MORTGAGE BANKERS ASSOCIATION

June 29, 2021

Bill McBride
Executive Director
National Governors Association
444 North Capitol Street NW, Suite 267
Washington, DC 20001

John W. Ryan
President & Chief Executive Officer
Conference of State Bank Supervisors
1129 20th Street NW, 9th Floor
Washington, DC 20036

Re: Remote Work Flexibilities

Dear Mr. McBride and Mr. Ryan,

As our nation emerges from the COVID-19 pandemic, I write on behalf of the Mortgage Bankers Association (MBA)[1] to ask for your organizations' assistance to address the challenges our member companies face as they attempt to reopen their offices safely to employees and consumers. Specifically, MBA asks that your organizations work together to extend existing emergency workplace flexibilities for licensed mortgage loan originators and others engaged in licensed activity (collectively, "licensed MLOs") until the end of the year.

MLOs who work for state-licensed mortgage companies are required by federal and state law to be licensed. In addition, some states require others, such as mortgage servicing staff, to be licensed. Many states further require employees engaged in licensed activity to work from a licensed location, such as a licensed branch office. Much has been done to help licensed MLOs continue to work and serve consumers during the last 16 months without jeopardizing their health and safety. However, as different states reopen with different requirements, state-licensed mortgage companies are presented with profound and vexing issues.

In early Spring 2020, state mortgage industry regulators responded to state and local shelter-in-place mandates by issuing written guidance for employers to allow licensed

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 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 over 1,700 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.

MLOs to work from other than a licensed location. Each state also established very specific consumer and data protection requirements for remote work that must be maintained. Because governors had issued executive orders or emergency declarations, many state regulators were able to issue guidance quickly (via bulletins or “no action” letters) confirming that their agencies would not enforce the work location requirements. Operating under state regulator guidance and corporate risk management protocols, the remote work experience has been positive and has not to our knowledge caused any lapses in data or consumer protection.

These guidance documents and “no action” letters allowed the real estate finance industry to serve consumers throughout the pandemic without exposing employees or the public to health risks. Most importantly, in states that require licensing of mortgage servicing staff who work with borrowers on forbearance and financial hardships, these work flexibilities were essential at a critical time. Indeed, in the first two months of the crisis, the real estate finance industry was able to provide nearly 4.5 million families with COVID-related forbearance.

As vaccination rates increase, governors have begun to rescind their emergency measures that protected the public during the pandemic. These policy actions, in turn, have led mortgage industry regulators in several states to announce sunset dates for their workplace flexibility orders, including some as early as June 30th. Return-to-work decisions by employers, however, require a balancing of legal, medical, religious, and workplace safety concerns that will limit the ability of mortgage companies to simply “order” employees back to licensed locations. In short, the industry needs more time to address remaining policy and litigation risk issues.

While it is true that there is much less peril today from the coronavirus than there was just over a year ago, health and safety concerns remain that necessitate a further extension of workplace flexibility under state licensing requirements:

- As of this writing, the nation’s full vaccination rate is still below 50 percent, and no authoritative health policy source in the country is predicting the United States will achieve “herd immunity” by the end of June. Moreover, vaccines are still being tested for their use on children younger than 12.[2] Thus, licensed MLOs with health or religious concerns about vaccination, or with at-risk children at home, will face a difficult choice without a delay in state policies that force staff back into offices.

- The Centers for Disease Control has confirmed that there are “variants of concern” in the United States. These are variants of COVID-19 “for which there is evidence of an increase in transmissibility, more severe disease (e.g., increased hospitalizations or deaths), and other significantly elevated health risks. [3] Data about the long-term

[2] https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-(covid-19)-vaccines and https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html#fully-vacc
[3] https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/variant-surveillance/variant-info.html

effectiveness of the current vaccines against the original strain and existing (or potential future) variants in the country is still being evaluated, and uncertainty warrants caution.

- While Occupational Safety and Health Administration (OSHA) federal employment law guidance permits private employers to require employees to get vaccinated for COVID-19, our member companies must also comply with federal employment laws that prohibit discrimination based on religion and disability. The balance that must be struck may leave unvaccinated consumers and staff vulnerable to others who have not yet been (nor plan to be) vaccinated because of religious or health reasons. [4] Moreover, if a member of staff becomes infected at their place of business, there are legal liability issues these companies could face for failing to offer a safe work environment to their staff. State licensing policies should not force licensed MLOs to choose between a potentially unsafe work environment or giving up their career. Similarly, companies should not be put in the untenable position of facing heightened litigation risk when an extension of existing policy flexibilities would protect employers, employees, and consumers.

- Because many MLOs are licensed in multiple states, one of the most challenging industry concerns is with the uneven reopening of states. An MLO may live in a state that permits him or her to continue working remotely but also may be licensed in other states that require a return to the licensed location. As a result, the laws of another state may mandate an unsafe return to work for an employee in a state that continues to permit remote work. This forces employers and employees to make untenable and unsafe decisions about returning to work.

The medical uncertainties about the coronavirus, its new variants, and the long-term efficacy of the vaccines warrant continued caution about workplace safety matters. MBA believes that the work location flexibilities provided for licensed MLOs during the pandemic have been essential to protect the health of consumers and employees. Sunset dates beginning in June on these temporary policies are premature. Moreover, lack of a coordinated approach among states to reopening the economy for the real estate finance industry presents unnecessary risks and challenges to MBA member companies and the consumers they serve.

MBA urges your organizations to collaborate in encouraging governors and banking regulators to use all available authority to extend the existing guidance for licensed MLOs. If a new emergency order is required by state law to provide this regulatory flexibility, MBA further urges governors to issue such narrowly tailored action to enable the mortgage industry regulators to act.

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[4] https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

Please note that MBA and its independent state and local association partners have been collaborating in pursuit of statutory and regulatory changes in states with requirements for licensed staff to work from a licensed location. In many instances, this advocacy is occurring with support from state mortgage industry regulators. During 2021, several legislatures made changes to their statutes with regulator input, and a number of regulators in other states have informed industry they are planning to seek similar bills in next year's legislative sessions.

Our associations welcome the opportunity to engage with you further on this issue. If you have any questions or need more information, please contact me or Pete Mills (pmills@mba.org or 202-557-2878) on MBA staff.

Thank you for considering our views.

Respectfully,

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