SINCE 1902
CONFERENCE OF STATE BANK SUPERVISORS

April 9, 2018

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20200

Dear Secretary Mnuchin:

The Conference of State Bank Supervisors ("CSBS" or "state regulators")[1] welcomes the opportunity to provide the Treasury Department (the "Department" or "Treasury") with information regarding the state system of regulatory oversight for non-bank financial services providers. As the Department has sought to develop recommendations that will improve the regulation of the United States financial system, CSBS appreciates that the Department has consistently sought out the input of state regulators through outreach meetings with state banking commissioners. The information contained within this letter summarizes and elaborates on the themes discussed at our most recent outreach meeting and is intended to inform the Department's development of the forthcoming *Report on Regulations Impacting Nonbank Financials and Innovation.*

In its first Report issued in response to the Executive Order on *Core Principles for Financial Regulation*, the Department acknowledged and supported the role of state regulators as the primary regulators of non-bank financial services providers,[2] a role they are uniquely qualified and best positioned to serve. In addition to chartering and supervising more than 78% of our nation's banks, state regulators are the primary regulator for more than 20,000 non-depository financial services providers, including those that employ financial technology in the delivery of products and services.[3] This dual responsibility for bank and non-bank supervision, and the proximity of state regulators to consumers, provides state regulators with unique and increased insight into the financial services marketplace and its impact on consumers, a level of insight unparalleled by any single federal agency.

In recent years, the application of advances in technology in the delivery of financial services has given rise to innovative financial technology ("fintech") solutions that could potentially lower costs, enhance convenience, and increase financial inclusion. As the marketplace has evolved, and innovative solutions have emerged, state regulators have been and continue to actively engage in monitoring these

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[1] CSBS is the nationwide organization of state regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. CSBS supports the state banking agencies by serving as a forum for policy and supervisory process development, by facilitating regulatory coordination on a state-to-state and state-to-federal basis, and by facilitating state implementation of policy through training, educational programs, and exam resource development.
[2] U.S. Department of the Treasury, Report: A Financial System That Creates Economic Opportunities—Banks and Credit Unions, June 2017. Pg. 92, Available here.
[3] FDIC SDI data (for bank count) as of YE 2017. NMLS data (for count of non-bank companies) as of March 2018.

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developments and updating regulatory approaches as appropriate. Importantly, while fintech firms may leverage novel, technology-enabled delivery mechanisms, the financial services activities to which they apply these mechanisms to and in which they are engaged in —whether it is loan origination, loan servicing, money transmission, or debt collection—are not fundamentally different from the traditional financial services activities subject to state licensure.

Over the past decade, the state regulators have created and implemented a system for non-bank supervision that has a foundation in technology-enabled coordinated oversight and extensive information sharing between and among state regulators. Central to this effort is the Nationwide Multistate Licensing System (NMLS). NMLS is a technology platform developed and used by state regulators to enhance state licensing and supervision of non-bank financial services providers operating across the United States. The coordinated oversight enabled through NMLS:

- enhances the efficacy of state oversight;
- reduces duplicative regulatory requirements;
- ensures the continued strength and resiliency of the financial services industry; and
- maintains critical consumer protections.

State regulators are focused on fostering prudent financial innovation by enabling fintech firms to operate on a nationwide scale while maintaining their commitment to these accomplishments. With this aim in mind, state regulators recently launched Vision 2020, an initiative to modernize state regulation of non-bank financial services providers, including fintech firms. Through Vision 2020, state regulators will expand ongoing initiatives to identify common challenges faced by non-bank fintech firms and promote a prosperous and innovative non-bank financial services industry and the integrity of markets.

The following sections of this letter will discuss why maintaining the primary role of the state regulatory system is critical to ensuring the continued protection of consumers and maintaining the strength and competitiveness of the non-bank financial services industry. The letter will also describe the Vision 2020 initiative, focusing on how continual enhancements to the state regulatory system will improve regulatory efficiencies for non-bank financial companies.

An appendix to the letter contains more detailed background on state licensing and the NMLS as well as the scope of non-bank industries regulated by state regulators, including specific licensing authorities, coordinated supervision, and data collected through NMLS for each key industry supervised by state regulators.

FEDERALIZATION OF NON-BANK SUPERVISION IS NOT NECESSARY

The Department's first report issued in response to the Executive Order *on Core Principles for Financial Regulation* noted that "state supervisors were often leaders in identifying consumer protection problems during the financial crisis."[4] This is true, and it is no accident. Rather, it is the direct result of

[4] U.S. Department of the Treasury, Report: A Financial System That Creates Economic Opportunities—Banks and Credit Unions, June 2017. Page 92. Available here.

the local proximity and accountability of state regulators to the consumers and stakeholders within their state. While developments at the federal level may result in significant variation in federal priorities over time, the state regulatory system maintains a steadfast dedication to efficient and effective prudential oversight and consumer protection. The Report also recognized that state regulators have proven experience in the supervision of non-banks and an existing process for multi-state regulatory coordination.

Despite the effective framework in place at the state level, there is a misperception that because some non-bank financial services providers are not subject to federal oversight they are simply not regulated at all. However, as the Department's previous report recognizes, state regulators are actively regulating non-bank financial services providers and have well-established processes for multi-state regulatory coordination.[5]

Another misperception is that the emergence of fintech products and services has proven the state regulatory system to be unworkable in principle no matter how much progress is made in fostering the convergence of state regulatory requirements. However, state regulatory requirements are activities-based and do not differ depending on the level or type of technology employed in the delivery of financial services. State regulators remain committed to enhancing the efficiency of state oversight, including moving towards consistency and commonality where appropriate.

