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MORTGAGE BANKERS ASSOCIATION

May 28, 2024

Commissioner Cathy Sheehy
Division of Mortgage Lending
3300 West Sahara Avenue, Suite 285
Las Vegas, NV 89102
mldinfo@mld.nv.gov

Subject: Proposed Regulation of the Commissioner of Mortgage Lending NRS 645B –
Mortgage Companies and Mortgage Loan Originators

Dear Commissioner Sheehy,

The Nevada Mortgage Lenders Association (NMLA)¹ and the national Mortgage Bankers Association (MBA)² appreciate the opportunity to comment on the Department of Business & Industry Division of Mortgage Lending's (Department) proposed regulations to implement SB 355 regarding flexibility for Mortgage Loan Originators (MLOs) and employees of mortgage companies to work remotely. SB 355 added Nevada to a long list of 30 other states and the District of Columbia to permanently allow remote work. These policies have fully embraced the approach taken by states during the COVID-19 pandemic at the recommendation of the Conference of State Bank Supervisors, and since the pandemic have been endorsed by the American Association

¹ The mission of the NMLA is to empower our community through advocacy, education, and support. Our leadership team is comprised of passionate individuals committed to creating lasting change. We leverage our collective experience to identify the most pressing issues facing our community and develop innovative solutions. We value partnership, and we work hand-in-hand with local organizations and community leaders to maximize our impact.

² The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 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 2,000 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.

of Residential Mortgage Regulators.³ Both NMLA and MBA recognize the importance of establishing clear guidelines to ensure compliance and safety while allowing for flexibility in remote work arrangements for licensed mortgage companies and their employees. The enactment of SB 355 provided an avenue for the Department to grant the needed flexibility for mortgage industry professionals to meet current consumer demands. Remote work flexibility has also allowed licensees across the country to better prepare for unexpected events including natural disasters. Additionally, these policies can enhance the ability to reach underserved rural and urban borrowers by enhancing competition in these communities. Technology and consumer expectations have evolved. This started prior to the pandemic but was certainly amplified during the pandemic as the need for industry – both originators and servicers —to flexibly meet with borrowers significantly increased during a period of low-interest rates, extremely high housing demand, and unprecedented forbearance needs.

The regulatory approach by the Department should acknowledge the business case for remote work based on the lessons industry has learned and incorporated from safely and effectively serving consumers during the pandemic. Leveraging technology has allowed our organizations' member companies and the Department to evolve. Indeed, not only has customer service been enhanced, but regulatory adoption of technology significantly improved oversight and supervision. Unfortunately, NMLA and MBA feel the proposed regulations diverge from, and in some concerning cases, reverse the intent of SB 355 by providing *less flexibility*. These issues require refinement and more clarity.

Our organizations have the following concerns:

- The wording in NAC 645B 1 and other sections regarding remote work and the required license address may lead to confusion, especially concerning origination activities, and should be revised for clarity;
- The scope of which employees may work remotely is too narrow;
- The regulations appear to remove the flexibility remote work aims to achieve, as evidenced by requirements such as pre-approval of remote locations in 1(c)(2) and extensive documentation for remote locations in 1(d)(1-5);
- Restrictions on in-person meetings at remote locations should be clarified to ensure alignment with the intended scope of SB 355; and,
- The Commissioner's powers in corrective action provide no opportunity for appeal, nor do they provide reasonable opportunity for employee relocation.

³ <https://www.aarmr.org/wp-content/uploads/2023/05/AARMR-Best-Practices-for-Employees-Working-Remotely-Guidance.pdf>

Clarity Regarding Allowable Activities at Remote Locations

Proposed language starting in NAC 465B.____ 1 includes the following statement:

“An employee of a licensed mortgage company may work remotely and will not be considered to be conducting business for which a license is required at a location other than the address that appears on the mortgage company’s license or licenses, as long as all of the following conditions are met...”

This language appears to unintentionally reverse course on remote work allowance by assuming only unlicensed activity would be conducted at remote locations. Should the intention behind this statement be to tie any remote work employee to the licensee’s address on file, the language should be re-written to be more explicit. NMLA and MBA suggest the following:

“An employee of a licensed mortgage company may work remotely, and any licensable activity conducted by the employee while working remotely shall designate the address that appears on the mortgage company’s license or licensees...”

