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Subcommittee on Housing, Transportation and Community Development

"The Need for National Mortgage Servicing Standards"

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Introduction

Chairman Menendez, Ranking Member DeMint and members of the subcommittee, thank you for the opportunity to testify on behalf of the Mortgage Bankers Association (MBA).[1] My name is David Stevens, and I am President and CEO of MBA. Immediately prior to assuming this position, I served as Assistant Secretary for Housing at the United States Department of Housing and Urban Development (HUD), and Federal Housing Administration (FHA) Commissioner.

My background prior to joining FHA includes experience as a senior executive in finance, sales, mortgage acquisitions and investments, risk management, and regulatory oversight. I started my professional career with sixteen years at World Savings Bank. I later served as Senior Vice President at Freddie Mac and as Executive Vice President at Wells Fargo. Prior to my confirmation as Commissioner of the FHA, I was President and Chief Operating Officer of Long and Foster Companies, the nation's largest, privately-held real estate firm.

Thank you for holding this hearing on the important subject of the creation of national servicing standards. I would first like to provide some background information as a preface to my remarks, express support for the need for national standards, highlight what MBA has done so far in examining that need, recommend steps for the process of developing comprehensive servicing standards, and suggest principles for those standards.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Background

As the housing crisis evolved, industry and policymaker responses evolved along with it. An understanding of these developments and their context is crucial to a full appreciation of the challenges facing the mortgage industry as it works to help borrowers avoid foreclosure and in identifying viable long-term solutions.

The "Great Recession" was the most severe economic downturn that the U.S. experienced since the Great Depression of the 1930s. It led to the failure or consolidation of many of the country's leading financial institutions, and from January 2008 to February 2010, the U.S. economy lost almost 8.8 million jobs. Government reacted with unprecedented policy initiatives, both in terms of fiscal stimulus and other government interventions, and monetary stimulus in the form of near zero interest rates and massive purchases of mortgage-backed securities and other assets.

The housing and mortgage markets both contributed to and suffered from this crisis. Although not an exclusive list, several factors were at play: excessive housing inventory, lax lending standards that favored non-traditional mortgage products and reduced documentation, the easing of underwriting standards on the part of Fannie Mae and Freddie Mac, passive rating agencies and regulation, homebuyers chasing rapid home price increases, undercapitalized financial institutions, monetary policy that kept interest rates too low for too long, and massive capital flows into the U.S. from countries that refused to allow their currencies to appreciate.

According to the Federal Housing Finance Agency (FHFA), home prices nationally decreased a cumulative 11.5 percent during the past five years, with much larger cumulative declines of 40 to 50 percent in the states of Arizona, California, Nevada, and Florida, known throughout the crisis as the "Sand States". Household formation rates fell sharply in response to the downturn, with many families combining households and household expenses to save money. And consumers cut spending across the board, as they tried to rebuild savings after the shocks to their wage income and the declines in the stock market and housing values. The residual effects continue today: even though construction of new homes remains near 50-year lows, inventories of unsold homes on the market remain high, with nearly 4 million properties currently listed, and homebuyer demand remains weak.

Regardless of which factors caused the recession, we do know that the nature of the crisis changed over time. Initially, rising rates from the Federal Reserve and suddenly tighter regulatory requirements regarding subprime and non-traditional loan products stranded borrowers who had counted on being able to refinance loans in late 2006 and into 2007.

As a result, serious delinquency rates on subprime ARM loans (loans 90 days past due) increased by 50 percent in 2006 and then more than doubled through 2007.[2] Even

[2] MBA's National Delinquency Survey.

before their first interest rate reset, these loans failed at unprecedented rates. Subprime ARMs originated from 2005-2007 have performed far worse than any others in recorded data.

Without access to credit for new buyers, home prices in the Sand States markets began to fall dramatically. With investors increasingly questioning loan performance, the private-label MBS market froze in August 2007 and has remained essentially paralyzed ever since. Compounding the problem, lending to prime, jumbo mortgage borrowers effectively stopped. As liquidity fled the system, fewer potential buyers could access credit, and home prices declined further. According to the National Bureau of Economic Research (NBER), the economy officially fell into recession in December 2007.

