May 17, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20510

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
4340 O'Neill House Office Building
Washington, D.C. 20024

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the Mortgage Bankers Association (MBA)[1], I am writing to express our views on H.R. 7022, the *Strengthening Cybersecurity for the Financial Sector Act*, scheduled to be considered for markup by the Committee on Financial Services on May 17, 2022.

MBA appreciates the recent dialogue held with the office of the proposal's lead sponsor, Congressman Bill Foster (D-IL), to discuss the provisions within this bill now before the Committee.

As part of those recent conversations, MBA has emphasized that cybersecurity vulnerabilities are best addressed through examination – not regulation. Providing FHFA with broad regulatory authority over institutions other than Fannie Mae and Freddie Mac (the GSEs) and the Federal Home Loan Banks (FHLBs) would amount to a dramatic expansion of its powers and purpose.

Among the "Challenges and Risks that May Hinder Achievement of Strategic Goals" cited in FHFA's updated Strategic Plan is the assertion that FHFA "does not currently possess adequate examination powers to oversee third-party service providers."[2] FHFA states that such lack of examination authority could interfere with its "ability to ensure the safety and soundness of the regulated entities and the resilience of the nation's mortgage markets."[3] A critically important clarification is that this language addresses third-party service providers, but not institutions that serve as counterparties and customers to the GSEs or FHLBs – such as mortgage servicers.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 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 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 more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] FHFA, "Strategic Plan: Fiscal Years 2022-2026," April 14, 2022. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_StrategicPlan_2022-2026_Final.pdf.

[3] Ibid.

The ability for FHFA to examine mortgage servicers, which operate in the primary mortgage market, would represent a broader scope of authority than would be appropriate for the Agency. Congress envisioned FHFA as a prudential safety and soundness regulator of the GSEs and the FHLBs, not as a marketplace regulator. Direct FHFA examination of servicers, moreover, largely would be duplicative of the efforts already carried out by primary state regulators, the GSEs, Ginnie Mae, warehouse lenders, and other counterparties. Additionally, there are no parallel examples of examination authority given to any federal agencies over *customers* of regulated entities. As such, FHFA direct oversight of GSE *customers* would be very different than oversight of GSE *vendors or service providers*.

Under prior leadership, FHFA has alluded to the third-party examination authority provided to the federal banking agencies under existing laws, such as the Bank Service Company Act (BSCA). The BSCA, however, would not be an appropriate model for FHFA and its relationship with servicers. The BSCA focuses its authority on entities that perform services outsourced by banks – *i.e.*, activities that the banks normally would conduct themselves. The GSEs, however, are not permitted to engage directly in primary market servicing activities, and as such, servicers do not fall under this construct. Servicers, furthermore, are not “institution-affiliated parties” to the GSEs, and do not participate in the affairs of the GSEs. These are factors that bank regulators are required to consider when exercising examination authority under the BSCA or taking enforcement action against a particular third party. Said differently, servicers are customers of the GSEs – not vendors to them.

H.R. 7022 appropriately focuses on “service providers” to the GSEs and the FHLBs, and limits FHFA’s expanded authority to situations in which these service providers are engaging in activities in which the GSEs and FHLBs also are permitted to engage. As was noted earlier, this does not include mortgage servicing. Congress should, however, clarify that this expanded authority with respect to service providers does not extend to GSE customers (*i.e.*, mortgage servicers).

H.R. 7022 features in its title the need for strengthened cybersecurity in the financial sector. To ensure the expanded authority granted to FHFA in this legislation reflects this point, the legislative text should include specific references to examination authority “for cybersecurity purposes.” As written, MBA is concerned that the legislation could be interpreted to provide a much more broad-based and inappropriate expansion of FHFA authority over all elements of service provider business operations.

This concern is compounded by the references to both regulatory and examination authorities for FHFA in the legislative text. It is not clear that FHFA needs the authority to issue regulations to which GSE and FHLB service providers would be subject in order to monitor cybersecurity risks. Examination authority should be sufficient to achieve this objective. As such, MBA recommends that the legislation limit FHFA’s expanded authority to examination authority.

For these reasons, we believe targeted amendments should be made to this bill to add clarifying language related to the cybersecurity vulnerabilities referenced in the legislation to ensure the intent is clear, as well as to focus FHFA’s expanded authority on examinations rather than regulations.

Thank you in advance for your consideration of the views expressed within this letter. We stand ready to work with all Members of the Committee to ensure a robust real estate finance market that is accessible and affordable – and works for all borrowers, renters, lenders, servicers, and other stakeholders.

Sincerely,

Bill Killmer
Senior Vice President
Legislative and Political Affairs

cc: All Members, House Committee on Financial Services