

TESTIMONY OF

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On behalf of the

CONFERENCE OF STATE BANK SUPERVISORS

On

**“EXAMINING REGULATORY RELIEF PROPOSALS FOR COMMUNITY
FINANCIAL INSTITUTIONS, PART II”**

Before the

FINANCIAL INSTITUTIONS AND CONSUMER CREDIT SUBCOMMITTEE

COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

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INTRODUCTION

Good afternoon, Chairman Capito, Ranking Member Meeks, and distinguished Members of the Subcommittee. My name is Sally Cline, and I serve as the Commissioner of the West Virginia Division of Financial Institutions (DFI).

Thank you for holding this hearing and considering H.R. 4626, the SAFE Act Confidentiality and Privilege Enhancement Act, which will help states promote and extend smart, efficient regulation to our state-licensed, non-bank financial services providers through expanded use of the Nationwide Multi-state Licensing System and Registry (NMLS, or the System).

It is my pleasure to testify before you today on behalf of the Conference of State Bank Supervisors (CSBS). CSBS is the nationwide organization of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision and to develop regulatory policy. CSBS also provides training to state banking and financial regulators and represents its members before Congress and the federal financial regulatory agencies.

State banking regulators supervise over 5,100 state-chartered banks. Further, most state banking departments also regulate a variety of non-bank financial services providers, including mortgage lenders, money transmitters, payday lenders, and check cashers. In my state of West Virginia, my department is responsible for regulating state-chartered banks, state-chartered credit unions, mortgage lenders, consumer lenders, and money services businesses.

H.R. 4626 is just one example of Congress and state regulators' shared interest in promoting smart and efficient financial regulation. More broadly, state regulators advocate for "right-sized" regulations that are appropriately tailored to a financial institution's size, risk, complexity, and scope. This tailored regulatory approach is especially crucial for community banks, whose portfolio lending and relationship-based business model unduly suffers under the burden of what we might call "one-size-fits-all" regulations. One-size-fits-all regulations treat all bank business models the same, ignoring the vast differences between complex global financial conglomerates and small community banks. State regulators support and thank the Committee for its efforts to alleviate community bank regulatory burden.

We appreciate your consistent and long-standing support for state banking and financial regulation, and I thank you for introducing H.R. 4626 and the many members of the Committee who support this bill.

ABOUT NMLS

Almost 10 year ago, in the lead up to the financial crisis, state regulators recognized the need to oversee the mortgage industry more comprehensively and efficiently. State regulators also wanted to effectively and efficiently streamline the licensing process across state lines. For instance, regulators from West Virginia and my neighboring state, Kentucky, should be able to seamlessly share information and communicate regarding a financial services provider licensed in both of our states. Similarly, a financial services provider should enjoy a streamlined licensing

process between West Virginia, Kentucky, and all other states in which it is licensed to do business. Furthermore, state regulators wanted to ensure that a bad actor could not have his or her license revoked in one state, only to go set up shop in another. To achieve this simple concept, the states collectively developed an electronic system for mortgage licensing, known as NMLS. The System gives regulators the ability to keep track of bad actors and provide responsible mortgage providers with greater efficiency and consistency in the licensing process. After two years of development, state regulators launched NMLS on January 2, 2008.

When Congress sought to pursue mortgage market reform in 2008, you recognized the benefit of state supervision and NMLS and codified the System into federal law through the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). The SAFE Act required all residential mortgage loan originators (MLOs) be either licensed or registered through NMLS. This web-based system, administered by the states through CSBS, allows state-licensed mortgage companies, their branches, and individuals to apply for, amend, update, or renew a license online for all participating state agencies using a single set of uniform applications.

The SAFE Act also established a framework that clarified state and federal roles and a mechanism for state and federal coordination and information sharing. Under this state-federal cooperative structure, state regulators are given primary responsibility for implementing the law's requirements, with a federal agency serving as a backstop and arbiter of the SAFE Act. All 50 states enacted laws to implement the mandates of the SAFE Act within one year of its passage. The states responded in record time to adopt NMLS, quickly putting in place a uniform and seamless system of mortgage licensing and supervision across the nation. With the success of NMLS, state regulators are increasingly able to share information across state lines and with their federal counterparts, leveraging collective resources and making the examination environment more efficient.