Despite the oft-cited challenges that come with being overseen by as many as fifty different state regulatory agencies, the state regulatory system has not proven to be an impediment to the emergence of innovative financial services providers. In fact, the state system has allowed for the emergence of thousands of new non-bank financial services providers at a time when de novo bank activity remains limited. Since 2011, numerous non-bank financial services providers have gone from being licensed in zero states to holding licenses to operate on a nationwide basis.

State Regulation Facilitates Competition and Economic Growth

State regulators' mandate to protect consumers and encourage economic growth underpins an emphasis on competition in the financial services market. Money services business (MSB) data collected through NMLS reveals an industry that is heavily concentrated at the top, but comprised of hundreds of companies supporting niche segments of the market.

The state system for non-bank supervision allows for companies of various sizes and reach to provide financial services to consumers. In 2017, the six largest MSBs moved 68% ($772 billion) of the industry's funds. This has left at least 409 other companies competing for the remaining 32%. When broken down by sector, the market data is more enlightening. For example, in the money transmission sector, 178 companies comprise the last 1% of the market. This signals robust competition, making way for a variety of business models focused on providing increased access to a diverse platform of financial services.

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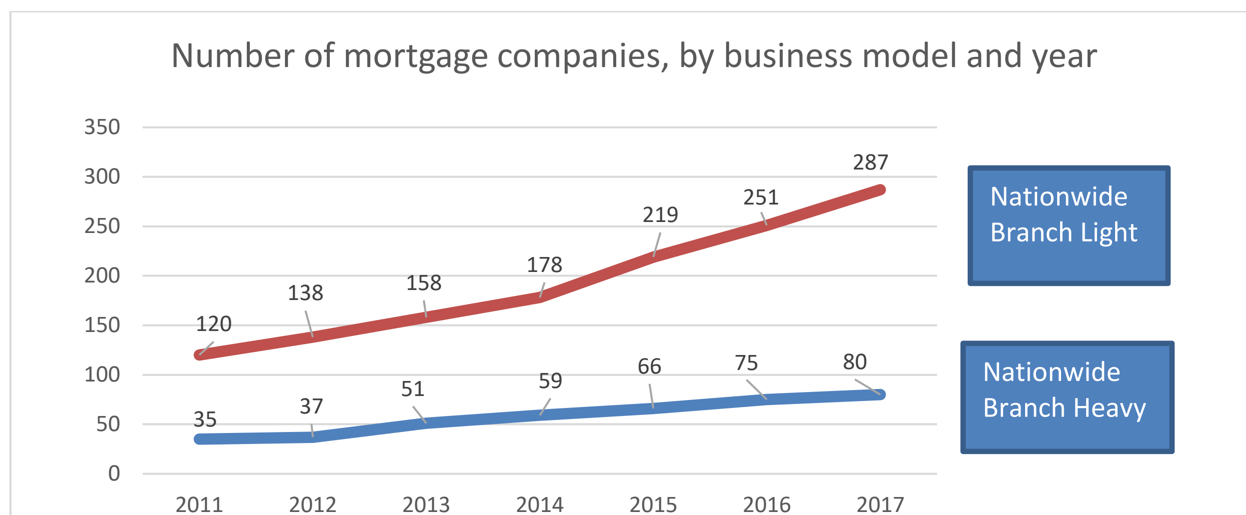
[5] For more information see the Appendix.

NMLS data also bears out that non-bank financial services providers that operate primarily over the internet have emerged at a staggering pace. In the mortgage space, presumably, companies with a limited physical presence and nationwide originators (“branch light”) are dependent on technology to interact with customers, and conversely, companies with numerous, widespread branch locations (“branch heavy”) rely on the traditional in-person, brick and mortar business model. NMLS data shows that technology dependent “branch light” companies are growing at a rate far outpacing the traditional “branch heavy” entities.



Based on the data above, the state regulatory system clearly supports technological innovation on a large scale. Business models dependent on technology can thrive in the state regulatory system because the NMLS serves as an efficient licensing resource, and state regulators actively ensure the use of technology protects consumer and economic interests.

The State Regulatory Framework Protects Consumers and Allows for Responsible Innovation in Financial Markets

Over the past decade, state regulators have focused on achieving consistency in state laws and supervisory practices. Wherever feasible, state regulators have created uniform licensing standards, and examination processes that are coordinated across the nation. Going forward, it is a critical goal of state regulators to determine where state-to-state differences in licensing and supervision are unnecessary and can be streamlined. However, as we discussed in our March 9 meeting, it is also important to recognize areas in which differences are based on the decisions of state legislatures about the types of credit needs in their states and about the appropriate corresponding consumer protection regimes. For example, in the regulation of small dollar lending, legislatures in fifteen states and DC have set usury rates that do not permit payday lending. However, in thirty-five other states, the traditional payday loan product is available to consumers subject to stringent licensing and regulatory requirements. These state differences are integral to the fabric of our federalist system.

Indeed, differing policy outcomes are a reflection of diverse populations, through their elected state representatives, balancing the needs of individual states, their desire for consumer protection and their individual frameworks for access to credit. This sensitivity of this calibration of conflicting policy priorities and on-the-ground knowledge simply cannot be replicated at the federal level, let alone by a single federal agency. Indeed, Congress recognizes the value of state autonomy in protecting consumers while allowing for beneficial innovation in financial markets by intentionally prohibiting the federal government from setting a national usury rate for non-bank financial services providers. The development of specific regulatory regimes by state legislatures illustrates the challenge of forcing a one-size-fits-all federal regulatory framework for the non-depository financial services industry.

