



September 1, 2015

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

Re: Request for Public Comments — Proposed Changes to Uniform NMLS Licensing Forms and Mortgage Call Report (July 21, 2015)

Dear Mr. Doyle:

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to comment on the changes proposed on July 21, 2015 (July proposal) to the uniform Nationwide Mortgage Licensing System and Registry (NMLS) Company, Branch, and Individual Licensing Forms (Forms) and the NMLS Mortgage Call Report (MCR).

MBA also appreciates the continued willingness of the State Regulatory Registry (SRR)—operating the NMLS on behalf of state regulators—and the Conference of State Bank Supervisors (CSBS)—the national organization representing these regulators—to jointly seek stakeholder input on the structure of these documents. Moreover, MBA would like to again thank CSBS and the SRR for granting the Association brief additional time to submit comments on the July proposal.

MBA hopes that its comments and recommendations will benefit the efforts of state regulators, helping them carry out their important responsibilities while avoiding undue regulatory burdens and costs on state-licensed mortgage companies and the consumers they serve.

## **I. Preliminary Comments**

MBA welcomes the effort of CSBS/SRR to promptly identify and update the tools utilized by state regulators to oversee compliance by mortgage companies licensed within their states. Nevertheless, MBA continues to have significant concerns with the time periods afforded for

---

<sup>1</sup> 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](http://www.mba.org).

comments on proposed changes. As the Association has highlighted on previous occasions—in its June 1, 2015 letter<sup>2</sup> and most recently at the August 4, 2015 NMLS Ombudsman meeting—MBA does not believe 30 days is sufficient time for stakeholders to provide considered, well-crafted and thoughtfully vetted responses. Moreover, as the chart below shows, a longer comment period generally results in a much greater number of comments and viewpoints.

<b><u>CSBS/SRR Proposal</u></b>	<b><u>Notice and Comment Timeframe</u></b>	<b><u>Comments Received (As Indicated by CSBS/SRR)</u></b>
<i>Proposal 2015-2</i> , Request for comment on the Uniform NMLS Licensing Forms and Mortgage Call Report	July 21 – August 20, 2015 (30 days)	10
<i>Proposal 2015-1</i> , Request for comment on the Uniform NMLS Licensing Forms and Mortgage Call Report.	May 1 – June 1, 2015 (30 days)	11
<i>Proposal 2014-2</i> , Request for comment on proposed changes to the Mortgage Call Report.	October 1 – 30, 2014 (30 days)	35
<i>Proposal 2013-3</i> , Request for comment on the proposed changes to the Uniform NMLS Licensing Forms and Mortgage Call Report.	October 11 – November 11, 2013 (30 days)	1
<i>Proposal 2013-2</i> , Request for comment on the Uniform NMLS Licensing Forms and Mortgage Call Report.	April 12 – June 11, 2013 (60 days)	34
<i>Proposal 2010-2</i> , Request for comment on the proposed NMLS Mortgage Call Report.	March 15 – May 14, 2010 (60 days)	88

Chart information courtesy of the NMLS Resource Center:

<http://mortgage.nationwidelicensingsystem.org/news/Pages/ProposalsforComment.aspx>.

In instances when CSBS/SRR granted stakeholders 60-day notice and comment periods for the Forms and MCR, the number of comments was much higher. Notably, only one comment was submitted for Proposal 2013-3—the first Forms/MCR proposal to transition from a 60-day to a 30-day timeframe.

The issues raised by CSBS/SRR are complex and significant and will impact a very large number of companies. The choices made will increase costs ultimately borne by consumers and maximum stakeholder input is imperative. For all of these reasons, MBA urges CSBS/SRR to establish a minimum comment period of 60 days, except in exigent circumstances. The Association also urges that CSBS/SRR consider publishing a policy on rulemakings, setting forth

<sup>2</sup> MBA Letter to CSBS/SRR re: Request for Public Comments — Uniform NMLS Licensing Forms and Mortgage Call Report (May 1, 2015).

timelines for stakeholder comment and incorporating robust needs and cost/benefit analysis for considered changes.

