

NMLS Ombudsman Meeting
The Roosevelt Hotel, New Orleans, LA
9:00 am – 12:00 pm CT
August 4, 2015

1. Robert Niemi, NMLS Ombudsman

Deputy Superintendent for Consumer Finance, Ohio Division of Financial Institutions

- Ombudsman Update and Issue Review

Niemi welcomed all to the 12th NMLS Ombudsman meeting and introduced Rod Carnes, AARMR President, Tim Doyle, CSBS, and all NMLS Policy Committee members who were in attendance. He gave a general update on the issues and concerns that have been forwarded to the Ombudsman email since the last public meeting in February. The large majority of the questions were able to be resolved with assistance from SRR staff or the NMLS Call Center, with some involving input from state or federal regulators. Most of the System users were assisted with a day or two.

Niemi outlined the format for the Ombudsman Meeting, noting that much of the focus will be on the progress that has been made on system enhancements and improvements, many of which have been developed in response to issues brought up at prior meetings. The first part of the meeting will be centered around reports from the various working groups in order to update the audience on what has been accomplished and to lay the groundwork for further discussion both at the meeting and throughout the conference. Niemi also noted the importance of receiving comments, questions and concerns in writing as that gives him and the SRR staff a more concrete basis upon which to plan enhancements. This is particularly important with regard to the NMLS licensing forms and the mortgage call report.

Niemi stated that SRR has been working with the MBA regarding a survey of license processing times that the association has pulled together from its members. That issue is slated to be discussed more in detail at the AARMR Industry Advisory Board meeting.

2. Working Group Reports

Uniform Licensing Forms: Keisha Whitehall Wolfe, Acting Deputy Commissioner from Maryland and Chair of the NMLS Licensing Forms Working Group, reviewed the process that the working group has been engaged in following the comments received, through the request for public comments process, on proposed changes and revisions to the forms. No major changes are being proposed to the forms at this time, but input and information is being gathered as the

basis for ongoing discussions on: business activities; updates to disclosure questions; attestation language; and development of dynamic licensing forms. Wolfe spent a few minutes reiterating what is meant by dynamic forms – the ability to expand or contract the information required on licensing forms tailored for a particular business activity. User input is still being sought on these issues and the working group will make final recommendations later in the year.

Gus Avrakotos of K&L Gates raised the issue of duplicative (and numerous) attestations that are required when using the System and asked whether some of the attestations could be eliminated. Several regulators responded stating that there are many types of attestations used with each type of form as well as for other submissions such as the mortgage call report. Through the forms review process we would like to move towards uniformity but there are many issues to address such as the use of third party attestations. Avrakotos also mentioned issues with an attestation for every item and the amount of information needed for “every business” a control person is involved with. Wolfe stated that fewer attestations may be needed and that issue will remain part of the overall and ongoing review process.

Rose Patenaude, HSBC – North America, raised the issue of states continuing to require more information outside of the System. She noted that uniformity among states is not totally doable, but that she would like to see a lessening of these outside requirements. It was suggested that checklist uniformity may help in that effort and individual state changes to laws and rules. Tom Brennan from Massachusetts noted that their department undertakes a yearly review of items required in the licensee annual report to ensure no duplication and has been instructed by the Commissioner to eliminate the annual report for brokers.

State License Checklists: Sam Wolling, Vice President, Prospect Mortgage, walked through the steps the joint industry and regulator working group have taken to streamline and promote uniformity among the state checklists. The project entails a great degree of details and necessitates a constant back and forth between the license applications and the checklists as well as references to the business activities definitions to reach the end goal of improving the clarity of the application process. The group is also reviewing the checklist items for surrenders and amendments and want to keep the structure and language of the checklists as uniform as possible through the use of templates. Avrakotos asked that more information be made available regarding which business activities in a particular jurisdiction are not subject to licensure and the general response was that these checklists are meant as an aid for industry to help organize the licensing process but do not take the place of legal counsel and do not supersede state law.

William Kooper, MBA, asked when the new checklists will be available. The process of rolling them out will begin in the fall and will continue on an ongoing basis.

Document Upload: Wolfe also led this discussion and noted that in October 2014, a guide was published to list the types and categories of documents that should (and should not) be uploaded as well as the acceptable document formats, etc. The working group has reached out to all of the

industry and regulator working groups to make sure that any applicable updates are added to the guide on an ongoing basis. There is much interest from industry to expand the list of permissible documents particularly those that are state-specific and the working group is open to making the upload functionality available on a wider basis.