With the passage of the Dodd-Frank Act, Congress limited the ability of certain federal agencies to preempt state law and preserved the ability of state regulators to enforce law that is stricter than federal law. Additionally, state regulators and attorneys general were expressively given the authority to supervise for compliance with federal consumer protection statutes. Consumers are well served under this system, which allows for federal agencies, when authorized by Congress, to set a floor for consumer protection, and respect the residual authority of states to enforce more stringent requirements when judged to be beneficial to residents.

Preemption of State Law Puts Consumers at Risk and Reduces the Competitiveness of the U.S. Financial Services Industry

Moreover, if the opportunity is not lost through preemption, the federalist structure underlying the state regulatory system incentivizes state regulators to develop more effective regulation for consumers and more efficient regulation for industry. The state regulatory system will become more efficient for industry just as competition between states in the development of corporate law has produced more effective state corporate governance laws for shareholders and corporate stakeholders. Additionally, state regulation is made more effective for consumers by creating protections which attract consumers seeking to avail themselves of such laws and thereby creating an incentive for other states to establish similar protections, as has been the case with recent enactments of state licensing laws applicable to student loan servicers. Unfortunately, when an attempt is made to preempt state law, the incentive structure created by the federalist system is no longer permitted to operate, harming consumers and industry alike.

It is not without reason that state regulators are concerned about federal attempts to preempt state regulatory authority. In the early 1980's, the OCC nullified state restrictions on adjustable rate mortgages, eliminating the ability of state regulators to respond to lending practices that hurt consumers. This laid the groundwork for predatory lending practices, culminating in state action to protect consumers where federal regulators refused to act. In the early 2000's, the OCC determined that national banks were exempt from state lending laws, including anti-predatory lending laws in place in

Georgia and North Carolina.[6] These preemptive policies were partly to blame for the mortgage crisis. National bank subsidiaries offered abusive products while state regulators were powerless to enforce laws which state legislators had enacted to stop consumer harm.

Federal Initiatives Should Not Undermine Traditional Commitments Ensuring the Strength and Resiliency of the U.S. Financial System

A more recent initiative by the OCC to create a federal charter for non-bank financial services providers by fundamentally redefining what it means to be a bank is concerning not only because of the level of federal preemption it would seek to secure for non-bank financial services providers but also because of its abandonment of traditional commitments to the separation of banking and commerce and limited access to the federal safety net. Congress and the courts have previously made clear that the OCC is prohibited from chartering a national bank that does not engage in deposit-taking, unless the charter is for a special purpose bank expressly authorized in statute.

There is a misperception that the OCC special purpose charter for non-banks is somehow the equivalent of an industrial loan company (ILC) charter. Congress explicitly exempted ILCs from coverage under the Bank Holding Company Act (BHCA) and, in so doing, limited ILCs access to the Federal Reserve payments system. Congress also applied antitrust restrictions to ILCs to mitigate concerns prompted by the intermingling of banking and commerce. Since Congress provided no explicit exemption from BHCA coverage for the OCC special purpose national charter, the limits on payments system access and anticompetitive practices would not apply based on the language of the BHCA. Furthermore, ILCs are insured depository institutions regulated at the state and federal level and, because of obtaining deposit insurance, are able to export interest rates across state lines. In contrast, the OCC special purpose national charter would be regulated solely by the OCC and seek to export interest rates nationwide without obtaining deposit insurance or other protections and thereby seek an unprecedented level of preemption of state usury laws without Congressional action.

In addition to fundamentally redefining what it means to be a "bank", a special purpose charter for non-bank financial services providers will distort the financial services marketplace by picking winners and losers among fintech entrants, put consumers at risk by preempting the existing state oversight regime for non-bank financial services providers, and pose significant risks to the Federal Reserve payments system. State regulators believe that the licensing process and bonding/net worth requirements currently in place for non-bank firms avoids the risks to taxpayers posed by the creation of a special purpose federal charter for non-bank financial services providers.

As noted in previous reports by the Department, state regulators have a unique expertise in local banking practices and local markets, which makes them uniquely situated to address specific market integrity issues and recognize and act upon consumer financial protection issues. Licensure is one of the

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[6] See Preemption Determination and Order, 68 Fed. Reg. 46264 (August 5, 2003) (preempting "the provisions of the [Georgia Fair Lending Act] affecting national banks' real estate lending" in response to a requirement from National City).

key tools available to state regulators under the police powers reserved to the states by the Constitution. Congress has deliberately preserved this cooperative state-federal regulatory framework for non-bank financial services activities for the benefit of consumers and providers of financial services alike. Consumers benefit because the proximity of the state framework has proven to be more accountable to local concerns. State regulators ask that the Department support the primary role of state regulators in licensing and regulating non-depository financial services providers, and their ability to enforce state consumer protection laws.

VISION 2020

As the states consider how non-bank supervision can be modernized, they are focused – as they always have been – on improving the state-based regulatory system to ensure that it continues to enable companies of various sizes and scales to provide a broad range of financial products and services. Through Vision 2020, state regulators have jointly committed to develop an integrated, 50-state licensing and supervisory system by 2020.[7] The key components of Vision 2020, outlined below, will build upon work that has been done over the past decade to promote consistency in licensing requirements and supervisory practices.

The first component of the Vision 2020 plan is focused on outreach to the fintech industry. In June of 2017, CSBS announced the formation of a Fintech Industry Advisory Panel that would provide state regulators with feedback regarding multi-state licensing and supervision, brainstorm possible solutions, and provide feedback to ongoing state initiatives. The Panel has over 30 industry members, including some of the largest fintech lenders, payment companies, and technology firms, including Amazon, Microsoft, and PayPal.[8] Members of the panel have met in-person with state regulator participants of CSBS's Emerging Payments and Innovation Task Force, and additional meetings will take place throughout the year.

