FREEDOM MORTGAGE

907 Pleasant Valley Ave, Suite 3, Mount Laurel, NJ 08054

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Conference of State Bank Examiners
1129 20th Street, N.W.
Washington, D.C. 20036

Re: Proposed Regulatory Prudential Standards for Nonbank Mortgage Servicers (the "Proposal")

Ladies and Gentlemen:

Freedom Mortgage Corporation ("FMC") would like to respond to the Conference of State Bank Supervisor's ("CSBS") request for comments on its "Proposed Regulatory Prudential Standards for Nonbank Mortgage Servicers" (the "Proposal"). We thank you for the opportunity to express our views on the Proposal and appreciate the thoughtful way in which the CSBS has approached this complicated policy issue.

While we provide more specific answers below to the Proposal's questions, our overriding comment pertains to the present need for regulatory prudential standards that go beyond requirements to comply with applicable law. The Proposal equates regulatory prudential standards with "safety and soundness" standards, much like what federal law imposes on federally- and state-chartered depository institutions. It notes that state regulators already are using established prudential-type standards and common practices to perform supervision of the nonbank mortgage industry, including mortgage servicers. While not formalized into law or regulations, these standards and practices address many, if not all, of the items specified in the Proposal.

Like any policy initiative, the questions are what are the problems that the initiative is designed to solve and do the benefits of increased regulation outweigh the burdens? Is there a need to codify these standards in a statute or regulations? In this case, the answer to the first question is not at all clear, and we do not believe that the Proposal takes into account the cost calculus of increased regulation. Merely taking notice of the market growth of nonbank mortgage servicers does not evidence the need for the legal codification of prudential standards or justify the burdens of additional regulation. Nor does it support the proposition that whole loan servicing, private label securitization servicing and agency servicing should be treated in the same way notwithstanding the material differences in the characteristics of each type of servicing. We respectfully request that the CSBS refrain at this time from finalizing *legally binding* prudential standards on residential mortgage servicers, while it continues its present practice of evaluating on an informal basis a servicer's risk management practices.

We also respectfully request that you consider our comments in the moment. Mortgage servicers, particularly nonbank mortgage servicers, are the "front line workers" for implementing the government's response to the COVID-19 pandemic. They are providing forbearance and working with borrowers to address next steps after the expiration of forbearance. They are advancing principal and interest to securities holders and real estate taxes and insurance to relevant third parties and must wait for reimbursement. And, because mortgage servicers receive servicing fees generally only when borrowers make their regularly scheduled monthly mortgage payments, they essentially are performing these services for free. Imposing state-by-state additional requirements on nonbank servicers as a condition to maintaining their state licenses to service will make it more difficult for a servicer to perform these essential functions, particularly if the state standards and their enforcement vary.

BACKGROUND ON FREEDOM MORTGAGE CORPORATION

FMC is a privately-owned independent mortgage company that both originates and services residential mortgage loans. We are licensed in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. Presently, we service over 1.5 million loans with an aggregate principal balance of approximately $301.3 billion, as of November 30, 2020. Substantially all (over 99%) of our servicing is third-party servicing for the Government National Mortgage Association ("Ginnie Mae"), Fannie Mae and Freddie Mac. The remainder of our servicing (less than 1%) is for private investors, in both whole loan and private label securitization transactions. FMC separately has a very small subservicing business of approximately five loans with an aggregate principal balance of approximately $470,537 as of November 30, 2020. In 2019, FMC originated and sold or securitized approximately $57.6 billion of first-lien, residential mortgage loans, and, as of November 30, 2020, FMC's 2020 originations totalled approximately $116,767,266,882.

FMC is a member of the Mortgage Bankers Association and the Housing Policy Council and has participated in the preparation of the final versions of their respective comment letters on the Proposal. FMC supports and agrees with the observations, recommendations and conclusions stated in those comment letters.

CONTEXT FOR CONSIDERING WHETHER TO IMPOSE REGULATORY PRUDENTIAL STANDARDS ON NONBANK MORTGAGE SERVICERS

A mortgage servicer is a contract service provider. Like any commercial contract, there is a counterparty on the other side that engages the mortgage servicer, specifies the applicable eligibility standards and performance requirements, monitors the servicer's performance in accordance with the servicing agreement, and determines whether to exercise available contract remedies in the event of a breach by the servicer of its contractual obligations. Similarly, if a mortgage servicer elects to finance its operations through debt, the relevant commercial lender that agrees to lend its money mortgage servicer, specifies the applicable eligibility standards and performance requirements under the credit agreement, monitors the borrower's performance in accordance with the credit agreement, and determines whether to exercise available contract remedies in the event of a breach by the borrower of its contractual obligations. In each case, the investor under the servicing agreement and the commercial lender under the credit agreement bears the direct credit risk of loss if the mortgage servicer defaults on its contractual obligations.