The unemployment rate in January 2008 was five percent. Eighteen months later, it would be nearly twice as high, following the near collapse of the financial sector in the fall of 2008. From that point forward, joblessness and loss of income began to drive mortgage delinquencies and foreclosures. Serious delinquency rates on prime fixed-rate loans were at 1.1 percent in the beginning of 2008. By the end of 2009, they approached five percent. These loans were traditionally underwritten and well-documented with no structural features that impacted performance. Many borrowers simply could not afford their mortgage payments as they did not have jobs.

Important policy initiatives were launched during this time period. Servicers began large-scale efforts to modify subprime and non-traditional loans. Initially, individual servicers and the GSEs undertook these efforts voluntarily, but government and industry efforts led to standardization of processes through the Home Affordable Modification Program (HAMP). HAMP also benefitted proprietary modification programs, which could leverage these standardized processes. Importantly, the HOPE NOW Alliance[3] estimates that, as of March 2011, almost 3.8 million homeowners have received proprietary modifications since mid-2007. Another 7.2 million borrowers received other home retention workouts, including partial claims and forbearance plans, a key tool supported by the Administration to assist borrowers who are unemployed[4]. The Treasury Department and HUD also report that borrowers received an additional 670,186 permanent HAMP modifications.[5] More than 11 million home retention workout options have been provided to consumers in four years. This is a significant accomplishment that took significant manpower and coordination in the face of

[3] Established in 2007, HOPE NOW is a voluntary, private sector, industry-led alliance of mortgage servicers, non-profit HUD-approved housing counselors and other mortgage market participants focused on finding viable alternatives to foreclosure. HOPE NOW's primary focus is a nationwide outreach program that includes 1) over five million letters to non-contact borrowers, 2) regional homeownership preservation outreach events offering struggling homeowners face to face meetings with their mortgage servicer or a counselor, 3) support for the national Homeowner's HOPE™ Hotline, 888-995-HOPE™, 4) Directing homeowners to free resources through our website at www.HOPENOW.com and 5) Directing borrowers to free resources such as HOPE LoanPort™, the new web-based portal for submitting loan modification applications.

[4] HOPE NOW, Data Report (March 2011).

[5] March 2011, Making Home Affordable Program Report.

unprecedented turmoil in the mortgage servicing industry and servicers should be recognized for what they have accomplished despite the industry's problems.

However, other public policy efforts, such as those designed to delay the foreclosure process, have typically not been effective over the longer-term. Frequently, there can be a tradeoff between late-stage delinquencies and foreclosure starts, as new regulatory or statutory requirements delay foreclosure starts one quarter, resulting in a temporary increase in the delinquency "bucket." In most cases, though, foreclosure starts rebounded in subsequent quarters as backlogs were drawn down.

In summary, the worst recession in living memory has led to the worst mortgage performance in our lifetime. Servicers have been overwhelmed by national delinquency rates running four to five times higher than what had been typical during the prior 40 years for which MBA has data. In spite of these market circumstances, servicers have worked to help borrowers avoid foreclosure whenever possible.

MBA Supports the Concept of National Servicing Standards

Presently, servicers face an overwhelming multitude of servicing standards and rules, from federal laws, such as the Real Estate Settlement Procedures Act, Truth in Lending Act, and the Dodd-Frank Act (just to name a few), to 50 state laws (plus DC), local ordinances, federal regulations, state regulations, court rulings or requirements, enforcement actions, FHA requirements, Veteran Affairs' (VA) requirements, Rural Housing Service (RHS) requirements, Fannie Mae standards, Freddie Mac standards, and contractual obligations, such as the pooling and servicing agreement (PSA). Almost every aspect of the servicer's business is regulated in some fashion, but the rules are not always clear, placing servicers in a position of having to guess as to the requirements. Also, the evolutionary nature of the housing crisis caused significant, near constant changes in these rules. Since the introduction of HAMP, a substantial number of major changes and additions have been made to the program. Many recent judicial challenges to the well-settled law of ownership rights to notes and mortgages have placed the very basis of secured lending at risk by disrupting note holders' and investors' ability to enforce their security interests.

Adding to the complexity is the fact that no two servicing standards are alike. Fannie Mae, Freddie Mac and FHA guidelines may cover the same subjects, but the requirements differ for each. Each of the guidelines addresses foreclosure processes, outlining penalties for not performing specified collection and foreclosure procedures in particular stages of delinquency, foreclosure or bankruptcy. This results in the need for servicers to create specialized teams for each investor. FHFA has undertaken a project to align certain portions of Fannie Mae's and Freddie Mac's servicing guidelines and create uniform requirements. This is a very positive step and we applaud the effort.

