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MORTGAGE BANKERS ASSOCIATION

October 15, 2019

Ms. Anna Firestone
Ohio Department of Commerce
Division of Financial Institutions
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RE: 1301:8-7-30 Temporary Mortgage Loan Originator Authority

Dear Ms. Firestone

On behalf of the Ohio Mortgage Bankers Association¹ and the national Mortgage Bankers Association,² thank you for the opportunity to comment on the Department's proposed rules to implement Mortgage Loan Originator (MLO) Temporary Authority.

Our associations appreciate the hard work of all state mortgage industry regulators to make changes to the Nationwide Multistate Licensing System (NMLS) over the last two years to prepare for the implementation of MLO Temporary Authority on November 24, 2019 as required by Section 106 (*Eliminating Barriers to Jobs for Loan Originators*) of the *Economic Growth,*

¹ The Ohio Mortgage Bankers Association, founded in 1961, is a statewide organization devoted exclusively to the field of residential and commercial real estate finance. OMBA's membership comprises of mortgage originators and servicers, as well as investors, and a wide variety of mortgage industry-related firms. OMBA is dedicated to the maintenance of a strong housing, residential and commercial, real estate finance system. This involves support for a strong economy; a public-private partnership for the production and maintenance of single and multi-family home ownership opportunities; a strong secondary mortgage credit delivery system; equitable tax laws; suitable shelter for low income families and the disadvantaged; housing opportunities for the nation's veterans; appropriate environmental measures; and fair and equitable bankruptcy laws.

² 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, DC, 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 over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field.

*Regulatory Relief, and Consumer Protection Act (EGRRCPA)*³ signed by the President on May 4, 2018. As you know, the NMLS is the sole instrument by which all parties will rely: eligible loan originators will access opportunities for Temporary Authority using the NMLS; companies will monitor, manage and oversee all of their MLOs using Temporary Authority in any state through the NMLS; and all state regulators will supervise existing and expanded licensing activity with NMLS.

Our associations have been active in preparing for Temporary Authority's implementation. We have been briefing key personnel at our member companies to ensure compliance with the new NMLS procedures, including multiple presentations by staff of the Conference of State Bank Supervisors (CSBS) and industry compliance counsel. In providing this compliance assistance, we have worked with state regulators and CSBS to ensure that there are no conflicts between the new federal law and state laws and rules that would create legal uncertainty for the industry.

As our groups share an interest in a successful launch of Temporary Authority, we wish to make the following points in response to the Department's proposed rule:

- Temporary Authority is now federal law and state regulators must implement it in a timely manner, consistent with the terms of the statute and any official guidance provided by the Consumer Financial Protection Bureau (CFPB);
- Federal law established the NMLS as the vehicle state regulators must use to manage mortgage industry licensing. Appropriately, it is being redesigned to facilitate the roll out of Temporary Authority by states. Any final rules promulgated by the Department should be consistent with all NMLS system procedures and processes, especially those being prepared by state regulators for the launch of Temporary Authority.
- Similarly, state regulators work collaboratively to manage the NMLS and routinely provide written policy to industry. To ensure consistency and legal certainty, these documents are approved by the NMLS Policy Committee. While NMLS policy documents are developed outside the normal statutory or rulemaking process of any state, they reflect national standards. To ensure uniform compliance with these standards, it is vital that state law and rules do not conflict with any NMLS policy statement.
- Do not confuse Transitional Licensing with Temporary Authority. Ohio led the nation in enacting the first law to permit MLO transitional licensing. The Department's final rules should not conflate that state law with the federal Temporary Authority law.

States Must Implement Temporary Authority without Delay and in Compliance with Federal Law

As you know, *the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)* established the NMLS as the system for registration for all residential MLOs regardless of employer. The law required licensing of MLOs employed by state-regulated companies by each state in which they wish to originate. The NMLS was also chosen as the vehicle for implementing each states' MLO licensing regimes. Lastly, the SAFE Act required each state to enact legislation to implement the new federal licensing requirements. Most states utilized the model legislation developed by the CSBS, which through the State Regulatory Registry, LLC (SRR), owns and operates the NMLS. In 2010, Congress passed and the President signed, *the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)*, which transferred rule-making authority for the SAFE Act from the Department of Housing and Urban Development to CFPB.

