MORTGAGE BANKERS ASSOCIATION

5/15/2023

Conference of State Bank Supervisors
1300 I Street NW, Suite 700 East
Washington, DC 20005
comments@csbs.org

Re: Mortgage Business-Specific Requirements

The Mortgage Bankers Association (MBA)[1] supports the Conference of State Bank Supervisors (CSBS) seeking to achieve uniformity among state regulator requirements, and where possible with federal policy. Thank you not only for the opportunity to comment on the Nationwide Multistate Licensing System (NMLS) mortgage business-specific requirements proposal (Proposal), but also for the Town Hall presentation on the Proposal that provided more context and conversation about the proposed changes. MBA appreciates CSBS's attempt to streamline the company licensing process and standardize requirements across the states.

CSBS states that the Proposal seeks to modernize and standardize the business-specific requirements within the NMLS license requirement framework in the following areas:

- Business activities included in the mortgage business-specific requirements
- Contacts required in application
- Periodic reporting requirements
- Document requirements
- Location reporting requirements
- Key individual requirements

<u>Overall Comments</u>

MBA believes for the standardization to work, state regulators need to be provided their specific state requirements and agree on interpretation of each element of the

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 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.

application. As stated in previous comments on CSBS's modernization efforts, state regulators must limit the amount of activity that is required outside of NMLS. MBA members have long discussed the challenge of licensing inside the NMLS in a given state, and outside the system in part or entirely in another state to effectively achieve the same result in both. Without full state regulator adoption and implementation there will continue to be a bifurcated system with states that fully embrace the NMLS and this proposal, and those states that do not adopt the modernization approach or accept it in part but still require certain documentation to be provided outside the system. To the extent states desire to retain their own configurations, modernization should ensure such configuration occurs within the system to improve workflow for regulators and industry alike. If all state regulators are not willing to implement the new workflow because it does not meet their needs, MBA believes the system will not produce the streamlined process, enhanced user experience, state regulator empowerment, and greater operational efficiencies promised by the Proposal.

In addition to overall concerns about state regulator implementation, MBA and its member companies have more specific suggestions regarding the Proposal, and urge CSBS to consider the following:

- Each state has different requirements and interpretations; CSBS should work to standardize submission without raising the requirements of all states;
- Location reporting requirements should reflect today's acceptance of remote work;
- Communication should be a priority among companies and state regulators when evaluating contacts and key individuals; and
- "Start-up company" thresholds need to recognize current accounting practices.

Standardization with State Differences

CSBS has stated that the documents proposed are "commonly required for companies engaging in mortgage lending and servicing business activities" which implies that each state will have access to the documents the Proposal seeks to standardize. However, each state does not currently require all such documents or additional elements in the Proposal. While states often have statutes that allow their regulator to ask for additional documentation, their statutes or regulations do not govern the review of those additional documents or require them for application consideration. The Proposal does not expressly state how this standardization will account for differences within each state.

During the Town Hall on this Proposal, it was stated a state regulator will not receive certain elements of the application if their statute does not provide authorization. However, it was also stated the states may still receive documents or policies currently not required. MBA would like to understand what elements could be withheld, how they would be withheld from unauthorized states, and what elements would be shared without authorization. The Proposal includes many terms with revised definitions from current practice or no definition at all, which will lead to more varying interpretations we see today. CSBS should update the Proposal to reflect the complexities of state variation given the number of examples of where this lack of clarity becomes an issue. A few examples illustrate our concerns:

- The Proposal as written would add regulatory elements to many states without addressing the regulatory or statutory process required. One example is within the periodic reporting requirements. A mortgage company must already comply with a patchwork of cyber security incident laws. While this Proposal seeks to standardize these divergent requirements, not every state obliges cyber security incident reporting to be submitted to the state regulator. In the event of a data breach, in Arizona[2] for example, a mortgage company would not be required to provide notification to Arizona regulators. Without the written statutory language nor rules detailing regulatory expectations for this notification, a mortgage company does not have clear understanding of the process to comply with this new requirement, what steps the Arizona regulator may take after receiving the notification, or how it may impact their license. Additionally, the notification trigger for each state is different and is dependent on which state has residents impacted by a breach or how many are impacted. The inclusion of periodic reporting requirements without clarifying how these differences will be handled creates uncertainty for the mortgage company.

- Another example of where the Proposal needs clarity on these state differences is the Control Person or Key Individual requirements. In the Proposal the Key Individual requirements are expanded to capture more than some states require to be identified. In Oregon,[3] the definitions are narrower than outlined in the Proposal. This difference will result in more individuals completing MU2 forms than required by Oregon, without the proper update and regulatory process changes required to assert Oregon's authority to expand these requirements.

- The Proposal states all mortgage licensees will be required to submit certain reports, including audited financial statements. Again, the Proposal does not recognize the varying licensing requirements in the states as outlined on the NMLS Resource Center's Financial Statement worksheet.[4] Each state has different requirements around financial statements for new or existing licenses and multiple licenses that would be considered under "all mortgage licensees." For example, in Hawaii, the "Exempt Sponsoring Mortgage Loan Originator Company," "Mortgage Loan Originator Company License," and the "Mortgage

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[2] ARS § 18-552
[3] OAR § 441-850-0005
[4] NMLS. (n.d.). Financial statements. NMLS Resource Center. https://mortgage.nationwidelicensingsystem.org/slr/common/fs/Pages/default.aspx

Servicer License" do not require any financial statements for new or existing licenses. The Proposal would raise the documentation requirements to operate in Hawaii without customary and statutory or regulatory changes.

