



MORTGAGE BANKERS ASSOCIATION

October 31, 2016

Mr. Tim Doyle
Senior Vice President
State Regulatory Registry, LLC (SRR)
Conference of State Bank Supervisors (CSBS)
1129 20th Street NW, 9th Floor
Washington, DC 20036
comments@csbs.org

Re: Proposal 2016-2 — Request for Public Comments, SRR Public Comment Policy

Dear Mr. Doyle,

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the August 30, 2016² Proposal to adopt a policy governing the procedures and processes for requesting and processing public comments on issues related to the Nationwide Mortgage Licensing System and Registry (NMLS).

MBA values the hard work of state regulators and the staff of CSBS and SRR to create greater certainty and uniformity in regulatory requirements – especially efforts to streamline licensing and reduce duplication among state reporting requirements. In our view, this work has improved the licensing and reporting processes for MBA member companies, mortgage loan officers and ultimately consumers.

In an effort to further improve the process, MBA welcomes this proposal to enhance the current procedures for when a request for comments is appropriate and how the request should be administered from inception through development of final policy. As you may recall, in comment letters³ and in NMLS Ombudsman meetings, MBA has advocated for a more structured and transparent framework for implementing new requirements. MBA believes that an improved structure with enhanced opportunities for stakeholder input would foster better and wider stakeholder engagement, in turn resulting in more workable requirements.

¹ MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the Association works to ensure the continued strength of the Nation's residential and commercial real estate markets; to expand homeownership and 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 over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² <http://mortgage.nationwidelicencingsystem.org/news/ProposalsForComment/Policy%20on%20Public%20Comments.pdf>

³ May 2, 2016, MBA Comment Letter to NMLS on Proposed Changes to the NMLS Attestations; Jun 1, 2015, MBA Comment Letter to NMLS on Changes to the Mortgage Call Report.

Overview of Comments

MBA strongly supports the process embodied in this proposal that would establish a period of public comment on all updates of no less than 60 days (and in some cases as long as 180 days or even more, subject to SRR-Vice Presidential approval) for future NMLS policy initiatives.

MBA does not believe that comment periods shorter than 60 days provide sufficient time for stakeholders to provide well-considered and thoughtful input. MBA's analysis in its September 1, 2015 comment letter to NMLS shows that when stakeholders are granted 60 day comment periods, the number of comments submitted are much greater; MBA believes that this in turn can be expected to result in a better examination of issues from stakeholders with diverse viewpoints and concerns.

As the comments explain, we believe a comment period shorter than 60 days should only be provided when there is a written finding of an emergency that threatens to harm either the NMLS system or consumers. While MBA appreciates that the proposal already contains a process where the NMLS Policy Coordinator must request an exception in writing to the requirement for less than 60 days comment, the justification is less rigorous than we propose. In any case, where less than 60 days is provided, comments also should be invited following the action, to consider whether there should be adjustment to the policy.

Section-by-Section Comments

The following reflect comments received by MBA from its member companies in the order presented in the proposal for comment.

Applicability

MBA appreciates that the proposed 60 day comment policy would apply to any "updates that impact outside parties." However, we are concerned that the current language also excludes instances where the NMLS Policy Committee determines public comment is not required, without providing examples of circumstances where such a finding would be made. A better approach would be to delete the exclusion and simply say that, "as a general matter, any updates affecting outside parties are covered by the policy." If, however, there remains a concern that an exclusion is needed, specific examples of circumstances warranting an exclusion should be identified. A written finding by a key official specifying the reasons for the exclusion should also be required.

Roles and Responsibilities

A. NMLS Working Group

MBA appreciates that the proposal indicates the NMLS Working Group "may" include industry representatives. However, the issuance provides no specifics about the considerations that will govern the inclusion of industry representatives. MBA suggests that

that a better approach is to include industry stakeholders unless there is a determination that their participation would not be useful considering the particular effort.

It would also be helpful for the Public Comment Policy to require the establishment of goals and a work plan with a timeline for the Working Group. MBA members have expressed some frustration about the growth, duration, direction and number of such groups among state regulatory bodies without standards or goals being established. Members report that with some working groups there has been limited opportunity for real industry input during policy development, and that regulators have only sought feedback on near-final policy changes.

While recognizing the needs of regulators to control their regulatory processes, MBA requests that any final policy ensure industry input to benefit regulators and industry alike.

B. NMLS Policy Coordinator

MBA's only comment is that in future proposed requests for comment it should be clearly stated in writing who the Policy Coordinator is and how to reach them or a staff person assigned to answer questions during the comment process.

C. Senior Vice President of Policy

MBA has no specific comments on this portion of the Proposal.

