

NMLS Ombudsman Meeting
2019 AARMR Annual Regulatory Conference
Westin San Diego Gaslamp Quarter, San Diego, California
August 8, 2019, 2:00 p.m. to 5:00 p.m. PT

The NMLS Ombudsman, Scott Corcadden, called the meeting to order at 2:00 p.m.

1. NMLS Ombudsman Update

Scott Corcadden, NMLS Ombudsman

Supervisor, Bureau of Loans, Alabama State Banking Department

Scott Corcadden reported there had been 68 emails between February 1, 2019, and August 1, 2019. The emails were reviewed by the Ombudsman, who either responded directly to the submitter or referred the question to SRR or state agency staff. Many of the questions were answered by referring the individual to the internal Regulatory User Group (RUG), NMLS Call Center, the NMLS Resource Center, a specific state regulator, or the Consumer Financial Protection Bureau (CFPB). Thirty-four of the emails were responded to directly by the Ombudsman and 22 emails were referred to the appropriate state agency. The top five general categories of the last six months, in order of frequency were Consumer Complaints, Federal Registration, State License Applications, Testing, and system log-in or access issues.

Tim Doyle (CSBS) provided an update on the NMLS 2.0 project. One year ago, SRR announced the NMLS 2.0 project was moving in a different direction. The system being developed was not going to deliver the vision of NMLS 2.0 needed to facilitate collaboration and improve consumer protection. SRR is now attempting to re-envision what NMLS 2.0 means and what the new system will look like. SRR may be moving from a “Big Bang” approach, switching 100% from one system to the other at one time, to a more iterative approach and improve the product overtime. SRR has moved forward with implementing and prototyping components of NMLS 2.0. SRR has implemented a new education management system for SAFE course providers, replaced the state regulator’s License Settings and Fees System (LSFS) with the new License Information & Fee Environment (LIFE), and launched a new case management system for the NMLS Call Center. SRR has built two exciting prototypes; the License Wizard, designed to help prospective applicants identify the correct license, and the Key Individual Wizard Initiative (KIWI), designed to help applicants identify the key individual or control persons and their vetting requirements.

Kyle Thomas (CSBS) provided an update on the State Examination System (SES) development and implementation. The development of SES has continued over the last 10 months. SRR believes SES will do for supervision what NMLS did for licensing; increase information sharing among regulators, help unify state requirements, and improve exam efficiencies for both industry and regulators. Starting in October, 11 state agencies will participate in the SES pilot program. SES training will be provided to all pilot participants. The pilot will run from October to December, followed by an evaluation period to determine SES’s readiness for nationwide release. Nationwide launch for SES is targeted for Q1 2020. SES functionality available to companies will include information exchange/information request process, report of exam review process and the initiation of follow-up responses.

Related to information requests and SES functionality, Costas “Gus” Avrakotos (Mayer Brown) asked what types of responses companies will be able to provide if the answer is “not

applicable.” Thomas indicated that SES will be able to customize the information request per exam to enable better responses from companies and provide clarification. Avrakotos asked for a list of the items in the information requests (IR). Thomas indicated that this information could be made available and Doyle stated that SRR will bring this request to the NMLS Policy Committee for further consideration. Avrakotos then asked if there is a graphical representation available of the roadmap for NMLS 2.0. Doyle states that the new roadmap for NMLS 2.0 is being developed.

David Shirk (Lotstein Legal) asked if SES will allow for explanations to be provided into the non-standard/state-specific portion of the IR. Thomas stated SES will have standardized IR items and regulators will be able to add state-specific items.

2. Regulator Communication & NMLS Improvements

Cindy Corsaro, Promontory Fulfillment Services

Cindy Corsaro took time to thank regulators for working with her organization on a variety of items. She thanked Hawaii, Missouri and Utah regulators for working with her to help identify available Approved-Inactive mortgage loan originators (MLOs) to fulfill Qualifying Individual and/or Branch Manager brick and mortar requirements. She also thanked Jim Malloy of New Hampshire Banking Department for providing examination questions and requirements to her organization two weeks prior to the official notice of examination, which allowed ample time to review what was needed for the examination and ask questions of the examiner. As a result, Promontory was able to begin gathering information and documents prior to the start of the exam, which guaranteed an on-time delivery of required materials. Corsaro also thanked Rich Cortes’ (Connecticut Department of Banking) examiners for reasonability and kindness during recent unannounced examination.

Kyle Thomas (CSBS) indicated SES could accommodate the submission of exam questions and requirements ahead of an exam by defining/adjusting due dates once an exam is scheduled.

Corsaro also reviewed her suggested enhancements to NMLS and regulator practices that she thinks would help improve the system. Her suggestions included:

- Create a view of a company’s Registered Agents in alphabetical order in a submitted Company Form (MU1). This would help when checking addresses in the NMLS when processing an address change.
- Create a view of an entity’s selected Business Activities under the Composite View tab and the Company Snapshot section.
- Regulators should include both the Primary and Secondary Contacts listed in the NMLS on any email communication send to the company, not just the Primary Contact. This would guarantee timely receipt of any and all time-sensitive and/or important notifications by the entity.

