



CONTROLLED

## Federal Housing Finance Agency

MEMORANDUM

January 29, 2020  
Via Electronic Mail

TO: The Honorable Delores G. Kelley      The Honorable Dereck E. Davis  
Chair, Finance Committee                  Chairman, Economic Matters Committee  
Maryland Senate                                  Maryland House of Delegates

FROM: Alfred M. Pollard *Alfred M. Pollard*  
General Counsel

RE: Maryland Collection Agency Licensing Act—Senate Bill 262 and House Bill 334

The Federal Housing Finance Agency (FHFA) has been informed of the re-introduction of the Maryland Collection Agency Licensing Act that would impose debt collection agency status and registration on certain entities including trusts.

On March 26, 2019, I conveyed issues surrounding this legislation and recommended avoiding a result that would impact adversely Maryland homeowners, particularly when they face economic difficulties and may require action to be taken to address their mortgage obligations. The newly introduced bills raise the same concerns. I have attached that Memorandum for your convenience.

At its core and as noted in the Memorandum, if enacted, the legislation would adversely impact borrowers and have a chilling effect on the secondary market insofar as Maryland properties are concerned. The burden and the confusion of applying the legislation would decrease investor demand and thereby lessen the availability of products to assist homeowners in the State.

FHFA remains committed to efforts of its regulated entities that help homeowners facing challenges. Many have benefitted from these programs.

I hope this information assists you in addressing this legislation. As noted before, I am happy to provide additional information to you or your staff if that would be helpful. My information remains [alfred.pollard@fhfa.gov](mailto:alfred.pollard@fhfa.gov) or 202 649 3050.

Attachment



# Federal Housing Finance Agency

March 26, 2019  
Via Electronic Mail

TO: The Honorable Delores G. Kelley      The Honorable Dereck E. Davis  
Chair, Finance Committee              Chairman, Economic Matters Committee  
Maryland Senate                              Maryland House of Delegates

FROM: Alfred M. Pollard *Alfred Pollard*  
General Counsel

RE: Senate Bill 485/House Bill 593— Maryland Collection Agency Licensing Act

The Federal Housing Finance Agency (FHFA) has been informed of legislation that would impose registration as a debt collection agency on certain entities including trusts.

Federal Housing Finance Agency oversees Fannie Mae and Freddie Mac (the Enterprises) and the eleven Federal Home Loan Banks. Together, they support mortgage financing for millions of mortgages across the country and in Maryland. The Enterprises, operating under FHFA conservatorships, have continued their operations in making mortgages available and administering major loan modification programs that have assisted over three million homeowners during and since the financial crisis.

## Legislation

SB 485 and HB 593 would amend the definition of “consumer claim” and define “mortgage lender” under the Maryland Collection Agency Licensing Act (MCALA). The bills indicate the General Assembly’s intent that the legislation be applied and interpreted to abrogate the decision of the Maryland Court of Appeals in *Blackstone v. Sharma*, 461 Md. 87 (2018), thereby requiring transferees of delinquent loans to become licensed debt collection agencies under MCALA, as held by the Maryland Court of Special Appeals in *Blackstone v. Sharma*, 233 Md. App. 58, 161 A.3d 718 (2017).

## Potential Uncertainty and Impact

The proposed legislation would create substantial uncertainty for the Maryland mortgage market and could harm existing Maryland homeowners as well as future borrowers. The bills appear to require any trusts that acquire delinquent Maryland mortgage debt be licensed as a collection agency under MCALA before pursuing a foreclosure. This licensing requirement will provide little or no benefit for Maryland borrowers who have mortgages held or transferred by the Enterprises.

*Enterprise Programs.* The Enterprises sell seriously delinquent whole loans to investors using non-performing loan offerings (NPL) and many investors purchase these loans intending to securitize them employing trusts. In addition, Freddie Mac periodically transfers delinquent loans into Freddie Mac-created common law trusts, which securitize the loans via two programs— the Seasoned Credit Risk Transfer (SCRT) program (which issues securities backed by loans modified to assist borrowers who are at risk of foreclosure to help them keep their homes) and the Seasoned Loan Structured



Transaction (SLST) program (which issues securities backed by re-performing loans and moderately delinquent loans). The function of the trusts created pursuant to the NPL, SCRT and SLST programs are primarily to hold the subject mortgages and *not* for the purpose of servicing any Maryland borrower's loan. Rather, the trust utilizes a properly licensed or otherwise exempt servicer under Maryland law to perform all servicing-related functions for the Maryland borrower.

The NPL, SCRT and SLST programs are important tools to assist delinquent Maryland borrowers by providing them a second-chance at avoiding foreclosure by working with new investors in delinquent loans. These investors may have additional programs to assist these borrowers, while helping the Enterprises to manage risk on mortgage-related investment portfolios and permitting transfer of credit risk to private sector investors.

Once transferred to a trust (SCRT and SLST) or a purchaser (NPL), the loans are serviced by Enterprise-approved servicers, who must comply with FHFA's servicing guidelines for such sales.<sup>1</sup> Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification then a short sale or a deed-in-lieu of foreclosure. Modifications must provide a benefit to the borrower and the potential for a sustainable modification and may include principal and/or arrearage forgiveness. Servicers may be able to provide additional options to borrowers with unique situations that may not otherwise be available under the Enterprises' traditional servicing guidelines. Foreclosure must be the last option in any waterfall.

*Impact.* These programs to keep homeowners in their homes are among the best devices to maintain stability in communities, provide a long-term benefit to neighborhoods and avoid a burden on localities and the State. FHFA strongly believes both Maryland borrowers and the Enterprises could be adversely impacted by the proposed requirement to require transferees of delinquent Maryland mortgage loans to become licensed debt collection agencies under MCALA. If enacted, the requirement could be confusing for investors and difficult to maintain compliance as securitization trusts are special purpose entities that typically do not have individuals associated with them. Requiring a trust to be licensed under MCALA provides no added benefit or enhanced consumer protection, as the trust, which has no borrower interaction, utilizes a servicer to perform all consumer-facing servicing responsibilities in strict compliance with applicable law and relevant FHFA and Enterprise program requirements (in the case of the SCRT and SLST programs).<sup>2</sup>

Assuming a trust is even able to comply with the existing Maryland Collection Agency License requirements, this burden will undoubtedly create decreased investor demand for products associated with the purchase of delinquent loans in Maryland and potential investor withdrawal from the market, lessening the availability of these products to assist homeowners.

I hope that this information on the substantial uncertainty the proposed legislation may create for the Maryland mortgage market would be taken into consideration as you work on the bills. I would be happy to answer any questions you may have and I may be reached at 202 649 3050 or [alfred.pollard@fhfa.gov](mailto:alfred.pollard@fhfa.gov).

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<sup>1</sup> <https://www.fhfa.gov/Media/PublicAffairs/Pages/Non-Performing-Loan-Sale-Guidelines.aspx>

<sup>2</sup> [http://www.freddiemac.com/seasonedloanofferings/docs/npl\\_sales\\_guidelines\\_factsheets.pdf](http://www.freddiemac.com/seasonedloanofferings/docs/npl_sales_guidelines_factsheets.pdf)