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President

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The Honorable Mike Crapo
Chairman, Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member, Committee on
Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

Thank you for the opportunity to submit legislative proposals to promote economic growth and enable consumers, market participants, and financial companies to better participate in the economy. We are a family owned federally chartered Thrift celebrating our 65th year in business. We service 171,000 residential mortgage loans with an Unpaid Principal Balance of over $26 Billion secured by homes all across the United States. We are proud of the fact that we survived the '80's S&L crisis (one of only 3 in Texas to do so), the Tech crisis, and the so called Financial Crisis of 2008. And, so far, we have survived Dodd Frank. We have consistently supported reasonable requirements that will prevent a reemergence of housing and market disruptions and support most of the initiatives that are discussed in the Mortgage Bankers Association letter that is being submitted. However, while some of the new regulations enacted in the past several years have made the mortgage market safer, in many other respects these rules have reduced the availability and affordability of mortgage credit for many families.

The current regulatory environment has increased costs and forced many responsible lenders to limit lending. This most often harms low-to-moderate income borrowers, minorities, and first-time homebuyers. We urge the Committee to do a thorough review of current rules and regulations and make adjustments where necessary in order to balance the need for consumer protection while ensuring access to safe, sustainable mortgage credit. In this regard, we strongly urge that particular attention be given to simplifying rules, providing greater clarity and certainty, and mitigating supervisory burdens. These goals are particularly important for smaller, community lenders that may not be able to sustain excessive compliance and legal infrastructures, such as our institution. Below please find some suggestions on ways to expand lending opportunities for qualified borrowers and better participate in the economy.

We sincerely appreciate your interest in these issues that affect millions of Americans who want to participate in the dream of homeownership. Smart, strategic modifications to the rules impacting mortgage lending can free lenders to expand their credit appetite in a prudent and sustainable manner.

If I may be of any further information please contact me at 817-390-2091, or by email David.Motley@GoColonial.com.

Sincerely,

J. David Motley
President

MORTGAGE BANKERS ASSOCIATION

I. Regulatory Clarity and Relief

Description: The Consumer Financial Protection Bureau's (CFPB) use of consent decrees and administrative decisions to make changes in the rules, rather than formal rulemaking or published guidance, has created uncertainty in the market and higher costs for consumers. Colonial believes the CFPB, when implementing new rules or changing the interpretation of existing rules, should adopt clear "rules of the road" through the issuance of official, written interpretative rules, supervisory guidance and/or compliance bulletins to facilitate regulatory certainty and consistent consumer protections throughout the market.

Impact on Consumers and Market Participants: Over the past five years, the costs of originating a mortgage loan have increased dramatically. The cost of originating a loan at Colonial has grown from $1950 in 2005, to $4500 in 2010, to $6500 in 2016. The vast majority of that increase has been caused by the layering of new regulations on our business that has reduced efficiency. And those increased costs have been passed on to consumers for the most part in the form of higher interest rates. While market rates have been extraordinarily low (some would argue artificially low thanks to Fed intervention) rates could have been even lower. HMDA data indicate the total number of lenders has declined. Furthermore, large institutions have pared back their participation in the market. This ultimately impacts the American consumer, driving up the cost of credit, increasing turn-times within the loan process as well limiting borrowers' choices due to reduced market competition. Increasing regulatory clarity will allow lenders to operate under clear rules of the road and decrease costs for lenders and consumers alike.

Economic Impact: Residential mortgage credit availability remains constrained due in part to uncertainty regarding the rules of the road and overly aggressive enforcement actions, both of which have led to the rising costs of originating and servicing home loans. Restrictions on credit availability for housing may in turn hinder the ability of potential first-time homebuyers to purchase a home and existing homeowners to move. With the reduced pace of home sales, household mobility has declined. Research shows that a lack of mobility has a negative impact on economic growth as labor resources do not move to where they are most needed. Further, tight credit conditions may exacerbate the widening wealth gap in the United States as fewer first-time homebuyers gain access to the ability to build housing wealth, especially those not receiving parental financial assistance.

Specific Recommendations: Congress should require the CFPB to establish and abide by a consistent framework for providing industry with authoritative written guidance that facilitates efficient compliance, reduces implementation costs, and ensures consistent consumer treatment across the market. That framework should:

- For existing rules, require rulemaking or, where appropriate, written guidance (prospectively applied) if the CFPB is making a change in prior rules or guidance (whether formal or informal).

- For significant new rules, require the CFPB to comprehensively evaluate implementation and dedicate resources to providing written guidance or amendments to the rule to address post-rule contingencies, unintended consequences, or other infirmities in the rule.