## **II. Uniform NMLS Licensing Forms**

MBA appreciates many of the positive changes proposed for the Forms, including providing company filers the ability to offer supplemental comments to regulators on the content of their filings within the Company (MU1) and Branch (MU3) Forms. Another positive change MBA wishes to highlight is an update to the Employment Section of the Individual Forms (MU4 or MU 2) to create a broader selection of categories to accommodate more accurate non-employment history reporting. However, there are several aspects of the proposal that are potentially problematic. These include:

### **a) Disclosure Question Updates (To Be Implemented Q2 2016)**

This aspect of the proposal would revise the Disclosure Questions on the Forms. However, MBA is concerned that some of these changes are ambiguous for the applicant or licensee, and potentially may result in inadvertent error and liability. MBA's specific comments follow:

#### **i. CSBS/SRR Proposal**

“(New to Financial Disclosure Section): (K) Has the entity or a control affiliate ever failed to file income tax returns (including information returns for pass through entities) by the due date (including extensions)?”

#### **MBA Comment**

The wording of proposed Company Financial Disclosure Question (K) creates uncertainty about what circumstances necessitate an answer in the affirmative. Is an answer in the affirmative necessary if the applicant or licensee failed to file by the due date but later filed by the date required under an extension? Or, is an answer in the affirmative needed only if there was failure to file by an extension's deadline?

Moreover, as drafted Question (K) appears to require applicants and licensees to gather information on tax filings for as long as they have paid taxes. This could prove highly burdensome for those who have been in business for many years or who have a sizeable or complex ownership structure.

Please note that MBA also has concerns with the similarly worded Individual Financial Disclosure Question (A)(4),<sup>3</sup> because it presents similar concerns about uncertainty and burden.

---

<sup>3</sup> (New to Financial Disclosure Section): (A)(4) Have you ever failed to file income tax returns by the due date (including extensions)?

MBA Recommendation

Questions (K) and (A)(4) should be clarified to address these comments and Question (K) should be limited so that it covers only the previous ten years—consistent with other Company Financial Disclosure Questions.

ii. CSBS/SRR Proposal

“(New Company Disclosure Section for Business Disclosure): (M) Has the entity or a control affiliate conducted financial services or financial services related business in a jurisdiction without a license/registration/exemption at a time when a license/registration/exemption was otherwise required?”

MBA Comment

While some state license applications may require similar questions, MBA believes Business Disclosure Question (M) is a question that cannot be answered in many instances by an applicant or licensee with certainty or conviction. The language being proposed requires a judgment by the applicant or licensee on whether certain activities raise a licensing or registration obligation under state statutory provisions—statutes that may be ambiguous or may leave a state regulator with a discretion that may or may not have been articulated in its guidance, but may have been regulated nevertheless. Examples of where this concern could come to fruition include the conducting of specific activities related to loan modifications, the acquisition and holding of mortgage servicing rights, or even the conducting of underwriting or loan processing activities.

MBA Recommendation

Question (M) raises serious questions and compliance concerns. Is it sufficient for the firm to review their financial services or financial services related business in conjunction with existing state statutory and/or regulatory language and have reasonably concluded that the activity in question does not warrant licensing, registration, or an exemption? And what if a state regulator determines that an activity required a license or registration under state statute, yet express statutory language did not exist on the matter and the regulator had never articulated guidance? There are many questions and scenarios that make providing an accurate response to Question (M) unduly complex. Considering the concerns raised by this question, MBA believes that proposed Question (M) should be deleted.

### **b) Attestation Language (To Be Implemented Q2 2016)**

MBA applauds CSBS/SRR for proposing to remove from the Forms the strikethrough language noted in the July proposal,<sup>4</sup> and also for proposing to replace this attestation language with a new attestation conditioned on the information being “true and correct to the best of my knowledge, information, and belief.” The new attestation language will allow for submission of the Forms by individuals—like compliance personnel—who are charged with compliance for a company though they may or may not be employees, and the conditioning language highlighted above importantly recognizes the business realities of organizations where attestations are made. Thus, MBA supports this change on both grounds.