D. General Counsel

MBA suggests an addition to the role and responsibilities of the General Counsel in the Effective and Sufficient Notice portion below – that consultation with the General Counsel also be required when consideration is given to shortening the comment period.

E. NMLS Policy Committee

Under the Proposed Policy, the NMLS Policy Committee will serve as the final determiner of updates presented for public comment. The issues considered by the Policy Committee are complex and significant and impact a very large number of companies doing business under the laws and regulations of multiple states. The Committee's decisions frequently require changes to operations and investments in technology, which increase costs that are ultimately borne by consumers. If these decisions are not correctly arrived at or implemented, they may also create significant risks of legal liability and enforcement jeopardy. Thus, MBA believes – wherever possible – only regulators who have broad agency-wide authority should serve on the Policy Committee, and that there should be an explicit effort made to reflect the diversity of regulator/supervisory approaches, and not just the opinions of Policy Committee volunteers.

While MBA appreciates the NMLS' and state regulators' outreach to ensure that the development of system policies appropriately balance consumer protection needs with marketplace realities, MBA urges that the NMLS Policy Committee itself be constituted to

reflect a diversity of regulators. Specifically, its membership should be diverse in terms of geography, statutory authority, regulatory philosophy and approach, and even the sizes of regulated entities. Given that the members of the NMLS Policy Committee will be exercising authority over the requirements of MBA member companies in states other than their own, it is in the interests of the NMLS to ensure the right mix of high ranking regulators serving on the NMLS Policy Committee where decisions are made.

MBA further believes the Policy Committee should in any comment process make a commitment to transparency in its decision making. For example, when issuing final requirements, a final issuance setting forth requirements should summarize the comments considered and explain how each comment was addressed.

Last, under the Proposal the Policy Committee would have authority to approve a comment period of fewer than 30 days “under limited circumstances and when good cause is demonstrated.” As explained below we think the standards for limiting the comment period are too undefined and insufficient. It is also unclear from the Proposed Policy what the group’s role is in selecting policy changes for comment. Section A indicates that it will be the responsibility of the NMLS Working Group. MBA believes that any final document should clarify the role of the Policy Committee in relation to the NMLS Working Group at the front end of policy changes, and consequently the role – if any – of the industry in determining the proposals published for comment.

Effective and Sufficient Notice

A. Comment Period

As discussed above, MBA and its member companies strongly support the proposal to move “at a minimum” “in most cases” to a comment period of “no less than 60 days” on all updates and the ability of the NMLS Policy Coordinator to extend a comment period to as long as 180 days.

However, MBA is concerned about the circumstances and standards that will be used to shorten a comment period to as few as 21 days. The “good cause” standard proposed is undefined. We believe a more suitable standard would establish that 21 days should only be provided when there is a written finding that there is an emergency that threatens to harm the NMLS system and consumers.

Notably, while there is a clear process expressed in this section of the proposal for the NMLS Policy Coordinator to follow when extending the comment period, there is no similar clear path laid out for instances when comment periods of fewer than 60 days are to be established. MBA believes that the same exigency standard noted above should pertain here, i.e., less than 60 days should only be provided when there is a written finding that there is an emergency that threatens to harm the NMLS system and consumers.

As a general matter, MBA opposes comment periods of fewer than 60 days for NMLS policy initiatives unless there is a very strong and compelling reason. At the very least, if a “good cause” standard is adopted, NMLS should provide examples of the limited circumstances

that constitute “good cause” and circumstances that do not. Examples might include a change in federal or state law or regulation with a short implementation period that requires a concomitant NMLS systems change or a court decision which mandates immediate systems modification. MBA suggests that the final public comment policy include consultation with the General Counsel to ensure there is indeed a compelling reason to shorten the comment period.

Notably, there appears to be a degree of conflict between the NMLS Policy Committee’s authority to shorten a comment period to fewer than 30 days (expressed in Section E of the Roles and Responsibilities portion of the Proposal), and the authority of the NMLS Policy Coordinator (in this portion of the Proposal) to request shortening the comment period. The latter requires good cause be demonstrated in writing, while the former only requires good cause be demonstrated. MBA believes whenever the comment period is to be shortened, the reasons should be put in writing by a key official, regardless of who is acting to shorten it.

Also, in all cases where less than 60 days is provided, comments also should be invited following the action, to consider whether there should be adjustment to the policy. If there is an emergency or other compelling reason to require a comment period of fewer than 60 days, MBA believes that the resulting policy should be assigned a reasonable sunset date – to allow a more thoughtful consideration of the change, and a re-proposal issued after the emergency has been addressed, to provide a more reasonable opportunity for stakeholders to comment.

