June 28, 2019
The Honorable Linda A. Lacewell
Superintendent of Financial Services
New York Department of Financial Services
1 State Street
New York, NY 10004-1511

RE: 3 NYCRR 419 – Servicing Mortgage Loans: Business Conduct Rules

Dear Superintendent Lacewell,

The New York Mortgage Bankers Association (NYMBA)[1] and the Mortgage Bankers Association (MBA)[2] are writing to you regarding the New York Department of Financial Services' (DFS) proposed changes to the business conduct rules for servicing mortgage loans (3 NYCRR 419). The proposal would represent the first major update to Part 419 since its adoption almost 10 years ago. In that time, the regulation of mortgage servicing has become much more robust with the implementation of an expansive federal framework of rules that protect consumers.

While the proposed changes to Part 419 would emulate the relatively recent changes to the RESPA and TILA servicing requirements, we believe the implementation of the state-specific standards offered in the proposal would create consumer uncertainty, add additional costs, and produce possible deviations from federal law. Therefore, we are urging DFS to add a provision to Part 419 that states compliance with the Consumer Financial Protection Bureau's (CFPB) servicing rules constitutes compliance with DFS

[1] The New York Mortgage Bankers Association, Inc. (NYMBA), is a 501(c)(6) not-for-profit statewide organization devoted exclusively to the field of real estate finance. NYMBA's rapidly growing membership is comprised of both bank and non-bank mortgage lenders and servicers, as well as a wide variety of mortgage industry-related firms.
[2] 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, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to 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.

rules. In the alternative, we also encourage DFS to review the key differences in the proposed rule and federal law and modify the language to ensure consistency with federal law.

In effect since 2014, the CFPB's comprehensive, national mortgage servicing rules effectively address the risks to consumers identified by the state Attorneys General, the CFPB and other regulators as a result of the foreclosure crisis. These national mortgage servicing standards apply uniformly to all mortgage servicers – both banks and nonbanks. If gaps in servicing standards are later identified, the CFPB has the power to promulgate additional requirements to address evolving market practices that the CFPB deems to be unfair, deceptive or abusive to consumers. In addition, the CFPB's ongoing market surveillance program is conducted in conjunction with state regulators and Attorneys General, providing state regulators an avenue for recommending enhancements.

Servicers already have processes, procedures, and controls in place for complying with federal consumer protection rules. Adding additional requirements that deviate from current federal standards creates regulatory inefficiency by requiring servicers to construct new processes – and regulatory inefficiency directly impacts the cost and availability of consumer credit.

Specifically, we note the following issues with Proposed Part 419:

- Proposed section 419.4 (Statement of Account) would require customer account statements to include a breakdown of the total payment amount, including details on actual fees and charges. This is a significant deviation from federal requirements that would unnecessarily increase regulatory risk and cost. Servicers follow federal guidance and rely on a mortgage statement template provided by the CFPB. DFS should not require servicers to deviate from that template, which already requires itemization of any fees incurred over the last billing cycle and shows the total amount of fees and charges due.

- Proposed section 419.6 (Borrower Complaints and Inquiries) would require servicers to provide certain information in every welcome packet and periodic statement, a significant deviation from the format and content of periodic statements and servicing transfer notices and the model templates provided under TILA. Further, the proposed rule would require servicers to follow stringent requirements upon receipt of a consumer complaint through any intake method. This is a deviation from RESPA requirements and would unnecessarily increase regulatory risk and cost.

- Proposed section 419.7 (Loss Mitigation)
    - Proposed section 419.7(c)(1) requires a written notice be provided no later than the 17th day of delinquency to inform the borrower that his or her payment is late. This additional notice provides little, if any, value to borrowers and may discourage borrowers from opening future correspondence from their servicer.

    - Similar to CFPB requirements,[3] proposed section 419.7(c)(2) requires a written loss mitigation solicitation notice be provided no later than the borrower's 45th day of delinquency. However, DFS's proposed notice must also include "all documents and information that a borrower must submit to be considered for any given loss mitigation option."[4] At this early stage, servicers will not have enough information on each individual customer's unique financial situation to identify all of the documents and information that will be necessary. Servicers can only identify some basic documentation that is generally needed from most customers. Moreover, providing a list of *all* documentation that may be required for *all* loss mitigation options may feel overwhelming to a borrower and may have the unintended effect of causing the borrower to disengage. Finally, the proposed notice would require servicers to include information on the nature and extent of the borrower's delinquency which could violate bankruptcy and Fair Debt Collection Practices Act restrictions.

    - Proposed section 419.7(f)(1)(iii) would require servicers to disclose all changes to a consumer's loan that would result from a loan modification when first approving a modification. At the initial approval stage, a servicer cannot fully identify all of the changes that a modification would make until a customer has completed a trial modification period and is eligible to transition to a final modification.

    - Proposed section 419.7(h)(1) would provide consumers with an opportunity to appeal a denial of any loss mitigation option. In contrast, the CFPB rules limit appeals to denials of a loan modification. The proposed rule would significantly enlarge the volume of consumer appeal opportunities, substantially raising mortgage servicing costs and negatively impacting cost and availability of consumer credit.

- Proposed section 419.10 (Servicing Prohibitions) would provide dual-tracking protection for consumers based on an incomplete loss mitigation application. This is significantly out of step with current industry practice and RESPA requirements which limit this protection to borrowers who have submitted a complete loss mitigation application. The proposed rule would create additional regulatory cost and risk, adversely impacting the cost and availability of

[3] Section 1024.39(b)

[4] 3 NYCRR Section 419.7(c)(2)(v)(emphasis added).

consumer credit. NY already has some of the longest resolution timelines and the highest costs to service and this would only serve to exacerbate these issues.

- Proposed sections 419.11 (Oversight of Third-Party Providers) and 419.13 (Affiliated Business Arrangements) add new disclosure requirements for "affiliated business arrangements" and "third party providers." However, the respective definitions are defined extremely broadly and do not provide clarity for which situations would require disclosure in the context of loan servicing. Disclosure of affiliate business arrangements is already required prior to mortgage settlement under RESPA and it is unclear what issue is being addressed by including additional disclosures.

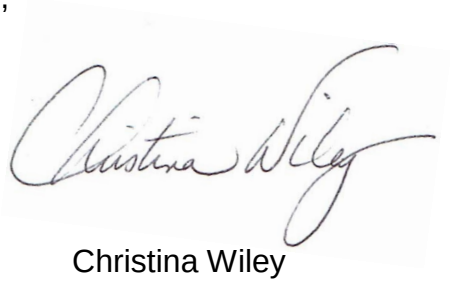
Standards in the proposed rule that deviate from the national mortgage servicing rules that servicers have been required to comply with since 2014, add additional costs and create compliance and legal risk for servicers of New York loans. Small and mid-sized independent mortgage banks will be hit particularly hard because of the inability to spread the additional cost of compliance across a large, geographically diverse servicing portfolio and the cost of complying with the state-specific standards will be borne by New York consumers. Therefore, the department should allow compliance with federal standards to constitute compliance with DFS rules.

Finally, DFS should provide servicers with sufficient time to implement the changes, new processes, and controls that would be required by the proposed rules. We suggest that the effective date of the rules should be at least six months after the final rules have been published.

Thank you for taking the time to consider our views on the proposed changes and the need for uniformity of servicing standards.

For more information, please contact William Kooper (wkooper@mba.org or 202-557-2737); Kobie Pruitt (kpruitt@mba.org or 202-557-2870); or Christina Wiley (cwiley@nymba.org or 518-963-0593).

Sincerely,



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