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MORTGAGE BANKERS ASSOCIATION

July 24, 2020

Mr. John Ryan  
President and Chief Executive Officer  
Conference of State Bank Supervisors  
1129 20<sup>th</sup> Street, 9<sup>th</sup> Floor  
Washington, DC 20036

**Re: Remote Work Flexibility for State Licensees**

Dear John,

I am writing to request that our organizations work together to address an issue that has concerned us both since the onset of the coronavirus pandemic. As you know, with the initiation of shelter-in-place orders by governors and mayors, the mortgage banking industry has had to modify its operations to facilitate remote work in order to deliver critically important financial services to the public. This has been particularly challenging in states where staff of lenders and servicers are required to work from a licensed location or branch. We appreciate that state financial service regulators have provided written guidance permitting those professionals to work-from-home. MBA<sup>1</sup> members are grateful for the leadership of the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) in encouraging and facilitating this flexibility. As a result, our industry has been successful in serving consumers and especially those who have needed forbearance. Indeed, MBA survey data show that more than 4.3 million American families have received mortgage forbearance in the first three months of operationalizing entirely new federal programs along with a variety of additional state requirements.

Because of the open-ended nature of the nation's current public health challenges, MBA would like to establish a collaborative effort with CSBS to address the real estate finance industry's near-term issues related to these work-from-home orders, and to build a longer-term framework for remote work capabilities to address future health emergencies, natural disasters, and changing attitudes toward telework in today's economy.

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<sup>1</sup> 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. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

### Near-Term Challenge and Recommendation

There are many reasons that the current work-from-home permissions should be continued, but none more compelling than the surge in recent weeks of new COVID-19 cases reported daily.

Our reality is that the re-opening of the economy is happening unevenly among the states and sometimes among counties/regions within a state. These uncoordinated public policy decisions are creating confusion and potentially significant regulatory risk for state-regulated independent mortgage bankers (IMBs) that employ licensed mortgage loan originators (MLOs) and servicing personnel. Mortgage companies licensed in several states or nationally must face the complicated challenge of balancing their team's needs against each state's directives. This has made it particularly challenging when individual MLOs are licensed in states where they do not physically reside.

Back-to-work considerations for state-licensed IMBs must not only address the broad public health considerations that go into decisions to extend or end these licensing flexibilities, they must also address factors unique to their workforce, their facilities, and individual employees. For example, an MLO's company/office may not be ready to open up to staff, because workspace and office architecture still needs to be modified to help reduce the risk of transmission. Or, company facilities may only accommodate return-to-work in phases and/or require staggered in-office workdays to adhere to responsible COVID-prevention density requirements. Even if lenders' or servicers' facilities are ready to reopen, companies may face the need to take precautions if individual employees become ill, thus requiring an entire site to be closed and deep cleaned and requiring all other employees who came into contact with their infected colleague to be subject to an extended quarantine.

Finally, personal or family health issues may govern an individual MLO's needs and compel them to remain away from others in a work environment or limit their ability to commute to work if using public transportation. Other legitimate pandemic related needs could relate to individual licensees needing to look after children because of the closure of schools, daycare, or summer camps, or the need to stay quarantined to protect high-risk family members.

All decisions about reopening facilities and allowing individuals to return are occurring against the backdrop of new legal and regulatory requirements as well as potential new litigation risk. These concerns stem from existing and any new federal, state, and even local requirements to provide safe workplaces and mitigate any potential spread of the virus to employees or customers. For example, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) General Duties clause (29 USC 654) requires each employer to furnish to each of their employees a place of employment which is "free from recognized hazards that are causing or are likely to cause death or serious physical harm." There are also compliance needs to consider with respect to the Americans with Disabilities Act. For example, an accommodation may be necessary for an employee who is unable to wear a mask for a protracted period because of a breathing condition. Additionally, new policies are also needed to implement the Families First Coronavirus Response Act enacted earlier this year.

Addressing these issues requires more time. Employers need to review all requirements and to develop and implement new procedures to protect their employees and their customers. They also need to navigate the increased potential for employee-related litigation and claims. As companies develop policies and procedures to open their offices, they will need to test and implement strategies for basic hygiene, social distancing, identification and isolation of sick employees, workplace controls and flexibilities, and employee training. Until they can confidently complete all these tasks, OSHA suggests they should “consider extending special accommodations to workers with household members at higher risk of severe illness.” Moreover, if an employer implements health screenings, the records of those screenings are, according to OSHA, to be considered confidential and are subject to confidentiality and record retention laws and rules.<sup>2</sup>

Thus, to be able to continue to meet urgent consumer needs during this period of economic upheaval while protecting employees and the public, lenders and servicers need operational consistency from state regulators to navigate these evolving personnel needs as well as labor laws and regulations. Given the sharp resurgence of the virus in recent weeks, and the lack of a vaccine or treatment in the near term, MBA believes state regulators should collaborate to issue aligned guidance extending the current work-from-home permissions.