³ <https://www.congress.gov/bill/115th-congress/senate-bill/2155>

Congress has now amended the federal SAFE Act to establish MLO Temporary Authority to provide eligible MLO's new employment opportunities nationwide. It is important to point out, however, that Congress did not direct states to amend their SAFE Act enabling legislation nor did CFPB require the states to promulgate any new rules in order for Temporary Authority to take effect. The ability for eligible MLOs to access Temporary Authority does not require states to pass new laws or enact new regulations. This point was made explicitly by the federal Consumer Financial Protection Bureau on September 25, 2019. In issuing guidance on Temporary Authority implementation in the form of Frequently Asked Questions (FAQs)⁴ the following was stated:

"Where can loan originators exercise temporary authority?"

*Beginning on November 24, 2019, a loan originator that satisfies the Loan Originator with Temporary Authority eligibility criteria may act as a loan originator in a state where the loan originator has submitted an application for a state loan originator license, regardless of whether the state has amended its SAFE Act implementing law to reflect the EGRRCPA amendments."*⁵ [Emphasis added]

Thus, the CFPB has made clear that amendments to states' SAFE Act implementing laws are not necessary. Our organizations wish to point out that the issuing of proposed rules by the state so close to the implementation date of Temporary Authority should not in any way delay the implementation of Temporary Authority as clearly stated in federal law. Additionally, when the Department issues final rules, it should do so in a manner that is consistent with federal law.

Final Rules Should Not Conflict with Current NMLS Procedures nor those State Regulators are Preparing to Implement for Temporary Authority

As noted, the NMLS was designated by Congress to manage the mechanics of the license application and renewal process. This function of NMLS is beneficial to all parties and provides efficiency and market certainty to companies, MLOs and consumers. As noted on the NMLS Website:

*The goal of NMLS is to employ the benefits of local, state-based financial services regulation on a nationwide platform that provides for improved coordination and information sharing among regulators, increased efficiencies for industry, and enhanced consumer protection.*⁶

By its terms, the Department's proposal does not appear to conflict with the normal operating procedures of the NMLS. We commend the Department for this important alignment. Given the number of lenders and MLOs that rely on this system, inconsistencies have the potential to significantly disrupt the mortgage market. This concern is heightened given that the proposed rule's effective date lands in the middle of the annual state licensing renewal season. This is the busiest time of year for lenders and their MLOs.

⁴ [Public Law No: 115-174: https://www.consumerfinance.gov/policy-compliance/guidance/secure-fair-enforcement-for-mortgage-licensing-act/secure-and-fair-enforcement-mortgage-licensing-act-faqs/](https://www.consumerfinance.gov/policy-compliance/guidance/secure-fair-enforcement-for-mortgage-licensing-act/secure-and-fair-enforcement-mortgage-licensing-act-faqs/)

⁵ <https://www.consumerfinance.gov/policy-compliance/guidance/secure-fair-enforcement-for-mortgage-licensing-act/secure-and-fair-enforcement-mortgage-licensing-act-faqs/>

⁶ <https://nationwidelicencingsystem.org/about/Pages/default.aspx>

For example, the new system incorporates timing requirements for regulators to review the Federal Criminal History Record Information (CHRI) of MLOs who have applied for a state license under the Temporary Authority. CSBS has briefed industry that regulators have agreed to render a decision on whether an MLO qualifies for Temporary Authority within two business days of receiving a CHRI report from the Federal Bureau of Investigation (FBI). If there is an item in the CHRI report that requires further clarification from the MLO, the regulators can delay a decision for another seven days while they wait for the MLO to respond to a request for more information. If an MLO responds to the request and the regulator does not act on that information, the NMLS will change the license status of the MLO to one giving them Temporary Authority.

These NMLS processes, to which all regulators have agreed through their collaborative management of the NMLS, are vital to ensure the smooth implementation by states of Temporary Authority. Process uniformity will also help facilitate industry's efforts to develop the necessary oversight mechanisms to comply with all requirements. The Department's final rules should avoid any conflicts with these and other new NMLS procedures under development.

Final Rules Should Not Conflict with NMLS Policy Statements

CSBS's SRR is also a policy making body and the real estate finance industry benefits from the consistency the NMLS offers through the collaborative work of state regulators.

