American Bankers Association
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Ms. Kelly Cochran
Assistant Director for Regulations
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, D.C. 20552

Re: ABA Rolling Delinquency Survey

Dear Ms. Cochran:

This letter follows up on ABA's July 29, 2014 request for various clarifications to CFPB's mortgage servicing rules. As discussed in the July 29th letter, numerous ABA members have expressed the need for increased certainty regarding how to properly apply the CFPB's 120-Day Rule in rolling delinquency situations.

In August 2014, ABA conducted the Rolling Delinquency Survey[1] to assess the frequency with which rolling delinquencies occur and to gather information regarding how banks manage mortgage loans that are delinquent on a rolling basis. A copy of the survey results are enclosed.

Summary of Key Findings:

- 27 percent of respondents reported that 20% - 40% of delinquent loans serviced for their own loan portfolios constitute rolling delinquencies.
- 79 percent of respondents said that less than 20 percent of delinquent loans serviced for investors constitute rolling delinquencies.
- 33 percent of respondents reported that 20% - 40% of rolling delinquencies are 60-89 days past due.
- 55 percent of portfolio servicers and 48 percent of servicers for investors always accept and credit payments and partial payments on rolling delinquencies.

[1] The Rolling Delinquency Survey was distributed to members of ABA's Mortgage Markets Committee and the Servicing Working Group. The survey had the participation of 32 banks, which represents a response rate of 24 percent. Approximately 63% of respondents have assets of $1 billion or less.

- 49 percent of portfolio servicers and 65 percent of servicers for investors begin foreclosure on rolling delinquencies within 151 days of the due date of the last fully paid installment of principal, interest, and escrow (i.e., 4 missed payments).

ABA Analysis:

While standardization of mortgage servicing has increased in recent years, the survey illustrates that bank practices involving rolling delinquencies are not uniform and may differ from bank to bank based on a number of considerations. For example, respondents have adopted a variety of policies for accepting and crediting payments and partial payments on rolling delinquencies. Likewise, there are multiple methods for determining when to commence foreclosure on loans that have been delinquent on a rolling basis. The survey results, taken in conjunction with feedback with our members, indicate that banks may weigh a variety of factors when establishing policies and procedures for handling rolling delinquencies. Considerations commonly include:

1. Whether the servicer holds the credit risk for the loan (which creates strong incentives to seek foreclosure alternatives);
2. Whether the servicer services the loan for another entity and is therefore subject to investor guidelines, servicing incentives, and compensatory fees;
3. Contractual language in loan documents;
4. Whether the borrower has been responsive to loss mitigation outreach efforts;
5. Accounting and capital requirements for nonaccrual loans[2];
6. Reputation risk in the community; and
7. Legal risk.

In responding to inquiries as to how banks should apply the 120-Day Rule in rolling delinquency situations, the CFPB has informally recommended that servicers look to common interpretations of "delinquency," which may be found in best practices, industry standards, state law, and contract law. Because borrowers have a private right of action to enforce the 120-Day Rule, we request that, at a minimum, CFPB incorporate this oral, informal staff guidance into the Bureau's official commentary to the servicing rule. This approach would help servicers to make informed business decisions, while also providing a measure of legal and regulatory certainty. It would also help to improve awareness of the CFPB's views on this issue among banks, their vendors and advisors, examiners from other regulatory agencies, and others.

[2] Loans are generally considered nonaccrual when, based on information and events, a bank determines it is probable that it will be unable to collect on all principal and interest amounts due according to the original contractual terms of the loan agreement. Loans are normally placed on nonaccrual status when payments are 90 days or more past due, or earlier if the timely collection interest and/or principal appears doubtful. The Basel III capital requirements require a 150% risk weighting on nonaccrual loans.

While banks seek clarification as to how the 120-Day Rule applies to rolling delinquencies, as well as assurance that their practices comply with this requirement, we note that the factors described above may constrain the ability of CFPB to provide written guidance that addresses all rolling delinquency situations with specificity. Nevertheless, it is important that the Bureau provide some degree of official regulatory clarification on this issue in a form that is readily accessible to all servicers and other interested parties.

Many banks are evaluating how mortgage servicing fits into their business strategy in light of new regulatory requirements, negative capital treatment of mortgage servicing assets,[3] high-profile enforcement actions, ever-changing investor guidelines, and other considerations. We urge CFPB to clarify the rolling delinquency issue, as well as other outstanding questions related to the servicing rules, so that legal and regulatory uncertainty are not additional factors that encourage banks to scale back their mortgage servicing activities.

ABA appreciates the CFPB's attention to this matter. We would be pleased to discuss the survey in greater detail at your convenience. Please contact Krista Shonk at kshonk@aba.com if you have any questions.

Sincerely,

Robert R. Davis

cc Allison Brown, Program Manager, Mortgage Supervision, CFPB
Laura Johnson, Senior Counsel, Office of Regulations, CFPB
Laurie Maggiano, Program Manager for Servicing and Securitization Markets, Division of Research, Markets, and Regulations, CFPB
Whitney Patross, Counsel, Office of Regulations, CFPB

[3] For more information, see ABA Primer: Mortgage Servicing Assets and BASEL III.