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July 10, 2017

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

RE: RFI Regarding 2013 RESPA Servicing Rule Assessment
Docket No. CFPB-2017-0012

Dear Ms. Jackson:

The Housing Policy Council of the Financial Services Roundtable[1] appreciates the opportunity to respond to your Request for Information (RFI) regarding the 2013 RESPA Servicing Rule assessment. Our member companies are committed to providing the best consumer experience possible in mortgage servicing and certainly support the objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), including the intent to improve the quality of mortgage servicing. However, HPC believes that the proposed assessment, as described in the RFI, is based upon a deficient application of the Dodd-Frank Act requirements[2] and we respectfully request that CFPB withdraw the RFI for reformulation and reissuance.

HPC is concerned that the proposed review of the servicing rule, which CFPB has set forth in this RFI, reflects a misinterpretation of the Bureau's obligation under Section 1022(d) of the Dodd-Frank law. We believe that the Bureau framed its statutory obligations in this RFI very narrowly and that this framing produces a flawed assessment methodology. The RFI truncates the full set of objectives that CFPB must incorporate into its assessment plan; instead of relying on the complete list of five objectives established by the Dodd-Frank Act, CFPB focuses solely on its own four regulatory purposes.

To be clear, the RFI suggests that the "purposes" that the CFPB set forth when the agency drafted the original servicing rule are "corollaries" of the lawmakers' objectives, as published in Subtitle B, General Powers of the Bureau, Section 1021. But, this is not the case. The Bureau's objectives, as described in the RFI are narrowly focused on specific servicer-borrower communications and responsibilities, a position that the CFPB adopted at the time of

[1] The Housing Policy Council (HPC) is a division of the Financial Services Roundtable. Our members are 32 of the leading national mortgage lenders, servicers, mortgage insurers, and title and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. For additional information, visit: http://www.fsroundtable.org/category/hpc/

[2] 12 USC § 5512(d)

the rule-making. These objectives are: “(1) responding to borrower requests and complaints in a timely manner; (2) maintaining and providing accurate information; (3) helping borrowers avoid unwarranted or unnecessary costs and fees; and (4) facilitating review for foreclosure avoidance options.”

In contrast, as defined by the Dodd-Frank Act, the Bureau’s objectives are substantially broader and the law obligates CFPB to perform the 1022(d) assessment in accordance with these statutory objectives. The law very clearly states, “the assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes or objectives *of this title* . . . “ Two of the five objectives spelled out in the title (Section 1021 of Title X), focus on consumers (similar to CFPB’s regulatory construction). Three of the statutory objectives stipulate the Bureau’s role and responsibility to support the broader marketplace. To cite these three objectives from the law, CFPB must ensure that: “(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to *reduce unwarranted regulatory burdens*; (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to *promote fair competition*; and (5) markets for consumer financial products and services operate transparently and efficiently to *facilitate access and innovation*.”

HPC is concerned that this clear divergence in the substance and meaning of these distinct sets of objectives results in two fatal flaws in the proposed assessment: 1) the proposed methodology will drive toward a set of conclusions that are inappropriately constrained and 2) the assessment proposal does not fulfill the original intent of Congress.

We believe that these deficiencies are significant enough to undermine the CFPB’s ability to satisfy the statutory requirement, and therefore CFPB should withdraw and reformulate the assessment proposal. Moreover, we would like to raise two additional legal concerns that call into question the proposal: 1) CFPB’s determination that only the RESPA portion of the servicing regulations and not the TILA portion be included appears to be based on a tenuous argument that the impact of the TILA rule was immaterial, but some HPC members would disagree with that conclusion and 2) the RFI posits that recommendations for modifying, expanding, or eliminating the RESPA servicing rule may be submitted, but will not be considered and included in the assessment itself, nor the report that is generated from the assessment. In other words, the RFI allows for, yet discourages, the submission of such commentary.

Additional Commentary:

While HPC’s strong recommendation is that CFPB withdraw the proposal for revision and republication as a new RFI, our members would like to offer additional comments on three critical areas of concern that should be addressed in either a new proposal or the assessment plan itself:

1. *CFPB Data Requests* – Any Bureau request for servicing data to perform the regulatory assessment should be tied directly to a set of delineated objectives and measures; data must be treated as Confidential Supervisory Information; and conclusions should be derived only from aggregated and "anonymized" data. HPC would be amenable to the use of a third party to compile and strip data of any proprietary characteristics, but would want to be sure that such an entity has the qualifications and capacity to secure and protect the data.