State laws also play into the complexity of servicing regulation. Each of the fifty states and the District of Columbia has its own laws governing the foreclosure process and other servicing activities. Some states require judicial foreclosure proceedings while others are non-judicial foreclosure states. Thus, the servicer must manage the nuances of the laws in the various states through its servicing systems and work processes. MBA supports uniformity among judicial foreclosure laws and non-judicial foreclosure laws, which have historically been within the domain of the states.

As a result of the unprecedented volumes of non-performing loans during the current cycle, servicers have experienced difficulties in their ability to adjust systems and work processes quickly to meet the ever-changing regulatory environment, including changes to loan modification programs, and the time required to hire and train employees for these new processes. We believe a national servicing standard would be beneficial to streamline and eliminate overlapping requirements. However, a national servicing standard must be truly national in scope and not simply another standard layered atop the already overwhelming number of servicer requirements.

In developing servicing standards, we must also pay careful attention to the interdependence of servicing and the impact that changes to the system will have on the economics of mortgage servicing, tax and accounting rules and regulations, and the effect of the new requirements on Basel capital requirements and on the To Be Announced (TBA) market. Servicing does not operate in a vacuum; instead it is part of the broader ecosystem of the mortgage industry. When making changes to the current model we need to be mindful of unforeseen and unintended consequences that could result ultimately in higher costs for consumers and reduced access to credit.

MBA’s Servicing Initiatives

On December 8, 2010, MBA announced the creation of a task force of key industry members to examine and make recommendations for the future of residential mortgage servicing. The Council on Residential Mortgage Servicing for the 21st Century (“Council”) is being led by MBA’s Vice Chairman, Debra W. Still, CMB, the President and Chief Executive Officer of Pulte Mortgage LLC. In announcing the formation of the Council, MBA Chairman Michael Berman, CMB, stated, "The residential mortgage servicing sector has been operating in a time of unprecedented challenges, presenting us with a unique opportunity to explore potential improvements to business practices, regulations and laws affecting the servicing sector and consumers. As the national trade association representing the real estate finance industry, we will bring together industry experts to take a comprehensive look at the current state and ongoing evolution of residential mortgage servicing and make recommendations for the future."

The Council convened a one-day public session on January 19, 2011, in Washington, DC, titled, "MBA's Summit on Residential Mortgage Servicing for the 21st Century.” This Summit brought together industry leaders, consumer advocates, economists, academics and policymakers who took a detailed look at the issues that have challenged the industry and started the process of identifying the essential building blocks for the future of servicing.

Keynote speakers and panelists at the Summit discussed problems and perceptions from their respective vantage points. Many speakers identified the need for a national servicing standard, the need to change the compensation structure to better incent servicers in the area of dealing with non-performing loans, and the need for potential changes in laws and regulations related to foreclosures and other facets of servicing.

In analyzing the issues that surfaced during the Summit, the Council identified three major areas for further study and development of policy recommendations:

- Review of existing servicing standards and practices especially in the areas of large volumes of non-performing loans, foreclosure practices, and loss mitigation practices, including loan modifications. The Council formed a working group to study and make policy recommendations related to a national servicing standard.

- Evaluation of the legal issues related to the foreclosure process, chain of title and other issues. The Council formed a working group to study and make policy recommendations related to legal issues surfaced during the Summit and any additional statutory or regulatory changes deemed appropriate for servicing in the 21st Century.

- Analysis of proposed changes in servicer compensation proposed by the FHFA, Ginnie Mae, Fannie Mae, and Freddie Mac. The Council formed a working group to analyze the proposed compensation structure from the vantage of various stakeholders including large and small servicers, depository and non-depository servicers, and portfolio lender/servicers and MBS issuer/servicers.

While MBA will continue to release several documents to the public during the next several weeks, today we issued a white paper that will act as an educational tool and provide background information and an environmental scan of the events leading up to the current crisis. The white paper provides information on what a servicer does, how a servicer is compensated, and the perspectives of consumers, regulators, and the legal community with regard to servicer performance in the current crisis and their policy recommendations. It also contains an industry analysis of the criticisms against servicers in order to separate real problems from "urban myths." The last chapter highlights the Council's next steps to set the course for the future of servicing in the 21st century.

