



March 1, 2025

Chair Beidle  
Senate Finance Committee  
3 East Miller Senate Office Building  
Annapolis, Maryland 21401

**Re: Testimony in Support of Senate Bill 1026: Financial Institutions - Consumer Credit - Application of Licensing Requirements (Maryland Secondary Market Stability Act of 2025)**

Dear Chair Beidle,

It is my pleasure to offer testimony today in support of **Senate Bill 1026: Financial Institutions - Consumer Credit - Application of Licensing Requirements (Maryland Secondary Market Stability Act of 2025)**. If enacted, this bill would create the necessary changes to statute to provide the Maryland Office of Financial Regulation ("OFR") with the clarity and tools needed to bring stability back to the secondary mortgage market for Maryland loans. Given the difficult interpretive issues raised by *Estate of Brown* (as discussed below) and the court's partial reliance on Maryland common law to support its ruling, Rocket Mortgage views a legislative fix as the most effective means to ensure liquidity is available in the Maryland mortgage market to assist Maryland consumers with their mortgage financing needs.

***Estate of Brown***

*Estate of Brown v. Ward* concerned a home equity line of credit ("HELOC") expressly made subject to Maryland's Credit Granter Revolving Credit Provisions ("OPEC").<sup>1</sup> In analyzing whether the party seeking to foreclose on the HELOC in the case was a "credit granter" pursuant to OPEC, which would require the party to be appropriately licensed or exempt under OPEC, the court noted the statutory definition of "credit granter" expressly includes an assignee.<sup>2</sup>

The court also cited several times to a Maryland Supreme Court case interpreting Maryland common law to dictate "the assignee of a mortgage loan generally succeed[s] to the same rights and obligations of the original lender."<sup>3</sup> In *Kemp*, the Maryland Supreme Court proffered that "statutes are not construed to repeal the common law by implication" in determining an assignee was subject to the statutory fee restrictions at issue in that case.<sup>4</sup>

Relying on both Maryland common law pertaining generally to assignees and the explicit inclusion of assignees in OPEC's definition of "credit granter," the court in *Estate of Brown* held the licensing requirements in OPEC apply to assignees, absent an exception.<sup>5</sup> Importantly, the court in *Estate of Brown* explicitly cabined its decision to OPEC by explaining "it makes little

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<sup>1</sup> 313 A.3d 630, 637 (Md. App. 2024).

<sup>2</sup> *Id.* at 646-47 ("The current definition of 'credit granter includes . . . [a]ny person who acquires or obtains the assignment of a revolving credit plan made under [OPEC].") (quoting Md. Comm. Law § 12-901(f)(2)(iii)).

<sup>3</sup> *Estate of Brown*, 313 A.3d at 648 (quoting *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 153 (2021)).

<sup>4</sup> 476 Md. at 177-78.

<sup>5</sup> 313 A.3d at 656.

difference whether the Maryland Mortgage Lender Law also imposes an independent licensing requirement."<sup>6</sup> The court additionally distinguished the instant case from a line of cases holding certain trusts did not satisfy the statutory definition of "mortgage lender" under the Maryland Mortgage Lender Law because that line of cases "has no direct application to the issues presented" in *Estate of Brown* as those cases "do not concern revolving credit plans or the licensing requirements of [OPEC]."<sup>7</sup> Moreover, the court expressly did not analyze any licensing exemptions as the party seeking to foreclose did not argue that it qualified for any statutory exemption from OPEC's licensing requirements.<sup>8</sup>

## Regulations

In response to the April 2024 decision in *Estate of Brown*, the Office of Financial Regulation (OFR) adopted emergency regulations that mirror proposed regulations (collectively, "Regulations") on January 10, 2025.<sup>9</sup> Recognizing the operational difficulties in subjecting passive investment entities merely holding Maryland mortgage loans as assignees to the OFR's mortgage licensing requirements, the Regulations sought to "allow[] entities whose structure would otherwise make it excessively burdensome to obtain a license."<sup>10</sup>