2. *Assess the Full Impact of the Regulation* – HPC members recommend that the CFPB assessment broadly consider the impact of servicing regulations on consumers, servicers, and the mortgage market. This type of comprehensive assessment is not only consistent with the Dodd-Frank objectives, but also would offer the government, industry, and consumer advocates an opportunity to understand the effects of the regulations in a more complete and inclusive manner, an approach that would be useful for future policy-making.

3. *Input to Consider* – As CFPB acknowledges in the RFI, the CFPB servicing regulations were developed and executed during a time of tremendous change in the marketplace, due in part to the imposition of many new requirements from federal and state agencies and regulators. It is critically important that CFPB parse out the introduction and impact of these new requirements, all of which were distinct (albeit sometimes redundant and sometimes conflicting), to ensure that the impacts of these additional regulatory and programmatic measures are not commingled in a manner that attributes outcomes from other rules to those of the CFPB regulations.

CFPB Data Requests

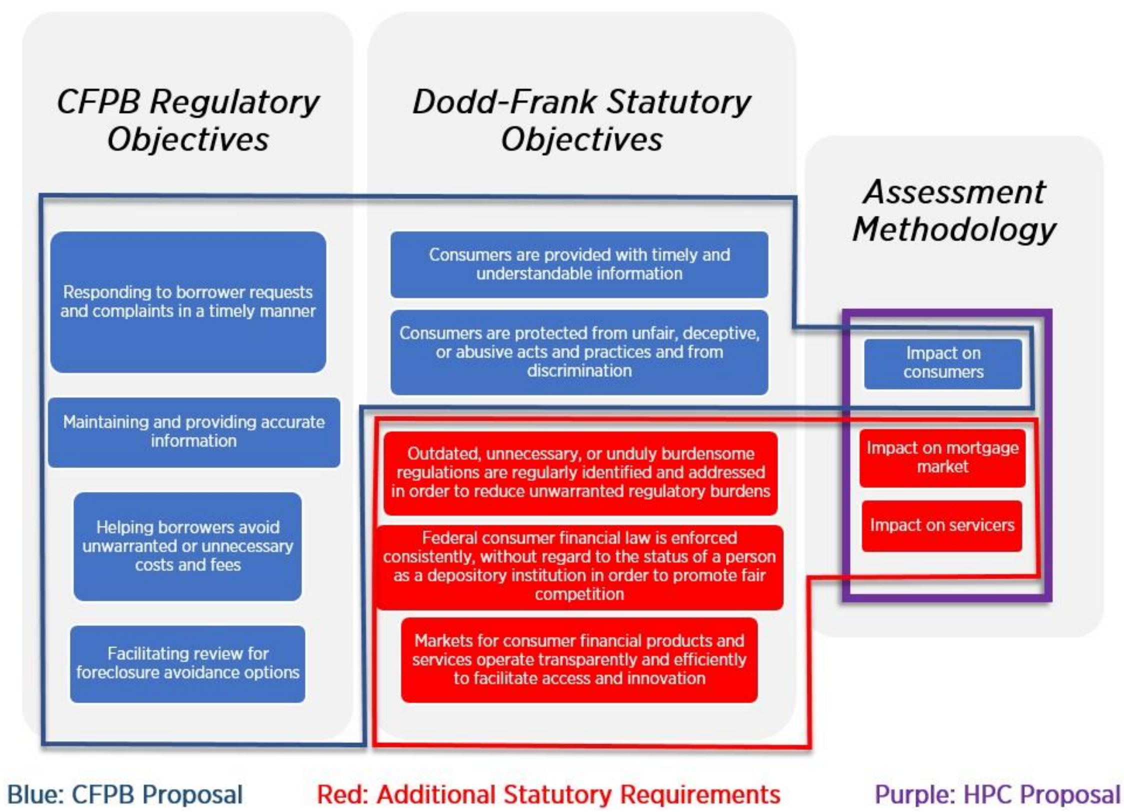
HPC members request that CFPB establish a set of clear objectives, measures, and analytic approach before seeking data from servicers, protect the confidentiality of any data collected, and perform analysis with aggregated data sets, to protect consumer privacy and the identity of any particular servicer. The anonymity of the servicer data is particularly important to ensure that the conclusions drawn from the evaluation are unbiased.