As a result, neither the mortgage investor nor the commercial lender has shied away from imposing strict standards to mitigate the risk of loss resulting from a mortgage servicer contract default. This is particularly true where the mortgage investor is either a government agency, like Ginnie Mae, or a government-sponsored enterprise, like Fannie Mae or Freddie Mac, or a bank lender that is itself subject to federal regulations on safety and soundness. The underlying premise to the Proposal appears to be that these counterparties to servicing agreements and related credit agreements are incapable or ill-prepared of singularly managing, or are unwilling singularly to manage, the material risks that they directly face, even when they are either themselves federal government entities or generally subject to the supervision and examination of federal banking agencies. The Proposal, however, does not provide a foundation for this premise.

Moreover, by codifying prudential standards at a state level, the Proposal could effectively limit a mortgage investor or commercial lender from exercising its discretion to waive or vary any of its requirements that also are covered by the Proposal, by taking the decision out of the hands of contract counterparty and putting it in the hands of state regulators who have the power to revoke or impair the mortgage servicer's state license. This concern is exacerbated if state regulators do not act in unison. A model approach to attack a perceived national issue needs uniform adoption, implementation and enforcement to seek to meet its stated goals. If the CSBS determines it is appropriate to issue a final version of the Proposal, which as we note below we hope it does not at this time, we respectfully request that the CSBS work with state regulators to ensure the Proposal is enacted and administered in a single, uniform manner. The CSBS's "One Company, One Exam" initiative is a good example of a uniform supervisory framework that, appropriately administered, could allow for an additional layer of supervision at the state level while minimizing the risk of conflicting requirements and standards. Such uniformity would be much more likely if the standards and requirements contemplated by the Proposal ultimately track those imposed by Ginnie Mae, Fannie Mae and Freddie Mac and, equally importantly, give effect to any waivers of such standards and requirements as may be granted in any particular instance by Ginnie Mae, Fannie Mae or Freddie Mac in their discretion. The Proposal should take care to prevent the scenario where one or more states could seek to impose a sanction for a violation of a standard in an instance where Ginnie Mae, Fannie Mae or Freddie Mac has, based on the specific facts and circumstances of any particular case, determined in their discretion that a waiver is appropriate.

RESPONSES TO THE PROPOSAL'S QUESTIONS

General

1. *Is the need for state prudential standards sufficiently established?*

Other than protecting consumers, which is the key purpose of state licensing of mortgage servicers, it is hard to discern the state interest in imposing rigid, legislative or regulatory prudential standards on mortgage servicers. First, to reiterate what we state above, the counterparty to the servicing agreement or credit agreement has the greatest interest in the strength and vibrancy of the nonbank mortgage servicer with which it contracts because it bears the direct and primary risk of loss. This is the very reason that Ginnie Mae, Fannie Mae and Freddie Mac have substantial and ever evolving financial strength requirements consisting of net worth, capital and liquidity standards, which in their discretion they may elect to revise for individual servicers based on individual circumstances but which they closely monitor for compliance.

Second, unlike federal and state regulation of depository institutions, there does not appear to be any risk of a government bailout of a nonbank mortgage servicer, or the risk of losses to taxpayers directly resulting from the failure of a nonbank mortgage servicer. In this regard, a mortgage servicer does not provide traditional banking services, such as holding customer funds in federally-insured checking and savings accounts. Indeed, virtually all servicing agreements require the mortgage servicer to deposit customer custodial and escrow accounts with an eligible depository institution in separate trust accounts. And there is no public benefit afforded to state nonbank servicers that justifies the imposition of these standards.