Legislative Language: Proposed language to address many of these concerns is attached (Regulatory Clarity and Relief Language).

II. Servicing Market Regulations and Basel III Requirements

Description:

1. *Cost of Servicing*

Colonial believes that mortgage servicing market regulations would benefit from review and coordination among federal agencies and government guarantors. Streamlining and harmonization of existing regulations would go a long way toward lowering costs and increasing the availability of credit. The variations in procedures or regulatory requirements among the federal agencies create inefficiencies and add complexity to the system, and can have adverse consequences for consumers that may not be clear at origination.

For example, the Department of Veterans' Affairs (VA), Federal Housing Administration (FHA), and Fannie Mae and Freddie Mac (GSEs) under the conservatorship of the Federal Housing Finance Agency (FHFA) all have different loan modification programs, despite a broad consensus on what constitutes the elements of a successful loss mitigation program. To alleviate these differences, MBA strongly urges government insurer and guarantor alignment toward the recently released GSE "Flex modification" program to harmonize these requirements, reduce cost for servicers, and lessen confusion as well as disparities in outcomes based on loan products.

2. *Basel III*

This rule is the most onerous and damaging of all to Colonial. Despite the fact that, as a thrift, we were designed to focus on mortgage lending and servicing, the rule will force us to reduce the number of loans that we service by approximately 24,390. And in doing so we will be forced to terminate 28 people who can no longer be justified. The punitive treatment of mortgage servicing rights (MSRs) under the Basel III risk-based capital standards is acting as an impediment to lending and servicing and should be reconsidered. These standards, imposed on U.S. institutions by an international regulatory body, threaten to undermine the value of this important asset, with adverse implications for the entire mortgage finance chain. The new Basel III rule increases the risk-weighting of MSRs held by banks from 100 percent to 250 percent. It also decreases the cap on MSRs that a bank may hold on its balance sheet from a 50 percent common equity component of tier one capital to a more stringent 10 percent limit with MSR assets above the limit deducted from regulatory capital. In addition, MSRs, deferred tax assets and equity interests in unconsolidated financial entities are limited, in aggregate, to a 15 percent common equity component of tier one capital before they must be deducted from regulatory capital. This unnecessarily punitive treatment of MSRs makes them one of the most costly asset classes in the entire Basel III framework, despite any clear linkage of MSRs to the financial upheaval that Basel III is intended to address. And the rule will reduce the number of banks willing to service loans and thereby eliminate a "bid" for the asset as more and more servicing will be done by non-depositories.

Impact on Consumers and Market Participants: MBA data show that the cost to service a performing loan has gone from $58 in 2008 to $228 by the first half of 2016. For a non-performing loan this increase is even more dramatic, as costs have gone from $482 to $2,522. These additional costs ultimately get passed through to consumers by raising the cost of new loans. Likewise, they directly impact consumer access to credit as defaulted loans cost more than 11 times as much to service as performing loans, causing lenders to reduce their exposure to borrowers that are perceived to pose greater risk.

With regard to Basel III, MSRs are not widely utilized outside of the United States but are a vital component of the American housing finance system's ability to provide a 30-year fixed-rate mortgage. Furthermore, the punitive treatment of MSRs and the increase in servicing costs has forced many community banks and smaller institutions to significantly scale back mortgage loan servicing or exit the market altogether. This directly impacts consumers, as the servicing rights to their loans are often sold to large, unfamiliar companies far removed from their communities.

Economic Impact: Higher servicing costs are ultimately passed on to consumers. Some potential homebuyers will not be able to afford a home at the higher cost and others will be unable to refinance in order to access the equity they have built in their homes, or to lower their monthly payments. On the margin, some borrowers will not be provided access to credit at all, reducing mobility and wealth building opportunities for American households.

Specific Recommendations: MBA believes the agencies tasked with regulating mortgage servicing should be required to coordinate with one another in order to provide consistency in the mortgage servicing space and minimize regulatory conflicts.

MBA believes that performance, capacity, and consumer service quality should be the primary drivers of which servicers gain market share, not excessively high capital standards on a particular segment of the industry. Nor should American banks be handicapped by an international agreement that discriminates against an asset that is uniquely integral to the American mortgage finance system. The current Basel treatment of MSRs, amid the backdrop of complicated and conflicting servicing rules, discourages many community banks from originating mortgages and retaining the servicing, or from acquiring servicing assets. Moreover, it impacts nonbank lenders by removing an important bid for MSR assets from the market.