While some industry participants suggest that a third party could possibly compile and "anonymize" servicer data, HPC would suggest that this function be performed only by organizations with pre-existing and recognized expertise in handling extensive data sets. It is critically important to HPC members that all data be managed in a manner that secures and protects proprietary and confidential information. HPC is open to using a neutral third party to collect and aggregate information to ensure impartial treatment that will lead to objective, unbiased conclusions. However, HPC members believe that the Bureau must treat the data as Confidential Supervisory Information, which dictates a set of conditions, limitations, and permissions designed to safeguard its transmission and use.

HPC members also feel strongly that any CFPB data request be based on and explicitly articulate a set of clear and well-defined objectives and measures. In other words, the Bureau should identify each assessment measure, the critical data it believes will allow staff to perform relevant analysis, and the reason why it believes such measures and data further its goals. The findings and observations of CFPB must flow from a pre-established and well-understood evaluation plan that states the objective, measures, and data required. HPC would oppose any effort to request and compile servicer data first, with the intent of subsequently defining the analysis and measures. Such an approach would be highly inefficient and costly for all parties.

Assess Full Impact of the Regulation

As mentioned above, a key concern of HPC members is the limited scope of the Bureau's assessment, as proposed in the RFI. We believe that consideration of the full set of Dodd-Frank statutory objectives, rather than the four goals described in Section IV of the RFI, is a more realistic and constructive approach to reveal unintended and negative consequences that could be addressed with regulatory reform.



The narrow focus of the proposed assessment will ultimately restrict the CFPB's measures and findings and will conceal some of the significant and meaningful effects of the CFPB regulations (as well as those of the extensive array of new federal and state regulations) on not only consumers, but also the servicing industry and the mortgage market itself. The health and resilience of the marketplace affect consumers and servicers alike. Some of the relevant considerations for evaluation include the following concerns regarding customer experience and access as well as transformational changes and trends in mortgage lending practices and the composition of the marketplace:

Impact on Consumers:

- Customer Experience – Increased investment in default servicing by the industry has not been commensurate with better service for consumers, in part due to complicated requirements, e.g. specific notifications or disclosures, sent on strict deadlines, can result in multiple transmissions of confusing and/or redundant letters.[3]
- Form of Communications – Paper letters and land-line telephone calls may not be the best means to reach and engage distressed borrowers. [4]
- Misalignment of Attention and Resources – Some of the CFPB's prescriptive regulatory requirements offer marginal benefit, relative to the cost. Excessive cost expenditure to resolve simple cases squanders resources that could be better applied to working with borrowers whose financial challenges require additional attention.
- Inefficiencies in Process – Complicated and burdensome requirements divert critical funds from investment in innovative technological advances that would improve the customer experience.
- One-Size-Fits-All – Servicer discretion may improve outcomes, permitting servicers to tailor communications and timeframes to address the unique situations and personal borrower circumstances. Customized interactions, yet uniform and streamlined loss mitigation offerings, could be a winning combination.
- Access to Credit – In response to a more stringent regulatory and enforcement regime, lenders have introduced credit overlays that restrict access to credit.[5]

Impact on Servicers:

- Increasing Costs - Since the outset of the crisis, mortgage servicing costs have increased dramatically, with exponential growth in the cost of quality control to achieve

[3] JD Power 2016 Primary Mortgage Servicers Satisfaction Study.
[4] US Chamber of Commerce, June 6, 2016, Problems with the Telephone Consumer Protection Act.
[5] Joint Center for Housing Studies of Harvard University, Low-Income and Minority Access to Credit, January, 2013.

compliance perfection, expansion of personnel, and technology updates. These costs are ultimately passed on to consumers, via higher rates and fees or restricted access. [6]

- Changing Servicer Landscape - Many companies have exited or reduced their participation in the servicing business rather than try to absorb the costs and risks. There is greater concentration with non-depositories and reliance on subservicers.[7]
- Restrictive Credit Standards - Many remaining servicers were compelled to adopt conservative underwriting and servicing practices to offset the rising costs and manage the demands associated with the unpredictable nature of servicing.[8]
- Dispersion of Servicing Portfolios - Many companies with long histories of servicing reduced their servicing portfolios, in some cases dramatically.
- Infrastructure Changes – The challenge of building out an effective servicing infrastructure – personnel, systems, and processes – has been exacerbated by inconsistent and ever-changing rules at the national and state level.
- Cumbersome and Conflicting Rules – The multitude of federal and state regulations create complexity, which introduces operational and compliance risk. To avoid this risk, servicers establish stringent servicing and origination controls that restrict credit. A single servicing standard set forth in federal regulations could be used to harmonize and/or eliminate such inconsistencies, to address these challenges.[9]

