



January 14, 2010

Jane M. Azia
Director of Non-Depository Institutions and Consumer Protection
State of New York
Banking Department
One State Street Plaza
New York, New York 10004

Dear Director Azia:

The Mortgage Bankers Association¹ (“MBA”) appreciates your early release of the proposed Part 419 of the Superintendent’s Regulations regarding Servicing Mortgage Loans. The MBA has several concerns with the proposed regulation, and intends to offer a detailed letter of comment once the rule has been formally proposed; however, at this time we would offer the following brief points for your consideration:

1. The creation of a duty of good faith and fair dealing on servicers at §419.2 creates the potential for significant confusion and potential liability while providing little benefit to consumers. More specifically, requiring servicers to make borrowers in default aware of available loss mitigation options and services, and to pursue loss mitigation with borrowers whenever possible creates an extremely subjective standard that may expose servicers to administrative liability in spite of their best efforts to comply.
2. Proposed language at §419.11 requiring servicers to “make reasonable and good faith efforts consistent with usual and customary industry standards . . . to engage in appropriate loss mitigation options, including loan modifications, to avoid foreclosure...” similarly creates an extremely subjective standard that potentially exposes servicers to administrative liability in the event their efforts to modify delinquent loans do not meet the standards viewed as appropriate by the

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 2,400 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.

Department. While we applaud the inclusion of the presumption of good faith found at §419.11(h) for servicers offering loss mitigation programs consistent with the Home Affordable Mortgage Program (“HAMP”) guidelines developed by the U.S. Department of Treasury, given that this program will not continue on indefinitely, that not all servicers or government agencies (namely FHA and VA) are participating in HAMP, and that a significant number of borrowers do not qualify for HAMP, we have grave concerns about HAMP being the only safe harbor. Proposed language at §419.6 modifying the manner in which payments may be credited will cause servicers to make costly changes to their current systems, and ultimately force lenders to re-examine pricing models for loans if they cannot be assured of realizing fee income as it becomes due.

3. The creation of extensive reporting requirements under §419.12 and §419.13 are overly burdensome to servicers while providing little added protection for consumers. The Superintendent already has broad authority to examine licensees and obtain all necessary information and data to ensure compliance with existing laws. This added reporting burden will only serve to increase administrative expense for servicers, ultimately driving up the cost of credit for all borrowers.

Again, we intend to offer a more detailed letter identifying all of our concerns with this proposal after your initial meeting of interested parties on January 19th, 2010. We look forward to the opportunity to work with you to ensure the finally adopted version of this regulation strikes the appropriate balance of consumer protection while still ensuring the credit markets are able to operate effectively and efficiently.

Sincerely,

A handwritten signature in cursive script that reads "John A. Courson".

John A. Courson
President and Chief Executive Officer