Third, there is no demonstrable evidence of a material risk to consumers resulting from the potential failure of a mortgage servicer. We appreciate there is a theoretical risk and sound public policy does not require a risk to eventuate before acting. At the same time, Fannie Mae, Freddie Mac and Ginnie Mae long have had the capacity and exercised such capacity on a moment's notice to transfer servicing from a failing or failed mortgage servicer to an interim subservicer. Each closely is monitoring their contractual counterparties' material compliance with agency requirements, including financial strength, to enable these investors to act if necessary. Each from time to time expands its financial strength and other requirements for eligible servicers. Arguably, there is a greater risk with private label securitization servicing because of the lack of a protocol for handling servicer defaults, but presently this type of servicing is not a material portion of the nonbank mortgage servicers portfolios. State mortgage banking regulators clearly have a critical role in supervising and examining a mortgage servicer's compliance with applicable legal and regulatory requirements that are expressly designed and adopted to protect consumers. But the proposed new standards only are tangentially related to consumer protection, and the Proposal does not make the case why the standards are reasonably necessary to enhance consumer protection in a material respect.

Fourth, we respectfully question whether a state mortgage banking agency has a proper role, jurisdiction and authority to seek to protect mortgage investors and other stakeholders, as the Proposal envisions, particularly where many (if not most) of the investors and other stakeholders are located out of state. This is not a traditional role for state mortgage banking regulators, and the Proposal does not make the case why state mortgage banking regulators should expand their traditional functions to take on this role. Even if one accepts the premise that state regulators have an appropriate role to play in protecting out-of-state mortgage investors and commercial lenders beyond enforcing regulatory compliance, the Proposal does not explain how states in individual cases should replace the judgment of, and undermine the exercise of discretion by, these investors and commercial lenders, which in many cases are themselves subject to federal safety and soundness standards and federal supervision and examination.

Fifth, the Proposal has not established the rationale for creating a regulatory framework that permits state variations from a proposed uniform standard. We appreciate that each state desires to make its own decisions regarding its regulatory standards, but, as noted above, the goal of promoting stability in the nonbank mortgage servicing market in order to limit systemic risk will be impaired if states vary in their adoption, implementation and enforcement of model standards.

Last, and perhaps most importantly, the very evil the Proposal is designed to avoid—namely, the failure of a mortgage servicer—is a more likely result if a state agency revokes or impairs a license based upon a mortgage servicer's violation of the prudential regulations, where the counterparty to the servicing agreement or credit agreement elected not to terminate the applicable agreement or other states do not agree with either the findings or proposed remedies of a single state.

Nevertheless, we are mindful that extending bank safety and soundness standards to nonbank mortgage servicers results, at least in part, from the request of the federal Financial Stability Oversight Council ("FSOC"). As the CSBS knows, Section 111 of the Dodd-Frank Act established the FSOC in order to identify risks to US financial stability that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies; promote market discipline; and respond to emerging threats to the stability of the US financial system. In its "Final Interpretive Guidance" issued on December 4, 2019, FSOC described the methodology it will use to make what it characterized as a "rare" determination, based on an activities-based rather than entity-based approach, that a nonbank financial company will be supervised by the Federal Reserve and subject to prudential standards.

Such a determination would be based in the first instance on FSOC's conclusion that (1) material financial distress at a nonbank financial company could pose a threat to the financial stability of the United States or (2) the nature, scope, size, scale, concentration, interconnectedness or mix of the activities of a nonbank financial company could pose a threat to the financial stability of the United States. The Guidance defines a "risk to financial stability" as the risk of an event or development that could impair financial intermediation or financial market functioning to a degree that would be sufficient to inflict significant damage on the broader economy—a high bar, for sure.

FSOC has *not* made such a definitive determination relating to mortgage servicing. Instead, it has identified mortgage servicing as a potential emerging risk. As the Proposal notes, in its 2014 Annual Report, FSOC "identified the rapid growth in nonbank mortgage servicers as a market development that warranted heightened risk management and supervisory attention… and recommended that state regulators work together to develop prudential and corporate governance standards for nonbank mortgage servicing companies, in collaboration with the CFPB and FHFA." FSOC again recommended in its 2019 Annual Report "that federal and state regulators continue to coordinate closely to collect data, identify risks and strengthen oversight of nonbank companies involved in the origination and servicing of residential mortgages." It repeated that recommendation in its just released 2020 Annual Report. Such recommendations are designed to obviate the need for FSOC to evaluate whether nonbank mortgage servicers pose a threat to the stability of the U.S. financial system. And, the composition of at least part of the FSOC, including its Chairperson, will change with a new Administration.