The "urban myths" document summarizes several issues and misperceptions raised by regulators and consumer groups that have crept into the public consciousness during the servicing debate and dialogue. For example, the document dispels beliefs that a servicer's compensation structure is misaligned whereby servicers have higher incentives to foreclose on a delinquent borrower rather than to modify a loan.

The final document in the initial wave will be the Council's preliminary views on the four fee proposals currently under consideration by FHFA, Fannie Mae, Freddie Mac and Ginnie Mae. Since servicers come in different sizes, ownership structures, specialties, etc., each servicer has its own unique motivations or "hot buttons" for owning servicing.

The Council's analysis will contrast specific attributes of each of the four fee structures against the current fee structure.

MBA expects to have a preliminary recommendation with respect to national servicing standards later this year. The Council plans to release in the coming months its preliminary recommendations related to foreclosure laws, chain of title issues and other legal and regulatory obstacles to the servicer doing its job in dealing effectively with borrowers in default.

Additional Industry Efforts

In addition to implementing the various loss mitigations programs, including HAMP, the industry has supported many other pro-consumer efforts:

- **Free Borrower Counseling[6]:** Many servicers and investors pay HUD-approved counselors to counsel borrowers on options to avoid foreclosure. Housing counseling is also supported through NeighborWorks America and HUD grantees. These counselors are instrumental in helping to educate borrowers about specific program details and to collect documents necessary to complete loss mitigation evaluations. Counseling is free to borrowers. HOPE NOW, of which MBA is a member, supports the Homeowner's HOPE™ Hotline, 888-995-HOPE™, which is managed by the non-profit Homeownership Preservation Foundation, and operates 24 hours a day, 7 days a week in several languages. The hotline connects homeowners to counselors at reputable HUD-certified non-profit agencies around the country. As of March 2011, there have been more than 5 million consumer calls into the hotline since inception, and it serves as the nation's "go-to" hotline for homeowners at risk. The US Government uses this hotline for their Making Home Affordable program and noted in its December 2010 report that 1.8 million calls have been fielded by the hotline to date, and more than one million borrowers have received housing counseling assistance.

- **HOPE LoanPort™ (HLP):** HLP is an independent non-profit created by HOPE NOW and its members as a data intake facility to improve efficiency and effectiveness of communications among borrowers, counselors, investors and mortgage servicers. HLP was created to help address the frustration among borrowers, policymakers, counselors and servicers in the document submission process. HOPE LoanPort™'s web-based system allows a uniform intake of an application for a loss mitigation solution though HAMP, all Federal programs and

[6] MBA's Research Institute for Housing America recently released a study, 'Homeownership Education and Counseling: Do We Know What Works?' which examined the benefits of pre-purchase and post-purchase counseling.
http://www.housingamerica.org/Publications/HomeownershipEducationandCounseling:DoWeKnowWhatWorks.htm

proprietary home retention programs. It allows for all stakeholders to see the same information, in a secure manner, and delivers a completed loan package to the servicer for action. This web-based portal increases accountability, stability and security for submitted information and increases borrower confidence that that their information will be reviewed and will not be lost. Servicer and counselor steering teams, working together have made the decisions on how best to create and improve the HOPE LoanPort™ system. This portal was designed by a core group of non-profits including NeighborWorks® America and HomeFree-USA, and six industry servicers who shared in this unique and important mission.

Recommended Steps in Developing National Servicing Standards

Several regulators have recently specified their own distinct standards regarding mortgage servicing, a trend that concerns MBA deeply. The State of New York implemented standards late last year for loans serviced in the State of New York. The Office of the Comptroller of the Currency (OCC) released proposed standards, and has separately issued consent orders to specific banks that impose servicing standards through enforcement action as opposed to the normal federal rulemaking process. The Federal Reserve and the Office of Thrift Supervision (OTS) have likewise issued consent orders to banks and thrifts that they regulate, which contain prescriptive servicing requirements. Several state attorneys general have proposed a settlement with some larger servicers that would impose restrictive standards as an alternative to civil litigation.

Additionally, the SEC and the Bank Regulators are currently attempting to impose servicing standards in the proposed origination rules related to a qualified residential mortgage (QRM) under the Dodd-Frank Act. In order to be considered a QRM and exempt from risk retention requirements, the proposal would require compliance with certain servicing standards. Specifically, the QRM's "transaction documents" must obligate the creditor to have servicing policies and procedures to mitigate the risk of default and to take loss mitigation action, such as engaging in loan modifications, when loss mitigation is "net present value positive." The creditor must disclose its default mitigation policies and procedures to the borrower at or prior to closing. Creditors also would be prohibited from transferring QRM servicing unless the transferee abides by "the same kind of default mitigation as the creditor."

