MEMORANDUM

TO: File No. DF Title IX - Asset-Backed Securities

FROM: Jay Knight
Attorney-Adviser
Office of Rulemaking
Division of Corporation Finance
U.S. Securities and Exchange Commission

RE: Meeting with the Mortgage Bankers Association

DATE: January 5, 2011

On December 16, 2010, Paula Dubberly, Katherine Hsu, Rolaine Bancroft, and Jay Knight of the Division of Corporation Finance; Wesley Bricker from the Office of the Chief Accountant; and Stanislava Nikolova and Eric Emre Carr of the Division of Risk, Strategy and Financial Innovation met with the following representatives of the Mortgage Bankers Association: Michael Carrier, Steve O'Connor, Josh Denney, Ken Markison, Jim Gross, Jay Brinkmann, Gail Cardwell, Kathy Marquhardt, and George Green. Among the topics discussed was the impact of regulations to be adopted under Title IX, Subtitle D, Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act on the commercial and residential real estate market.

Attachment

MORTGAGE BANKERS ASSOCIATION®
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MBA Meeting With SEC
To Discuss Securitization Issues

1:00 p.m. – 2:00 p.m. December 16, 2010
SEC Headquarters (100 F Street, NE)
Washington, DC

Agenda

I. **Introduction and Meeting Purpose** (O'Connor)

II. **"Qualified Residential Mortgage" Risk Retention Exemption** (O'Connor)

a. MBA's Recommendations
b. "Qualified Mortgage" ability to repay rebuttable presumption

III. **Commercial Real Estate MBS Risk Retention** (Cardwell)

a. Allocation of Retained Risk Between Originator and Issuer
b. Representations and Warrantees and Underwriting Standards
c. B-piece Buyer

IV. **Other Dodd-Frank Act Risk Retention Issues** (O'Connor/Cardwell)

a. Defining credit risk retention
b. Duration of Risk Retention Requirement
c. Hedging Prohibition
d. Non-Qualified Residential Mortgage Requirements

MORTGAGE BANKERS ASSOCIATION
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November 22, 2010

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Tom Vilsack
Secretary
U.S. Dept. of Agriculture
1400 Independence Ave., SW, Rm. 200-A
Washington, DC 20250

The Honorable Shaun Donovan
Secretary
U.S. Dept. of Housing & Urban Dev.
451 Seventh Street, SW
Washington, DC 20410

The Honorable Ben S. Bernanke
Chairman, Board of Governors
Federal Reserve System
20th St. & Constitution Ave. NW
Washington, DC 20551

The Honorable Eric K. Shinseki
Secretary
U.S. Department of Veterans Affairs
810 Vermont Ave., NW, Room 1000
Washington, DC 20420

Gentlemen:

Recently, the Mortgage Bankers Association[1] (MBA) submitted the attached letter to the federal financial regulators responsible for developing the risk retention regulations under the Dodd-Frank Wall Street Reform and consumer Protection Act (DFA).[2]

Among other points, MBA urged the regulators to synchronize the definition of the Qualified Residential Mortgage (QRM) exemption for risk retention purposes (as required by Section 941 of the DFA) with the Qualified Mortgage (QM) definition (under the "ability to repay" provisions of Section 1412 of Title XIV of the DFA). We also urged that the timelines for drafting, proposing, issuing for public comment, finalizing and implementing both regulations concerning these definitions be coordinated now – so they are concurrent rather than sequential.

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

[2] Sec. 941, Public Law 111-203, (July 21, 2010)

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proper to ensure that responsible, affordable mortgage credit remains available to consumers consistent with the purposes of this section..."[5] Similarly, while the regulators are charged with defining the QRM term, "taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default," they are given wide latitude to determine which features should comprise a QRM. Using their discretion in connection with both provisions, the regulators may determine that the purposes of consistency are better served by excluding the limit on points and fees from both definitions or by modifying it and/or establishing other criteria. They could also determine that only the QM definition will contain the points and fees limit but the definitions otherwise will be consistent.

4. ***Finalizing both definitions in a coordinated manner on the same schedule will help facilitate consistency.*** If deliberations are coordinated and on the same schedule, regulators are more likely to hear similar views to help shape both definitions. They are also more likely to be afforded a greater opportunity to determine how best to use their discretion to ensure consistency between the definitions.

