicer or affiliates do not own the MSRs, an exemption should be created because the subservicer does not own any MSR assets.

(2) Create a Loan Type Exemption: Reg X RESPA 1024.2(b) outlines the requirements for a note to be considered a Federally Related Mortgage Loan and exempts Non Federally Related Mortgage Loans based on situations found in 1024.5(a). Because many of the TL&Mmembers are developers, provide seller-financing, and originate and service unimproved property, and because Texas defines an unimproved residential lot in its definition of Mortgage Loan (see Texas Finance Code §180.002(18)&(20)), an exemption for non-federally-related mortgage loans must be created or else a vacant lot will get caught up in these costly servicing regulations unnecessarily.

It is very important to note that in the run-up to this proposal by CSBS, the actual proposal, and the request for responses and answers to 11 questions, private business (mortgage servicers) have not been involved in the process at the dialogical level. While having the opportunity to submit written responses and answer a set of calculated questions is appreciated, it is very important to recognize that after the June 23, 2015 comment deadline, the private sector should be allowed to participate in the dialogical process by which these proposed rules (and the responsive comments) are evaluated and vetted. There is a great deal at stake in the outcome of this process. Businesses could be destroyed and borrowers/consumers could be adversely affected if it is not done properly. The best course for the best result is to involve those involved in the industry in the dialogical process after the comment deadline.