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

Re: Proposed Regulatory Prudential Standards for Non-bank Mortgage Servicers

On March 25, 2015, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) issued for public comment Proposed Regulatory Prudential Standards for Non-bank Mortgage Servicers (hereinafter sometimes referred to as the "Proposal").

State regulators are proposing a set of Baseline Prudential Regulatory Standards (Baseline Standards) to be applied to all non-bank mortgage servicers licensed by and operating in the states.

To the extent possible, the Baseline Standards will leverage existing standards or generally accepted business practices. These Baseline Standards cover eight areas: capital; liquidity; risk management; data standards; data protection (including cyber risk); corporate governance; servicing transfer requirements; and change-of-control requirements.

The proposal also includes Enhanced Prudential Standards that may be appropriate for large, complex non-bank mortgage servicing companies. The proposed Enhanced Prudential Standards would deploy enhanced planning, modeling, metrics and audit for: capital; liquidity; stress testing; and living will and recovery and resolution plans.

Introduction of the TMHA and Background on Texas-Specific Issues

The TMHA represents over 1,100 manufactured housing professionals in the state of Texas. Members of TMHA include both large, vertically integrated manufacturing, retail and financing companies, medium sized companies and small, so-called "mom and pop" entrepreneurs who own and operate retail locations and manufactured home communities (sometimes called "land-lease communities"). Our members also conduct business throughout many south and central U.S. states, and some of our members operate nationwide.

Similar to the statistics for new home-starts for traditional site-built homes, the statistical barometer in the manufactured housing industry is based on new manufactured home shipments and production. Over the past four and one-half years, Texas represents the largest number of manufactured housing shipments per state in the United States.[1] Over the past year, Texas new manufactured home shipments accounted for 16.9 percent of the national market share and 22.7 percent of the nation's production.[2]

There are sixteen (16) manufactured housing factories located in Texas, the most per state in the nation, employing a range of highly skilled workers averaging from 125 to 250 jobs per factory. According to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, there are 726 active licensed manufactured housing retailers in Texas, and 931 active manufactured housing salesperson licensees.[3]

Overall, there are approximately 9.7 million housing units located in Texas.[4] Of this number, 747,975 are manufactured homes, comprising 7.7 percent of the housing stock in the state in all areas (metropolitan and rural).[5] As noted below, however, and, as to be expected, the percentage of manufactured homes as part of the overall housing stock in rural areas in Texas is much higher than 7.7 percent. Texas has a 64.8 percent homeownership rate, and the median home value is $123,500, with a median household income of $49,646.[6] According to data from the Manufactured Housing Institute (or MHI, the national trade association for the manufactured housing industry), approximately 60 percent of manufactured homes are located in rural areas. Based on information available to us, the percentage of manufactured homes that are located in rural areas in Texas is much higher than 60 percent.

Over thirteen (13.2%) percent of all owner-occupied housing units located in Texas cost less than $50,000, with those homes costing between $50,000 and $99,999 comprising 25.2 percent of the housing units in Texas. In other words, 38.4 percent of owner-occupied housing units in Texas units cost less than $100,000. Approximately twenty-three (22.9 percent) percent of Texas borrowers with have a monthly mortgage payment of less than $1,000. However, 24.1 percent of such persons have monthly housing ownership costs of 35 percent or more of their household income. Compared to the rental market for Texans, 39.9 percent have monthly rental costs of 35 percent or more of their household income. Over fifty (50.2 percent) percent of such persons have a total annual income and benefits of less than $50,000 per year.

Thus, to a great extent, more broadly, the manufactured housing industry serves a lower income, rural and affordable housing segment of the population. As reflected by the information above, this also is the case in Texas.

Currently, the manufactured housing finance market is dominated by three or four non-depository lenders, with several hundred or more small community lenders (mostly depository institutions) supporting manufactured housing finance in their local markets by making loans and holding such loans in portfolio and servicing the loans themselves. In 2015, the manufactured housing industry is slated to produce approximately 12,500 loans. Very few if any of these loans are insured by the Federal Housing Administration (or FHA), nor do lenders sell many if any loans to Fannie Mae or Freddie Mac.

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[1] According to Institute for Building Technology and Safety (IBTS), nationally in 2008 Texas represented 13.6% in shipments and 18.3% in production. 2009 Texas represented 14.6% in shipments and 21.3% in production. 2010 Texas represented 16% in shipments and 22.9% in production. In 2011, Texas represented 16.9% in shipments and 22.7 in production.