5. ***Finalizing both definitions on the same schedule will speed the process of implementing better underwriting standards to ensure sustainable mortgage lending.*** DFA requires final risk retention rules, including its QRM provisions, no later than 270 days after enactment of the law, which is April 1, 2011. Since it does not require implementation of the ability to repay provisions until no later than 18 months after the transfer date (or January 2013), putting the QM rules on the same schedule will speed efforts to implement new underwriting requirements for sustainable lending.

6. ***Finalizing both definitions on the same schedule will speed the return of private capital to the mortgage markets.*** Investors can be expected also to insist ordinarily on the satisfaction of both definitions to lessen the possibility of liability and increase the value of securitized assets. The implementation of both definitions at the earliest possible date will help speed the return of private investment capital to the mortgage markets.

7. ***Establishment of both definitions as promptly as possible is likely to advance thinking about loans that do not meet the definitions.*** While it is anticipated that most lenders will only offer and underwrite loans meeting the QM and QRM definitions, many transactions will fall outside of the QM's and QRM's strictures. Timely and consistent implementation of the QM and QRM definitions also will speed regulators' consideration of any requirements for transactions outside the definitions in light of safety and soundness or consumer protection concerns.

In sum, we believe there are numerous reasons, including those we have highlighted, to synchronize the QRM and QM definitions and put their implementation timelines on the same track. First and foremost, doing so will, in our judgment, better protect consumers and return private capital to the mortgage market.

We would welcome the opportunity to discuss this critical issue further. Please contact us if you have any questions.

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[5] Subsection (b)(3)(B)(i) of Sec. 129C of the Truth in Lending Act, as amended by Sec. 1412, Public Law 111-203 (July 21, 2010).

MORTGAGE BANKERS ASSOCIATION
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October 7, 2010

Board of Governors of the Federal Reserve System
20th Street and Constitution Ave
Washington, DC 20551

Dear Governors:

The Mortgage Bankers Association[1] (MBA) is writing to you in relation to Section 941 (i)(c)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) which requires a study (Study) of the impact of risk retention on Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140* (FAS 166) and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167). MBA is the voice of the real estate finance industry, with both residential and commercial constituencies. This letter comments separately on the interaction of risk retention rules and FAS 166 and 167 as they relate to the commercial mortgage backed securities (CMBS) market and the residential mortgage backed securities market (RMBS).

Background

On June 12, 2009, the Financial Accounting Standards Board (FASB) issued FAS 166 and FAS 167. FAS 166 and FAS 167 removed the concept of a qualifying special-purpose entity (QSPE) from generally accepted accounting principles (GAAP) and altered the criteria under which special purpose entities, like mortgage-backed securities (MBS) trusts, must be included in the issuer's, controlling class holder's or servicer's consolidated financial statements. FAS 166 contains rules which govern whether a

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behalf of the bondholders. Consequently, in most CMBS transactions, the holder of the first loss bonds, sometimes called the "Controlling Class," with consultative rights with the Special Servicer and the right to change the Special Servicer in its discretion, will be the primary beneficiary and be required to consolidate the vehicle. The theoretical underpinnings of the structure are, of course, that the Special Servicer will be highly responsive to a party who has the power to terminate its contract.

If the issuer is required to retain a significant variable interest, it would, as a matter of prudence, need the same rights as a third party first loss buyer and, consequently, would likely become the Controlling Class investor. The issuer's retention of a first loss piece, plus its right to terminate the Special Servicer, would make it the primary beneficiary under FAS 167, and it would consequently be required to consolidate the assets and liabilities of the securitization.

This consolidation would dissuade both regulated and publicly held institutions from participating in the securitization market as securitizers because of the balance sheet and income statement distortions accompanying consolidation. If consolidation is required, assets would be significantly increased, liabilities would be significantly increased, reserves for loan losses would also be increased and, in the case of regulated institutions, capital ratios would become distorted. Distorted capital ratios might require additional capital. All of these issues would likely result in both regulated and publicly held institutions withdrawing from the market as securitizers. If regulated and publicly held institutions choose not to participate, it would leave the market to private, unregulated companies leading to significantly less liquidity and less credit available for new lending. We, therefore, urge you to draft regulations that would allow companies to avoid those consequences.

