MORTGAGE BANKERS ASSOCIATION

February 26, 2015

Ms. Stacey Valerio, Esq.
Staff Attorney
Connecticut Department of Banking
260 Constitution Plaza
Hartford, CT 06103-1800

Dear Ms. Valerio;

We appreciate the opportunity to speak with you at last week's meeting of the American Association of Mortgage Regulators (AARMR) Industry Advisory Council in San Diego, California during the Nationwide Mortgage Licensing System and Registry (NMLS) User Conference. As always, the Mortgage Bankers Association (MBA)[1] is grateful for the opportunity to meet with state regulators at these events and, in particular, your willingness to assist in your capacity as Chair of the State Regulatory Registry (SRR) Lawyers Committee on an issue of great importance to our industry.

As discussed, MBA is seeking clarity on behalf of its member companies on the treatment of privileged and confidential data reported to state regulators via the quarterly NMLS Mortgage Call Report (MCR). As a result of recent changes to the MCR, companies submitting data are now required to provide information on loan servicing. Specifically, the report now includes nationwide servicing information fields for company-level activity for all companies (Standard and Expanded MCR filers), and also includes additional state-specific servicing information fields for all Expanded filers.[2]

MBA members are concerned about whether or not they might lose the ability to continue to treat much of this information as confidential and privileged and protected from public release if it is all provided through the MCR to states in which they do not do business or where a state does not have the authority to require this information. Again, much of this information is not otherwise publically available and would be treated as confidential information.

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[1] The Mortgage Bankers Association (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, D.C., 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 Web site: www.mba.org.

[2] http://mortgage.nationwidelicensingsystem.org/news/ProposalsForComment/2014-2%20Response%20Summary.pdf

The federal SAFE Act provides:

> *Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 5108 of this title, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.*[3]

It is not clear to the industry how these provisions would apply in this circumstance. For example, the Act does not define what "mortgage industry oversight authority" means. If regulated entities provide data for these new data sets without clear protections, they may lose any ability to maintain the confidentiality of this data and withhold it from competitors in the future.

Notably, during the NMLS Ombudsman meeting at the User Conference, CSBS counsel indicated that a proposed piece of federal legislation would possibly resolve this matter. The bill was introduced by U.S. Senator Shelley Moore Capito (S.372, the *SAFE Act Confidentiality and Privilege Enhancement Act*). While we believe the bill would amend the SAFE Act to extend its privilege provisions to other financial services such as money transmitters, pawnbrokers, check cashers, and payday lenders, we do not believe it addresses this concern.

Finally, in our meeting you requested our input about states where we believe questions regarding privilege will be an issue. We have attached a November 21, 2014 letter sent to the NMLS Policy Committee and the Consumer Financial Protection Bureau from the Director of the Colorado Division of Real Estate in the state's Department of Regulatory Agencies. The letter notes the conflict between Colorado state law and the NMLS policy decision on the MCR stating, "…the proposed changes to the MCR require the submission of data that is beyond the purview of [Colorado's] Mortgage Loan Originator Practices Act." Additionally, Texas Department of Banking Commissioner Charles Cooper has asked us to keep him briefed on this topic, as the state of Texas also does not regulate servicers.

Given that the MCR's new data sets were announced at the end of November 2014, were then implemented on January 1, 2015 and Q1 data sets must be reported in mid-May of this year, we believe this matter should be given very high priority. Mortgage bankers need to know what is being done with this information, how their data is being protected, and

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[3] Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act of 2008, Title V, Pub. L. No. 110-289.

most importantly, how submission would impact their ability to maintain the information's confidentiality with respect to non-regulators. It is on this final point that we respectfully seek guidance.

Sincerely,

Pete Mills
Senior Vice President, Residential Policy and Member Engagement

Attachment
CC:

- Robert Niemi, NMLS Ombudsman and Deputy Superintendent for Consumer Finance, Ohio Division of Financial Institutions
- Robert Carnes, AARMR President and Deputy Commissioner for Non-Depository Financial Institutions, Georgia Department of Banking and Finance
- Bill Mathews, Executive Vice President, Conference of State Bank Supervisors & President, State Regulatory Registry, LLC
- Buz Gorman, Esq., General Counsel, Conference of State Bank Supervisors
- Mary Pfaff, Senior Director, Policy, Conference of State Bank Supervisors

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November 21, 2014

Dear Mr. Chow and Members of the NMLS Policy Committee:

On behalf of the Colorado Board of Mortgage Loan Originators (the "Board"), I am writing to express several concerns that the Board has with the NMLS, including the proposed changes to the Mortgage Call Report ("MCR"). To begin, neither the Board nor the Colorado Division of Real Estate, which is the agency that houses the Board, were notified of any proposed changes to the MCR. As the state regulatory agency responsible for licensing mortgage loan originators in Colorado, it is of growing concern that modifications are made to the NMLS, and now potentially the MCR, without any consultation with the state regulator about the potential impacts such changes will have on our operations or the financial burdens that may be created. To date, the Board has had to address requirements imposed by the NMLS that were in direct conflict with our rules and regulations as they relate to license requirements and continuing education. The NMLS currently misrepresents the continuing education requirements found in the individual's NMLS course completion and compliance record for Colorado and there has been a refusal on the part of the CSBS to correct the information.. We have also been required to regularly modify our systems to accommodate the frequent modifications that are made to the data feeds that we receive from the NMLS. It is distressing that policy decisions regarding a licensing database override state regulations.

If the proposed changes to the MCR are adopted, the Board is apprehensive about the industry's ability to comply with the enhanced reporting requirements. In order to comply with the first quarter reporting requirements, mortgage companies will need to be begin collecting the additional, required data on January 1, 2015. The mortgage industry is already actively working to address the systems requirements that will be necessary to comply with the RESPA-TILA Integrated Disclosure Rule. Adding to the modifications that they will need to make to their IT systems to include the MCR changes only serves to impede their ability to adhere to the RESPA-TILA Integrated Disclosure Rule. Furthermore, the proposed changes to the MCR require the submission of data that is beyond the purview of Mortgage Loan Originator Practice Act. Mortgage servicing is not a duty included within the scope of licensure as a mortgage loan originator in Colorado.

If the changes to the MCR occur as planned, we are concerned about the overall impact that it will have on Colorado's real estate market. Mortgage companies that fail to comply with the MCR requirements are prohibited from renewing their NMLS registrations. While the Board is not able to estimate the number of mortgage companies that will not be able to comply with the proposed changes to the MCR, we have heard concerns that the deadline to implement, along with the associated costs to modify their IT systems, would make it virtually impossible for our licensees to comply with the first quarter reporting deadline. If the MCR is going to be modified, the Board would respectfully request that the changes be orchestrated with the final Home Mortgage Disclosure Act, and that reporting requirements be restricted to those duties contained within the limits of regulation.

Sincerely,

Marcia Waters

Marcia Waters
Division Director