



*Invested in America*

July 7, 2015

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 annual meeting later this week of the National Conference of Commissioners on Uniform State Law (the "Commission") to vote on the on the "Home Foreclosure Procedures Act" (the "Act"), I wanted to confirm the opposition of the Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> to the enactment of the proposed Act. As a preliminary matter, we appreciate the opportunity extended to SIFMA to participate in the deliberations and drafting of the proposed Act. We applaud the tireless and professional efforts of you and the committee to grapple with the conflicting positions of the many stakeholders in order to produce a draft Act that seeks to balance the legitimate interests of such stakeholders. Unfortunately, SIFMA is not willing to support the final version of the Act, despite many appealing provisions.

Foreclosure remains a uniquely state law issue, but, as you well know, the federal government has enacted sweeping federal regulations that prescribe in great detail the treatment of borrowers in default, including the handling of loss mitigation, which have been in effect for about 18 months. The Consumer Financial Protection Bureau (the "CFPB") has rulemaking, supervisory and enforcement authority over these regulations and aggressively is using this authority. Like the proposed Act, these servicing regulations at their core seek to minimize home foreclosures and we believe address many of the same consumer protections that the Act seeks to impose but not necessarily in the same way. Servicers continue to expend significant resources to implement these new regulations, and we believe that these new regulations should be given a chance to succeed before a new layer of state barriers to enforcement of loan terms is imposed on servicers and loan holders.

We also strongly oppose the Act's abrogation of the "holder in due course" doctrine. The loss mitigation requirements under the new servicing regulations provide substantial protections to borrowers to limit the likelihood of a foreclosure when alternatives are available. The statutory right of a borrower to assert defenses against an assignee arising out of common law claims that may be asserted against the creditor will be virtually impossible to diligence in advance by a loan purchaser and will not be apparent on the face of a loan file. Merely by asserting that the originating lender had made an unverifiable misrepresentation up to six years before, a borrower who failed to qualify for available loss mitigation can stop a foreclosure in its tracks, even if the state statute of limitation would have expired for such a claim to be brought against the originating lender; the holder likely

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<sup>1</sup> "SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>."

would not have any meaningful way to defend such factual assertions based on hearsay. Moreover, while we do not support the foreclosure resolution provisions in the proposed Act, we note that the borrower is not required to raise the defenses at that time in order to preserve the right to assert them in defense of foreclosure.

Once again, we appreciate that an extraordinary amount of work went into the proposed draft Act. We believe our final opposition is consistent with the points that we raised throughout the process.

Sincerely,

A handwritten signature in blue ink that reads "Chris Killian". The signature is written in a cursive, flowing style.

Christopher B. Killian  
Managing Director  
Securitization Group