The second component of the Vision 2020 plan involves a complete re-design of the NMLS system. The re-design of NMLS, expected to be completed in 2019, will transform the licensing process through the automation of several manual processes. Improved data and analytics tools within the system will enable states to focus more on higher-risk entities when risk scoping solo and multi-state exams. It is important to note that the NMLS system has already made great strides towards reducing reporting burdens for companies required to submit mortgage and money services business (MSB) call reports.[9] For example, non-bank financial services providers are required to only complete data fields that are relevant to the company's activities and/or license types.

[7] Additional information on Vision 2020 can be found here.
[8] Additional information on the Fintech Industry Advisory Panel is available here.
[9] For additional information on the mortgage and MSB call reports, please see the *Scope of Regulated Industries* section of the Appendix.

The third component of Vision 2020 focuses on harmonizing multi-state supervision processes. Collaboration between state regulators on examinations increases the efficiency of the supervisory process for both state regulators and the industry and enhances consumer protections.

The central piece of this component is the development of a comprehensive State Examination System (SES). The system will facilitate work-flows for both single state and multi-state examinations and support information sharing among states and federal regulators. The sharing of exam schedules, ratings, supervisory concerns and reports of examination will make regulators more efficient while also reducing burden on the industry. Through the development of SES, best practices and standard processes used at the state level are being identified and implemented across the system. Increased alignment in the supervisory process will lead to a more streamlined and consistent examination process for non-bank financial services providers licensed in multiple states. With the release of NMLS 2.0 and the SES, start-up firms that seek to operate with national scale will be able to do so within a licensing and supervision framework that is integrated across all 50 states.

Another component of Vision 2020 recognizes the harm that is caused by de-risking practices that have resulted in many MSBs losing access to traditional banking services. State regulators do not believe that the regulatory environment should provide an incentive for banks to cut off relationships with entire classes of legally operating businesses. The de-risking phenomena may be partially rooted in a misunderstanding of the degree to which MSBs are licensed, regulated and supervised by state and federal regulatory agencies. For this reason, state regulators and CSBS are committed to addressing de-risking through awareness campaigns and the provision of tools that provide greater clarity around regulatory requirements. Recently, CSBS released a BSA/AML Self-Assessment Tool for MSBs. The tool is intended to reduce uncertainty surrounding BSA/AML compliance, support more transparency and address de-risking. This follows the issuance of a similar BSA/AML Self-Assessment Tool for banks.

The last key component of Vision 2020 seeks to improve state supervision of technology service providers (TSP) by making changes to the Bank Services Company Act (BSCA). The BSCA authorizes federal regulators to examine TSPs, but it is silent regarding the role of state banking regulators. As discussed earlier in this letter, many state banking regulators are authorized to examine bank TSPs under state law. However, the BSCA's lack of a comprehensive approach to TSP supervision limits the ability of states and federal agencies to share and rely upon information generated in their respective TSP exams. The current language also imposes challenges in coordinating TSP exams, resulting in duplicative and inefficient supervision. State regulators support H.R. 3626, the Bank Service Company Examination Coordination Act. The bill would amend the BSCA to appropriately reflect states' authority to examine TSPs, thereby enhancing the ability of state and federal regulators to coordinate examinations of and share information on banks' technology vendors and partners in an effective and efficient manner.

CONCLUSION

Often, global or national standards are pushed to assertedly facilitate the most efficient deployments of technology. State regulators are concerned that federalization of non-bank supervision in the name of financial innovation would benefit the largest financial service providers while reducing competition in the industry and hindering the ability of start-ups to develop innovative solutions for consumers. As the Department focuses on changes that are necessary to allow for prudent financial innovation, it is important to consider how the current framework for state regulation of non-bank financial service providers has fostered a unique and expansive industry that is responsive to the needs of consumers and local communities. With an effective framework already in place and planned enhancements that will further streamline the licensing and supervision of non-bank financial services providers, state regulators are best positioned to protect consumers while ensuring that companies can offer innovative, and responsible, methods for accessing credit.

We look forward to working with the Treasury Department, the industry, consumers, and our federal regulatory partners to achieve further integration and collaboration in our approach to the supervision of non-bank financial services providers.

Sincerely,

John Ryan
President & CEO

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APPENDIX

BACKGROUND ON THE STATE REGULATORY SYSTEM FOR NON-BANK FINANCIAL SERVICES PROVIDERS

State Licensing and Supervision

Across the United States, state legislatures have placed responsibility for regulating non-bank financial services providers with their state banking departments or other state financial regulatory agencies. Through their non-bank licensing authority, state regulators function as the prudential regulators of non-bank mortgage lenders, consumer lenders, money service businesses, debt collectors, and other non-bank financial services providers as required by state law. Thus, when any non-bank performs financial services for or offers financial products to consumers, state regulators are responsible for licensing and supervising these activities consistent with state and federal law.

The licensing authority exercised by state regulators with respect to non-bank financial services providers is a manifestation of the historic police power of the states which is itself an attribute of the residual sovereignty of the states in our federalist system. Because the welfare of their citizens is primarily and, historically, a matter of local concern, state regulators traditionally have had great latitude under their police powers to protect and promote the general welfare of their citizens. The plenary nature of state police power includes, by implication, the right to regulate by requiring a license as a *prerequisite* to carrying on certain activities. Accordingly, through their licensing authority, state regulators have broad oversight authority ranging from conducting examinations and taking enforcement actions for violations of state and federal laws or regulatory requirements to revoking a license to prevent consumer harm.