NMLS also serves as a resource for consumers and promotes greater transparency concerning the companies providing financial services to consumers through the NMLS Consumer Access website (www.nmlsconsumeraccess.org). NMLS Consumer Access enables consumers to verify whether a mortgage lender is in fact properly licensed.

The simplicity of the concept underpinning NMLS has been key to its success – via NMLS, a mortgage lender can easily apply for a license in one state or across multiple states using a uniform, electronic license application form. This uniformity cuts bureaucratic red tape and reduces regulatory burden for state-licensed companies with operations in numerous states. NMLS provides similar streamlining benefits to state regulators by providing back-office services. States that license the same entity are able to share pertinent information and collaborate with colleagues across state lines regarding multi-state entities, thereby reducing duplicative efforts and costs and promoting more efficient supervisory processes at state regulatory agencies. NMLS complies with the Federal Information Security Management Act's (FISMA) stringent data security standards.

EXPANSION AND WIDESPREAD SUPPORT OF NMLS

NMLS was designed in a forward-thinking manner to provide functionality for all state licensing regimes. NMLS proved to be such a successful and integral regulatory tool in the mortgage licensing arena, my fellow state regulators and I decided to expand its use to serve as a licensing system for other state-licensed, non-bank financial services providers. Starting in April 2012, state regulators began voluntarily using NMLS on this expanded basis to include licensees such as check cashers, debt collectors, and money transmitters. My own state legislature in West Virginia decided to expand use of NMLS, and beginning this month, my department will utilize the System to license money services businesses. As another example, I know that Texas also plans to expand use of NMLS for money transmitters later this year, as well as for currency exchangers. Other states are rapidly expanding their use of NMLS to achieve these synergies. As of year-end 2013, 24 state agencies were using NMLS to license consumer lenders, money services businesses, and debt companies. By the end of this year, 27 states will use NMLS to license and track money services businesses, eight states for payday lenders, five for debt collectors, 12 for consumer finance companies, and another eight for debt settlement and management businesses.

The expanded use of NMLS has streamlined the licensing process for both licensees and regulators. It enables licensees to manage their licenses for multiple states, while states are able to track the number of unique companies and individuals, as well as the number of licenses they hold in each state. As a system of record for state regulatory authorities and a central point of access for licensing, NMLS brings greater uniformity and transparency to these non-depository financial services industries while maintaining and strengthening the ability of state regulators to monitor these industries.

Non-bank financial services companies have also supported the efficiencies that NMLS provides. In a June 2012 House Financial Services Committee hearing on money services businesses, industry representatives testified that widespread adoption of NMLS “would eliminate duplication of effort and opportunities for error” and “urge[d] any changes at the federal level to accommodate and encourage its further development.”¹ In another House Financial Services Committee hearing that same month, appraisers, money transmitters, and regulators alike testified to their interest in using NMLS as a licensing platform.²

Federal regulators have also benefitted from NMLS efficiencies and are examining advantages to expanded use in other non-mortgage industries. In fact, the Dodd-Frank Wall Street Reform and Consumer Protection Act specifically required the Consumer Financial Protection Bureau (CFPB) to consult state agencies on existing state registration systems when developing and implementing its own registration requirements.³ The CFPB has turned to state regulators and NMLS on numerous occasions. Earlier this year, the CFPB was able to use information from NMLS in a proposed rule entitled “Defining Larger Participants of the

¹ Timothy P. Daly, Senior Vice President, Global Public Policy, The Western Union Company. Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, U.S. House of Representatives, 112th Congress, Second Session, Serial No. 112-139, 49-50 (June 21, 2012).

² Subcommittee on Insurance, Housing, and Community Opportunity: “Appraisal Oversight: The Regulatory Impact on Consumers and Businesses,” Printed Hearing 112-140 (June 29, 2012).

³ 12 U.S.C. § 5512(c)(7) and 12 U.S.C. § 5514(b)(7).

International Money Transfer Market.”⁴ Taking advantage of state-federal information sharing agreements, the CFPB used data that had been collected by the states on money transmitters to perform an analysis of money transmitters. This is exactly the kind of efficient and cooperative supervisory data sharing that state regulators originally envisioned and NMLS now enables. In November 2013, the CFPB issued an Advanced Notice of Proposed Rulemaking on debt collection practices, which specifically sought comments on using NMLS if it were ever to require registration of debt collectors.⁵ State regulators appreciated that the CFPB identified NMLS as a potential registration database. As the CFPB contemplates registration requirements of various regulated entities, NMLS is an obvious solution that can efficiently meet regulators’ needs while avoiding duplication.

