

January 29, 2014

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Mr. William R. Breetz, Jr., Chairman  
Uniform Law Commission Drafting Committee  
Residential Real Estate Mortgage Foreclosure Process and Protections  
University of Connecticut School of Law  
Knight Hall Room 202  
35 Elizabeth Street  
Hartford, CT 06105

Re: Home Foreclosure Procedures Act

Dear Bill:

In anticipation of the meeting later this week of the National Conference of Commissioners on Uniform State Law (the "Commission") on the "Home Foreclosure Procedures Act" (the "Act"), I wanted to provide some comments on behalf of the Securities Industry and Financial Markets Association ("SIFMA"). Unfortunately, I will not be able to attend the meeting.

As a preliminary matter, we appreciate your consideration of SIFMA's comments that we provided by letter dated November 20, 2013. Your Chair Memo dated January 24, 2013, for example, highlights our concern about the potential displacement of the "holder in due course" doctrine, which remains a major outstanding issue for SIFMA. We also adopt almost verbatim the thoughtful and comprehensive comments of Alfred Pollard in his memo dated January 22, 2014.

Here are a few additional comments:

- Why is it necessary to include a "good faith" requirement to comply with the Act? Most laws simply state that x shall or shall not do y, not that such compliance must be performed with any particular state of mind. Moreover, in this case, there is no reciprocity of obligations. The requirements on an obligor are minimal at best, even though there is a "good faith" standard for obligors. Rather than debating the various ways that one could define "good faith," I think it makes more sense simply to delete the requirement in its entirety. Either a party did or did not comply with its obligations under the statute. Introducing the subject of "good faith," in my view, simply will lead to more factual disputes and provide unjustifiable defenses to foreclosure. If it is deemed important to retain the concept, then perhaps there should be a requirement on the part of the obligor to discharge his or her obligations under the mortgage loan in good faith.
- Permitting local authorities to enact regulations that are not "inconsistent" with the Act may authorize the very type of local legislation that many are trying to avoid. Many federal consumer credit laws preempt state and local laws that are "inconsistent" with the federal requirements. In this context, the term "inconsistent" is interpreted to exclude state laws that provide greater protections to consumers. In other words, state and local

governments are permitted to overlay additional laws that go beyond the requirements of the federal law if and to the extent they benefit the consumer. If “inconsistent” were given a similar meaning in this context, the language essentially would empower local governments to address the exact same issues covered in the Act in more restrictive ways.

- The Chairman’s Memo on notices does a very good job contrasting the notice requirements of the CFPB and the Act. Another point to note is that federal insured or guaranteed loans, such as those of the Federal Housing Administration, the Department of Veterans Affairs and the Rural Housing Administration, also have their own notice requirements. My view is that compliance with the notice requirements of the CFPB and, as applicable, those of the applicable federal governmental authority for loans insured or guaranteed by such authority should be deemed to constitute compliance with the notice provisions of the Act.
- It is clear that “facilitation” is an issue that generates significant, thoughtful debate. From a very narrow perspective, the issue for the investment community is how long must the inevitable be postponed? I have no doubt that facilitation can be constructive in certain circumstances, both in terms of perhaps avoiding foreclosure when there are less drastic, available alternatives and in instilling confidence in the integrity of the foreclosure process. A problem, though, is that this facilitation process in many cases will be layered over a robust loss mitigation process where servicers and holders already have considered the borrower for available alternatives to foreclosure. For example, for FHA-insured loans, a servicer is required by statute and regulations to consider a borrower for a waterfall of loss mitigation options before a loan may be referred to foreclosure. While not based in law, Fannie Mae and Freddie Mac impose by contract substantial default servicing requirements on servicers, including consideration for a range of loss mitigation options. Requiring a servicer to repeat the process is of questionable utility.

I understand that the CFPB explicitly declined to impose obligations on servicers to provide borrowers with foreclosure avoidance options, acknowledging that to do so by law might impair the willingness of private capital to invest in mortgage loans; it did, however, obligate the servicer to inform delinquent borrowers of what loss mitigation options might be available and to evaluate borrowers for their eligibility for available options, including providing appeal rights. If a mandatory facilitation process remains in the Act, please consider obligating a facilitator to waive the requirement if a servicer provides the facilitator with evidence that the servicer has satisfied the loss mitigation requirements of the CFPB and, as applicable, those of FHA, VA, RHS, Fannie Mae, or Freddie Mac. If mediation is required, it is essential that it be quick, informal (off the record), and non-binding—basically a last set of eyes to give a clean look. As the current draft states, there should be no express or implied obligation of the servicer to provide a borrower with a loss mitigation option. If the process is perceived by servicers and holders simply as a way to coerce foreclosure avoidance settlements for which borrowers already have been considered and rejected, this provision likely will be met with significant industry resistance. Permitting a servicer to continue but not complete a foreclosure during the pendency of the facilitation is important.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurence E. Platt". The signature is stylized with a large initial "L" and a long horizontal stroke extending to the right.

Laurence E. Platt

cc: Chris Killian, SIFMA