MBA is extremely concerned with the inclusion of servicing standards in a QRM definition. The QRM exemption was very clearly intended under the Dodd-Frank Act to comprise a set of loan origination standards only. The specific language of the Act directs regulators to define the QRM by taking into consideration "underwriting and product features that historical loan performance data indicate lower the risk of default." Servicing standards are neither "underwriting" nor "product features," and while they may bear on the incidence of foreclosure, they have little, if any, bearing on default. Combining origination standards that terminate at loan closing and servicing standards that commence at closing and continue for decades in a single QRM regulation is problematic, as the regulation must address two distinct functions and timeframes. Accordingly, MBA strongly believes they have no place in this proposal.

Embedding servicing standards within the proposed QRM regulations will have unintended consequences that could actually harm borrowers. Specifying a servicing standard as part of QRM is directly contrary to achieving a national standard, as QRM as proposed would only represent a small share of the market. The proposal requires loss mitigation policies and procedures to be included in transaction documents and disclosed to borrowers prior to closing. Such a requirement codifies the servicer's loss mitigation responsibilities for up to 30 years at the time of origination. While servicers today have loss mitigation policies to address financially distressed borrowers, these policies continue to evolve as regulators' concerns, borrowers' needs, loan products, technology and economic conditions evolve. One need only look at the variety of recent efforts that have emerged during the housing crisis such as HAMP, the Home Affordable Foreclosure Alternatives, FHA HAMP, VA HAMP, and proprietary modifications. A further example is the different set of loss mitigation efforts necessitated by Hurricane Katrina. In both situations, inflexible loss mitigation standards would not have been in the best interest of the public or investors.

The QRM proposal is also likely to make servicing illiquid by combining "static" loss mitigation provisions in legal contracts and borrower disclosures with the inability to transfer servicing unless the transferee abides by those provisions, even if more borrower-friendly servicing options become available.

The proposal also calls for servicers to disclose to investors prior to sale of the MBS the policies and procedures for modifying a QRM first mortgage when the same servicer holds the second mortgage on the property. This adds another level of complexity to the concerns raised above, notwithstanding the irrelevance of these provisions to underwriting, origination, and statutory intent.

MBA believes that national servicing standards should start with a full analysis of existing servicer requirements and state laws on foreclosure. The new standards should be promulgated in a process that includes open dialogue with all stakeholders, including federal regulators, state regulators, consumer advocates, servicers, and investors in mortgages and MBS. MBA welcomes the opportunity to participate and play a constructive role in such a process.

Principles for National Servicing Standards

MBA believes that one consistent set of standards would be beneficial for servicers and consumers. In developing a national servicing standard, specific principles should to guide decision making. We suggest, at a minimum, the following principles:

a. National Servicing Standards Must Be Truly "National"

Of paramount importance to the industry is that any national servicing standard be truly national and not yet another requirement on top of the myriad existing obligations. Servicers would not have the burden of looking to varying standards created by different entities (e.g., federal regulators, state laws, government agencies, etc.). Servicers could reduce staff and third-party experts currently needed to follow, track and comprehend varying standards. Errors would be reduced. Consumers would benefit by reduced complexity and, ideally, easy-to-understand requirements.

b. Process Must Be Transparent and Involve Key Stakeholders

The process to create national servicing standards must include servicers and investors as these parties must ultimately implement the new standards and the standards will potentially restrict servicing activities and impose additional costs. Although it is likely that the newly-authorized Bureau of Consumer Financial Protection (CFPB) will finalize the standards, given its expansive role in consumer protection, industry input must be a crucial part of the process for the standards to be workable.

c. Process Must Recognize Existing Requirements

As previously indicated, servicers are subject to a multitude of laws, regulations and requirements. In many cases, remedies already exist for a majority of the perceived problems. In setting national standards, regulators must recognize existing rules and adopt them without change when they have been fully vetted through the rulemaking process.

d. Rules Should Allow Flexibility to Deal with Market Changes

Rather than prescribe the exact methodology in which servicers must conduct their day-to-day operation, a national servicing standard should describe the ultimate result the government wishes to achieve. Servicers and investors would be allowed to devise the means to achieve the objective that best suits their business model and capital structure. Moreover, flexibility would allow servicers to address different market conditions and consumer needs. The best example to illustrate the importance of flexibility is by comparing today's borrowers' needs, whereby modifications are critical, to borrowers affected by Hurricane Katrina, whereby forbearances were paramount as borrowers awaited hazard insurance and Road Home funds.