However, there is another provision of the “Proposed Company Attestation Language” that is concerning. Specifically, the proposed requirement that the attester “have investigated them for accuracy” appears to require that the attester investigate each and every one of the responses attested to. Not only would it be an enormous burden to satisfy this requirement, given the level of detail in the submissions, but it is not clear it is possible in organizations for attestors to act as investigators. Respectfully, MBA urges that the “have investigated them for accuracy” provision be deleted altogether. Alternatively, if CSBS/SRR declines to remove this provision, it should define “investigate” and establish very clear standards to satisfy the requirement.

### **III. NMLS Mortgage Call Report**

While MBA appreciates many of the changes proposed concerning the MCR—including the implementation of a one-click print option for submitted MCRs (by period/quarter to assist in the analysis of historical data) and the incorporation of a broader upload option within “Section III – Loans Serviced” to accommodate companies reporting large amounts of servicing data—there are several components that the Association has identified as potentially problematic. These areas of concern include:

#### **a) Dynamic MCR (To Be Implemented in 2017)**

##### *CSBS/SRR Proposal*

“Resulting from the public comments received, agency feedback, and discussions amongst the MCR [Working Group] members, SRR is pursuing development of a dynamic MCR based on a company’s business activities and license authority. SRR has begun mapping out required fields for dynamic MCR implementation so that only appropriate data fields will be presented to company filers based on the actual entity. Once required fields dictated by business activities and license authority have been

---

<sup>4</sup> “I verify that I am the named person above and that I am authorized to attest to and submit this filing on behalf of the Applicant.”

identified, SRR will publish more specific changes to the MCR and request public comment. A dynamic MCR is expected to be incorporated in a 2017 system release.”

*MBA Response*

MBA respectfully disagrees with the CSBS/SRR decision to pursue development of a dynamic MCR based on a company’s business activities and license authority without further study. MBA believes these changes may disproportionately impact smaller, independent mortgage companies that cannot easily absorb new compliance costs. This point may prove especially concerning given that many of their larger competitors—depositories and depository-affiliated lenders—do not face the same reporting regime.

MBA suggests that a study of potential impacts on all lenders be conducted ahead of further development, to ensure that the benefits of these changes outweigh their burdens, particularly for smaller entities.

**b) Comprehensive MCR (To Be Implemented in 2017)**

*CSBS/SRR Proposal*

“SRR is working with industry participants, associations, and state agencies to determine what external state-specific reports can be removed due to current MCR content and through expansion of the [Residential Mortgage Loan Activity or] RMLA and the Financial Condition (FC) components. Expansion of the content within the RMLA and FC components will be implemented in conjunction with the dynamic MCR initiative in 2017. Specific and targeted changes will be published for another public comment period after SRR identifies appropriate modifications to facilitate further removal of external state-specific reports.”

*MBA Response*

MBA is and remains a steadfast advocate for uniformity and standardization among state regulators, to the greatest practical extent. By working to reduce needless deviations among states, companies operating in multiple states are better able to function and serve the needs of consumers at competitive costs.

Nevertheless, MBA believes that CSBS/SRR’s stated goal of including “all necessary information required by regulators” within the MCR is not wise. Some information required by regulators should not be required in a uniform report like the MCR. Broad, unlimited inclusiveness will result in an unduly, time consuming and unnecessarily burdensome MCR. Given these concerns, MBA urges CSBS/SRR to work with the state regulators to streamline the required reporting elements, just as they work to make reporting requirements as uniform as possible.

**c) Financial Condition (To Be Enhanced in 2017)**

CSBS/SRR Proposal

“In pursuit of developing a comprehensive report that meets state’s needs SRR plans on enhancing the FC component in 2017. The FC enhancement effort will include consultations with industry trade associations, federal and state agencies, and relevant industry stakeholders to ensure alignment between the state’s needs and the MBFRF, while keeping in mind the potential impact to industry players. Targeted changes have been identified will be published for another public comment period.”