The proposed regulations later reference “only activities” or “a specific act” in NACB 1(b) & (c)(1) without further context or explanation for what these regulations are looking to allow at remote locations. In SB 355, and other remote work laws around the country, the practical application is that any origination activity may be performed remotely in accordance with all applicable state and federal laws and regulations. Adding this language to limit flexibility to certain activities or acts restricts this policy further without clarifying that restriction and may be contrary to legislative intent. It also does not provide any further protection even with clarification.

Scope of Which Employees May Work Remotely is Too Narrow

In the proposal, the language appears to narrowly speak only to “employees licensed as mortgage loan originators.” The statutory intent was to address all employees conducting business of a mortgage company, which is defined to expressly include MLOs but also employees who are “associated with a mortgage company”. NMLA and MBA are concerned that by not expressly including other employees throughout the proposal the regulations will unnecessarily restrict to whom the flexibility applies. This important distinction will impact many underwriters or loan processors who may need the flexibility to work remotely. These positions are often under the umbrella of supervision, but not licensed by the state. The majority of the proposed regulations reflect language that appears to speak to both an MLO or other employee, but a few areas would need to be addressed. NMLA and MBA suggest the following edits:

Section 1. NAC 645B. __ 1. *A mortgage company may allow employees ~~licensed as mortgage loan originators~~, other than Qualified Employees as defined pursuant to NAC 645B.008 and NRS 645B.021, to work from an authorized remote location without being physically present at such location.*

Section 2. NAC 645B. __3(a) *Allowing employees working at remote locations authorized by this section to access the licensee's information technology system, other systems, and data needed to perform the employer's job functions in a safe and secure manner, including a cloud-based system, directly from any out-of-office device the mortgage loan originator or employee uses, including, but not limited to, a laptop phone, desktop computer, mobile device or tablet, via a virtual private network or comparable system that ensures secure connectivity and requires passwords or other forms of authentication to access;*

Section 2. NAC 645B. __3(d) *Ensuring that mortgage loan originators or other employees working at a remote location access the company's secure systems;*

Inflexible Remote Location Requirements

The proposal outlines significant requirements in NAC 645B 1(d)(1-45) to authorize and document remote locations, which effectively reduces this much needed flexibility by confining it to a licensed MLO or employee's home. The only location that could be pre-approved consistent with the requirements in this proposal would be the MLO or employee's residence as it is the only known location for a mortgage company to assume remote work could take place to obtain pre-approval. The requirement in (d)(3) for "any information regarding the remote location..." is the most restricting, except in a work from home context since that is the only location information could be known to complete this requirement.

Also, in NAC 645B 2 the proposed regulations appear to restrict the ability of an MLO or employee to work remotely to only one location and potentially prohibit a home office:

2. An employee of a licensed mortgage company shall not establish his or her own office at any location other than the licensed branch office to which he or she is assigned, or the remote location authorized by the mortgage company pursuant to this chapter.

Here it states 'the remote location' as in singular, in line with a singular branch location preceding this restriction. It again appears the Department intends to restrict the ability to work remotely to only one pre-authorized and known location. This approach would again only describe an employee's home, where SB 355 will be utilized the most, but again is not the only use case for the remote allowance it sought to provide. As we have stated earlier, an important benefit of remote flexibility for licensees is how these

sensible policies afford the opportunity to better prepare for unexpected events, including natural disasters, as well as to better enable industry to meet new post-pandemic consumer expectations. This section also states the employee “shall not establish his or her own office at any location” which could unintentionally restrict setting up an office at their residence. NMLA and MBA request this language be removed as the establishment of a remote location as an office would already be prohibited by 1(c)(3).

Further, the requirement in NAC 645B 3 restricts the number of employees permitted to work from a single remote location. This limitation might impact legitimate scenarios where multiple authorized individuals, such as partners, family members, or individuals utilizing a co-working space seek to work from the same remote location. Our organizations believe that more than one licensed MLO or employee should be able to work from the same remote location, due to the duty and care our member companies provide as robust supervisory oversight to all their employees.

If by limiting this flexibility to only one person from each remote location it is the Department’s intent to avoid the establishment of unlicensed branch offices, our organizations believe the approach should be adjusted to avoid some of the unintended consequences. As written, even 1(c)(6) includes a provision of the location not being “owned, controlled, or leased by the licensee or an affiliate of the licensee, or for the benefit of the license or an affiliate of the licensee” which does not seem to fully acknowledge some of the smaller family-owned lenders who may be working remotely from home – which is financially linked to the licensee even if the deed or lease is not in the licensee’s name.

