

Evolving State Supervision:

Issues Arising From State Qualification Standards and "SAFE" Act Licensing, and Coordination with the CFPB



**Timothy R. McTaggart, Pepper Hamilton LLP; John W. Ryan, CSBS; Chuck Cross, CSBS;
John Prendergast, CSBS; Leo J. Esposito, RECOVCO Mortgage; Bill Pearson, RECOVCO Mortgage**

**November 17, 2014
1:00 PM – 2:30 PM (ET)**

Pepper Hamilton LLP
Attorneys at Law



Listen to the audio portion of today's webinar by dialing:

North America: +1.866.322.1348

International: +1.706.679.5933

Audio Conference ID: #34345717

Technical Support Numbers

If you experience technical difficulties, hit *0 on your telephone keypad and an operator will assist you. Or you can dial:

For Web Support:

+1.877.210.3577

For Audio Support:

+1.800.374.2440 or

+1.706.645.6500

Click this icon to view the slide in full screen mode.

Evolving State Supervision:

Issues Arising From State Qualification Standards and "SAFE" Act Licensing, and Coordination with the CFPB

Hit the 'Escape' key to return to the normal view.

Timothy R. McTaggart, Pepper Hamilton LLP; John W. Ryan, CSBS; Chuck Cross, CSBS; John Prendergast, CSBS; Leo J. Esposito, RECOVCO Mortgage; Bill Pearson, RECOVCO Mortgage

November 17, 2014
1:00 PM – 2:30 PM (ET)

Pepper Hamilton LLP
Attorneys at Law

Feel free to submit text questions throughout the webinar

Evolving State Supervision:

Issues Arising From State Qualification Standards and "SAFE" Act Licensing, and Coordination with the CFPB



Timothy R. McTaggart, Pepper Hamilton LLP; John W. Ryan, CSBS; Chuck Cross, CSBS; John Prendergast, CSBS; Leo J. Esposito, RECOVCO Mortgage; Bill Pearson, RECOVCO Mortgage

November 17, 2014
1:00 PM – 2:30 PM (ET)

Pepper Hamilton LLP
Attorneys at Law

Evolving State Supervision: Issues Arising From State Qualification Standards and "SAFE" Act Licensing, and Coordination with the CFPB



Timothy R. McTaggart, Pepper Hamilton LLP; John W. Ryan, CSBS; Chuck Cross, CSBS;
John Prendergast, CSBS; Leo J. Esposito, RECOVCO Mortgage; Bill Pearson, RECOVCO Mortgage

November 17, 2014
1:00 PM – 2:30 PM (ET)

**Click this icon to
download the slides**

Pepper Hamilton LLP
Attorneys at Law

Click this icon to
download the
CLE Credit Form

Evolving State Supervision:

Issues Arising From State Qualification Standards and "SAFE" Act Licensing, and Coordination with the CFPB



Timothy R. McTaggart, Pepper Hamilton LLP; John W. Ryan, CSBS; Chuck Cross, CSBS;
John Prendergast, CSBS; Leo J. Esposito, RECOVCO Mortgage; Bill Pearson, RECOVCO Mortgage

November 17, 2014
1:00 PM – 2:30 PM (ET)

Pepper Hamilton LLP
Attorneys at Law

**Contact Brian Dolan at
dolanb@pepperlaw.com for
CLE Information**





We will be starting momentarily...

Speaker: Timothy R. McTaggart



202.220.1210

mctaggart@pepperlaw.com

- Partner in the Washington office of Pepper Hamilton LLP
- Focuses his practice on bank and financial services regulatory matters. He also assists financial services clients on transactional and enforcement issues
- Has represented clients before the Consumer Financial Protection Bureau and the federal bank regulatory agencies, including the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, as well as various state banking departments across the country
- Served as the Delaware State Bank Commissioner (1994 - 1999), in this role had responsibility for regulating and supervising non-depository institutions, including mortgage companies

Speaker: John W. Ryan



202.296.2840

JRyan@csbs.org

- President and CEO of the Conference of State Bank Supervisors (CSBS), the national association representing state banking supervisors and the leading advocate for advancing the state banking system
- Former Executive Vice President of CSBS (2003 – 2011)
- First joined the organization in 1997 as an Assistant Vice President for legislative affairs
- Previously led Newmyer Associates' financial services consulting practice and was a professional staff member to the United States House of Representatives Committee on Banking, Finance, and Urban Affairs
- Received his B.A. in political science and economics from the University of California, Berkeley

