



July 8, 2015

Mr. William R. Breetz, Jr.
Connecticut Urban Legal Initiative, Inc.
University of Connecticut School of Law
35 Elizabeth Street
Hartford, CT 06105

Re: Proposed Home Foreclosure Procedures Act

Dear Chairman Breetz,

The Mortgage Bankers Association (MBA)¹ is grateful for the opportunity to participate as an Observer in the drafting committee meetings for the Home Foreclosure Procedures Act (the Act). We recognize and appreciate the tremendous time and effort your committee has put in to drafting a model state law that would bring uniformity to the home foreclosure process. We also appreciate the committee's thoughtful consideration of the industry's concerns and your efforts to find compromise among all stakeholders.

From the start, the most contentious issue was the inclusion of language that modified the Holder in Due Course (HDC) doctrine. The drafting committee made significant efforts to find a middle ground short of a wholesale abrogation of the HDC doctrine and the final draft reflects limitations to the time in which a claim or defense may be asserted,² caps the liability to the outstanding loan balance,³ and applies only prospectively.

However, as you know, MBA cannot support any expansion of assignee liability through modification of the Holder in Due Course doctrine. Under Section 705 of the proposed draft, it will be virtually impossible for an assignee to diligence claims in advance or defend itself against the types of claims the draft authorizes.⁴ Claims under Section 705 could be based on allegations

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, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

² Section 705(c) "A claim or defense under subsection (a) may not be made or asserted more than six years after the signing of the record creating the obligation being enforced."

³ Section 705(d) "... relief is limited to modification of the remaining obligation and recoupment. Recoupment must be in the amount of the economic loss caused by the fraud, misrepresentation, or material breach of promise and may not exceed the amount owed on the obligation at the time of judgment."

⁴ The available defenses are based on fraud, material misrepresentation or breach of promise in connection with the original loan transaction. Section 705(a)(1)-(3). There is no requirement that the allegations be substantiated in writing.

stemming from oral conversations, the validity of which could not be determined by a review of the loan file.

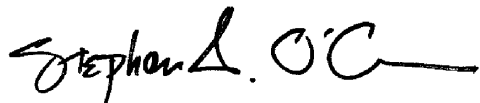
The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ushered in a myriad of new rules and regulations that impose substantial liability on mortgage lenders, servicers, and investors for faulty loan originations or servicing errors. Creating a new source of assignee liability is unnecessary and will only serve to erode investor confidence during a period when the housing market recovery is far from certain — particularly with regards to the return of private capital.

MBA also cannot support the Foreclosure Resolution Program provisions as outlined in Section 305. The CFPB issued comprehensive servicing rules requiring mandatory early intervention and comprehensive loss mitigation evaluations for delinquent borrowers. The process as contemplated by the Act would not unfold until *after* the homeowner has received significant opportunities to be considered for loss mitigation. The draft also does not contain a timeframe within which the resolution conference must be scheduled or concluded and gives the agency authority to delay mediation and therefore delay the foreclosure sale. This will have serious practical consequences as both FHA and the GSEs penalize servicers for foreclosures that exceed certain set timelines. Thus, we fear that this proposal will have the practical effect of unnecessarily prolonging the foreclosure process to the detriment of both consumers and lenders.

Again, we greatly appreciate the efforts the committee made to find common ground and consensus. However, while MBA supports efforts towards standardization of the foreclosure process, we cannot support a model law that features the expansion of assignee liability or imposes a foreclosure resolution program after a consumer has had the opportunity to be fully evaluated for loss mitigation options.

Please feel free to contact Justin Wiseman, Director of Loan Administration Policy, at Jwiseman@mba.org or (202) 557-2854 or Sara Singhas, Policy Analyst, at SSinghas@mba.org or (202) 557-2826 with any questions or comments that you or the Committee might have regarding these positions.

Sincerely,

A handwritten signature in black ink, reading "Stephen A. O'Connor". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen A. O'Connor
Senior Vice President, Public Policy & Industry Relations
Mortgage Bankers Association