e. Standards Should Create Uniform and Streamlined Processes

Processes that servicers must follow need to be simple and uniform. Markets operate best with certainty, and servicers need straightforward processes that do not differ by product, investor, regulator or state. As stated above, one set of standards will limit errors and litigation risk, and promote customer satisfaction. Simple processes will yield the best results for all consumers and servicers.

f. Standards Must Treat Borrowers Fairly/Recognize Borrower Duties

MBA strongly believes that borrowers should be treated fairly and with compassion. Customers should obtain respectful service, should have access to the opportunities to retain homeownership for which they qualify, and should understand their options. We also believe that borrowers have duties. These include responding to servicer offers of assistance, contacting the servicer early in the delinquency, and diligence in providing required documents and other fulfillment requirements of loan modification programs. These principles, for both the servicer and the borrower, must be recognized in the development of national servicing standards.

g. Standards Must Treat Servicers Fairly

National servicing standards should ensure the fair treatment of servicers and recognize the economic realities of the servicing business. Standards must recognize the costs of delinquency and foreclosure, including late fees and other compensatory fees necessary to offset the cost of delinquency. Many of the suggested standards question these charges, yet these fees are necessary to ensure quality customer service, to enable advance payments to bondholders as required, and to provide the loss mitigation products borrowers seek. We urge policymakers, therefore, to balance the needs of borrowers and servicers.

Potential Components of National Servicing Standards

Regulators, Congressional leaders, consumer advocates and academia have proposed various servicing standards to address perceived problems as well as borrower complaints. These proposals differ significantly, but the goals appear clear: to improve the customer's experience while in the loss mitigation process, to avoid confusion, and to ensure that borrowers are treated fairly and given access to loss mitigation. We agree with these goals.

We would like to address several concepts currently under consideration as part of the dialogue concerning various proposed national standards.

a. Single Point of Contact

Some regulators and consumer advocates are promoting a single point of contact to simplify communications with servicers during the loss mitigation process. MBA supports clear and helpful communication with the borrower. However, a single-point of contact may have unintended consequences, potentially leaving consumers more frustrated and with greater delays. There is no unified definition of "single point of contact". A plain English definition would imply that a single person would be assigned to each borrower and that the borrower would communicate only with this person. This is not feasible in the current environment and would create numerous problems as servicer call volumes fluctuate significantly throughout the day, week, and month.

First, a single point of contact eliminates the specialty training necessary to deliver accurate and timely assistance to borrowers, as borrower assistance may range from questions regarding their payment history or escrow processes to complicated modifications such as HAMP or short sales. A single person cannot be expert in each of these highly complex and regulated areas. The result will be delays, miscommunication and/or errors.

Second, given the current environment, it will be impossible to appropriately staff to meet demands as they fluctuate widely. By the sheer reality of the situation, borrowers may be subject to significant delays and response times if limited to one individual. Even if a borrower were able to talk to other knowledgeable servicing team members, we are concerned that said borrower could decline and request a return phone call from the single point of contact. As a result, the borrower will suffer delays and frustration with regard to his or her issues and concerns.

Third, a single point of contact raises concerns regarding staff departures, work schedules, business travel, vacations, illness, etc. The reality is a single point of contact can never be truly a single person. In its purest sense, a single point of contact disrupts a servicer’s efforts to provide the best service in a specific area of expertise. Borrowers must be willing to communicate with other staff familiar with the borrower’s account, and servicers must have the flexibility to structure staff the best way to achieve the principle of superior customer service.

b. Dual Track

Policymakers and consumer advocates continue to call for the elimination of so-called “dual tracking.” Dual tracking occurs when the servicer continues intermediate foreclosure processes while loss mitigation activity is underway. Interim foreclosure processes, such as notices, rights to hearings, and the like are required by state law or the courts and would continue during preliminary loss mitigation efforts to ensure the borrower received due process and to avoid unnecessarily delaying foreclosure should the borrower not qualify. It is important to realize, however, that servicers *will not* go to foreclosure sale (e.g. the borrower will not lose the house) if the borrower has provided a complete loss mitigation package sufficient to evaluate the borrower for loss mitigation and has provided such information in a reasonable time before the foreclosure sale date.