The Regulations amend the OFR's existing licensing regulations by defining a "passive trust," tweaking the definition of "principal officer" for passive trusts, and altering net worth requirements for passive trusts to enable such entities to meet net worth requirements within ninety (90) days of initial licensing. Rocket Mortgage welcomes the OFR's intent to provide a "feasible avenue" to licensure for passive mortgage investment entities; however, the relative flexibilities introduced by the Regulations do not go far enough. Among the Regulations' tailored requirements for passive trusts is the designation of a principal officer, who still must maintain at least three (3) years of experience in the mortgage lending business. Even with the Regulations allowing a trustee or a principal officer of a trustee to satisfy this prior mortgage experience requirement, licensing of these entities is still not practical as these entities typically do not maintain dedicated employees and trustees do not normally undertake any mortgage lending activity. Additionally, it is not clear how or whether the OFR would exercise its supervisory and other authority over these entities, making it significantly more unlikely a trustee agrees to take on these currently nebulous obligations.

## Rescind or Revise the Guidance

The Regulations' practical shortcomings are exacerbated by the overly broad coverage of the OFR's accompanying January 10, 2025 Guidance on Licensing Requirements for Mortgage Trusts ("Guidance").<sup>11</sup> As detailed previously, *Estate of Brown* only concerned licensing obligations relating to HELOCs under OPEC and the court there refused to address the independent licensing obligations in the Maryland Mortgage Lender Law. The sweeping scope

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<sup>6</sup> *Id.* at 653.

<sup>7</sup> *Id.* at 654.

<sup>8</sup> *Id.* at 650.

<sup>9</sup> 52:1 Md. R. 17, 27-33.

<sup>10</sup> *Id.* at 28.

<sup>11</sup> Available at <https://content.govdelivery.com/accounts/MDDLRL/bulletins/3cba11c>.

of the Guidance applying to "all mortgage loans" presumably stems from the *Estate of Brown* court's reliance on Maryland common law; however, nothing in *Estate of Brown* required the OFR to extend the holding beyond HELOCs governed by OPEC.

The OFR rightly identified the significant impact the Guidance would have on entities the OFR never previously subjected to licensure by suspending enforcement activities for such entities through April 10, 2025. Nevertheless, the Regulations are in effect today and can presumably be leveraged by private litigants and other enforcement entities, such as the Maryland Attorney General. Given the expansive scope of the Guidance reaching far beyond the circumstances at issue in *Estate of Brown*, Rocket Mortgage respectfully requests the OFR immediately rescind the Guidance or materially revise it only to address the holding of *Estate of Brown*. Such rescission or revision of the Guidance would address the negative market and consumer impacts highlighted below, and allow the Maryland legislature an opportunity to weigh in on the important assignee licensing issues raised by the decision in *Estate of Brown*.

### **Market and Consumer Impacts**

In the immediate aftermath of the Guidance and Regulations, a number of outlets stressed the uncertainty created by the Guidance and the potential impact to the primary and secondary Maryland mortgage markets.<sup>12</sup> More specifically, the bond rating agency Kroll speculated the Guidance "could impair the viability of securitization financing for Maryland loans" and "[s]ecuritization liquidity for Maryland loans could be significantly curtailed."<sup>13</sup> These outlets also drew similarities between the Guidance and a 2002 change to the Georgia Fair Lending Act that froze the non-Agency mortgage market for Georgia loans and led to exclusions of Georgia loans from many securitizations until the Georgia legislature fixed the issue the following year.