We want to emphasize that legislative or regulatory prudential standards are not compelled by the FSOC. Nor has there been any definitive determination by FSOC or any of its component agencies that, on an activities-basis, the bankruptcy or insolvency of one or more nonbank mortgage servicers would be or is reasonably likely to result in material risk to the financial stability of the United States. While it is theoretically possible that such a bankruptcy or insolvency could have such a result, we believe it is imprudent to impose inflexible legal or regulatory requirements without regard to their cost to implement or the likelihood of the risk the standards are designed to manage. Particularly for mortgage servicers that are approved by and subject to the requirements of Ginnie Mae, Fannie Mae and/or Freddie Mac, we do not believe that the need for state prudential standards in the form of law or regulations has been sufficiently established and it is premature to implement statutory or regulatory prudential requirements for mortgage servicers.

The Proposal's requirement than a "complex servicer" maintain approved "living wills and recovery resolution plans" is a good example of what believe is an overreach. This concept appears to have been inspired by the comparable provision in the Dodd-Frank Act, which only apply to bank holding companies with assets greater than $50 billion and nonbanks designated by FSOC. But FSOC has not designated mortgage servicers for heightened federal supervision, because it has not yet determined that a (1) material financial distress at a nonbank mortgage servicer could pose a threat to the financial stability of the United States or (2) the nature, scope, size, scale, concentration, interconnectedness or mix of the activities of a nonbank mortgage servicer could pose a threat to the financial stability of the United States. We appreciate that FSOC has encouraged states to enhance their supervision of mortgage servicers to lessen the potential future risk that the failure of a mortgage servicer could have such an adverse impact on the larger financial system. But that does not mean that states should assume the role of 50 mini-FSOCs to seek to achieve this objective without themselves definitively determining based on reliable date that the likelihood and severity of risk that they seek to avoid is present.

Research of the Mortgage Bankers Association reveals that third party agency servicing (Ginnie Mae, Fannie Mae and Freddie Mac) presently comprises over 80% of the nonbank third party servicing rights. And much of the non-agency private label servicing pertains to securitization that occurred before the 2008 financial crisis, which is "burning off" and not being replaced by new private label securitizations. In other words, the Proposal essentially would provide state supervision of mortgage servicers participating in federal government-related mortgage servicing programs. Once again we question the compelling need for state regulators to codify legal and regulatory standards to enable mortgage servicers to participate in the federal agency servicing market.

We propose in the alternative that CSBS convert these prudential standards to augment its existing standards or perhaps best practices as to which state regulators may review licensed mortgage servicers. They would be guideposts for holistic review but not enforceable legislative or regulatory requirements. Perhaps CSBS may want to develop a publicly available grading or rating system based on clearly articulated standards to reflect their subjective judgments of a mortgage servicer's adoption of the prudential guidelines, much like banking agencies do under the Community Reinvestment Act. This would enable states some time to evaluate the feasibility and effectiveness of their guidelines, but not otherwise pre-empt and potentially conflict with the eligibility and operational standards imposed by Ginnie Mae, Fannie Mae and Freddie Mac.

2. *Do any of the standards threaten the viability of a servicer or a specific subsector within the industry?*

We believe that the states' enforcement of statutory or regulatory requirements pertaining to prudential standards could threaten of the viability of a mortgage servicer, which could be whipsawed between its contractual relationships with investors and credit lenders, on the one hand, and codified prudential requirements imposed by state regulators, on the other hand. There is an overlap between the federal agencies' and the Proposal's financial strength and other requirements. It is not hard to imagine a scenario where any one state or states operating in tandem could impose administrative sanctions on a mortgage servicer for its violation of codified prudential standards when at the same time Ginnie Mae, Fannie Mae or Freddie Mac have decided in their discretion to waive similar violations or rely on an action plan to cure the violation. This could have a cascading effect on a variety of a servicer's contractual arrangements, triggering defaults that might not otherwise be declared and causing material distress to the mortgage servicer. And this risk would be exacerbated if states do not agree between themselves whether a violation has occurred applying the same standards to the same facts but reaching differing judgments. As noted above, ironically, this potential disparate treatment could result in the very adverse impact on markets and consumers that the Proposal is designed to prevent.