Conclusion

As the Federal Reserve conducts its study of the combined impact on each individual class of asset-backed security (ABS) of risk retention requirements and their impact under FAS 166 and FAS 167, in response to the Dodd-Frank Act's mandate, MBA submits the following with specific attention to the CMBS market:

Impacts on the market:

- If any risk retention requirements that the regulators promulgate as a result of the Dodd-Frank Act result in consolidation of assets on the balance sheets of CMBS issuers, we believe that will greatly reduce participation in the CMBS market.
- Regulated institutions, such as banks, would be required to hold additional capital should consolidation be required.
- Any requirement that issuers must retain a variable interest should be structured so that the issuers would not be obligated to consolidate the related securitization.

Typical RMBS structures have a master servicer who may perform all servicing functions themselves, or who may contract with other companies to perform certain servicing functions. The servicer(s) collects the monthly principal, interest and escrow payments (for property taxes and hazard insurance) from the mortgagors; performs collection and foreclosure services; pays tax and insurance bills; and remits principal and interest to the bondholders. When more than one servicer collects monthly principal and interest payments from mortgagors, each servicer remits to the master servicer, and the master servicer does the pool level accounting and remittance to individual bond investors. Often the master servicer is the issuer of the securities or an affiliate of the issuer.

Under FAS 167, the subordinate bond holder or the third party surety would likely be deemed to be a party with a potentially significant variable interest. In order to be required to consolidate the VIE, these parties would also need to have the power to direct the activities of an entity that most significantly impacts the entity's economic performance. Frequently, the master servicer or servicer is deemed to be the party that has this power since default risk is deemed to be the primary driver of economic performance, and the master servicer or servicer is the party that performs collection and foreclosure processes or can remove at will the Special Servicer whom they have hired to perform this function.

Each securitization is unique requiring the parties to study their respective retained interests and ongoing roles to determine if they have a potentially significant variable interest and the power to direct those activities that most significantly impact the entity's economic performance, including consideration of kick-out rights.

MBA's recommendation for regulations related to RMBS is similar to our recommendation for CMBS. Regulations should be crafted in such a way to avoid consolidation on the balance sheets of RMBS issuers and to provide flexibility to allow for many different forms of risk retention, as allowed in Section 941 (c)(1)(E) of the Dodd-Frank bill.

Conclusion

MBA hopes the Federal Reserve finds these comments helpful. We stand ready to offer additional assistance as you undertake the various regulations and studies mandated by the Dodd-Frank Act.

Sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association

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MBA Fact Sheet
The Role of Electronic Mortgage Registrations

The Need for Electronic Registration
Recent events in the mortgage loan servicing industry have prompted questions about how mortgages are recorded and their ownership tracked. These questions are important for a number of reasons. In today's mortgage finance system, a loan is often sold one or more times after origination and then securitized as part of a pool of similar mortgages. Additionally, the overwhelming majority of mortgage loans are paid off through refinancing or sale of a property long before their terms (such as 15, 30 or 40 years) expire. These facts make tracking the servicer and ownership of every mortgage challenging and, at the same time, absolutely critical to the efficient operation of the mortgage market.

To understand the purpose of a registry of mortgage rights outside the public land records, it is important to understand the nature of mortgage loans. Mortgage loans are complex financial products that come with piles of paperwork (actual and electronic) at every step of the process – from borrower application to the ultimate marketing of a security backed by that loan. Two instruments are fundamental to virtually every mortgage loan today and rise above the rest in terms of legal importance – the promissory note and the security instrument, which is generally a mortgage or deed of trust. The security instrument establishes the note holder's right to the property securing repayment of the borrower's promissory note upon the borrower's default.

The legal principle governing the right to receive payment under a mortgage note is that "possession" of the note determines ownership and the security instrument follows the note. The security instrument is recorded in the local (usually county) land records office to provide "public notice" of the mortgage lien.

The American process for allowing a borrower to possess real estate while paying the debt, and requiring the lender to record a notice of lien so that subsequent creditors and other interested parties can be aware of the lender's security interest in the real property, has been in place since the early 17th century. For hundreds of years, it worked pretty much the same way in counties across the country.