Specifically, MBA suggests that CSBS urge its state regulator members to issue guidance, which extends current permissions (by order, rule, or by legislation, if necessary) through the end of 2021. Additionally, MBA recommends state policymakers establish a simple uniform method for companies to request additional extensions of an MLO’s work-from-home permission. State regulators should develop this process through NMLS to allow these companies to specify which MLOs and branches are affected, the address from where they will be working, and the approximate duration. The process should also allow for companywide or branch-level requests with an ability to easily renew/extend the permission as public health considerations may dictate. The process should also incorporate the requirements that many states have adopted as part of their current remote work permissions for MLOs including, for example:

- Licensable activity is conducted from the home location of an individual working on behalf of a state-licensed company.
- The MLO is working from home due to a reason relating to the COVID-19 outbreak.
- The MLO maintains all necessary licenses under state law to conduct licensable activity.
- None of the licensable activities will be conducted in person with members of the public from the home location.
- The company/employer exercises reasonable supervision of the licensable activity being performed at the remote office and ensures that appropriate safeguards and controls are established concerning consumer information and data security.
- The MLO and their employer meet specific data security provisions:
  - The MLO must be able to access the company’s secure origination system (including a cloud-based system) directly from any out-of-office device the MLO

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<sup>2</sup> <https://www.osha.gov/Publications/OSHA4045.pdf>

- uses (e.g. laptop, phone, desktop computer, tablet, etc.) using a virtual private network (VPN) or similar system that requires passwords or other forms of authentication to access;
- All security updates, patches, or other alterations to device security must be maintained; and
  - The MLO must not keep any physical business records at any location other than the licensed main office.

Attached is a supplemental document that can be shared with state regulators, which lists considerations that should be taken into account when determining if an MLO should be allowed to work-from-home.

An extension through 2021 will also give regulators more time to consider and compare their views and data on the supervisory experience of the industry during the pandemic. This is an opportunity to measure compliance and loan quality. Regulators could also review how their examination of lenders and servicers has changed in recent months and they could also evaluate whether or not complaints have increased relative to significantly larger loan volumes this year. MBA would like to work with CSBS staff and state regulators to move as expeditiously as possible to harmonize any independent efforts and establish this uniform approach.

#### Long Term Challenge and Opportunity

MLOs and state-licensed companies in this health crisis have proven they can operate in a new paradigm where they can remotely serve consumers effectively while respecting all necessary consumer protection rules. Indeed, the industry's service to consumers impacted by the pandemic and needing forbearance is a remarkable success story. MBA believes this moment presents an opportunity to learn from current exigencies and facilitate new and more efficient ways for companies to operate and for regulators to conduct oversight.

In recent years, the financial services industry has been providing consumers with new technological resources to enhance the customer experience and streamline processes. The pandemic has expedited the adoption of these digital technology solutions in ways that could make the current model for branch licensing outdated and perhaps even anachronistic. Having made significant financial investments in recent months to support remote work, most companies now have the resources, policies, and procedures to interact with consumers and manage compliance remotely.

We recognize and appreciate the ongoing efforts of CSBS and state regulators to adapt to these changes as well. MBA would welcome the opportunity to work with CSBS in a collaborative fashion to move away from a company and individual licensing regime that is location-based. We believe the last four months have provided valuable lessons learned (for both the industry and the regulators) that warrant a joint effort to better understand the risks and benefits of developing a new approach to licensing in a digital world. Issues to be discussed could include (but not be limited to):

- Oversight expectations and standards when licensable activity is conducted from the home location of an individual working on behalf of a state-licensed company;

- Appropriate restrictions on conducting in-person activities from remote work/home locations;
- Establishing minimum standards for data/system security, and protection of consumer privacy; and
- Record retention and storage requirements and regulator access to such records.

Given the industry's record in recent months in providing remote delivery of consumer service, it is appropriate to move to a regulatory structure that embraces that dynamic on a permanent basis once appropriate safeguards are established and implemented.

MBA also suggests that now is the time to reconsider the state license renewal process. Requiring all MLOs to renew their licenses within the same narrow time window each year has proven problematic for regulators and industry alike. MBA recommends allowing states to expand the renewal time window to 120 days, rather than anchor all parties to the compressed two-month period that currently falls during the already challenging holiday season. This change would allow both licensed entities and regulators a greater window to complete, submit and review all renewal information and materials. In addition to reducing demands on all parties, it may also help state agencies budget more effectively and consistently by allowing the influx of licensing revenue from renewal fees to come in earlier and be spread across a more extended period than just two months of the year.

We appreciate your consideration of ways to engage regulators and industry collaboratively on this effort, and look forward to discussing this further with our respective leaderships.