Although the states possess residual sovereignty, state regulators also maintain a deep commitment to applying a model of cooperative federalism to emerging issues which are seemingly irresolvable absent a single, uniform regulatory solution. Indeed, when the opportunity has not been preempted, state regulators have answered such challenges with comprehensive, enduring regulatory solutions delivered through coordinated and consistent multi-state efforts. This model of cooperative federalism was applied to create a comprehensive, enduring regulatory system for state financial services regulation, namely, the Nationwide Multistate Licensing System (NMLS).

Multi-State Licensing and Supervision

With the advent of the mortgage broker and the originate to distribute business model, state regulators began discussions in 2003 about the development of a state-based licensing system for mortgage lenders, brokers and loan officers. The multi-state licensing system was intended to enhance transparency to regulators and stakeholders, establish uniformity in state regulation through common licensing processes, improve workflow processing functionality for regulators, and enhance the security of licensing information through a system with robust security protocols.

The original vision was to include a licensing structure for all non-bank financial services industries regulated by state agencies. Given the significant transformation in the mortgage industry, it was selected as the first industry for inclusion in what was then called the Nationwide Mortgage Licensing System. While this concept was new for CSBS itself, state regulators have participated in a nationwide licensing system since the early 1980s for the securities industry, known as the Central Registration Depository.[10] The NMLS system development began in late 2005 and NMLS went live in January 2008 as a voluntary system used by seven state agencies. By the end of that year, 43 state agencies had committed to using NMLS for the licensing of mortgage companies and loan originators.

When the financial crisis hit in August 2007, Congress sought to address concerns about professional qualifications and standards for mortgage originators and embraced the work that state regulators had already undertaken to develop the NMLS. In July 2008, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act)[11], codifying NMLS into federal law and established a coordinated state-federal approach to minimum standards for licensing mortgage loan originators (MLOs), including education, testing, criminal and credit requirements, and a mortgage call report. The SAFE Act also required all depository MLOs to be registered through NMLS. All agencies transitioned state-licensed non-depository MLOs onto NMLS by the end of 2010.

In addition to the purposes of the system noted above, state regulators and Congress recognized that sharing licensing information with consumers could empower them to make better educated decisions in the mortgage marketplace. CSBS launched NMLS Consumer Access in 2010, a fully searchable website that allows consumers to view information concerning companies, branches and individuals that are licensed or registered through NMLS for the mortgage, MSB, consumer lending and debt industries.[12] CSBS offers a subset of the public data available in NMLS Consumer Access in a business-to-business (B2B) data format through a subscription service. Making the data available in a full dataset format expands the reach of the SAFE Act to further meet compliance and fraud prevention goals by supporting companies who service the mortgage industry with data and loan origination products.

Coordinated Supervision

Prior to the expansion of NMLS into industries beyond mortgage, CSBS and the American Association for Residential Mortgage Regulators entered into a Nationwide Cooperative Protocol in 2009 that would govern the coordinated supervision of mortgage entities that operate in multiple states.[13] This agreement established the Multi-State Mortgage Committee, which developed procedures to be followed by state exam teams in their supervision of multi-state mortgage companies. Recognizing that a similar framework was necessary for the coordinated supervision of money services businesses, state

[10] Developed by the North American Securities Administrators Association and NASD (now FINRA) and implemented in 1981, CRD consolidated a multiple paper-based state licensing and regulatory process into a single, nationwide computer system. More information is available here.
[11] 12 USC §§ 5101 et. Seq.
[12] NMLS Resource Center, NMLS Consumer Access. More information is available here.
[13] CSBS/AARMR Nationwide Cooperative Protocol for Mortgage Supervision, May 2009. Available here.

regulators, in 2012, established a Multi-State MSB Examination Taskforce, known as the MMET. A year later, state regulators formed the State Coordinating Committee (SCC) with the goal of promoting consistent standards for examinations conducted jointly between state regulators and the Consumer Financial Protection Bureau (CFPB). The SCC aims to promote efficient information sharing between the CFPB and state regulators, and to minimize the regulatory burden on providers of consumer financial products and services operating in multiple states. In 2017, state regulators completed 13 joint exams of non-bank entities with the CFPB. These joint exams included mortgage lenders, debt collection firms, payday lending companies, money transmitters and auto finance companies.

NMLS Expansion and Information Sharing

In 2012, CSBS expanded the uses of NMLS to industries and subsets of industries beyond the mortgage space, including money services businesses (MSBs), consumer finance companies, debt collection industries and others that require licensure as defined by state law.[14] Currently, 62 state agencies and five federal agencies participate in NMLS. The 62 state agencies manage a total of 442 different license authorities within the system. As the system of record for state financial services regulatory agencies, NMLS tracks the number of unique companies and individuals operating in the state system. As of March 2018, 22,091 unique companies held 58,975 licenses in NMLS.[15]

In light of the expansion of the information collected through NMLS, CSBS has entered into MOUs to govern the sharing of information with the Office of Financial Research, the Consumer Financial Protection Bureau, the Treasury Department's Financial Crimes Enforcement Network, the Federal Housing Administration, and the Federal Trade Commission. The information sharing language in the SAFE Act is broad enough to allow for sharing with federal agencies with whom an explicit MOU does not exist.[16] For example, when certain mortgage companies have sought to take ownership roles in a bank, the states have been able to provide the FDIC with information regarding the mortgage companies financial condition and management.