In more recent history, it also has been common practice to divide up the rights in a mortgage into "legal" rights and "equitable" or "beneficial" rights. Going back to the launch of FHA-insured mortgages in the 1930's, when a loan was made, the mortgage originator was identified in the public records as "mortgagee of record" on behalf of a life insurance company that would purchase the mortgage obligation. All rights to receive payment were sold to the insurance company which would become the equitable owner of the promissory note. To the world, the mortgage originator/servicer would be the mortgagee of record, but the entity would hold only "bare legal title" in order to service the mortgage on behalf of its investor. "Servicing" includes collecting mortgage payments, remitting them to investors, and handling mortgage delinquencies and defaults on behalf of an investor. As the secondary mortgage market evolved, this model was adopted by Fannie Mae and Freddie Mac, Ginnie Mae, and private label securitizers.

Under this model, every time servicing obligations changed hands as the mortgage moved through the mortgage business chain, the new servicer was generally required to record the assignment of its bare legal title in the local land records office. The records also had to be updated and liens released, as they do still today, any time a mortgage was paid off through a refinance or sale of the property.

By the early 1990s, with homeownership continuing to grow and interest rates falling to new lows, it was apparent that the mortgage recordation system that had been in use for nearly 400 years could not keep up with the modern volume of residential real property finance transactions. In fact, the 1993 mortgage refinance boom, still one of the largest in American history, was hampered by a severe backlog of paperwork at land records offices in many areas of the country, often delaying lien releases and related home purchase and mortgage refinance transactions to the detriment of consumers trying to benefit from falling interest rates and compromising the chain of record title. Borrowers, lenders and government officials all became frustrated by this situation which was exacerbated by the growing volume of required mortgage assignments.

The mortgage recordation backlog of the early 1990s was somewhat analogous to Wall Street's "paperwork crisis" of the late 1960s, where clerks were buried in so many paper stock certificates that they could not process them fast enough. To solve this crisis, Wall Street turned to technology and a system of book-entry accounting to track stock ownership. Mortgage companies, banks, investors and government officials saw the positive results of this evolution in the stock market and began to discuss how to apply a similar concept to tracking mortgage ownership rights, servicing rights and warehouse loans (short-term security interests in mortgage obligations prior to their sale into the secondary mortgage market). Out of these discussions was born an industry utility that came to be called MERS, or Mortgage Electronic Registration Systems, Inc.

MERS Today

Today, MERS is an integral part of modern mortgage finance. MERS systems have dramatically improved the quality and availability of information in the residential mortgage process since its operations began in 1997.

The MERS System is a database of information provided by mortgage lenders, servicers and investors. Using a mortgage loan identification number (the MERS MIN), MERS tracks changes in holders of loan servicing rights, owners of the mortgage note and holders of warehouse loans.

On the majority of mortgage loans today, borrowers agree at settlement to allow MERS to be the mortgagee of record – for the purpose of serving as "nominee" for the promissory note holder as the note is sold, aggregated and securitized. The mortgage lien and its priority position are properly established in the county recorder's office, while the ownership of the note and other mortgage rights move through the modern system of banking and capital markets, all the time being tracked closely by the MERS System.

Allowing MERS to serve as the mortgagee of record has relieved the pressures on the public land records caused by repeated transfers of mortgage rights (such as servicing and ownership rights), and thereby helps protect the accuracy and integrity of the chain of title. MERS also maintains a centralized "mailroom" on behalf of its members to receive and disseminate legal notices it receives as mortgagee of record.

The MERS System supports the mortgage securitization process by giving banks, brokers, loan originators, servicers, investors and regulators the ability to track key information on every mortgage loan registered on the MERS System. Since its inception, over 3,000 such market participants have registered more than 65 million loans with MERS. Today, over half of all outstanding mortgages are registered with MERS.

MERS is also useful to borrowers, both directly and indirectly. MERS, for the first time, created a way for borrowers to track the servicer and investor for their loan. This service is free online at http://www.mersinc.org/homeowners/ or by calling (888) 679-6377. Through the reduction of paperwork and other efficiencies, MERS has helped significantly reduce the costs of a mortgage which helps keep the mortgage market liquid and ultimately reduces costs to borrowers. In addition, MERS has decreased the time it takes to refinance a loan which can be a significant benefit to borrowers attempting to lower their interest rate or move from a variable interest rate loan to one with a fixed rate.