Speaker: Chuck Cross



202.728.5745

CCross@csbs.org

- Senior Vice President of Consumer Protection and Nondepository Supervision for the Conference of State Bank Supervisors (CSBS)
- Oversees multistate supervision for mortgage, money services businesses and other nonbank supervisory areas. He is also responsible for administration of the State Coordinating Committee in the coordination of the state system with the Consumer Financial Protection Bureau (CFPB)
- Former work includes U.S. Department of Treasury as a “Founding Member” of CFPB Implementation Team (2010 – 2011), Director of the Washington DFI Division of Consumer Services (2003 – 2006) and the Division’s Enforcement Chief, and examiner for the FDIC and the State of Washington Division of Banks
- Was a subject matter expert and instructor for the National White Collar Crime Center and is a Certified Fraud Examiner
- B.S. Economics/Accounting

Speaker: John Prendergast



617.956.1534

JPrendergast@csbs.org

- Vice President of Non-Depository Supervision for the Conference of State Bank Supervisors (CSBS)
- Works to promote the development of initiatives for the state banking and non-depository regulatory agencies to better foster coordination and process improvement in the mortgage and money service business areas
- Former Chief Risk Officer at the Massachusetts Division of Banks where he supervised the regulation of nine financial industries comprised of nearly 240 state-chartered banks and credit unions and more than 10,000 non-bank financial licensees
- Began his career at the Division as a bank examiner and has more than 23 years of regulatory and policy making experience

Speaker: Leo J. Esposito



913.620.0230

Leo.Esposito@recovcomortgage.com

- Executive Vice President of Servicing Solutions at RECOVCO Mortgage
- Develops and oversees the implementation of solutions to support the needs of mortgage servicing institutions
- Mr. Esposito's career started with Ocwen Financial (1990s), where he supported Foreclosure, REO, and Compliance with process improvement and platform development initiatives
- Formerly worked for NovaStar Mortgage (2003), where he built and managed their Loss Mitigation and REO departments, and ServiceLink/Black Night Financial (2007), where he was responsible for Loss Mitigation and Asset Disposition divisions



Speaker: Bill Pearson



215.817.1404

bpearson@recovcomortgage.com

- Managing Director of RECOVCO Mortgage
- Has a mortgage lending background and extensive knowledge in originations, structured finance transactions, consulting, business process improvement, and project management
- Former Executive Vice President of Corporate Strategy at Advantium Capital, Vice President of Strategic Consulting for ISGN, Director at Solomon Edwards, and licensed franchise Director for Gateway Funding
- Co-founder and CEO of Contemporary Staffing, which grew revenues to over \$40MM, had over ten thousand employees, and was successfully sold in 2004 for 4.5 times EDBITA



Events That Changed Our World; And Yours Too!



- **2008** – Congress passes SAFE Act
 - That same year – NMLS was launched
- **2010** – Dodd-Frank passes
 - That same year – Consumer Access launched
- **2011** – CFPB becomes an agency
 - That same year, states enter Information Sharing MOU with CFPB



- One stop licensing system for banks & non-banks
- Expanded in 2012 to non-mortgage entities
- Contains 29,000 companies and 570,000 MLOs
- Uniformity means streamlined efficiency
- Enhancements coming:
 - Electronic surety bonds
 - Upload documents directly to the system
 - Examination management tool system



verify a financial services provider

Quicken

SEARCH

1 match found!

Filter by: Individual Company

Apply Filter(s)

Quicken Loans Inc...

NMLS ID: 3030

Address: 1050 Woodward Avenue
Detroit, MI 48226

Branches: AZ, HI, MI, MO, NV, OH, PA



verify a financial services provider

[Back to Search Results](#)

[Start New Search](#)



Quicken Loans Inc.

NMLS ID: 3030

Street Address: 1050 Woodward Avenue
Detroit, MI 48226

Mailing Address: 1050 Woodward Avenue
Detroit, MI 48226

Phone: 313-373-3000

Toll-Free Number: Not provided

Fax: 877-380-6995

Website: www.quickenloans.com

Email: veronicathomas@quickenloans.com

Other Trade Names [?]: QLMS; Quicken Loans; Quicken Loans Mortgage Services; Rock Financial

Prior Other Trade Names [?]: None

Prior Legal Names [?]: None

Sponsored MLOs [?]: 2,640

Fiscal Year End: 12/31

Formed in: Michigan, United States

Date Formed: 06/21/1985

Stock Symbol: None

Business Structure: Corporation

State Regulatory Actions [?]: None posted in NMLS.