Scott Corscadden stated that SRR would review these enhancement requests and prioritize them with other requested NMLS 1.0 enhancements.

3. State-to-State Temporary Authority

Robert Niemi, Bradley

Robert Niemi expressed concerns that the current interpretation of the Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155 being provided by CSBS in the published FAQ may have overreached the federal statute. Niemi made a point to state his support for the opportunity to allow state licensed MLOs to continue to earn income for their families while undergoing employment changes and relocation.

Niemi espoused that, if read grammatically, S. 2155 allows for qualified MLOs, after moving from one state to another, to continue originating loans temporarily, availing themselves on S. 2155, only in the state in which they moved to. This interpretation is in direct opposition with the interpretation listed in CSBS's *FAQs S. 2155 Temporary Authority to Operate*, which states that, "an MLO could be eligible for temporary authority in any number of states at the same time."

Niemi requested that efforts be made for a formal legal opinion to resolve these concerns and show support for the CSBS interpretations from the CFPB. While the current interpretation by CSBS would benefit the industry in the short term, he is very concerned about potential downstream impacts, including future legal action related to loan originated under S. 2155 with the current interpretation. Niemi also referenced the need for the CFPB to clarify Bulletin 2012-05 in the wake of S. 2155.

Scott Corcadden stated that Niemi's letter was sent to the CFPB. He also stated that the FAQs related to S. 2155 were reviewed and approved by both the CSBS Lawyers Committee and the NMLS Policy Committee. Bill Young (CSBS) stated that the FAQs were also shared with the CFPB, who had no objections to the interpretations.

David Shirk (Lotstein Legal) asked, considering current cases before the Supreme Court, how important is it to have a formal legal response to the question or an amendment to the statute. Tim Doyle (CSBS) believes the language and intent of S. 2155 was to facilitate movement of licenses between and among states, not physical relocation or movement. He encouraged industry to go directly to CFPB with these types of concerns. Doyle also clarified that the CSBS Lawyers committee is made up of state regulator legal counsel and their translation is based on the intent of S. 2155 focused on the licensing process. Kirsten Anderson (Oregon Division of Financial Regulation) explained that the NMLS Policy Committee thoroughly reviewed, discussed and vetted the FAQs related to S. 2155.

4. State-Specific Information in NMLS & Artificial Intelligence and Licensing Costos Avrakotos & Keisha Whitehall Wolfe, Mayer Brown LLP

Costos Avrakotos expressed his continued concern about state regulators requiring state-specific information be provided in the NMLS, instead of accepting the information outside of the system. By requiring state-specific information be uploaded in NMLS, the information becomes available to regulators in all states in which an entity is seeking a license, even though these states may not require the information for the purposes of licensing or processing a change in control. He thinks this practice also undermines NMLS' goal of increasing consistency in licensing requirements. Avrakotos was not questioning the legitimacy of a regulator's request for state-specific information, nor was he questioning whether NMLS is the best repository to keep such state-specific information for each state. His concern was with state regulators

compelling an entity or licensee to upload the regulator's required information in NMLS when such information is not required by all other states.

Avrakotos also asked for an update for how this issue may be resolved in NMLS 2.0. He asked to confirm if the approach presented previously was still being considered or had it been abandoned.

Stephanie Buonomo (CSBS) stated that the previously communicated approach to documents in NMLS 2.0 is still the approach SRR is working to implement. This approach would categorize document types based on who should have access to them. With the NMLS 2.0 moving in a new direction and development work on hold, work on this feature of the system was put on hold, which is why SRR had not communicated further on the topic.

Keisha Whitehall Wolfe presented Mayer Brown's second topic, related to artificial intelligence ("AI"). One of the challenges with state laws is whether a licensing obligation arises as an MLO when an application is taken through an AI system such as a chatbot (generally, a natural language processing algorithm which provides a personalized and conversational experience to users). While most state mortgage finance licensing laws are written in such a way to require a license of an entity that employs an AI system by which applications are taken for a mortgage loan, under most (if not all) state laws that provide for the licensing of an MLO, the licensing obligation applies to an individual who conducts the activities that define an MLO (e.g., minimally, taking an application for a mortgage loan or offering or negotiating the terms of a mortgage loan). Often, an individual is expressly defined as a natural person and a few states define what constitutes taking an application for a mortgage loan. Generally, however, how the individual takes an application for a mortgage loan (whether completing a paper or electronic version of an application person to person, over the phone, or via email) is not regulated, so regulators can apply taking an application broadly.

Recently, California enacted legislation that requires clear and conspicuous disclosures when bots are used to communicate or interact online with people in California, however this legislation did not address a licensing obligation. Whitehall Wolfe asked regulators in attendance if any other states have either introduced/enacted or contemplating legislation or a policy related to the regulation of AI in the mortgage industry.

Anthony Polidori (Idaho Department of Finance) stated his agency is looking at legislation that may be out within the next two years. David Shirk (Lotstein Legal) mentioned there is a difference between rules-based tools versus true AI/Machine Learning applications. He asked whether a natural person has to be named for each loan origination particularly if loan approval may be done via a rules algorithm. Joe Mulberry (Wyoming Division of Banking) said his state has passed a FinTech sandbox law allowing a variety of companies to operate in the sandbox and be governed by current WY statutes.