ENHANCED PRIVILEGE AND CONFIDENTIALITY PROTECTIONS FOR AN EXPANDING NMLS

Given the desire for expanded use of NMLS among non-depository financial services companies, state regulators, and other stakeholders, the introduction of H.R. 4626 comes as a very welcome development. The SAFE Act currently provides that information shared through NMLS among mortgage industry regulators retains existing state and federal privilege and confidentiality protections. Neither the SAFE Act nor H.R. 4626 create any additional privilege or confidentiality rights. Under the SAFE Act, information contained in NMLS retains whatever privilege and confidentiality protections the information enjoyed prior to being entered into NMLS, as long as that information is shared through NMLS among mortgage regulators.

I will use my own banking department as an illustration. Since the West Virginia DFI has the authority to license and supervise entities and individuals involved in mortgage lending, my agency is considered a mortgage industry regulator, and any regulatory information that I share with other mortgage industry regulators through NMLS retains all legal protections related to confidentiality and privilege. However, if another state regulator wants to use NMLS to license a certain category of non-depository companies and that state regulator is *not* a mortgage regulator, it is not clear that the SAFE Act’s protections for privilege and confidentiality would apply. In that instance, if I needed to share licensing or other regulatory information through NMLS with that state regulator, that regulator might not be bound to comply with and honor the privilege and confidentiality protections that I must follow.

This possible gap limits the states’ ability to use NMLS as a licensing system for non-mortgage financial services providers. The change proposed by H.R. 4626 addresses this uncertainty and would provide me and West Virginia regulated entities with certainty that confidential or privileged information shared through NMLS would continue to be protected under state and federal law.

It is important to note that H.R. 4626 does not create any privilege or new licensing or registration requirements through NMLS. The bill simply allows for existing confidentiality or

⁴ Bureau of Consumer Financial Protection. “Defining Larger Participants of the International Money Transfer Market (CFPB 2014-0003).” Federal Register. Vol. 79, No. 21, p. 5316.

⁵ Bureau of Consumer Financial Protection. “Debt Collection (Regulation F) (CFPB 2013-0033).” Federal Register. Vol. 78, No. 218, p. 67879.

privilege to continue when regulatory information concerning the expanded financial services industries is shared among state and federal regulators through NMLS. It also provides regulated entities with additional assurance that their sensitive information housed in NMLS retains existing legal protections related to privilege and confidentiality.

AUTHORITY TO CONDUCT CRIMINAL BACKGROUND CHECKS FOR AN EXPANDED NMLS

In the SAFE Act, Congress mandated that MLOs undergo background checks as part of the licensing process. The Federal Bureau of Investigation (FBI) warehouses the most comprehensive and reliable database of criminal record information from both state and federal law enforcement agencies, and facilitates background checks on their behalf. The process is simple – when an individual is required to undergo a background check, he or she submits fingerprints, which are then sent to the FBI. The FBI pulls the individual’s criminal history, and then sends it back to the state via NMLS.

To make this process more efficient, the SAFE Act designates CSBS as a “channeler” – an approved company that acts as an intermediary in the fingerprinting and background check process – in the mortgage context. As a channeler, CSBS streamlines an otherwise onerous process and makes it efficient. A potential MLO scans his or her fingerprints at just one location. The FBI generates that individual’s criminal record and passes it to NMLS, which then directs the information to the relevant state licensing agency.

State law often requires background checks on other non-mortgage licensees, and a similar background check arrangement would need to be in place for successful NMLS expansion. The FBI has the authority to – and has – designated CSBS as a “channeler” for regulatory purposes beyond mortgage regulation. Unfortunately, despite the FBI’s approval of CSBS as a channeler and our successful track record in processing background checks through NMLS, the FBI has not authorized CSBS to move forward with the use of NMLS in conducting background checks for non-mortgage financial services providers. This complicates our efforts to expand the use of NMLS. Despite engagement with the FBI over the course of two years, there still has been no resolution. With passage of H.R. 4626 and, hopefully, progress on implementing CSBS’s channeling authority, state regulators will be well-positioned to provide efficient and effective regulation through expanded use of NMLS.