We also are concerned about the potential impact the codification of prudential standards could have on access to affordable lending. The natural consequence of the Proposal as drafted is to avoid taking risk, since, particularly with respect to "Complex Servicers," state regulators will have the legal authority to review and approve the various standards to be codified. Mortgage servicers that also originate already have enough incentive not to make risky loans, given the federal Ability-to-Repay requirements, the risk of investor or insurer demands for repurchase or indemnification of "defective" loans and the principal and interest advance requirements of Ginnie Mae, Fannie Mae and Freddie Mac in respect of delinquent borrowers. Compliance with these legal requirements will impose costs on the servicer, which presumably will directly or indirectly be passed on to the consumer and impact the cost of credit.

We also refer you to our comment to question 9.

The Proposal also could have unintended adverse consequences. It would add an additional layer of incentive not to make loans that have a higher risk of delinquency because of the resulting increases in net worth, capital and liquidity that one or more state regulators may deem to be necessary after the fact and without regard to standards articulated in advance for "Complex Servicers." Compliance with applicable law and investor and insurer requirements presently is relatively well understood based on clearly specified requirements. Even federal banking requirements have relatively clear regulatory capital requirements for the assets that depository institutions hold so the institutions can plan in advance the financial consequences of originating certain types of loans and holding the loans or the related servicing rights for investment. Under the Proposal, a mortgage originator/mortgage servicer that qualifies as a "Complex Servicer" would have to "shadow box" with state regulators which would decide well after the loans were made whether a financial consequence would be imposed on the mortgage servicer for holding the related servicing rights. Mortgage servicers that also originate loans may resist originating loans that on their face are eligible for government insurance or guaranty or sale or securitization on a servicing retained basis simply because the originators do not want to contend with the potential, but real, risk that state regulators will demand an increase the mortgage servicer's financial requirements if delinquencies exceed a subjectively determined standard retroactively applied.

3. *What is a reasonable transition period to implement the standards?*

If the CSBS Proposal results in state laws or regulations, we believe an effective date of twelve to eighteen months after enactment of such laws or regulations would be reasonable. If states adopt a final proposal in different ways, from promulgating new regulations or passing new laws, there would not be a single implementation date.

4. *Are there specific standards that would require additional time to implement?*

FMC recommends that CSBS should allow Ginnie Mae, Fannie Mae and Freddie Mac to finalize their frameworks, and that any phase-in periods provided for therein should be also adopted by CSBS.

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

Virtually all warehouse and advance facility borrower contracts require the mortgage servicer borrower to represent, warrant and covenant that it has complied with, is complying with and shall comply with applicable law and investor requirements. If this representation, warranty and/or covenant is breached (perhaps limited to a materiality qualifier), the creditor would have the contractual right to declare a breach under the credit agreement, accelerate the outstanding debt and terminate the funding arrangement. In addition, the creditor might make its own determination of whether the mortgage servicer borrower has violated any of the state-imposed prudential requirements and, if so, what remedy if any is appropriate, even if a state itself or states themselves has or have not made such a determination. This may cause a private counterparty to declare a default that it might otherwise not declare to get in front of any inconsistent state determinations that could have a material adverse effect on the servicer's ability to stay in business. And, because the creditor is not the author of the underlying prudential state requirements, the mortgage servicer borrower cannot negotiate the language of the requirements as part of the representation, warranty or covenant in the credit agreement.

In addition, all of our warehouse and advance facility borrowing contracts impose a variety of affirmative and negative financial covenants, the actual terms of which are based on the creditor's targeted evaluation of the mortgage servicer's credit risk. If the results of the Proposal are to require higher financial covenants to satisfy state requirements, a mortgage servicer borrower's ability to access credit may be impaired.

Coverage

6. *Do you agree with a scaled approach for coverage where all servicers are subject to Baseline Standards and Complex Servicers only are subject to Enhanced Standards?*

Our comments only focus on the requirements to which we would be subject, and we would qualify as a "Complex Servicer" subject to "Enhanced Standards" under the Proposal. Respectfully, what the Proposal labels as "Enhanced Standards" could just as easily be labelled as "Unknown Standards." The Proposal identifies the categories of standards that must be "Enhanced" over the "Baseline," but they do not provide any specific guidance as to what that actually means. It requires the mortgage servicer to retain an independent third-party entity to model, assess and validate certain of the financial requirements contained in the Proposal, but the Proposal empowers state regulators to reject the findings and require something different.

In other words, the Proposal does not require state regulators to specify in advance for what it is looking or on what basis it may reject the findings of an independent third party and superimpose its own subjective judgment.