Departure from Statutory Intent on In-Person Meetings

The statutory language enacted through SB 355 intentionally acknowledged the difference between mortgage regulation and other financial services regulation when granting flexibility to work remotely for state licensees. The language also intentionally recognized the current allowances provided to registered MLOs operating throughout the country. The proposed regulations under NAC 645B 1(c)(4) includes the language:

(4) May not be a location where the employee will meet consumers in-person;

Both NMLA and MBA support a provision to restrict in-person meetings at a mortgage company employee’s personal residence, but reject the further restriction imposed in this proposal. SB 355 intentionally contemplated in-person interactions for both MLOs and other licensed financial professionals. SB 355 Section 24 provides employees with the ability to meet consumers in-person if it is not at the employee’s residence:

3. An employee of a mortgage company shall not interact with a customer of the mortgage company in person at the residence of the employee unless a license has been issued for that residence pursuant to NRS 645B.020.

The Nevada Legislature understood there are many instances where in-person meetings at remote locations provide greater availability and benefit to Nevada consumers. These in-person meetings as mentioned previously could be at a real estate agent's office, on-site at an open house to help answer pre-application questions, and many more. The idea of a mortgage loan originator's physical location dictating conduct is an anachronism in today's real estate economy. Moreover, 1(c)(4) stands in sharp contrast to the unprecedented work performed by the mortgage industry during the pandemic, which allowed millions of American families to access historically low interest rates to save thousands on their mortgages every year.

Industry can support a restriction of frequent in-person interactions at the same remote location, however the restrictions in 1(c)(3) address this as MLOs or employees cannot represent the remote location as a place they regularly conduct business. An MLO or employee consistently providing the address of and meeting consumers in-person at the same remote location would be out of compliance with 1(c)(3). NMLA and MBA urge the Department to remove paragraph (4) from the proposal, or update this requirement to reflect standards placed on the depository industry and that align with SB 355:

(4) May not meet consumers in-person at the employee's personal residence;

The Commissioner's Powers in Corrective Action Provide No Opportunity for Appeal, Nor Do They Provide Reasonable Opportunity for Employee Relocation

The proposal lacks details regarding when the Department may determine whether a licensee is not supervising remote employees appropriately. The proposed regulations outline powers provided to the Commissioner not seen in any other state:

4. If the Commissioner determines that the licensee does not provide reasonable and adequate supervision of a remote employee pursuant to this section, after written notice from the Commissioner and within 5 business days of receiving such notice, the mortgage company shall terminate the employee's eligibility to work from a remote location provided for under this section.

This language does not provide the needed criteria for what is "reasonable" or "adequate" supervision for licensees to develop remote work policies and procedures consistent with the Department's expectations for MLO or employee supervision. This section is vague enough for the expectations to potentially change based on a licensee's situation, and our organizations instead request clearer rules of the road for industry to follow. Considering the brief time frame provided to correct any issues, there

may be instances where the licensee cannot get their employee back into a licensed location. This case potentially places the MLO, whose income is heavily commissioned based, in a difficult position to retain employment through no fault of their own.

NMLA and MBA request the Department establish a corrective action period which allows the licensee to communicate with the Department and safeguard the remote MLO's or employee's employment. Should the Department disagree with the supervision by a licensee or see non-compliance, the Department should provide notice to the licensee to correct the issue within a certain period of time. In that time, the licensee may provide sufficient evidence of adequate supervision to address the Department's concerns for them to retract the notice entirely. This coordination allows for greater partnership between industry and the Department and may help shape policy in the future. Additionally, the corrective period could provide the licensee with more time to give notice to any remote MLO or employees if they already know they will not be able to address the Department's concerns.

Conclusion

NMLA and MBA believe these proposed regulations have the potential to support the evolving dynamics of the mortgage industry. Enactment of SB 355 offers the real estate finance industry the opportunity to address two important needs: better compete for and serve consumers in the 21st century economy and improve their operational resiliency to growing environmental challenges. These objectives can be achieved without compromising important consumer and data protection. However, to realize these opportunities, our organizations recommend addressing the aforementioned concerns to ensure that the final regulations foster compliance, clarity, and operational efficiency in remote work environments for mortgage companies to better serve Nevada consumers both today and in the future.

Respectfully,



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