Impact on Mortgage Market:

- Aggressive Enforcement - CFPB enforcement permits no tolerance for minor errors and imposes severe penalties for infractions, a tactic that has driven the industry toward more conservative approaches to both origination and servicing.
- Consumer Lending - The direct consequence of aggressive enforcement is that some credit-worthy borrowers do not receive full consideration for mortgages.
- Changing Profile of Lenders / Servicers – The types of lenders offering mortgages to higher credit risk borrowers and servicing loans that are more likely to default has shifted over the course of the crisis.[10]
- Systemic Capacity -The trends create new tensions around system capacity and the transfer of loans to a shrinking population of servicers that are willing and able to hold Mortgage Servicing Rights (MSRs) as well as increasing reliance on subservicers.

[6] Urban Institute, Sunset Seminar, Emerging Issues in Mortgage Servicing, August 17, 2016.
[7] In 2016, five of the top 10 servicers are now nonbanks, compared with just one 6 years ago.
[8] Urban Institute, Borrowers with Less-than-Perfect Credit are Giving Up Trying to Get a Mortgage, February 10, 2017.
[9] Federal Reserve Bank of Philadelphia, Larry Cordell and Lauren Lambie-Hanson, "A Cost-Benefit Analysis of Judicial Foreclosure Delay and a Preliminary Look at New Mortgage Servicing Rules," March 2015.
[10] MBA and PWC, "The Changing Dynamics of Mortgage Servicing Landscape," June 2015.

- Liquidity - The need for uninterrupted liquidity across the system, where the flow of capital and assets is not constrained by capacity concerns, is critically important.[11]

Input to Consider

HPC would like to suggest that the scope of the CFPB review be the totality of the regulatory obligation arising under the Dodd-Frank Act, as well as those regulations imposed by other federal and state entities. To do otherwise would be to replicate the piecemeal treatment that has resulted in regulatory overlaps, conflicts, and increased operating risks and costs to servicers and consumers.

Given the CFPB's unique authorities and role in the market, the Bureau is well-positioned to perform an extremely useful assessment on behalf of the government. HPC recommends a wide-ranging assessment that looks at the compounding effects of numerous and disparate servicing requirements, including those of CFPB, as well as the combined impact on the industry and market. This broader approach would enhance and not diminish the focus on consumers, because consumers benefit when the entire market works well and efficiently.

HPC believes that a more expansive view, perhaps using some qualitative insight, could help the government, industry, and public better appreciate the true impact of the regulations, which should fulfill the obligations set forth in the Dodd-Frank statute. Further, a more extensive review would enable CFPB to parse out the impact of discrete programs and requirements in a way that would be very beneficial for future policy-making. The assessment could serve as a valuable foundation for decision-makers to build on what worked well and eliminate practices that were ineffective or cost-prohibitive.

Conclusion

HPC believes the Bureau should withdraw and reissue the RFI, reconfiguring the proposed methodology to ensure that the assessment takes into consideration the five objectives spelled out in the Dodd-Frank Act. Such an approach would enable the Bureau to assess the effectiveness of the 2013 Mortgage Servicing Rule broadly, considering its effect on consumers, servicers and the marketplace, as well as the regulatory environment in which the CFPB regulations were developed and implemented.

HPC would welcome the opportunity to continue to work with the Bureau on this assessment of the servicing rule. Moreover, HPC would appreciate the opportunity to communicate and collaborate more routinely with the CFPB, to address outstanding questions about regulatory interpretation, discuss areas where enforcement actions may inappropriately focus on deficiencies that have little impact on consumers, or share thoughts, ideas, and insight

[11] HUD User, PD&R Article, "Ginnie Mae and the Rise of Nonbank Specialty Servicers, June 15, 2015.

on future regulatory considerations. We would also advocate for additional industry engagement with the CFPB and other prudential regulators simultaneously, to assure that the various rules and practices are well-aligned.

Thank you for seeking comments on the assessment methodology. If you have any questions or would like to follow up with us to discuss our comments, please contact me or Meg Burns, Senior Vice President for Mortgage Policy, at 202-589-1923.

Yours truly,

Edward J. DeMarco
President
Housing Policy Council
Financial Services Roundtable