7. *Nonbank servicer coverage in this proposal is intentionally unspecific. We seek comment to assist in the appropriate coverage triggers.*

We have no comment on this question.

8. *In this proposal, we have not established a de minimis threshold for baseline coverage. Further, we have limited coverage of Subservicers Only and have excluded companies that only perform servicing for reverse mortgages. Finally, we have proposed a triggering level for Complex Servicers that would be subject to the Enhanced Standards. We request comment on the following*:

    a. *Should there be a de minimis threshold (a minimum volume or size threshold that triggers coverage)?* Please identify any threshold and explain your reasoning.

    We are limiting comments to the impact the Proposal would have on us.

    b. *What risk factors besides size of servicing portfolio are appropriate to consider for those servicers that have no agency servicing volume and therefore are not covered by either FHFA or Ginnie Mae requirements?*

    Not applicable

    c. *Have we struck the correct balance for Subservicer Only coverage as well as exclusion of portfolios serviced for others?* Please explain any disagreement with our inclusion/exclusion of subservicing activity.

    FMC agrees that it is appropriate to exclude portfolios serviced for others.

    d. *Do you agree or disagree on whether servicers performing only servicing for reverse mortgages should be excluded from this proposal?* If you disagree, please explain your reasoning.

    Not applicable

    e. *What size or volume of servicing do you believe is the appropriate threshold for a Complex Servicer?* Please explain.

    We believe this concept, if applied at all, should exclude agency servicing.

    f. *Are there specific risk factors that should be considered in the evaluation for inclusion or exclusion as a Complex Servicer?* Please provide detail.

    We have no comment on this question.

Capital and Liquidity

9. *The capital and liquidity components of this proposal align with existing and future FHFA Seller/Servicer requirements where possible. Do you support such alignment?*

If the capital and liquidity components of the Proposal remain in a final version, we encourage the CSBS not to impose "Enhanced Standards" on "Complex Servicers." We believe that Ginnie Mae, Fannie Mae and Freddie Mac have more sustained and direct experience to determine the appropriate standards, particularly since they bear the primary, direct risk of loss in the case of the failure of a mortgage servicer. We often think that FHFA goes too far. For example, we strongly disagree with the recent surprising announcement by Fannie Mae and Freddie Mac that, effective March 31, 2021, they will exclude from their required liquidity calculations the unused and available portion of committed lines of credit, although it is consistent with the Proposal. We are surprised because FHFA previously proposed this change this past January as part of its proposed revised financial strength requirements, but then rescinded the proposal in June in response to industry comments, saying that it would re-propose revised standards at a later date. The new announcement came before any re-proposal. In light of the inconsistent approach of FHFA and the GSEs to the implementation of this change, we expect trade groups to ask FHFA to reconsider its approach and, at a minimum, delay its effective date. We request that any final version of the Proposal pertaining to liquidity include available portions of committed lines of credit in the calculation of required liquidity, unless and until the effective date of any such change by Fannie Mae and Freddie Mac.

While we intend to participate in industry efforts to push back on FHFA for this revised liquidity calculation, at least the debate is informed by the "in the trenches" experience of these agencies. They have been managing this risk for decades, have the internal expertise to make informed judgments based on data-driven analyse and the fact that they are federal government entities gives them credibility as the ultimate decision maker. We are hard pressed to understand how individual state regulators should pre-empt the informed judgments of these government entities that bear the direct risk of loss and instead impose greater requirements as the "higher of" standard as the Proposal suggests. If the final Proposal imposes net worth, capital and liquidity requirements, they should not exceed Ginnie Mae, Fannie Mae and Freddie Mac requirements. We want to reiterate, though, that Fannie Mae and Freddie Mac often waive or lessen these requirements in individual cases, and new state standards should not undermine this exercise of discretion.

If the CSBS nevertheless believes that the states should retain authority to exercise separate judgments, perhaps they should provide that compliance with FHFA Seller/Servicer requirements, including any waivers or variations that a GSE made in a particular case, is presumed to be sufficient, and may be rebutted only by clear and convincing evidence that such requirements present a reasonably likely risk of material mortgage servicer distress and resulting material consumer harm.

Another alternative is not to prescribe any specific net worth, capital any liquidity requirements and simply require that mortgage servicers comply with their contractual financial strength requirements and be prepared to demonstrate such contractual compliance during state supervisory reviews.