In addition to sharing information on multi-state non-bank firms, state regulators share nearly 2,000 independent Reports of Exams, and supervisory actions with the CFPB annually through the SCC framework.

[14] A spreadsheet containing all license types in NMLS by state is available here.

[15] A company licensed in three states, for example, would count as one unique entity holding three licenses.

[16] The SAFE Act provided a foundation for information sharing between state and federal regulatory agencies to enhance consumer protection and eliminate duplicative requests by different agencies for similar information. The law specifically allows CSBS to share information disclosed by licensees with all state and federal officials with financial services industry oversight authority. The information can be shared without the loss of confidentiality protections provided by federal and state laws. See §1512 of the SAFE Act (12 USC §5111).

SCOPE OF REGULATED INDUSTRIES

Mortgage

Federal law requires that depository and non-depository mortgage loan originators in every state be registered with or licensed through NMLS, respectively.[17] State licensed mortgage loan originators (MLOs) are required to pass a written qualified test, complete pre-licensure education courses, and take annual continuing education courses. Applicants are required to submit fingerprints in NMLS for submission to the FBI for a criminal background check and provide authorization for NMLS to obtain an independent credit report. MLOs are also required to be covered by a surety bond, net worth requirements, or a recovery fund. As part of the licensing process, companies report identifying information, legal status, including corporate formation; information on affiliates and subsidiaries, and control and ownership information.

The NMLS permanently assigns a unique identifier (NMLS ID) to each state-licensed or federally registered MLO. NMLS also assigns an NMLS ID to each non-depository company, branch, and control person that maintains a single account in NMLS. The permanence of the NMLS ID allows regulators to monitor licensed entities and individuals across state lines to ensure a provider will not escape regulatory supervision in one state simply by crossing into another state. The NMLS ID also allows consumers and the industry to easily identify and research licensed entities' histories and qualifications through NMLS Consumer Access.

The benefit of the NMLS ID has been recognized by the Federal Housing Finance Agency (FHFA) and the U.S. Department of Housing and Urban Development (HUD). Both federal agencies require that any loan purchased or securitized by Fannie Mae and Freddie Mac or submitted for insurance by the Federal Housing Administration (FHA) must include the NMLS ID for the mortgage company and individual MLO that originated the mortgage loan.[18] The CFPB's 2015 HMDA Final Rule also requires covered entities to report NMLS IDs for individual MLOs who originated loans included on the entities Loan Application Register (LAR). The NMLS ID is also widely used by the private sector, particularly investors and compliance management providers, to ensure that purchased loans are being made in compliance with federal and state laws and to track performance levels of originators.

In addition to being licensed through the NMLS system, federal law requires that all non-bank mortgage companies submit reports of condition and income through NMLS, that is, the Mortgage Call Report (MCR).[19] From this data, NMLS can provide state and federal regulators with insights into trends in the

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[17] 12 USC §5103, Available here.

[18] FHA Mortgagee Letter 2011-04, FHA Capture of Nationwide Mortgage Licensing System and Registry Information, Available here.

[19] The standard MCR contains two components. The first component is a Residential Mortgage Loan Activity Report which contains information on applications, closed loans, servicing, and additional information by state. This information is reported at the individual MLO level. The second component collects financial condition information at the company level.

mortgage lending industry, including the number of companies that operate with a limited or no physical presence.

As discussed above, state regulators coordinate multi-state supervision of mortgage originators and servicers through the Multi-State Mortgage Committee (MMC). The MMC has been central to coordinated efforts and enforcement actions that have resulted in significant restitution to borrowers. Of note, in 2012, following two years of intensive examinations and negotiations, the MMC reached a historic settlement with five of the largest mortgage servicers in the country after uncovering significant operational deficiencies at these companies. The $25B settlement has helped many homeowners avoid foreclosure and stay in their homes through loan modifications.[20] More recently, the MMC oversaw individual actions taken by 22 state mortgage regulators against subsidiaries of a large mortgage servicer to address violations of state and federal laws, including the mishandling of consumer escrow accounts, unlicensed activity, and a deficient financial condition.[21] This multi-state effort was a testament to state regulators ability to regulate large companies across the country while ensuring compliance with applicable state and federal law, and protecting consumers.

Consumer Finance

In the consumer finance sector, state law requires individuals and businesses to obtain a consumer lending license to lend to consumers in a particular state. Such licenses are issued to a variety of consumer lending subsectors, including installment lenders, auto lenders, title lenders, small dollar lenders, consumer sales finance companies, escrow businesses, and other consumer lenders. As with mortgage lending, states manage licensing and supervision for consumer finance businesses through the NMLS. To obtain a license, prospective licensees are required to file an application that typically includes the submission of credit reports, fingerprints, a business plan, financial statements, and a surety bond. The prospective licensee may be required to provide evidence of policies, procedures, and internal controls that will facilitate the organization's compliance with state and federal laws, including disclosure, servicing, and debt collection requirements. Once a license is granted, management is required to maintain compliance with federal and state law which is overseen through periodic reporting and compliance examination requirements.

Operating online only does not allow an entity to circumvent state licensing requirements. Consumer finance businesses that make loans to a consumer via the internet and without a physical presence in the state in which the consumer resides are required to obtain a license for each state in which they are attempting to make loans. Even when non-depository consumer lenders originate loans to consumers through partnerships with depository institutions, state licensure remains applicable to the non-depository institution. Thus, while state product requirements may vary in terms of interest rate, terms and other provisions, consumer loans made through business models described as fintech in nature

[20] ProPublica, Breaking Down the Mortgage Settlement: How Far Does $26 Billion Go? March 2012. Available here. Also see CSBS 2012 Annual Report (Pg. 13), available here.