COMMENTS ON OTHER LEGISLATIVE PROPOSALS

I appreciate the opportunity to offer, on behalf of CSBS, general comments on the other proposals being discussed today. I referred previously to the diverse financial services ecosystem that I and my fellow state regulators oversee in our home states. Community banks are a vital part of this marketplace, and, individually and through CSBS, state regulators are very focused on commonsense regulations and supervisory practices that reflect the community bank business model.

Our focus is not necessarily on less regulation, but on “right-sized” regulations that recognize most community banks engage in traditional portfolio and relationship-based lending.

For most community banks, risk management is based on an inherent understanding of the underlying credit risk, a deep knowledge of its customer base, and an alignment between the success of the bank and its customers. As this Committee has recognized, policy efforts that encourage portfolio lending by community banks will help these institutions capitalize on the strengths of this time-tested business model. Portfolio lending has been the focus of Congressman Barr's bills addressing the Ability-to-Repay rule's treatment of rural areas and loans held in portfolio; Similarly, H.R. 4521 recognizes that community banks take taxes and insurance into consideration before deciding whether to offer escrow services to customers. At its core, these policies reflect the incentives inherent in a community bank's decision to make a mortgage loan.

Given the centrality of housing and mortgage lending to the economy, ongoing oversight of mortgage regulation is important to ensure a diverse and well-functioning marketplace for mortgage credit. CSBS praised the final Basel III rule for its efforts to respond to the concerns of Congress, industry, and state regulators, including in the rule's treatment of residential real estate loans. However, as CSBS noted when the final rule was released, "[w]hile the framework approved today significantly reduces the complexity and the number of issues banks need to address, the rule still represents a significant change and burden for the industry."⁶ Accordingly, further study such as that called for in H.R. 4042 should provide important oversight and perspective.

Similar to H.R. 4626, Congressmen Barr and Perlmutter's bill, H.R. 5062, ensures the protection of privileged state supervisory information that is shared with the CFPB. This bill provides regulators and regulated companies with greater certainty about the protections that apply when information is shared with and among regulators. As the Committee considers H.R. 5062, we urge you and the bill's sponsors to include a reference to confidentiality as well as the bill's existing reference to privilege. Because state laws frequently refer to confidential and/or privileged information when describing the legal protections applicable to information shared with or among regulators, adding a reference to confidentiality will provide state regulators and regulated entities with greater certainty that information shared with and among state and federal regulators will retain any and all privilege and/or confidentiality protections conferred by existing state or federal law.

CONCLUSION

As locally based and locally accountable regulators, state banking regulators continually strive for better ways to regulate the diverse system of financial services businesses that serve our communities and consumers. Our proximity to both businesses and consumers and our diverse regulatory portfolio gives us a unique, firsthand perspective of the benefits a smarter, more efficient, non-depository regulatory framework would bring. Such benefits include promoting sound business practices and responsible lenders, reducing regulatory burden, and strengthening consumer protection.

⁶ Ryan, John W. "Approach to Basel III Respects Industry Diversity." Conference of State Bank Supervisors. July 2, 2013. Available at: <http://www.csbs.org/news/press-releases/2013pr/Pages/pr-070213.aspx>

H.R. 4626 promotes all of these goals through an existing and successful regulatory tool, NMLS. H.R. 4626 will cut regulatory burden, streamline the licensing process, and promote regulatory coordination at the state and federal level. My colleagues and I appreciate the work Chairman Capito has done in sponsoring H.R. 4626, and the many members of this Committee who support it.

The Senate has also recognized the importance of protecting the privilege and confidentiality of supervisory information, and passed identical companion legislation, the SAFE Act Confidentiality and Privilege Enhancement Act (S. 947), by unanimous consent in December 2013. In a show of overwhelming bipartisan support, Senate Banking Committee Chairman Tim Johnson and Ranking Member Mike Crapo, representing the Committee of jurisdiction, both co-sponsored the bill. My fellow state regulators and I urge the House to expeditiously pass H.R. 4626 in a similar bipartisan manner. This would signal to the federal agencies, state regulators, non-depository financial institutions, and consumers that Congress supports and promotes smart, proven, and efficient regulation.

Thank you for the opportunity to testify before you today on state regulators' support for H.R. 4626. I look forward to answering to any questions you might have.