10. Do *you agree with the components included in the calculation of net worth? Is there an alternative calculation that would be more effective?*

We see no reason to veer from the long standing definition of net worth used by Ginnie Mae, Fannie Mae and Freddie Mac as actually applied in practice. This definition could be read to require a nonbank mortgage servicer to exclude from its net worth mortgage servicing rights and other assets pledged against unused credit lines. In practice, however, this exclusion often is waived by the agencies. For example, we understand that Ginnie Mae has interpreted its definition of net worth to exclude mortgage servicing rights from net worth only if the mortgage servicing rights are used to secure an obligation of another entity. This approach is particularly important to FMC because the majority of our servicing portfolio is Ginnie Mae servicing. Fannie Mae and Freddie Mac have a similar requirement that they explicitly are authorized to waive based on their judgment. We know that they often do not apply this exclusion and believe that reversing this approach would have a significant adverse effect on many servicers.

11. *State supervisors hold jurisdiction over a nonbank servicer's entire portfolio. Do you feel that applying the FHFA calculations to all owned servicing is an appropriate approach for these standards?*

We believe that the standard should be based on the requirements of the applicable servicing agreements, because the counterparty to the servicing agreement is in the best position to determine the credit risk of loss it is willing to bear resulting from the failure of the mortgage servicer and the best way to manage that risk. Presently, non-agency servicing consists of whole loan servicing for banks and other private investors for which principal and interest advances often are not required and private label securitizations which is not a material part of the market at this point beyond pre-2008 legacy securitizations. It is hard to believe that either component presents the material risks that FSOC has identified as an emerging risk with respect to agency servicing. Accordingly, we see no compelling argument supporting the application of these requirements to non-agency servicing. At a minimum, however, the calculation should exclude mortgage servicing rights that do not require more than three months of principal and interest advances on delinquent loans.

12. *These standards define two types of liquidity need: Servicing Liquidity for the direct performance of servicing and Operating Liquidity for general operations of the organization. Do you agree with these definitions? What alternative definitions would you propose?*

Again, we believe that any liquidity test that may be included in a final version of the Proposal should parallel the requirements of the FHFA as applied to that servicer's agency servicing. We keep repeating the question of what happens if a mortgage servicer unintentionally breaches a net worth or liquidity covenant, or perhaps another covenant in a credit agreement like a "borrowing base" requirement? The counterparty to the servicing agreement or the credit agreement has the discretion to waive the "breach" or require alternative protections based on their commercially reasonable judgments based on the totality of the mortgage servicer's specific circumstances. Presumably, state regulators similarly would have discretion to enforce the state requirement, but there are no standards guiding the exercise of that discretion, different states may exercise their respective discretion in different ways and any decision not to waive the violation could result in the termination of the mortgage servicer's license and thereby cause the very failure of the mortgage servicer that the Proposal is designed to prevent.

Operating liquidity is a risk to which all companies manage, regardless of the industry sector. The Proposal highlights the need for quantitative legal requirements for operating liquidity without explaining why other than it would be nice to have. We do not believe that there is a need for a quantitative legal requirement for operating liquidity and recommend that the states rely on the requirements that contract counterparties may impose.

13. *Allowable Assets for Liquidity is intended to align with FHFA's 2019 Servicer Eligibility 2.0 Proposal. Do you agree with this alignment?*

We believe the alignment would be appropriate if and when FHFA adopts the 2019 Servicer Eligibility 2.0 Proposal. Such alignment should expressly give effect to any waivers granted under the FHFA standards. We are aware that the FHFA is expected to release their standards for comment in January; we understand that this release will apparently include a comment period for the FHFA's recently released guidance for liquidity calculations to exclude unused and available portions of committed lines of credit.

<u>Corporate Controls</u>

14. *Do the Risk Management standards appropriately capture the risks faced by nonbank mortgage servicers?*

While the Risk Management standards capture the risks that are required to be part of a federally- or state-chartered depository institution, it is not at all clear why nonbank mortgage servicers should be required to establish a risk management program as a matter of state mortgage banking law. For example, is it really an appropriate role for a state regulator to evaluate whether a mortgage servicer faces reputation risk or market risk? Would it revoke a license or impose administrative sanctions if a mortgage servicer failed to manage the risks posed by fierce competition or an adverse reputation?