It is common for MERS to play a role in foreclosures. If MERS is the mortgagee of record with the county land records, and the borrower is in default on the mortgage, foreclosure can be legally commenced either by MERS on behalf of the note owner, or by the note owner after assignment of the mortgage to the note holder. The process varies in these two ways due to state laws and/or the preference of the servicer or investor. It is important to note that MERS only initiates foreclosure when it has been instructed to do so by the owner of the mortgage and possesses the mortgage note.

For more information on MERS, go to www.mersinc.org.

October 22, 2010

Judicial Versus Non-Judicial Foreclosure

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Judicial Versus Non-Judicial Foreclosure

In many discussions about mortgage foreclosures the terms **judicial** and **non-judicial** foreclosure are used. They involve very different processes. These terms refer to how individual states handle real estate foreclosure. Under both systems, time frames and terms vary widely from state to state. The following is a brief, general, description of both processes. The accompanying chart (see last page) depicts the varying time frames involved in the judicial foreclosure process.

Judicial Foreclosures

A judicial foreclosure is a court proceeding that begins when the lender files a complaint and records a notice in the public land records announcing a claim on the property to potential buyers, creditors and other interested parties. The complaint describes the debt, the borrower's default and the amount owed. The complaint asks the court to allow the lender to foreclose its lien and take possession of the property as a remedy for non-payment.

The homeowner is served notice of the complaint, either by mail, direct service or publication of the notice. The defendant (borrower) is permitted to dispute the facts (such as show that payments were made), offer defenses or present counterclaims by answering the complaint, filing a separate suit, and/or by attending a hearing arranged by the court. If the defendant shows there are differences of material facts, a trial will be held by the court to determine if foreclosure should occur. In the vast majority of cases, however, the foreclosure action is undisputed because the borrower is in default and cannot offer facts to the contrary. If the court determines the homeowner did default and that the debt is valid, it will issue a judgment in favor of the servicer for the total amount owed, including costs for the foreclosure process. In order for the judge to determine the amount of the judgment, the servicer submits paperwork through an affidavit that itemizes the amounts due.

Twenty two states use judicial procedures as the primary way to foreclose. These include: Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont and Wisconsin.

In all other states, foreclosure is usually handled by attorneys who follow a state-provided process. In the mortgage documents, borrowers give lenders the "power of sale" outside of judicial process in the event of an uncured default. Documentation or affidavit issues are not common in these states because of the non-judicial nature of the process.

Next, the court will authorize a sheriff's sale. The sale is an auction of the property open to anyone, and must be held in a public place. Procedures for a sheriff's sale in each locality differ, but the individual with the highest bid is granted the property. After the sale is confirmed by the court, the deed, which transfers ownership, is prepared, recorded and the highest bidder becomes the owner of the property. In most cases, the highest bidder is the servicer, who takes title of the property. The servicer then can sell the property. At this point, it is called **real estate owned (REO).**

Non-Judicial Foreclosures

The requirements for non-judicial foreclosure are established by state statue; there is no court intervention. When the default occurs, the homeowner is mailed a default letter and in many states a Notice of Default is recorded, at or about the same time. The homeowner may cure the debt during a prescribed period; if not, a Notice of Sale is mailed to the homeowner, posted in public places, recorded at the county's recorder's office, and published in area newspapers/legal publications. When the legally required notice period (determined by each state) has expired, a public auction is held and the highest bidder becomes the owner of the property, subject to recordation of the deed. Prior to the sale, if the borrower disagrees with the facts of the case, he or she can try to file a lawsuit to enjoin the trustee's sale.

Judicial Foreclosure Process

480-700 Days

180-400 Days

PRE-FORECLOSURE 1-180 Days	IN-FORECLOSURE 180-220 Days	POST-FORECLOSURE 180+ Days

Customer Outreach

Beginning within a month of a missed payment and all the way to title transfer, a mortgage loan servicer exhausts all home retention options, including outbound calls and solicitations to educate the customer on alternatives to foreclosure.

Date of Default

Date the borrower is considered to have defaulted under the mortgage contract due to non-payment.

Initiate Foreclosure Process

Date the borrower's mortgage case is referred to a foreclosure attorney by the servicer.

Filing

Date the servicer or its attorney files a complaint (lawsuit) against the borrower to seek foreclosure as a remedy for non-payment.

Court Approval

Date court decides to alow the property to be sold through foreclosure.

Transfer Date

Date the foreclosure sale is completed by transferring title to the property from the borrower to the servicer or other highest bidder at the foreclosure sale.