[21] Housing Wire, State Banking Regulators Crush Ocwen's Business with Sweeping New Restrictions, April 2017. Available here.

generally remain subject to consumer credit licensing. Given the differences in state law, licensing through NMLS enables states to monitor for illegal or unauthorized lending activity.

Money Services Businesses

State money services business (MSB) laws require individuals and companies to obtain an MSB license to take, hold, and/or send money for consumers. Non-bank financial services providers subject to MSB licensing include traditional money transmitters, payment instrument sellers, stored value providers, check cashers, currency exchanges, and certain virtual currency businesses. Traditional remittance providers, as well as companies that offer fintech payments products and services—including mobile wallets, peer-to-peer payments, and peer-to-business payments—are likewise licensed and regulated as MSBs under state law. While differences exist in state laws governing money service businesses, a common set of requirements exists for companies seeking to operate nationally. To operate in 49 states, D.C., and Puerto Rico, a MSB must obtain a surety bond, maintain permissible investments, and satisfy minimum net worth requirements. While the dollar amount of these requirements varies, the application of these types of regulatory standards is consistent.

State regulators coordinate with each other to perform multi-state examinations of MSBs; a process which involves teams of examiners from different states applying consistent supervisory expectations to reach uniform supervisory findings. As of March 2018, 48 states, D.C., Puerto Rico, Guam, and the Virgin Islands have signed the Nationwide Cooperative Agreement for MSB Supervision and its companion Protocol for Performing Multi-State Examinations.[22] The Protocol and Agreement established the Multi-State MSB Examination Taskforce ("MMET"), a body consisting of representatives from ten participating states, tasked with enhancing the state supervisory system for MSB supervision and fostering regulatory consistency. In 2017 303 state examinations of MSBs were completed, with the MMET serving to coordinate 65 examinations of multi-state MSBs.[23]

Importantly, as with mortgage and consumer finance, state regulators do not solely examine MSBs for compliance with state law but also examine for compliance with federal law. Ensuring an MSB licensee's compliance with federal consumer financial laws and federal anti-money laundering laws are key components to the state examination process which, at times, serves as the basis for state enforcement actions. State regulators have taken actions against licensed MSBs for violations of the federal anti-money laundering and terrorism financing regulatory requirements as well as other federal standards.[24] State regulators have also demonstrated that they are prepared and capable of promptly coordinating on a national and international basis. In 2013, thirty-seven states, led by Massachusetts, worked with

[22] Nationwide Cooperative Agreement for MSB Supervision, January 2012. Available here.
[23] Nationwide Multistate Licensing System data as of Q4 2017.
[24] Commonwealth of Massachusetts Consent Order in the matter of POAPAY, LLC. Docket No: 2016-001, Available here.

federal authorities from the United States and Brazil, to act against one money transmitter they identified as having illicit transactions.[25]

More than 40 states require licensed MSBs to submit quarterly or annual reports providing transactional activity and permissible investment amounts.[26] In 2016, state regulators created an MSB Call Report. The MSB Call Report standardizes the reporting of this information by MSBs, thereby allowing the individual states to replace the unique reports they previously required. The report covers financial condition, transaction activities, permissible investments, and destination country details for transactions. Companies report financial condition information at the licensee level, as opposed to reporting consolidated information for the parent company. Reporting at this level ensures that regulators have a full picture of the financial condition of the licensee, who in some cases could be a subsidiary of a much larger technology firm.

Data in the MSB Call Report provides state regulators with unparalleled insight into the business models of MSBs. Out of a group of 415 companies that operate nationwide, 14 percent do not have agent locations, meaning they operate primarily online. MSB call report data also shows that approximately one-third of the transmission volume of licensed MSBs comes from companies with no physical presence.[27]

In 2017, the 415 MSB companies operating nationwide reported transactions totaling $1.136T. Broken down, money transmission comprises the largest share of the sector at $684B transmitted, followed by stored value at $229B and payment instruments at $189B.

Sector	Total $ Volume	Companies Reporting
Money Transmission	$684,323,794,682	272
Payment Instruments	$189,866,795,565	108
Stored Value	$229,340,030,235	59
Check Cashing	$ 16,827,082,687	158
Currency Exchange	$ 4,442,562,953	19
Virtual Currency	$11,537,523,938	13
Total:	**$1,136,337,790,060**	**415**

[25] American Banker, Ranks of Money Transmitters Plunge, May 2016. Available here
[26] SRR Annual Report 2017, available here.
[27] NMLS Data as of Q4 2017.

Following the implementation of the MSB Call Report, information sharing agreements were put into place that facilitate the provision of MSB data to federal agencies, including the CFPB and FinCEN, who use the information for risk-scoping in the allocation of supervisory resources.

Debt Collection

When attempting to collect debts, state licensed debt collectors must comply with a variety of federal and state laws and regulations. Some states have consumer notice requirements or restrictions on debt collection activities that provide greater protections to consumers than federal statutes.[28] In addition, some states have laws governing the activities of creditors collecting their own debts (including some of the largest debt-purchasers who buy charged-off debt at a substantial discount), whereas federal law generally applies only to third-party debt collectors.[29] The Fair Debt Collection Practices Act (FDCPA) explicitly notes that debt collectors must comply with any state laws that provide greater protection than the federal statute.[30]

State regulators license and supervise 1,785 debt collection companies who hold a total of 5,651 approved debt collection licenses in NMLS. Data from NMLS shows that state licensed debt collectors vary in size and scale. Approximately 50% of the companies are licensed in only one state, and approximately 300 companies operate in more than 10 states.[31]

Through NMLS, state regulators also collect and aggregate consumer complaints with respect to debt collection. A significant volume of the consumer complaints received and analyzed by state regulators are related to debt collection. Consumer complaints are used to focus supervisory efforts on the areas of greatest risk. When enforcement actions are warranted, states have imposed civil money penalties, provided restitution to impacted consumers, and mandated operational and systemic changes to mitigate risk to the public. State regulators are also able to revoke licenses when necessary to prevent debt collectors from engaging in further unlawful collection activities.