5. Commutable Distance, Branch Oversight and Licensing

Haydn Richards, Bradley

Haydn Richards started by reminding all states to make sure they update their state licensing checklists, as these are of the utmost importance to their licensees and prospective applicants.

Richards discussed the evolving world of branch licensing. Richards described how branches and MLOs operated in the past, when loan applications were largely handwritten, and offices dealt more in paper. During this time, loan originators had to be physically located in the office

to work and branch managers would have to diligently supervise the loan origination and aided as needed. This business model and approach to the mortgage industry no longer exists. In today's modern world, every loan file is run through an advanced mortgage loan origination system. Branch managers no longer look over the shoulders of mortgage loan origination or spot check loan files for completeness and accuracy. Borrowers rarely meet their loan originator face-to-face until it is time to sign their loan application and disclosures, and even this act is becoming extinct with the use of services that allow for electronic signatures. Richards also described the way in which advanced technology has allowed for the origination of some of the safest mortgage loans in history.

Richards suggested a wholistic discussion about branch and MLO licensing obligations. Consistent with CSBS's Vision 2020, Richards hopes to engage in a discussion regarding the future of the regulator environment and whether certain existing requirements remain appropriate in a digital age, including the need for a commutable distance requirement, branch managers required at every location, the existence of virtual branches, appropriate requirements for MLOs that work remotely, and the continued revenue generated by states related to branch licensing.

KC Schaler (Idaho Department of Finance) indicated ID is working to remove the Qualifying Individual requirement for licensing. She also stated ID added a telecommuting option on the Idaho business plan requests. Tracy Reno (Alaska Division of Banking) stated that AK does not have a commutable distance requirement. Gus Avrakotos (Mayer Brown LLP) stated some states do not license branches now. Mark Hastie (Minnesota Department of Commerce) stated MN MLOs use VPN due to need for mobility.

Stephanie Buonomo (CSBS) described an SRR initiative that is just getting off the ground directly related to this topic. The Streamlining Authorized Branch Reporting Project (SABRE) will address the pain points of branch licensing and attempt to streamline the application process, with the goal of modernizing branch licensing requirements through NMLS.

Cliff Charland (Maryland Commissioner of Financial Regulation) stated his agency used to have a distance requirement for branches but recognized with today's technology changing that MLOs can work at locations other than their branches. MD places the burden on companies to demonstrate they are adequately supervising their MLOs.

Gus Avrakotos (Mayer Brown LLP) requested notification be provided by NMLS when there are any changes to state regulations. Tim Doyle (CSBS) stated this used to be done through the NMLS Resource Center/Agency Update section when requested by the states. SRR will take this as an action item to improve these types of legislative communications.

Richards closed by offering his time/help and the time/help of the Industry Advisory Council to address the open questions regarding branch licensing.

6. Open Discussion

Amy Greenwood-Fields (Dentons US LLP) spoke about the state criminal background check process, which has too many steps/requirements. She asked how this process can be made easier and can SRR consolidate the state specific fingerprinting requirements into one place for reference. Stephanie Buonomo (CSBS) agreed that state CBC processing is a challenge and thinks the creation of a consolidated reference may be a good Ombudsman research project.

Rose Patenaude (Land Home Financial Services, Inc.) discussed an issue she is experiencing. Deficiencies were placed on Land Home Financial Services, Inc.'s NMLS record as a result of a non-disclosable informal exam matter. As the result of a March 2019 exam, the company agreed to certain terms relative to the exam, including the execution of a resolution. The examining state advised that the resolution would remain confidential and be a non-disclosable event. The resolution was posted as a Regulatory Action in NMLS and classified to allow all NMLS regulators to have access. As a result of the posting of the non-disclosable event as a Regulatory Action in NMLS, another of Land Home's regulators, who was not the examining state, placed deficiencies on the company's officers asking them to update their Disclosure Questions and Explanations related to the informal exam matter. Land Home believes that this deficiency should not have been placed and have been trying to contact the state but have been unsuccessful in getting a response. The state that performed the exam has also reached out multiple times to their fellow state and have not yet been able to come to resolution. Scott Corscadden indicated that he would follow up on this issue and asked Patenaude if she would email ombudsman@csbs.org with more information.

Dana Melanson (Sourcepoint Inc.) requested that CSBS change the "Miscellaneous" or custom License Items defaulting to private in NMLS. Bill Young (CSBS) agreed to follow-up on this as an enhancement, which will most likely will go to the NMLS 1.0 backlog

Kobie Pruitt (Mortgage Bankers Association) requested an update on the issue the MBA brought to the last Ombudsman meeting related to federal instruction employer's access to their MLO's SAFE required testing and education information in NMLS. Stephanie Buonomo (CSBS) indicated that this issue was discussed by the NMLS Policy Committee and was added to the NMLS 1.0 Backlog for prioritization.

Corscadden thanked all the attendees and participants at the meeting and adjourned at 4:31 p.m.