Successful loss mitigation, however, requires diligence and priority on the part of the borrower. Borrowers should submit full application packages as soon as possible and prior to initiation of foreclosure. Servicers should not be expected to stop foreclosure processes, or even a foreclosure sale, if the borrower waits until the last minute to request assistance. Moreover, some courts do not allow a foreclosure sale to be cancelled within 7-10 days of the scheduled sale date.

The halting of the foreclosure process is difficult due to investor requirements. As noted above, Fannie Mae, Freddie Mac and FHA all require servicers to meet various foreclosure timelines. Failure to meet these timelines, without a waiver, results in penalties to the servicer. For example, FHA requires that the servicer start foreclosure within six months of the date of default. Failure to meet this strict deadline by even one day, without a waiver, means the servicer does not get reimbursed for almost all of its interest costs (e.g., the accumulating arrearage).

Moreover, state law often provides that various steps must occur at specific times or costly steps, such as newspaper publication, must be repeated at significant cost to the servicer, foreclosing attorney, government agencies, and, ultimately, taxpayers with regard to government programs.

Delays have significant monetary impact on the investor and servicer. Delays extend the period of necessary advances a servicer must pay to investors, increase costs to government agencies due to larger claim filings, result in the loss of equity in the property if market values decline, and allow more time for the property to deteriorate. In addition to merely delaying foreclosure, a pause can result in real hard dollar costs, which today are not fully reimbursed to the servicer or the foreclosing attorneys who incur them. This is not a sustainable model and can result in millions of dollars of unreimbursed costs. A national standard must consider these “cost” issues.

c. Mandatory Principal Write-down

The issue of mandatory principal write-down continues to be suggested as a means to achieve affordability. While there is no doubt principal write-down promotes affordability, there are other means to achieve the same affordability without the disparate impact on servicers or noteholders. Such options include rate and/or term modifications and principal forbearances. A principal forbearance takes a portion of the principal and sets it aside in calculating a reduced monthly mortgage payment. It is similar to a principal write-down, but appropriately gives a portfolio lender or investor the right to recoup the set aside principal at a later time, such as when the house is sold. FHA HAMP and FHA partial claims are principal forbearance programs, and we believe they are effective tools.

The concept of mandatory principal write-down—as opposed to principal forbearance--is extremely problematic in secured credit transactions for the many reasons MBA has expressed in previous policy debates regarding Chapter 13 bankruptcies. The same issues surface if servicers are required to accept principal reductions over interest rate or term modifications or principal forbearances in the loss mitigation waterfall:

- First, the servicer is a mere contractor in the securitization function and thus cannot obligate the note holder or investor to take a permanent loss on the loan. Fannie Mae and Freddie Mac do not accept principal write-downs and FHA and

Ginnie Mae do not reimburse for voluntary or mandatory principal write-downs. Servicers, therefore, cannot impose it.

- Second, with regard to private label securities, the securitization documents must specifically provide for this option or the servicer risks litigation. Most securitization transaction documents do not provide for principal write-downs, and some specifically prohibit principal write-downs. We understand there are differences in views from the various MBS tranche holders. Principal write-downs would benefit senior security holders to the detriment of subordinate holders. However, it is inappropriate to forcibly reallocate winners and losers in contradiction to the contract created to protect against these very default scenarios.

- Third, note holders and investors must be able to rely on the contractual terms of their mortgage agreements given the secured nature of a mortgage transaction. It is inequitable to mandate that secured note holders or investors to write down principal.

- Fourth, without statutory changes, mandatory principal write-downs by the servicer could eliminate government mortgage insurance[7] and private mortgage insurance[8] that currently protect servicers/investors against losses. If mandatory principal write-downs were required without a change to agency guidelines/statutes, servicers--not the investors--would be required to absorb the principal loss. This is an inappropriate role of a servicer, who never priced their compensation to accept first dollar loss. However, servicers have been voluntarily writing down principal balances of loans when appropriate and more often on loans they own and will continue to do so.

In sum, MBA opposes involuntary principal write-down and believes it will inhibit the housing market's recovery.

d. Misalignment of Servicer and Investor Incentives

Another common theme is that servicer incentives are misaligned with the interests of investors. While servicing compensation may not appropriately compensate the servicer for the multitude of additional requirements imposed on them during this crisis,[9] we do

[7] Today, FHA insurance and VA guarantees protect the servicer against principal loss due to foreclosure. However, FHA and VA cannot pay the servicer a claim for principal reductions. Authorizing statutes do not permit it. Conversely, if the loan went to foreclosure, the servicer would have the benefit of the insurance/guarantees and not suffer a principal loss.