[2] Source: Institute for Building Technology and Safety (IBTS)

[3] Source: Manufactured Housing Division of the Texas Department of Housing and Community Affairs manufactured housing database (http://mhweb.tdhca.state.tx.us/mhweb/main.jsp)

[4] Source: 2010 Census, United States Census Bureau

[5] Source: 2010 Census, United States Census Bureau

[6] Source: 2010 Census, United States Census Bureau

Further, chattel only manufactured home loans are exempt from the Bureau's RESPA rules.

Comments

Introduction

Initially, we note our concern that the CSBS is a trade association of state bank and mortgage banking regulators. While we do not question CSBS members' ability to regulate non-bank mortgage servicers, the CSBS itself is neither a regulatory nor a legislative body. Further, the FSOC's recommendation that state regulators coordinate with the CFPB and FHFA do not appear to us to be borne out in the Proposal. We do trust that the CSBS conducted extensive research and conferred with interested stakeholders, however, because the CSBS itself is not a regulatory body, and thus not otherwise subject to state or federal open records laws, we respectfully request that in any further proposal on this matter, that it fully publish detailed information on its extensive research and which interested stakeholders, particularly industry stakeholders, with whom it conferred in crafting the Proposal.

In this regard, we are concerned as to the manner by which the CSBS will develop, finalize and implement such a potentially broad reaching and impactful rule when it is not itself either a legislative or regulatory body.

Further, prudential standards as such are normally reserved for banking institutions that derive protection from the federal government through deposit insurance, claims against or on such federal insurance which can place the public purse at risk. Non-bank mortgage companies derive no such benefit, and thus should not be subject to such banking like regulation. In this regard, perhaps the CSBS should consider merely adopting portions of the Proposal as examination guidelines for state mortgage banking auditors, and base those guidelines in substantial part on administrative and regulatory provisions that are already in place, such as GSE and federal agency capital and liquidity standards, and CFBP mortgage servicing transfer rules.

Further, we are concerned that the Proposal does not define with adequate specificity what constitutes a "servicer" such that an entity would be subject to the provisions of the Proposal. The Proposal states that state regulators propose and seek public comment on a baseline set of prudential standards be applied to **all non-bank mortgage servicers licensed by and operating in the states** (emphasis added). We note that many state statutes define a servicer as one that services loans for another. As outlined below, most manufactured housing lenders make and service their own loans. The Proposal does not contain enough specificity upon which we feel we can adequately comment. For this reason, before any guidelines or rule on the Proposal is finalized, we respectfully suggest that the CSBS put out a more detailed proposal and allow affected stakeholders to comment more fully.

We provide more manufactured housing specific comments below.

Manufactured Home Loan Specific Comments

Portfolio Exemption

Most if not all manufactured home loans made by our members are held in portfolio by the lenders that make such loans. We understand that pursuant to outreach with manufactured housing industry stakeholders that the CSBS does not intend for the Proposal to apply to entities that make loans and hold loans in portfolio. In this regard, we respectfully request that any finalized proposal exempt from its provisions loans held in portfolio and serviced by creditors or their affiliates or assignees.

Chattel Loan Exemption

Likewise, most if not all so-called “chattel only” manufactured home loans are held in portfolio by the lenders that make such loans. In this regard, we respectfully request that any finalized proposal exempt from its provisions chattel only manufactured home loans.

Small Servicer Exemption

Under CFPB Mortgage Serving Regulations, a small servicer is, among other things, a servicer that services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee. 12 CFR § 1026.41(e)(4)(ii). We note that the CSBS Proposal states that FSOC recommended that state regulators work together to develop prudential and corporate governance standards for non-bank mortgage servicing companies, in collaboration with the CFPB and FHFA. However, we note that the Proposal does not provide an exemption for small servicers. As stated above, we trust that the CSBS did consult with the CFPB, and others, in crafting the Proposal, however, we do believe that it would be helpful for the CSBS to publish its documented efforts of its consultations and coordination with the CFPB (and FHFA) in crafting the Proposal so that stakeholders could more fully understand why the CSBS did not propose a small servicer exemption as already provided in CFPB regulations. In any event we respectfully request that in any final proposal the CSBS provide for a small servicer exemption consistent with that provided under CFPB regulations.

Conclusion

We appreciate this opportunity to comment upon the CSBS’ Proposal. We trust that you will find our comments above both helpful and persuasive and we trust that you will consider and treat our comments favorably.

Very truly yours,

DJ Pendleton, J.D.
Executive Director
Texas Manufactured Housing Association