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BY EMAIL

Jim Payne
NMLS Ombudsman
c/o Conference of State Bank Supervisors
1129 20th Street, N.W., 9th Floor
Washington, DC 20036

Re: 2021 Ombudsman Discussion Topic

Dear Mr. Payne:

Thank you for the opportunity to submit topics for the 2021 NMLS Ombudsman meeting. As you know, in September of 2020, the Conference of State Bank Supervisors ("CSBS") released proposed prudential standards for state oversight of nonbank mortgage servicers (the "Proposal") and requested comments from interested parties, which were due by December 31, 2020.

With this letter, we identify certain questions and concerns that have been raised by commenters to the Proposal during and after the comment period for the Proposal. These topics merit discussion among the CSBS, state regulators, and industry participants that would be impacted by the adoption of any aspect of the Proposal. We hope the Ombudsman will consider this topic for discussion at the meeting on April 1, 2021.

While by no means is this an exhaustive list, below is a high-level list of certain important questions and considerations that have been raised regarding the Proposal and its potential finalization by the CSBS and adoption by states.

- Uniformity of the Proposal's Prudential Standards: Will states act consistently in adopting, implementing, and enforcing any prudential standards for oversight of nonbank mortgage servicers? Will states consistently interpret any such prudential standards? How would such uniformity be achieved? Inconsistencies in any of these three areas would impose additional and unnecessary complexity and compliance costs for nonbank mortgage servicers.

- The Proposal's Financial Standards: The financial strength requirements detailed in the Proposal align with the Eligibility Requirements for Enterprise Single-Family Seller/Servicers established by the Federal Housing Finance Agency ("FHFA") in many respects, but also include non-agency servicing in the Proposal's liquidity calculations.

- The Proposal, however, includes a “higher of” construct that may increase the financial strength requirements applicable to nonbank mortgage servicers. Questions have been raised regarding why such deviations should be adopted, particularly given the efforts of the FHFA and Ginnie Mae in recent years to amend their guidelines and increase counterparty oversight of nonbank servicers.

- The Proposal does not address whether, or to what extent, states would have discretion to waive or modify the financial strength or other requirements if individual circumstances might warrant such discretion. The FHFA standards referenced in the Proposal are not regulatory in nature and, thus, the GSEs can, and often do, exercise discretion in evaluating seller/servicer compliance with such requirements.

- The Proposal’s “one size fits all” financial strength requirements could make it very difficult for smaller non-agency mortgage servicers to maintain such standards.

- Change in Ownership Proposal: The Proposal includes a requirement for all nonbank mortgage servicers to provide 30 business days prior notification of change in ownership of 10% or more of a mortgage servicer. Many state licensing laws already require prior notice or prior approval of such changes. How would the Proposal’s standard be incorporated into existing state laws and/or regulations governing changes in ownership?

- Servicing Transfer Requirement Proposal: The Proposal states that the prudential standards would “align” with the CFPB’s Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers.” How will the Proposal accomplish this alignment and adopt the referenced guidance?

Thank you for your consideration, and for the opportunity to participate in the upcoming Ombudsman meeting.

Sincerely,

Krista Cooley

Krista Cooley
Partner