Branch Locations [?] (9 Active, 3 Inactive)

[View All Branches](#)

State Licenses/Registrations (Displaying 62 Active of 63 Total)

[\[+\] View All](#)

Regulator [?]	Lic/Reg Name	Authorized to Conduct Business [?]	Consumer Complaint [?]	[+] View All Details
Alabama	Consumer Credit License	Yes	Submit to Regulator	[+] View Details
Alaska	Mortgage Broker/Lender License	Yes	Submit to Regulator	[+] View Details
Arizona	Mortgage Banker License	19	Yes	Submit to Regulator
Arkansas	Consumer Mortgage Business Banker License	Yes	Submit to Regulator	[+] View Details

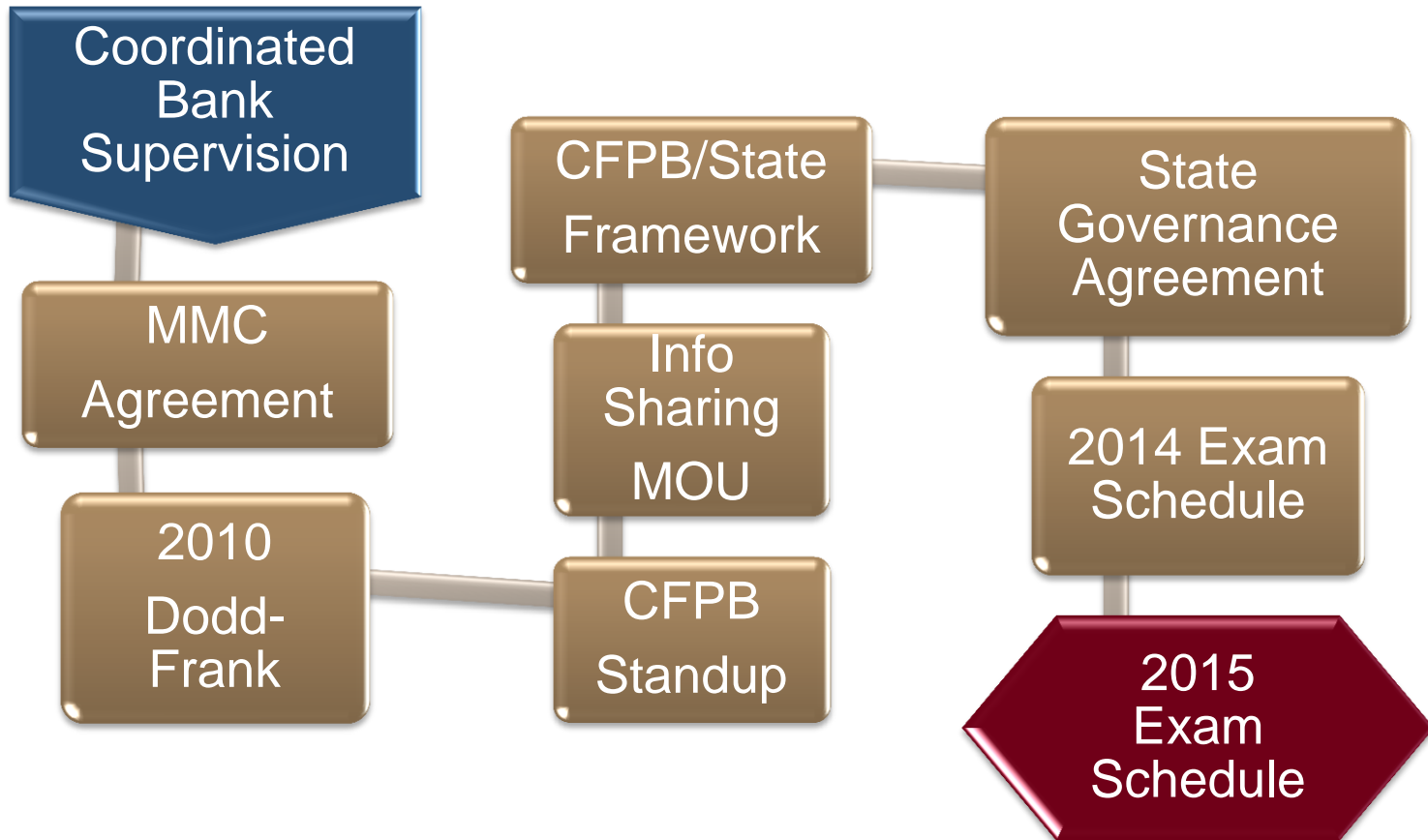
Current Issues in Licensing

- Transitional licenses – from bank to non-bank
- Uniform State Test (UST) adopted by 46 states
- Call Report Amendment
 - New servicing data capture proposed
 - HMDA reconciliation – MBA request
- SAFE Act amendment: S.947/HR.4626
- Fingerprinting

State Coordination With CFPB



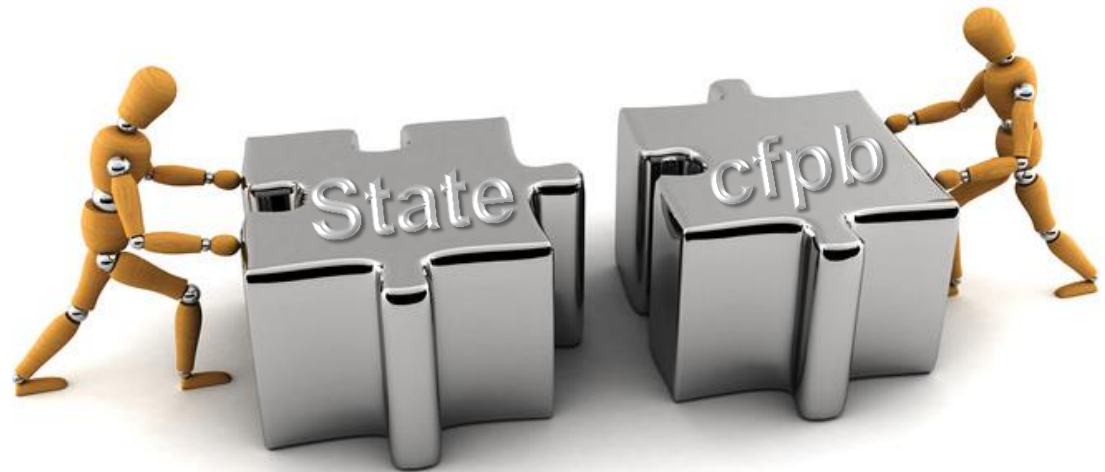
The Path to Coordination



Responsibilities of the SCC

- Single Point of Contact (SPoC) for CFPB
- Schedule and Oversee Coordinated Exams
- Designate SPoCs and EICs for each Exam
- Reconcile issues between states and CFPB

Supervision Coordination



What does it mean?

Elements of Coordination

- Coordinated Examinations – do them together
- Independent Examinations – do them apart
- Information Exchange
 - Confidential Supervisory Information
- Share process development and training
- Consult or collaborate on enforcement

2014 Coordinated Exam Schedule

- 6 Mortgage Exams
 - Origination
 - Servicing
- 2 Debt Collector Exams
- 1 Payday Lender Exam

Multi-State Mortgage Committee

- 10 state oversight body for multi-state supervision
- Schedule, plan and oversee exams/enforcement
- MMC is overseeing mortgage for the SCC
- In the first 3 coordinated mortgage exams:
 - 47 states & 92 examiners participated
 - All 4 CFPB Regions

2015 Proposed Schedule

- 12 to 19 Exams Proposed
- Industries to be examined:*
 - Mortgage Origination (3-5 exams)
 - Mortgage Servicing (3-4 exams)
 - Payday Lending (1-3 exams)
 - Debt Collection (3 exams)
 - Money Transmitter (2-4 exams)

* Based on how you count the #s.