[8] Private mortgage insurance is comparable to government insurance in that it protects lien holders from principal loss in the event of foreclosure. Private mortgage insurance protections will be lost in the amount of the lien strip.

[9] Fannie Mae, Freddie Mac and FHA recognized over a decade ago that servicers could reduce their losses by performing "extraordinary" servicing, which involved very complex loss mitigation options. MBA was involved in those discussions, which ultimately resulted in the incentive payments for successful loss mitigation efforts. Unfortunately

believe that there are significant incentives within the existing fee structure that encourage appropriate loss mitigation. Fannie Mae, Freddie Mac, and Ginnie Mae ultimately designed their programs and concluded that servicers should not be paid their servicing fee while the loan is delinquent. The theory is that if the servicer is not paid for managing the very expensive default process, they will expend resources to cure the delinquency or otherwise ensure cash flow—ultimately the goal of the investor. This incentive is real for the servicer.

The greatest financial incentive supporting modifications over foreclosures for servicers is the reinstatement of servicing income and the servicing asset. A modification immediately reinstates the servicing fee income and retains the servicing asset. Assuming a borrower remains current under the modified terms, the servicer will continue to receive its base monthly servicing fee income (25 basis points for GSE servicing and approximately 44 basis points for Ginnie Mae servicing) over the life of the loan. In contrast, such income ceases during the period of delinquency. In the case of GSE and FHA programs, the servicer never gets reimbursed the servicing fee if the loan goes to foreclosure. In private label securitizations, the servicing fee ultimately is reimbursed to the servicer when the Real Estate Owned ("REO") is sold, but the reimbursement is without interest. In summary, foreclosures result in an early termination or, in the case of private label securities, deferment of servicing fee income. Modifications, on the other hand, result in the immediate reinstatement and continuation of such servicing income. Also, the continuation of servicing fee income through a loan modification or other cure provides retention of the servicing asset that is otherwise written off upon foreclosure.

Modifications also stop costly advances of principal, interest, tax, insurance and other expenses, such as property preservation costs, and provide for quick reimbursement of these outstanding advances. In the case of private label securities, servicers generally must advance principal and interest from the due date of the first unpaid installment until the property is liquidated through the sale of REO. According to LPS's Mortgage Monitor Report, "as of February 2011, the average length of time a loan in foreclosure is delinquent was nearly 537 days." The average number of days a property remains in REO is in the range of 116-176 days, according to Clear Capital and the Five Star Institute. In many cases, the servicer does not receive full reimbursement for those advances. For example, FHA curtails 60 days of interest advanced and one-third of foreclosure attorneys' fees on all foreclosure claims. The GSEs also curtail property preservation expenses and attorneys' fees when foreclosure steps must be repeated due to a foreclosure pause. In sum, servicers are incented to modify the loan to reduce the interest costs and capital allocation associated with carrying advances.

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loss mitigation has become even more complex, with the agencies requiring more and more from servicers and foreclosure attorneys without compensation. This is not appropriate and, thus, we agree that some additional compensation is required. Investor contracts should not impose unlimited cost burdens on servicers.

Conclusion

MBA supports reasonable national servicing standards that apply fair practices for borrowers, servicers and investors alike and that seek to eliminate the patchwork of varying federal, state, local and investor requirements. However, national servicing standards must be truly national. Creating different state and local requirements would only compound the complexities servicers already face within current market conditions.

Servicers must also be included as stakeholders in the development of the standards. It is important to understand why processes are in place to avoid unintended consequences. Existing standards should be given careful consideration before being replaced. Servicers' use and development of successful loss mitigation efforts to date should also be recognized.

We recognize that our industry can and must do better. Given the overwhelming nature of the crisis and the ever-changing requirements, servicers have tried to meet competing obligations in a rapidly changing environment, and we believe that national servicing standards can help us accomplish the goal of preventing foreclosures whenever possible.

At the same time, in moving toward national servicing standards, policymakers must fully recognize the economics of mortgage servicing and balance laudable public policy goals against business and market realities. Our industry stands ready to play a constructive role in the dialogue about how best to achieve this balance.