15. *Is it a reasonable expectation that all covered servicers establish a risk management program under a board of directors scaled to the complexity of the organization?*

We, of course, take risk management very seriously. We worry that state regulators will seek to inject themselves into the deliberations of a licensee's board of directors to determine compliance with legally-required corporate controls. As we note in our response to Question Number 1, we have no objection to guidelines addressing appropriate risk management standards and the involvement of a licensee's board of directors in approving and implementing a risk management program. We use the word "appropriate" because we believe the Proposal goes well beyond what we believe is appropriate to serve a state's legitimate interest in supervisory oversight.

For example, the Proposal provides that "The board of directors of a nonbank mortgage servicer must establish a sound corporate governance framework to protect the financial, reputational, cultural and strategic interests of the firm and the firm's stakeholders and set minimum standards of acceptable behavior for employees." We simply fail to see how a state mortgage banking regulator should mandate requirements for a licensee's reputation, cultural and strategic interests of the licensee or set minimal standards of acceptable employee behavior. Nor do we believe, as noted above, that it is the role of state mortgage banking regulators to seek to protect the interests of a licensee's stakeholders other than consumers.

One could read the Proposal as an attempt to assert direct jurisdiction over a licensee's board of directors with potential authority to make direct claims against a board and its' members; is that correct? If so, such expanded authority may prove to be a barrier to finding qualified directors who are willing to serve if they have to worry about claims from fifty individual states based on vague standards.

16. *Is it appropriate for the Data Standards to incorporate the CFPB's Mortgage Servicing Rules standards? What alternative standards should we consider?*

It is not at all clear why it is necessary to create a state law or regulation that essentially requires compliance with federal law and extends these regulations to small servicers that are exempt from the federal requirement. State regulators routinely examine licensees for compliance with federal consumer credit laws. We fail to see how extending the federal law to small servicers under state laws furthers the larger goals on which the Proposal is based.

17. *Are the Data Protection standards appropriate for the data risks inherent in nonbank mortgage servicers?*

As a best practice, the Proposal's Data Protection Standards are useful. As a legal requirement, however, they are vague, overlap with federal information security requirements and would require significant additional refinements to fairly be the subject of government enforcement for non-compliance. This in no way is intended to diminish the importance of this issue. But we believe this topic is best left to a more comprehensive and holistic review if the goal is to convert a legitimate concern into law.

18. *Is it appropriate to rely on the Ginnie Mae audit standards for Corporate Governance?*

As a Ginnie Mae-issuer, we already are subject to these standards.

19. *Should all covered nonbank mortgage servicers be required to have a full financial statement audit conducted by an independent certified public accountant?*

We have no comment on this question, other than to note that FMC currently follows this practice.

20. *Is it appropriate for the Servicing Transfer Requirements to rely on existing CFPB and FHFA transfer requirements?*

The Proposal cites the 2014 CFPB servicing transfer guidance, but neglects to cite the specific regulation promulgated by the CFPB imposing that effectively replaced the informal guidance. The CFPB amended the servicing regulations in 2017 and included many of the provisions of the 2014 guidance on servicing transfers. For example, 12 CFR 1024.41(k)(1) provides that, with a few exceptions, if a transferee servicer acquires the servicing of a mortgage loan for which a loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the Regulation X loss mitigation requirements for application within the timeframes that were applicable to the transferor servicer.

This requirement would fall within compliance risk, in our view.

21. *For Change of Ownership and Control, do you believe we have chosen the correct number of days for notification and the appropriate ownership percent trigger?*

We are concerned with the inclusion of this item. Many state mortgage banking requirements already provide for prior approval of change of control and rely on both complex definitions of what constitutes a change of control and use of NMLS to effect the approval or notice requirements. This item appears to be misplaced in the Proposal.

CONCLUSION

We applaud the effort of the CSBS to focus on the important issue of risk management for mortgage servicers. However, we believe the Proposal goes too far in seeking to codify inflexible prudential standards that are not tailored to the type of mortgage servicing and the different risks they may present in order, in part to protect out-of-state investors and other stakeholders. We also believe that the inability to ensure a uniform state approach to risk management, particularly if a state or states act inconsistently with Fannie Mae, Freddie Mac or Ginnie Mae, could cause chaos in the marketplace and contribute to the very fundamental risk that the Proposal is designed to avoid.

Sincerely,

/s/ Steven J. Molitor

Steven J. Molitor
Executive Vice President and Chief Legal Officer