Based on other publications and Rocket Mortgage's trusted industry contacts, certain mortgage backed security issuers are excluding Maryland loans from transactions. Large mortgage aggregators are not currently purchasing certain Maryland loans, and other entities have stopped particular lending efforts in Maryland.<sup>14</sup> Indeed, Rocket Mortgage faced similarly difficult decisions relating to its Maryland mortgage loan production in the aftermath of the Regulations and Guidance. Prior to the issuance of the Supplemental Guidance detailed below, Rocket Mortgage considered shuttering all Maryland loan production given the uncertainty caused by the OFR's efforts to align its licensing regime with *Estate of Brown*. Although Rocket Mortgage continues to originate Maryland mortgages, it has excluded certain non-Agency production from multiple securitization deals over the past several weeks to ensure alignment with the Guidance and Regulations.

If clarity and resolution are not brought to the non-Agency mortgage market, Rocket Mortgage and other market participants will be forced to reassess their efforts relating to Maryland mortgages. In particular, if Rocket Mortgage cannot include its non-Agency loan production

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<sup>12</sup> See, e.g., *Maryland Licensing Rule: Roadblock for Mortgage Securitization?*, Kroll Bond Rating Agency, LLC (Jan. 16, 2025).

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., *Maryland Licensing Regulation a Major Issue for MBS*, Inside Mortgage Finance (Jan. 24, 2025).

(such as its originations for closed-end subordinate lien loans) in securitizations going forward, it may be forced to increase the pricing of such products or otherwise discontinue offering such products in Maryland. This will in turn make it more costly for Maryland consumers to obtain mortgage credit and may ultimately limit mortgage credit products available to Maryland consumers. Given the current interest rate environment and the lack of an Agency market to meaningfully support closed-end subordinate lien mortgages, Maryland consumers may be forced to leverage more costly alternative products to meet their financial needs.

### **Supplemental Guidance and Need for Additional Guidance**

The OFR's January 31, 2025 Supplemental Guidance on Licensing Requirements for Mortgage Trusts Made by Corporate Instrumentalities ("Supplemental Guidance") helpfully removed substantial uncertainty from the Agency mortgage market that was previously significantly concerned with the continued viability of the market for Maryland loans.<sup>15</sup> The OFR leveraged its interpretive authority under the Maryland Mortgage Lender Law to clarify "any trusts created by [Fannie Mae, Freddie Mac, and Ginnie Mae] are themselves corporate instrumentalities and that they are engaged in the acquisition of loans under federal programs of mortgage loan purchases, and therefore are not subject to licensure by OFR."<sup>16</sup>

As Agency mortgage production predominates the market, the OFR took a sensible approach in quickly publicizing the Supplement Guidance to address the ambiguity created by *Estate of Brown*, the Regulations, and the Guidance. Nevertheless, the OFR has the same interpretive authority to inform industry participants and other stakeholders regarding the bounds of other relevant licensing exemptions for securitization trusts and other passive investment vehicles that may be relevant to non-Agency production. Moreover, the OFR's interpretive powers in this regard do not appear limited at all by the holding in *Estate of Brown* as the court there intentionally did not consider any exemption arguments under the Maryland Mortgage Lender Law.

Rocket Mortgage implores the OFR to iterate upon its Supplemental Guidance by explaining how the OFR views other licensing exemptions in the Maryland Mortgage Lender Law, such as exemptions for federally or state chartered financial institutions under Md. Fin. Inst. Code § 11-502(b)(1). For example, industry is currently not clear on whether such licensing exemptions apply to a securitization trust whose trustee is a national banking entity.

### **Conclusion**

Rocket Mortgage understands the precarious position *Estate of Brown* has placed the OFR in and is encouraged by the OFR and the Legislature's most recent efforts to bring clarity to the Maryland mortgage market through updated supplemental guidance and this crucial legislation. We support SB 1026 and urge a favorable report.

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<sup>15</sup> Available at <https://labor.maryland.gov/finance/advisories/advisory-ind-licensereqmorttrustcorpinst.pdf>.

<sup>16</sup> *Id.*



Please contact Micheal Stidham at (313) 670-8559 or [MichealStidham@rocketmortgage.com](mailto:MichealStidham@rocketmortgage.com) to facilitate any such additional discussions.

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