Mortgage Loan Servicing

- **Introduction**
 - Support clients of varying sizes
 - Who service a variety of investor types
 - Solved for and built solutions for the following
 - Three most common requested services
- **Mortgage Due Diligence**
 - Non-performing loans
 - Re-performing loans
- **Loss Mitigation Underwriting and QA/QC**
 - Retention (Modification)
 - Liquidation (Short Sale & DIL)
- **Compliance Reviews**
 - Regulatory (CFPB)
 - Policies and Procedures (Internal)



Mortgage Due Diligence

- Non-performing and re-performing loans
- Types of diligence varies per clients' needs
- Flexible and customizable diligence checklist
- Technology, workflows and reporting
- Analytical and trending capabilities
- Values, borrower disposition and loan type
- Ability to capture current disposition
- Maintain regulatory compliance



Loss Mitigation Underwriting and QA/QC

- Retention and liquidation workouts
- Modifications, short sale, DIL
- SAFE licensed
- Qualified loss mitigation underwriters
- Utilize proprietary software and NPV calculators
- Leverage client's technology, platforms and decisioning tools
- Ability to create a seamless partnership
- Exception reporting for compliance purposes



Compliance Reviews

- Auditing by a third party
- Regulation (CFPB) auditing
- Internal policies and procedures
- Technology designed specifically for auditing
- Flexible and customizable workflows and checklists
- Robust reporting capabilities
- Qualified auditing specialists with servicing and originations backgrounds
- Work closely with compliance, risk and legal of client



SAFE (Secure and Fair Enforcement for Mortgage Licensing) Act



- Passed July 30, 2008
- Requires employees of covered financial institutions obtain a federal registration as a Mortgage Loan Originator (“MLO”) and obtain a unique identifier
- Requires all other individuals to obtain a state license and registration as a state-licensed MLO and a unique identifier
- All MLOs must have unique ID’s from the National Mortgage Licensing System and Registry (NMLSR)
- Requires registrations be kept up to date
- De minimis exception – an employee of a covered financial institution who has never been registered or licensed does not need to be licensed if they have acted as an MLO on 5 or fewer residential mortgage loans in the previous 12 months.



- Policies and procedures mandated for covered financial institutions with one or more MLOs:
 - Covered financial institution – Any national bank, Federal branch and agency of a foreign bank, member bank, insured state nonmember bank (including state-licensed insured branches of foreign banks), savings association, or certain of their subsidiaries; branch or agency of a foreign bank or commercial lending company owned or controlled by a foreign bank; Farm Credit System institution; or federally insured credit union, including certain non-federally insured credit unions.

- Policies and procedures mandated for covered financial institutions with one or more MLOs:
 - Establish process for identifying employees who must be registered
 - Require that all MLOs be informed of the registration requirements and regulations and how to comply
 - Establish procedures to comply with unique identifier requirements
 - Establish reasonable procedures for confirming adequacy and accuracy of MLO employee registrations, including updates and renewals, by comparisons with its records



- Policies and procedures mandated:
 - Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures
 - Provide for annual independent testing for compliance by institution personnel or outside party
 - Provide for appropriate action if an employee fails to comply with registration requirements or the institution's SAFE related policies and procedures
 - Establish process for reviewing employee criminal history and record maintenance for employee disciplinary records
 - Establish procedures to ensure that any third party with arrangements related to mortgage loan origination with the institution is properly following SAFE requirements

State Licensed MLO Under the SAFE Act



- State Licensed MLO
 - Any individual who, for compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan application must be licensed or registered as a MLO.
 - Activities not covered
 - Real estate brokerage, loan processing, and loan underwriting activities.
 - Administrative/Clerical tasks including receipt, collection, and distribution of information common for the processing or underwriting of a loan in the residential mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

Dodd Frank Act

- Transferred the consumer protection functions of the SAFE Act, among others, to CFPB
- Imposes a duty on individual loan officers, mortgage brokers, and creditors to be “Qualified” and, when applicable, registered or licensed.
- Imposes duties on loan originator organizations to make sure that their individual loan originators are licensed or registered under the SAFE Act.
- Employers whose employees are not required to be licensed:
 - Depository institutions
 - “Bona fide” non-profits



- Requires employers whose employees are not required to be licensed to:
 - Ensure that their loan originator employees meet character, fitness, and criminal background standards similar to existing SAFE Act licensing standards; and
 - Provide training to their loan originator employees that is appropriate and consistent with those employees' origination activities.
- Requires as set forth in the Dodd Frank Act that loan originators provide their unique identifiers under the NMLSR.

Loan Originator Compensation Requirements under the Truth in Lending Act (12 C.F.R. 1026)



- Mortgage brokers, creditors, and individual loan originator employees that are primarily responsible for a particular origination will be required to list on enumerated loan documents their NMLSR unique identifiers (NMLSR IDs), along with their names.