MBA urges CSBS to make clear how these patchwork requirements will be addressed in any standardization or modernization efforts prior to implementation. A start-up or small existing mortgage company may look to begin operating in states with certain standards. With this Proposal, these smaller companies would be forced to meet the more expansive national standards rather than those in the limited number of states they operate in. This difference will increase the cost of compliance for new entrants and deter small companies from entering new markets, which results in fewer options for consumers and reduced competition.

CSBS has drafted a model bill to provide the states with a path to regulate capital and liquidity standards. To achieve this authority, each state must enact legislation or promulgate regulation based on the CSBS model. The same process should be followed to implement the system modernization standards outlined in the Proposal, which effectively increases many states' requirements for licensure. MBA and its members are aligned with CSBS in efforts to modernize and standardize licensing, however MBA urges CSBS to uphold many of the variations of requirements within each state. The Proposal should not negate, nullify, or expand state laws and/or regulations on this matter by virtue of system changes currently outlined in the Proposal.

Location Reporting with Remote Work

Since the COVID-19 pandemic, state regulators and industry have been working together to modernize the mortgage origination process as well as regulatory supervision. The current Proposal requires documentation of where "licensed activity" or "company operated work" is occurring but provides no definition to understand the intent of this section. With promulgation of recent remote work laws, rules, and policies in more than half the states there is an acceptance among regulators and mortgage companies that origination activity can happen anywhere, provided appropriate supervision is in place and prescribed consumer and data safeguards are followed. Requiring an applicant to list specific locations will restrict their ability to utilize the flexibility allowed under these state policies. This flexibility benefits both borrowers and Mortgage Loan Originators (MLOs). Remote work provides increased MLO, underwriter, and processor availability, greater service to traditionally underserved borrowers and communities, and allows borrowers to address their concerns throughout the process without regard to in-office hours. It also makes the industry more resilient in times of natural disasters.

MBA recognizes the need to include location requirements regarding the location of any physical record keeping or branch offices within their state as well as the principal office location. To avoid impeding progress on remote work flexibility, the location reporting requirement should be updated to reflect only these requirements and not based on locations of ‘licensed activity.’

Contacts and Key Individuals

MBA does not support the increase in individual contacts required within this Proposal and believes that the current regime is sufficient. Mortgage companies must maintain relationships with state regulators and often have teams dedicated to support regulator requests. State regulators are easily able to connect with key mortgage company staff using the existing current contacts listed in NMLS directly or by request. By including more contacts, the company loses the ability to maintain visibility with each inquiry, exam, or application. Moreover, the proposed increase in specific contacts required to be listed adds another item that must be continuously updated within NMLS as individuals grow and change roles and responsibilities within their firms.

Additionally, MBA appreciates the acceptance of third-party service providers as a mortgage company may contract externally for different services and need the ability to have communication lines open between the third-party and state regulating agency. While this acceptance is appreciated, the Proposal includes a sweeping authorization which may pose unintended consequences by potentially excluding the mortgage company from communication or stall communication for third parties who may not accept the authorization. The proposed authorization does not clarify how the mortgage company would be notified, if at all, with any incoming request nor does it allow varying authorization depending on the regulator inquiry.

A mortgage company should be notified of any inquiry or request made on their behalf. Without this step, communication will inevitably break down and result in less coordination between a mortgage company and state regulators. The modernization efforts of CSBS should work to foster better working relationships between companies and regulators, which should include increased visibility and communication. CSBS should look to provide varying elections of authorization for any third-party contact, in lieu of automatic full authorization. This would allow the mortgage company to dictate which third-parties may have full authorization, if they would like to dictate authorization based on the nature of requests, or if they would like to be notified even with authorization.

Start Up Companies

The financial statement requirements outlined in the Proposal use the term ‘start-up company’ and define this group based on their publicly traded status, years of operation, and gross revenue above or below $500,000 as the qualifiers. MBA believes the definition should be clarified to reflect ‘net’ revenue as the revenue qualifier for the definition. Without such clarification, revenue would be inflated, and this would result in a distortion of the definition of a start-up company as intended in the Proposal. Under Generally Accepted Accounting Practices (GAAP), gross revenue generally reflects gain on sale/net revenue, which is the amount that is recorded and recognized on the income statement. The proposal should clarify that “gross revenue” as used in the definition of a start-up company is in accordance with GAAP, and therefore is the grossed-up amount of the company’s gross proceeds as reflected in its statement of cashflows. Including this clarification, i.e., gross revenue in accordance with GAAP (reflecting gain on sale), will ensure that the definition uses the correct amount for purposes of classifying an entity. This would help achieve the goal of this Proposal in recognizing true start-up companies.

Conclusion

Once again, thank you for providing MBA with the opportunity to comment on CSBS’ proposed changes to the mortgage business-specific requirements. MBA welcomes the opportunity to engage with you further to modernize NMLS. If you have any questions, please contact Liz Facemire (lfacemire@mba.org or 202-557- 2870).

Sincerely,

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Mortgage Bankers Association