Sincerely,



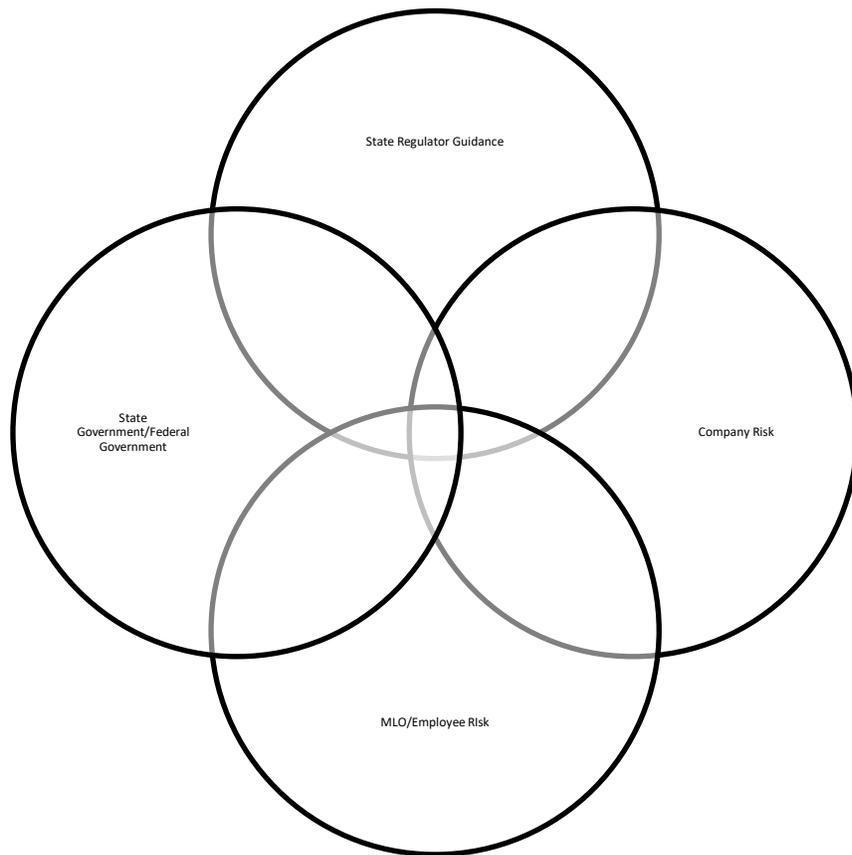
Robert D. Broeksmit, CMB  
President and Chief Executive Officer  
Mortgage Bankers Association

Attachment

CC: Chuck Cross  
Tim Doyle  
Mary Pfaff  
Pete Mills  
William Kooper  
Kobie Pruitt

### Considerations for Permitting Work-from-Home during the COVID-19 Pandemic

When considering if an MLO should be required to work from their licensed branch location, there are several factors that must be evaluated and conditions that must be met. If one of the following four (4) are not met, then the ability for an MLO to return to their licensed branch location is not feasible based on the risks. There must be a balanced, thoughtful approach when determining when an MLO must be forced to return to their licensed location since doing so not only affects the regulator risk, but also personal, corporate and community risks.



### State Executive Order Guidance for State Businesses

- Should a state not have the requisite guidance for businesses to resume operations in order to interact with the public in a manner that adequately protects the health and safety of the state's constituents, then an MLO should be able to work-from-home for an undetermined period of time until such guidance is provided and/or extended. For example, if the state does not require social distancing, but the company wants to require such and therefore does not have adequate office space to do so.

### **State Mortgage Regulator(s) Guidance for MLOs and Branches**

- Should a state not have the requisite guidance needed for a branch to open safely based on the company's risk profile, then a company should be provided the opportunity to develop its own strategic plan to protect employees and determine when it is safe to continue on-site activities. The company would be required to submit a company risk profile and timeline for returning their employees back to licensed locations.
- If state regulator guidance for a licensed location conflicts with any other states in which the company operates, the state must allow a company to be in compliance with the latest date in which branch compliance is required by that company. For example, if a branch is licensed to operate in multiple states, the latest of the dates would be required to be met.

### **Legal Liability and Risks to the Company**

- Companies should be able to assess the potential legal liability to their company and determine the proper course of action for allowing MLOs to work on-site. If a company determines it cannot ensure the safety of employees, then MLOs and other employees must be provided the opportunity to work-from-home.
- Companies must be provided the time needed to create a working environment conducive to the social distancing guidelines of the federal Center for Disease Control (CDC) and state health services.

### **Considerations for Personal Risk to MLO**

- An employee should be given deference to decide to work-from-home should they live with or care for family members that have a higher risk for respiratory illness or are more susceptible to COVID-19 related illness (i.e. elderly).
- If an employee is unable to wear a mask for an extended period of time because of a breathing condition, accommodations need to be made to comply with the Americans with Disabilities Act (ADA).