Legislative Language*:* Language to address these concerns is attached (MBA Servicing language).

III. Ability to Repay and Qualified Mortgage Rule Improvements

Description: The Dodd-Frank Act and the CFPB's Ability to Repay (ATR) rule requires lenders to determine whether a borrower has a reasonable ability to repay a mortgage before the loan is consummated. This obligation is coupled with significant penalties and liability for failing to meet this requirement. The ATR rule also provides a presumption of compliance for loans that are originated as Qualified Mortgages (QMs), which provides greater certainty to lenders and mortgage investors regarding potential liability where there has been compliance but a claim is made. Consequently, most lenders have limited themselves to making only QM safe harbor loans to minimize potential liability and litigation. The ATR rule and QM standards must be improved to responsibly widen the credit box. While MBA appreciates some earlier efforts to address flaws in the QM definition, we believe changes to the ATR rule should not be confined to particular types of institutions or business models. The QM definition should be fixed holistically, not revised in piecemeal fashion with special exceptions for certain categories of lenders.

Impact on Consumers and Market Participants: As a result of some of the constraints in the QM definition, many borrowers who should qualify for a QM are unable to access safe, sustainable, and affordable mortgage credit.

Economic Impact: Especially as ATR/QM creates a negative impact on small loans, the rule has had a negative impact on potential first-time homebuyers and those with lower incomes and less wealth, denying these households the ability to access homeownership and its wealth-building potential. Wealth-building for lower income households is especially important in providing them resources to weather times of economic stress and to provide opportunities for their children, especially with respect to education.

Specific Recommendations:

1. **Expand the Safe Harbor**

   All loans satisfying QM requirements should have a legal safe harbor regardless of their rate. The current 150 bps limit is too narrow considering the inclusion of fees in the Annual Percentage Rate (APR).

2. **Increase the Small Loan Definition**

   The current definition of a smaller loan under the ATR rule – where points and fees may exceed three percent and still qualify as a QM – is set at $102,894 (for 2017). This metric is too low considering the average loan size is approximately $260,000. As a result, too many smaller loans do not qualify as QMs. The points and fees cap should apply only to loans of $200,000 or more, with a sliding scale that permits progressively higher points and fees caps for smaller loans. This change would increase QM lending to moderate-income borrowers who have smaller loan balances.

3. **Establish Alternatives to Appendix Q**

   For those loans not satisfying the QM patch, underwriting of QM loans must be conducted in accordance with Appendix Q of the rule. Unfortunately, Appendix Q is generally viewed as lacking sufficient guidance and flexibility to be used as an underwriting standard. To rectify this problem, MBA supports regulatory or legislative changes to allow the use of other commonly accepted underwriting standards such as those acceptable to FHFA, FHA, VA, and the Rural Housing Service (RHS).

4. **Broaden Right to Cure for DTI and other Technical Errors**

   MBA has long advocated for an amendment that would permit the correction of errors where the three percent points and fees limit is exceeded. To encourage lending to the full extent of the QM credit box, MBA also urges that the right to cure or correct errors be extended to debt-to-income (DTI) miscalculations and other technical errors. There is an existing points and fees cure, but it will apply only to loans closed on or before January 10, 2021. MBA believes there is a need for both a permanent points and fees cure as well as a DTI cure.

5. **Revise the Points and Fees Definition**

   Colonial supports H.R. 1153, the Mortgage Choice Act, which would exclude title insurance fees paid to lender-affiliated companies from the calculation of points and fees under the QM definition. Under the ATR rule, the QM points and fees calculation includes fees paid to lender-affiliated settlement service providers – but not to unaffiliated settlement service providers. Excluding fees paid to affiliates would result in greater competition between providers and benefit consumers. In addition, the treatment of mortgage broker fees results in identical loans being treated differently under the rules.

6. **Replace the Patch and the Default QM**

   The "QM patch" – which allows loans approved by the GSEs' underwriting systems to qualify as QM – is essential at this time, however, it is only a temporary solution while the GSEs are in conservatorship or until 2021. Loans must be consummated on or before January 10, 2021 (unless the conservatorship ends earlier).Colonial urges the CFPB to start the process of working with stakeholders to develop a transparent set of criteria, including compensating factors, to define a QM – replacing both the QM patch and the 43 percent DTI standard. Such a standard must provide workable, flexible underwriting standards that are consistent with the Dodd-Frank Act without injecting undue complexity or uncertainty into the process of serving consumers' credit needs.

Legislative Language: Language to address these concerns is attached (see MBA QM Changes).