On the other hand, MBA would also like to point out that there are good reasons to consider comment periods of longer than 180 days or for extending existing comment periods. For example, significant federal rulemakings by the Consumer Financial Protection Bureau or other federal regulators can, and sometimes have had a dramatic impact on NMLS system changes and the resources needed among MBA member companies to consider, discuss and prepare thoughtful input to state regulators. Additionally, in some cases an advance notice of a proposal concerning an NMLS initiative may be warranted considering the scope and importance of the initiative. Such a notice will allow careful thinking and input well ahead of the comment period on the proposal.

B. Notice to the Public

In addition to the new process requirements in the proposal, MBA also suggests that NMLS begin issuing press releases at least to the real estate finance trade press of any proposed system changes. Such activity would help raise industry awareness of proposals and opportunities for industry input. Press releases could also help bring into the process the views of other stakeholders. MBA publicizes NMLS initiatives but additional publicity from NMLS would garner additional attention.

In the past, MBA has noted that state regulators ought to consider issuing some measured form of advance notice of future proposals. As suggested above, such a process would assist industry and other stakeholders to focus more attention on forthcoming policy changes and their subsequent opportunities for comment. This might take the form of

advance public presentations pre-proposal at NMLS Ombudsman meetings or similar events such as industry conference calls.

MBA suggests that the advance notice should include:

- a general review of the findings that necessitate the proposal;
- a preliminary assessment of the costs (generally, and to small business in particular);
- the perceived benefits; and
- the legal authority appropriate to the proposal.

Collecting and Receiving Comments

MBA has no specific comments on this portion of the Proposal.

Consideration of Comments

MBA applauds the efforts of state regulators, when making NMLS system changes through a public comment process, to promptly provide the public with all comments received via the NMLS Website (www.mortgage.nationwidelicencingsystem.org). This openness has also included presentations during NMLS Ombudsman meetings and presentations at the Annual NMLS User Conference. MBA strongly supports this commitment to transparency and suggests that it be made more formal in the Proposed Policy.

Additionally, and as noted in previous comment letters, MBA has suggested to state regulators other specific factors that should be considered during the process of establishing requirements (as well as in determining which policies should be proposed). These include reviewing:

- potentially duplicative or conflicting federal requirements;
- potential conflicts with, or instances of new NMLS requirements exceeding, individual state laws or rules;
- the burden or impact on small business, defined as those with fewer than 25 employees, to implement new NMLS requirements in the time period provided; and
- the legal authority for the action.

MBA again urges state regulators to incorporate these considerations into this process. Moreover, as noted above, the notice issuing a final policy should discuss the comments and these factors and how they were addressed.

Adoption of a Rule or Policy of General Applicability

MBA is opposed to the use of the term “rule” in this section of the SRR Proposed Policy. Regulators, acting in a voluntary capacity to support the NMLS system required by Congress via the federal SAFE Act of 2008, establish system requirements for mortgage lenders. To call NMLS system requirements “rules” should be the subject of further discussion and legal review before the term is included in the final Proposed Policy. MBA

instead prefers the term used in the document “Policy of General Applicability” or “System Requirements.”

Additionally, in this new policy, MBA believes attention should be given to effective dates and implementation periods that allow a reasonable time before a requirement must be met. Ninety days should be established as a minimum time frame for any implementation. However, such a time frame will be far too short for certain changes that will necessitate modifications to policies and procedures, training and systems. Guidelines for time frames that are reasonable should be required of NMLS to allow lenders and their vendors to make what can be costly technology investments and/or system changes. They will also afford MBA members time to test and operationalize system changes before going live with new requirements. In establishing effective dates, a final policy should provide that NMLS will:

- assess the complexity of the new policy and its impact on lenders, their systems and operations;
- consult with institutions of all sizes and business types and vendors; and,
- assess other federal or state rulemakings that are underway and could compete for industry resources and industry’s ability to reasonably implement the new NMLS requirements.

Concluding Comments

Again, MBA greatly appreciates the establishment of the process outlined in the August 30th Proposal, especially its embrace of a 60-day comment period as the norm. This comment period will help facilitate greater industry engagement as well as more diverse and useful comments. MBA believes better industry input will assist state regulators in establishing more rational market oversight while maintaining and improving important consumer protections.

In this spirit, MBA has offered these comments in support of a process. If regulators choose not to adopt these suggestions, we respectfully ask to include a discussion of these items on the agenda of the next NMLS Ombudsman meeting in February 2017.

Thank you again for this opportunity to provide MBA’s views. We greatly appreciate your work. If you have any questions, or need more information, please feel free to contact William Kooper or Ken Markison on the MBA staff at wkooper@mba.org or kmarkison@mba.org.

Sincerely,



Pete Mills
Senior Vice President
Residential Policy and Member Engagement