Maryland
DEPARTMENT OF LABOR

OFFICE OF FINANCIAL REGULATION
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Antonio P. Salazar, Commissioner

February 18, 2025

House Environment and Transportation Committee

Chair: Delegate Marc Korman
House Bill 769 - Real Property – Residential Foreclosures – Materially Delinquent Mortgages

Re: Letter of Support

Dear Chair, Vice-Chair, and Members of the Committee,

The Office of Financial Regulation (OFR) is Maryland's state consumer financial protection agency. OFR provides this testimony in support of House Bill 769, Real Property – Residential Foreclosures – Materially Delinquent Mortgages.

Bill Summary

HB769 seeks to ensure that homeowners at risk of foreclosure from old mortgage debt are provided with certain protections. In the legislation, old mortgage debt is referred to as a "materially delinquent mortgage" and defined as a mortgage for which no payments have been made in the previous five or more years.

The bill requires a mortgage holder to have provided periodic statements to the homeowner for at least a 24 month-time period immediately preceding the start of a foreclosure on a materially delinquent mortgage. (Prior to October 1, 2027, this requirement can also be satisfied if the mortgage holder serves notice to the homeowner on a form created by OFR.)

The bill also allows courts to consider a homeowner's defense of laches during a foreclosure proceeding. Laches is a legal term that refers to an unreasonable delay on the part of a claimant in pursuing their legal right or claim. In the context of a foreclosure, a laches defense means the homeowner is asserting that the mortgage holder's delay unfairly burdened them in such a way as to make the foreclosure inactionable.

Background

Holders of materially delinquent mortgages are typically debt buyers who have purchased the old mortgage debt after it has been charged off by the previous secured party. Because they are not receiving any communication from the mortgage holder regarding the loan, homeowners mistakenly believe that they no longer owe the debt.

Recently, as housing values have increased, holders of materially delinquent mortgages have been initiating foreclosure actions in an effort to collect on the old debt, plus interest and fees. In many situations the old debt

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is from a second lien mortgage that was originated in the years leading up to the Great Recession and subsequent foreclosure crisis. In addition to not receiving correspondence on these old loans, those homeowners who successfully obtained loan modifications on their first mortgage were often led to believe that the second mortgage was included in their modification.

Scope and Homeowner Impact

OFR records indicate that since 2018 over 3,000 mortgage borrowers in Maryland received a Notice of Intent to Foreclose for a mortgage on which the last payment was made five or more years ago. During that same time period, a total of over 373,000 Notices of Intent to Foreclose were filed. Therefore, materially delinquent mortgages as defined in the bill comprise less than 1% of all potential foreclosures. Consequently, OFR believes that the requirements in this bill would impact a very small percentage of mortgages in Maryland.

The impact on affected homeowners, however, is significant. An analysis of the same Notices of Intent to Foreclose for materially delinquent mortgages revealed that the average amount a homeowner would need to pay the mortgage holder in order to avoid foreclosure is over $193,000. Such a substantial sum of money is challenging for most consumers to raise with little to no advance notice, particularly so for those homeowners with limited resources.

Federal Response

In April 2023, the federal Consumer Financial Protection Bureau (CFPB) issued guidance regarding "zombie" mortgages, described by the CFPB as "silent second mortgages… that consumers thought were satisfied long ago and that may be unenforceable in court". The CFPB guidance reminds debt collectors covered under the Fair Debt Collection Practices Act that they are prohibited from collecting or attempting to collect on old debt past the debt's relevant statute of limitations, referred to as "time-barred debt".

The Need for Legislation in Maryland

Maryland case law holds that foreclosures do not have a statute of limitations so the debt is not time-barred; as such, the CFPB's aforementioned guidance is limited.

OFR has received complaints from homeowners who thought the attempt to collect on the old mortgage was a scam, since the homeowners did not recognize the name of the mortgage holder and believed that the debt had been forgiven many years ago. This change would provide homeowners with notice and time to gather the resources to pay off the old mortgage debt or to attempt to work with the mortgage holder to negotiate an alternative to foreclosure, if there is one.

With that, OFR requests a favorable Committee Report.