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MORTGAGE BANKERS ASSOCIATION

January 19, 2024

Mr. Jim Payne  
NMLS Ombudsman  
Director of Examinations and Assistant Deputy Commissioner  
Consumer and Mortgage Lending Division  
Kansas Office of the State Bank Commissioner

Re: February NMLS Ombudsman Meeting – MCR Issues and Data Privilege

Dear Director Payne,

As always, the Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity offered by the NMLS Ombudsman for the real estate finance industry to engage in discussions on policy issues with the nation's state mortgage regulators. We extend our thanks to you and those agency representatives who make themselves available during these meetings as well as staff.

During the February 15, 2024, Ombudsman meeting, MBA would like to raise three concerns regarding the NMLS Mortgage Call Report (MCR). Specifically, staff would like to have a conversation with respect to: the need for greater adoption by regulators of the NMLS State Specific Supplemental Form; the importance of some form of grace period by state regulators applicable to NMLS MCR Q1 2024 filings; and the public distribution of privileged MBA member company information collected by regulators for the MCR.

### **NMLS State Specific Supplemental Form**

The proposal of the Mortgage Call Report Version 6 (MCRV6) included a State Specific Supplemental Form (SSSF) aimed at consolidating external reporting for licensees. MBA applauds NMLS' approach to consolidate and make consistent filing to ease the reporting burdens for multi-state licensees.

At the announcement of the MCRV6 roll out in June 2023, it was unclear that states had not yet decided to adopt the SSSF. And, as recently as the mid-December NMLS "Office Hours", i.e., just before the start of V6 data collection was to begin, the industry was informed that number of

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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 300,000 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 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 more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

adopting states was undetermined. As of this writing, only eight licenses in three states have adopted the SSSF. The hope for the form is that it will serve as a source of great regulatory relief to MBA members, and it was presented as a benefit to MCR filers for all the hard work of MCRV6 implementation. This level of SSSF adoption is a disappointment, and MBA would like to hear what the impediments to embracing it are from state regulators. Anecdotally, MBA has been informed that the chief reason has been the burdensome requirements of NMLS licensing renewal season. Respectfully however, the burdens of licensing renewal season are also shared by industry who this year had the additional simultaneous challenge of performing an entire overhaul of their MCR reporting software in a very compressed timeline.

### **State Regulator Grace Periods for Q1 2024 MCR Reports**

Since the MCRV6 implementation timeline was announced last summer, MBA and its members have raised a wide array of concerns with the Conference of State Bank Supervisors (CSBS), the American Association of Residential Mortgage Regulators (AARMR), and with individual regulators regarding the rapid MCRV6 timeline. In response, both CSBS and AARMR have issued well-received statements urging their state regulator members to offer their licensees some form of grace period related to their Q1 2024 MCR data submissions. AARMR went further and said it “encourages member agencies to consider allowing licensees who have made good faith efforts to submit accurate Q1 2024 reports the opportunity to amend their reports, without penalty, if errors are subsequently discovered, to the extent that an agency has such discretion.”<sup>2</sup>

As of this writing, just about half – only 27 – state mortgage regulators are listed on [www.NMLS.org](http://www.NMLS.org) as providing a range of grace periods (30 days to 90 days). It is a concern given these powerful organizational endorsements that so many individual regulators have not responded, especially considering that the technical specifications, or Extensible Markup Language (XML), to file this new version was not provided to MCR filers or vendors until October 19, 2023. MBA’s concerns are amplified given that in both the CSBS Office Hours and testing environments member companies are continuing to report ongoing issues. And, at the time of this writing the issues with acceptance of both the V6 and V5 XML file submissions have been among the reasons the testing environment was extended. It is in this context that MBA members have expressed concerns about their ability to submit error-free Q1 2024 MCR reports and the potential consequences for needing to refile or correct information despite months of good faith efforts.

### **MCR Data Privilege and Protection of Member Company Information**

Recently, MBA members reported their concerns about the public availability of company-specific proprietary financial information accessed from NMLS. It appears that some state regulators have been providing complete MCR data to individuals based on state freedom of information act (FOIA) requests. On at least two specific occasions, the privileged material was provided to researchers for projects on the nonbank mortgage sector. Based on a review of those papers, there appear to be no requirements imposed on the researchers to anonymize or

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<sup>2</sup> <https://www.aarmr.org/about/news/aarmr-congratulates-recipient-of-2023-examiner-in-charge-eic-of-the-year-award-2/>

aggregate the data in their papers to protect confidential information. See in particular the paper published by the Syracuse University Whitman School of Management, *Lending in the Shadows: Shadow Bank Financial Fragility and Mortgage Credit*.<sup>3</sup>

We surmise that the state FOIA laws that permit such disclosure of licensee information predate the development of the MCR and the state agencies' evolving role as prudential regulators of independent mortgage bankers. Now that the NMLS collects detailed, confidential, and proprietary financial information on IMB licensees to conduct this safety and soundness supervision, MBA strongly believes that it is time for a comprehensive re-examination of the protections accorded such information – both in the NMLS terms of use for accessing MCR data and in the individual state laws governing this information. Over the past decade, MBA has worked collaboratively with CSBS as the state system has evolved from a licensing function to a supervisory function that covers capital, liquidity, and other sensitive financial information. MBA has also supported efforts to improve uniformity and consistency in industry data and better information sharing between state and federal agencies. This is an issue that must be addressed for that work to move forward in that same collaborative spirit. Thank you again for the opportunity. We look forward to the discussion.



William Kooper  
Vice President  
State Government Affairs and Industry Relations

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<sup>3</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4238065](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4238065)