State regulators coordinate supervision of licensed debt collectors through the newly formed Multi-State Debt Collection Committee (MDCC), facilitated by the North American Collection Agency Regulatory Association (NACARA)[32]. Companies that have been defined as larger participants in the debt collection industry are supervised jointly with the CFPB, with coordination taking place through the SCC and the MDCC. An information sharing MOU in place between CSBS and the Federal Trade Commission

[28] GAO, Credit Cards—Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology. September 2009, Available here.
[29] Ibid.
[30] §816, Fair Debt Collection Practices Act as Amended by Public Law 111-203, title X, 124 Stat. 2092
[31] NMLS Data as of June 30, 2017. Available here.
[32] Although the MDCC was recently formed through a multi-state agreement, NACARA has been facilitating multi-state supervision prior to its creation through a different governance structure.

(FTC) allows for the comprehensive sharing of supervisory information regarding debt collectors between state and federal regulators.

State regulators have worked effectively with federal regulators and law enforcement agencies to protect consumers from illegal debt collection practices. State regulators were active participants in the FTC's Operation Collection Protection, a nationwide enforcement initiative that included more than 165 actions against debt collectors who used illegal tactics including false threats of litigation or arrest.[33]

Bank Service Providers

As mentioned above, state regulators are also responsible for chartering and supervising state-chartered banks. Banks have long been able to partner with or invest in third party service providers. Increasingly, banks are partnering with third parties to originate loans, purchase loans, utilize mobile banking products, or to provide other services to customers. In these situations, state and federal laws governing the use of third-party service providers are applicable.

As discussed during our March 9 meeting, banks working with third-party lending platforms are expected to operate with comprehensive compliance management systems and vendor oversight programs designed to protect the consumer from harm, and to protect the bank from any undue risk associated with third-party partnerships. Third-party service providers are also extensively monitored by state banking regulators. Many state banking agencies are authorized by state law to examine third-party service providers that provide services to their supervised institutions. Some state regulators have both examination and enforcement authority over third-party service providers, while other states only have examination authority. Although the state statutes themselves vary, the authorities generally fall into four categories:

1) Authority to examine only bank subsidiaries and affiliates[34]
2) Authority to examine a third-party when a bank outsources certain enumerated services to the third-party, such as electronic funds transfers or data processing services,[35]
3) Authority to examine any entity that provides any type of service to a bank,[36] or

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[33] Press Release, Federal Trade Commission, FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors (Nov. 4, 2015), available here.

[34] Ala. Code § 5-3A-1(b); Alaska Stat. § 06.05.005(a)(1); Colo. Rev. Stat. § 11-102-301(2); Del. Code Ann. tit. 5, § 121; La. Rev. Stat. Ann. § 6:123(A)(2); Md. Code Ann. Fin. Inst. § 5-404; Mass. Gen. Laws Ch. 167, § 2(a)(2); Mich. Comp. Laws § 487.12202(1); Neb. Rev. Stat. § 8-108; N.H. Rev. Stat. Ann. § 383:9-i; 71 Pa. Stat. Ann. § 733-402 (West 2015); S.D. Codified Laws § 51A-2-18; Tenn. Code Ann. § 45-2-1602; Wash. Rev. Code § 30.04.060(3); W. Va. Code § 31A-2-6(a).

[35] Colo. Rev. Stat. § 11-102-301(2); Conn. Gen. Stat. § 36a-17(b); Idaho Code Ann. § 26-1102(1); 205 Ill. Comp. Stat. 5/48(2)(b)(2.5); Iowa Code § 524.218; Kan. Stat. Ann. § 9-1127d(a); Me. Rev. Stat. Ann. Tit. 9-B, § 211(5); Mo. Rev. Stat. § 362.105.1(12); Tex. Finance Code § 31.107; Utah Code Ann. § 7-1-501; Va. Code Ann. § 6.2-901; Wyo. Stat. Ann. § 13-9-101(f).

[36] Ga. Code Ann. § 7-1-72(b); N.C. Gen. Stat. § 53C-8-4; Vt. Stat. Ann. Tit. 8, § 11501.

4) Authority based on a statutory requirement that a bank cannot outsource a service unless the service provider affirmatively consents to examination by the state banking agency.[37]

In the recent case of the Equifax data breach, one state—Maine—has a specific statute which provides the authority to supervise credit agencies, but more than 40 states have determined they have supervisory authority over technology service providers. Out of the group of 40 states, a smaller group of states with examination authority was assembled to conduct an on-site exam. The exam focused on the adequacy of the company's cybersecurity programs, what breakdowns led to the breach, and corrective actions that will be taken to ensure consumers are not harmed in the future.

As described above, the state system for supervising non-bank financial services providers is comprehensive and effective in protecting consumers while also allowing for prudent innovation.

[37] Cal. Fin. Code § 462; Fla. Stat. § 655.0391; Ind. Code § 28-11-3-1 (g); 3 NYCRR SP G § 101.1; Or. Rev. Stat. § 708A.145; Wis. Stat. § 221.1101(5).