SRR is governed by a seven-voting member Board of Managers comprised of state banking commissioners and/or state mortgage regulators, including a representative nominated by AARMR [American Association of Residential Mortgage Regulators]. The SRR Board of Managers is responsible for all system development, operations, and policy matters concerning NMLS....NMLS policies are made with the input of all NMLS participating state agencies through a series of working groups, committees and boards that seeks to ensure thoughtful considerations of all viewpoints. To assist it in making decisions and handling operational matters, the SRR Board of Managers created the NMLS Policy Committee (formerly the Mortgage Licensing Policy Committee), which is comprised of 11 state financial services regulators. The NMLS Policy Committee provides SRR a mechanism to make policy decisions for NMLS with regards to its impact on meeting state licensing regulations. Decisions are made after considering input from NMLS Participating State Agencies, licensees and industry.⁷

When the NMLS Policy Committee issues policy statements it is acting as a regulatory agency as these statements immediately become nationwide industry requirements, supervised and enforced by the states. The NMLS Policy Committee has issued two public policy statements since the enactment of EGRRCPA. The key elements of each follow.

- **License/Registration Period Eligibility and Break in Service**
To be eligible for temporary authority to operate, an MLO must be either continuously registered throughout the one-year period or continuously licensed throughout the 30-day period preceding the date that the information required under 1505(a) is submitted. A break in service for an MLO shall not exceed fourteen calendar days. The break in

⁷ <https://nationwidelicencingsystem.org/about/Pages/default.aspx>

service is calculated from the beginning of either the MLO's federal deregistration or state licensure termination, until the employer submits a sponsorship request.⁸

- **Sponsorship and Worker Classification**
S. 2155, §§ 106(b)(1) and (c)(1)(B), state that applicants must be employed by a state-licensed mortgage company if they wish to take advantage of TA. Those applicants moving interstate must be employed by a mortgage company in the state in which they are applying.

To meet the legal requirement of an employee, SRR recommends using Worker Classification (application element number 5 above [Worker Classification (W2 employee or Non-W2 employee)]). On the Company Relationship Screen in NMLS, employers must select the appropriate classification for an employee (W2 employee or Non-W2 Employee) and edit the worker classification begin date. W2 employment is required to be eligible for TA.

SRR recommends using a request for sponsorship from the applicant's employer to validate that an applicant is an employee of the required state-licensed mortgage company (application element number 6 above [a request for sponsorship from the MLO's employer]). Final action by the state on the request for sponsorship by an employer is not required for an applicant to be eligible for TA.⁹

These policy statements help ensure consistent implementation across the states by clarifying ambiguous areas of federal law. In this way, they are essential to guarantee the smooth implementation of Temporary Authority. Any final rules by the Department should ensure there are no conflicts with these or other NMLS Policy Statements.

Additionally, the NMLS has offered guidance in the form of Frequently Asked Questions (FAQs) that have been enormously useful to mortgage lenders who have spent months redesigning their oversight of licensing procedures in anticipation of the increased activity at their firms from Temporary Authority. These FAQs have been updated several times, with the most recent version released by NMLS on September 16, 2019. Given industry's reliance on this guidance, the Department should ensure that any final rules it issues do not conflict with the helpful guidance offered in the NMLS FAQs.

Final Rules Should Not Conflate Ohio's Transitional Licensing Law with the New Federal Temporary Authority Law

Ohio was a pioneer with its first-state-in-the-nation response to the inequities created by the federal SAFE Act, which required MLOs employed by state-regulated companies to be licensed in each state, while MLOs at federally-regulated institutions were only required to register. The licensing process is time consuming and expensive. The lack of any provisions for temporary authority almost always caused an interruption in income for loan originators changing jobs and/or moving to a new state.

⁸ <https://nationwidelicencingsystem.org/slr/common/policy/NMLS%20Document%20Library/TA%20-%20License%20Registration%20Period%20Eligibility%20and%20Break%20in%20Service%20Policy.pdf>

⁹ <https://nationwidelicencingsystem.org/slr/common/policy/NMLS%20Document%20Library/NMLS%20Policy%20-%20Sponsorship%20and%20Employment%20Verification.pdf>

During 2012, the Ohio's General Assembly passed and the Governor signed SB-333, which established a 120-day transitional licensing period for an MLO licensed in any state wishing to obtain an Ohio license.¹⁰ Several states followed Ohio's example, and that emerging legal consensus among states was essential in obtaining broad bipartisan support for the eventual federal Temporary Authority law. While the industry is grateful for Ohio's leadership, it also suggests that any final rule by the Department not attempt to incorporate the provisions of state "transitional licensing" law into its rules to implement the federal "temporary authority" requirement, as the concepts are too different to be reconciled.

Thank you for the opportunity to provide comments on the Department's proposed rule. If you have questions, please feel free to contact either Marianne Collins mcollins@ohiomba.org or Pete Mills (pmills@mba.org).



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¹⁰ http://archives.legislature.state.oh.us/bills.cfm?ID=129_SB_333