Hypothetical



- What if an unlicensed employee calls a customer to get information to put on a form? When does that become a negotiation? When does that employee need to be registered?

What Happened

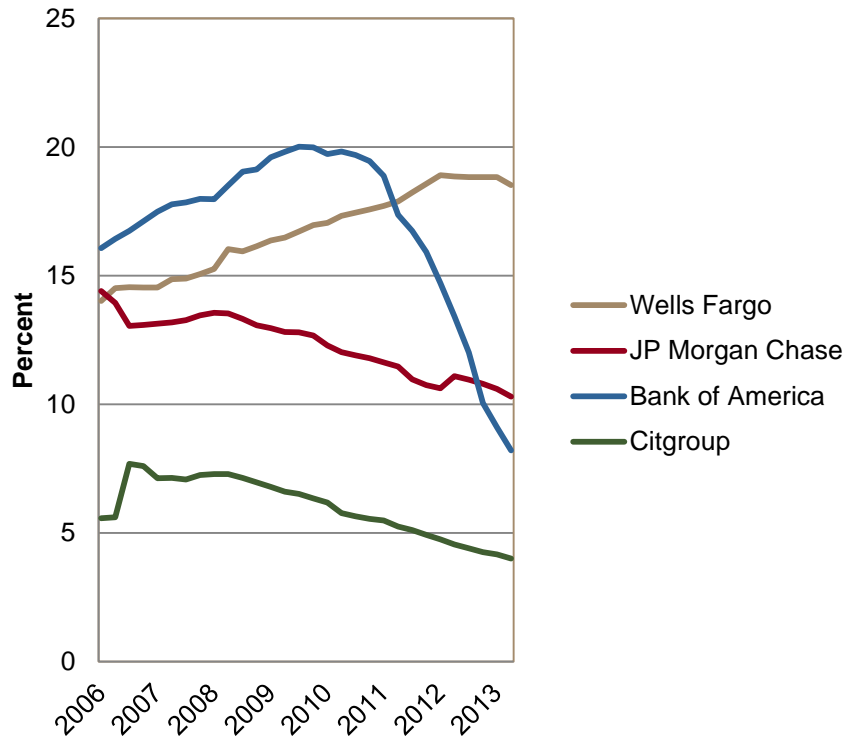
- Robo-signing was the tip of the iceberg
- State Regulators uncovered severe systemic operational deficiencies during examinations
 - False Affidavits
 - Missing loan documentation
 - Fabricated documents
 - Minimal third party oversight
 - Borrowers wrongly foreclosed upon

What Happened Led To:

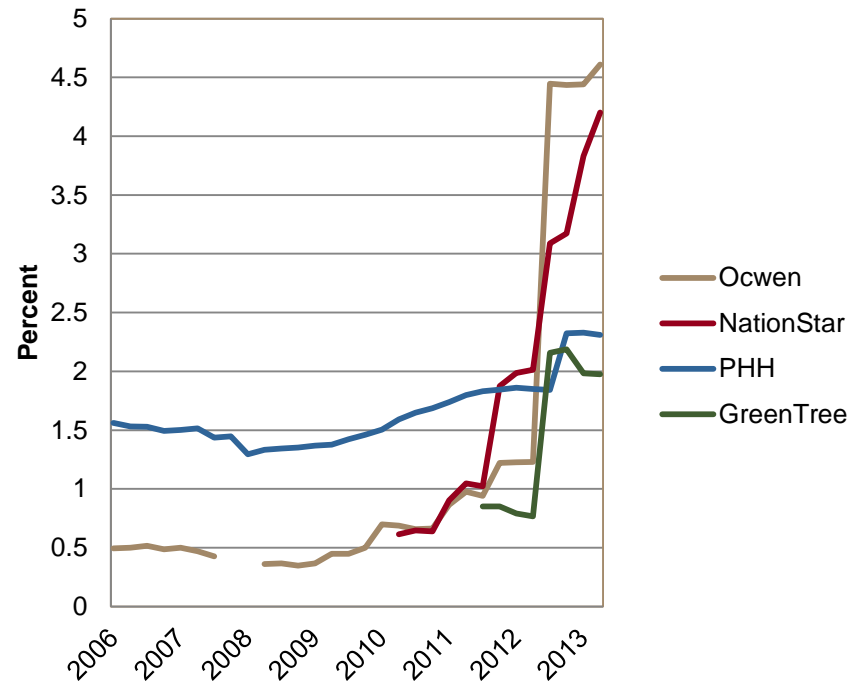
- Settlements
 - National Mortgage Settlement
 - Ocwen
 - Additional State and Federal negotiations in pipeline
- Servicing Standards
 - An effort to bring uniformity to the industry
 - Single Point of Contact
 - Borrower Communication Acceptable Timeframes
 - Third Party Provider Oversight
 - Loss Mitigation/Restricted Dual Track
 - Loan Modification Timelines