Eviction

Date the borrower is evicted from the property if they do not leave voluntarily before this time.

REO Marketing and Sale

Date the repossessed property (real estate owned-REO) begins to be marketed for sale and the date the property is sold by the servicer.

Customer Outreach/Homeownership Preservation Efforts Continue

Borrower In Home

Day counts represent national average.

Understanding the Foreclosure Paperwork Situation

What happened?

Recently, an employee of a major mortgage loan servicer testified under oath that he had signed legal paperwork required for foreclosures on residential mortgages without personally reviewing each business record on which certain statements contained in the legal paperwork were based, even though the document itself stated that the signer had "personal knowledge" of these statements. The employee also testified that his signature was not properly notarized.

Since then, this company and a number of other mortgage servicers – companies that are in the business of handling customer service, payment collection, and if necessary, foreclosure on property financed with mortgage loans – have publicly stated that they are reviewing their business practices related to the signing of legal documents required for foreclosure.

Why does it matter?

The paperwork (an affidavit) described above is common and includes the date on which the borrower fell behind on payments or otherwise "defaulted" on their loan, as well as the current amount of money due. In many cases, this type of affidavit includes legal language indicating the person signing the form has *personal knowledge* of the facts of the case, such as the amount due. It also may state that the affidavit has been signed in the presence of a notary.

In light of the employee's testimony and other reports that some mortgage servicing companies may have engaged in "robo-signing" (signing affidavits without the signer personally checking the facts stated in the documents they sign), some consumer advocates and government officials have expressed concern about the risk that foreclosures by these companies may have been based on inaccurate information. The issue has received significant government and media attention, and mortgage servicers have responded quickly by reviewing their procedures to ensure they are complying with relevant state laws.

Why should we not rush to judgment?

In today's mortgage system, with approximately 51 million outstanding first mortgages, roughly 4.8 million of which are one or more payments behind and approximately 2.3 million of which are in the foreclosure process, employees of mortgage servicers rely on their business systems – people and computer programs – to track facts such as the date of default and the amount owed.

Mortgage servicers have comprehensive quality control procedures in place throughout the foreclosure process. For example, these procedures provide for verification of the accuracy of the information contained in legal documents necessary for foreclosure prior to their presentation to an employee for signature. For this reason, it is highly unlikely that the signer passed along erroneous paperwork for processing. Moreover, any technical error in the execution of the paperwork does not stop the borrower from raising defenses to foreclosure or from questioning the substantive facts of the case, such as amount due and date of default. Therefore, while it is important for servicers to comply with laws requiring personal knowledge by a signer, any assumption that "robo-signing" led to wrongful foreclosures is not correct.

Is this a problem everywhere?

The issues raised by "robo-signing" arise only in a limited number of states because the paperwork in question is required only in certain "judicial foreclosure" states – states where foreclosure is a formal court process. Only the following states (22) use judicial procedures as the primary way to foreclose: Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont and Wisconsin. Furthermore, not all judicial foreclosure states require affidavits.

For all other states, foreclosure is handled by attorneys who follow a state-provided process. Documentation or affidavit issues are not common in these states because of the non-judicial nature of the process.

Are borrowers affected?

There is no reason to believe that "robo-signing" has resulted in servicers erroneously foreclosing on borrowers or that borrowers have been treated unfairly in the affidavit process. The situation arising from the revelation that some documents have been "robo-signed" relates to whether the person who signed the document relied on other employees to verify the information rather than personally re-checking the company's records. No mortgage servicer or financial regulator has announced any reason to believe that erroneous foreclosure decisions have been made or that unwarranted foreclosures have been completed.

While they work to review their processes and verify that all paperwork is in order, some mortgage servicers have voluntarily paused foreclosure proceedings or stopped the sale of foreclosed property in some or all of the states in which they service loans.

Borrowers should continue to make their mortgage payments on time and continue to promptly respond to any request for information or paperwork from their loan servicer. Servicers will continue to exhaust all assistance options for which a borrower is eligible, including government programs, before foreclosing.

What should be done about it?

Mortgage loan servicers, and the law firms and other companies on which they rely in servicing loans, are reviewing their systems to ensure compliance with the law in the states where they service loans. This is the appropriate response to a correctable technical problem with paperwork from specific companies regarding specific cases in specific states.

October 15, 2010