MBA Response

MBA appreciates that the FC component of the MCR is based on the Mortgage Bankers Financial Reporting Form (MBFRF)—the MBFRF being the common platform used by Fannie Mae, Freddie Mac, and Ginnie Mae to evaluate financial information (i.e. credit worthiness and financial stability) reported by mortgage bankers with whom they do business. However, the Association respectfully affirms its belief that specific changes being considered for the FC component of the MCR should be done in *unison* with the aforementioned entities, not simply in *consultation* with them among other stakeholders.

If the FC component of the MCR diverges from the MBFRF—on the grounds that the MBFRF has not been regularly updated—the result will be added costs for state-licensed mortgage companies as a result of this avoidable divergence.

MBA reiterates the suggestion from its June 1 letter that CSBS/SRR and MBA meet with Fannie Mae, Freddie Mac, and Ginnie Mae to discuss this matter in detail. As an initial step, MBA requests that CSBS/SRR provide MBA and these entities with analysis specifying the perceived shortcomings of the MBFRF—in order to ensure a more informed and constructive discussion aimed at consistency. By working together, the parties could achieve the reporting objectives they determine are necessary while avoiding needless compliance costs for state-licensed mortgage companies and the consumers they serve.

**d) Definition of Application (To Be Implemented Q1 2016)**

CSBS/SRR Proposal

“State regulators have urged the [Consumer Financial Protection Bureau or] CFPB to adopt a definition of ‘application’ that is consistent with state requirements in order to alleviate additional burden[s] on industry. The revised definition seeks to clarify the data state regulators want reported as the definitions under federal law do not capture all of the loans necessary to state regulators. The purpose of the MCR is to provide state regulators, through the use of data, with a means to identify, measure, monitor and control risk at the licensee level and to monitor the industry as whole. The

byproduct of reverting to strict alignment with the proposed [*Home Mortgage Disclosure Act* or] HMDA definition of ‘application’ would be no reduction in out-of-system reporting to state agencies as well as a possible increase in these reports for other state agencies in order to capture the required application information. Absent additional guidance, the revised definition of ‘application’ is enforceable for MCR reporting in the first quarter of 2016.”

#### MBA Response

MBA would like to again voice its appreciation for the one-year delay in implementation of the revised MCR definition of application. Further, the Association appreciates that CSBS/SRR have together stated their willingness to review the final definition of application that will be established under the CFPB’s pending update to the federal HMDA rule, in order to determine whether or not this definition meets state supervisory needs. However, the July proposal indicates that the CSBS/SRR revised MCR definition “is enforceable for MCR reporting in the first quarter of 2016” absent additional guidance.

MBA strongly urges CSBS/SRR to consider that the real estate finance industry is currently contending with several separate definitions of application, including a new definition that will bring significant operational changes pursuant to the CFPB’s *Know Before You Owe or Truth in Lending Act – Real Estate Settlement Procedures Act Integrated Disclosures* (TRID) rule—slated for implementation on October 3, 2015.

Given that the industry will soon begin operating under the TRID application definition, and the CFPB’s HMDA application definition has yet to be finalized, MBA again strongly urges CSBS and the SRR to await the final HMDA rule’s release. A delay until that time will allow state regulators to assess the HMDA standard, and it may present an opportunity for HMDA-MCR conformity. Moreover, it may even present an opportunity to conform even more definitions to reduce undue confusion and costs.

#### **IV. Conclusion**

Thank you for the opportunity to comment on the Forms and MCR, and thank you again for granting additional time for MBA to comment. MBA looks forward to working with the state regulators, CSBS and the SRR to ensure that undue regulatory burdens are avoided, changes made are beneficial and necessary, and that the information sought from MBA’s state-licensed mortgage companies is consistent with other reporting requirements to the greatest extent feasible.

Please feel free to contact Ken Markison, Vice President and Regulatory Counsel, at [kmarkison@mba.org](mailto:kmarkison@mba.org), or William Kooper, Associate Vice President of State Government Affairs and Industry Relations, at [wkooper@mba.org](mailto:wkooper@mba.org), if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is fluid and cursive, with a large initial "P" and "M".

Pete Mills  
Senior Vice President  
Residential Policy & Member Engagement  
Mortgage Bankers Association