Change in Market Share between Banks and Non-Depository Servicers

Largest Bank Market-Share



Non-Depository Servicer Market Share



- The top 4 non-depository servicers now service approximately 13% of the \$10 trillion (in outstanding principal) Residential Mortgage Servicing market. As of Q4 2013:
 - Ocwen- \$455 Billion
 - Nationstar-\$415 Billion
 - PHH- \$228 Billion
 - Walter Investment Management (GreenTree)- \$195 Billion

“Prudential standards at the state level consist of bonding and net worth requirements.”

“The Council recommends that, in addition to continued monitoring, state regulators work together to collaborate on prudential and corporate governance standards to strengthen these companies, in collaboration with the CFPB and FHFA, as may be deemed appropriate”

The “*Capital*” Question

Flaws with a Basel approach

- Tier 1 of what?
- Accounting issues?
- Likely be more than is reasonably necessary
- Bank capital protects depositors.....

“Basel III is definitely going to have an impact,” Sharma noted. The Basel III proposed guidelines threw some financial institutions for a curve by stipulating that the value of MSRs can only account for up to 10% of common equity when determining a bank’s Tier 1 capital requirements. This alone had market analysts anticipating an MSR sell-off.

Housing Wire, 8/20/2013

If we applied this formula to servicers today.....????

The “*Capital*” Question



What kind of cushion for loss

- What are we *cushioning* for? Or *against*?
 - Capital as a cushion against loss
 - But no depositors to protect.....
- Financial impact on industry?
 - Graduated approach?
 - Augmentation and Replenishment?
- Problems necessitating a need for cushion
 - Operational
 - Capacity issues
 - Financial
 - Embezzlement vs. sustained negative earnings

Failure.....*is not an option*



Several Scenarios where failure may occur

- Operational
- Financial
- Regulatory Induced

Failure.....*is not an option*



Operational

- Inability to process entire pipeline
 - Volume issues

- Lack of staff.....Overseas risk profile

- Technology related -- Disaster recovery..... *or not*
 - *Katrina, Sandy....*

Failure.....*is not an option*



Financial

- Liquidity risk
 - What is appropriate levels
 - No “PCA” to determine action

- Funding
 - Who provides these lines of credit
 - Under what conditions and timeframes can they be withdrawn
 - Feasibility of back up lines of credit
 - At what point is credit unattainable

Failure.....*is not an option*



Regulatory Induced

- Significant increase in complaints
 - Indicating borrowers not at fault
 - Third party vendors
- Complaints indicate an intolerable situation
 - Late payment crediting
 - Consumer Credit report impact
 - Borrower harm

Failure... *when there are no options*



Liquidation

- Managing the pipeline
 - Whose agency? Contract out?
- Can regulators sell the company
 - Who can handle the volume
- Who has capacity to buy
 - Deal must be financially attractive
 - Current market condition will effect salability and feasibility

Resolution

- Legal
 - States authority to resolve
 - Do employees of the company become employees of the state?
 - Benefits, wages, legal aspects of assuming the company for a certain period
 - Cost of outside counsel

What Will Make Traditional Resolution, or a Simple Buyout, More Difficult



- What kind of failure?
 - Financial
 - What will make the deal attractive to suitor?
 - Regulatory incentives/financial incentives
 - If driven by lack of capacity how will acquiring firm supplement
 - Acquiring firm must have ability to make any borrower payments not made to the GSE's
 - Operational
 - Suitor must be substantively larger to enable safe acquisition
 - Overseas operations compatible
 - Must have technological sophistication to succeed
 - Regulatory
 - Most likely due to excessive complaints
 - Must have the capacity to not only carry on, but remedy what went wrong for borrowers affected

Questions & Answers



Contact Brian Dolan at
dolanb@pepperlaw.com for
CLE Information



**For more information,
visit www.pepperlaw.com**



Timothy R. McTaggart
202.220.1210
mctaggart@pepperlaw.com