3. Advance Change Notice

Amy Greenwood-Field, Senior Attorney, Bradley Arant Boult Cummings LLC

Greenwood-Field brought up an advanced change notice (ACN) usability issue regarding how the submission of a notice should be processed differently depending upon whether a state needs to give affirmative approval to a change versus a requirement to give notice of a change (“acknowledge vs approve”). The System does recognize the difference and permits a state to acknowledge the delivery of a properly timed notice, but some states do not utilize that functionality. Oftentimes, particularly in connection with a change of control filing, outside companies (such as investors) may be reviewing the process and require those acknowledgements as part of meeting compliance requirements.

Several state regulators spoke up regarding their specific requirements and noted that while often there is a technical clear-cut process, many requests result in more of a judgement call where there is not a clear line between approval and notice. Greenwood-Field specifically mentioned changes that result in an ownership change may result in the filing of a new license application and requested clarity on whether these were triggered by statutory requirements. She stressed the need for coordination particularly with large transactions and stated that pipeline loans may be an issue when the company changes. Kirsten Anderson, Oregon, stated that the Oregon Department has a process in place to ensure funding of such loans.

An additional issue raised was what name is required on a license application or other filing. Generally, states require the legal name and it was discussed that the issue would be followed up on during a future regulator call.

4. Advertising Disclosures

Scott Nowak, MBA

Nowak brought up the need for uniformity regarding state advertising disclosures. In some jurisdictions, the NMLS number is required while others require additional information and can become exceedingly lengthy. The MBA would like to work with state regulators to develop uniform legislative language that would incorporate driving consumers to NMLS Consumer Access to validate an individual or company’s credentials. Several

Several state regulators spoke on this issue and generally agreed with the MBA that the rules could in many instances be simplified. Several states have recently, or are in the process of doing that including Ohio, Maryland, Virginia, Oregon and Kansas. There are legislative challenges when attempting to change existing requirements and there was some discussion of the role of Consumer Access and the value of that information to consumers. The issue of the

overlap into regulation of use of social media was also discussed. It was also discussed that the issue should be discussed by the AARMR Board and Advisory Committee as they may be the right vehicle to formulate language for use by the states.

Nowak also brought up the issue of state adjudicated actions that are reported in NMLS Consumer Access and the fact that for federally registered MLOs the actions are self-reported. The MBA believes that this is an issue for consumers and also for industry employer who may not be aware of an existing action against an individual. The reporting requirements are derived from the SAFE Act and Nowak asked whether it would be helpful to reach out to the federal regulators and/or the CFPB. It was noted that beginning in 2016, the CFPB plans to post public regulatory actions on NMLS Consumer Access and also that under the FDI Act, federal registrants are vetted for character and fitness, including past regulatory actions, by their employers.

5. State Licensing Requirements for HARP Loans

Rebecca Warfel, Indecomm Holdings, Inc.

Warfel posed the question of how do states regulate lenders that engage in only HARP loans and whether they view it as an underwriting activity or servicing activity? The main comment from the states was that it often depends on who is engaging in the activity – is it the servicer itself or a third party. A direct servicer may not need a separate license but third party actors may depending upon the definition of terms in a particular jurisdiction (e.g. “loan modification”).

6. Bond Riders for Conversions

Avrakotos brought up this issue to request consideration of more consistency among the states. In connection with a change of name and corporate conversion, his firm had several different responses from state regulators regarding the date that should be the effective date on the bond riders. Some jurisdictions required the date the conversion occurred and others requested the effective date the company would begin operating under its new name. Niemi indicated that this issue would be referred to the appropriate working group for follow up to determine whether a consensus on the appropriate date can be agreed upon.

7. CSBS Proposed Prudential Standard for Non-Bank Mortgage Servicers

Terry Ryan, Multi Financial Services, Co, Inc. & Trakker Loan Servicing Software

Ryan discussed the CSBS proposal for non-bank servicers and its potential impact on small, non-agency servicers particularly those that service non-profit affordable loans. This is a niche market and the servicers are generally small companies that would be adversely impacted by the proposed net worth provisions. Mike Stevens, CSBS Senior Executive Vice President, gave some background on the proposed standards and noted that CSBS is aware of the net worth issues and that the framework would be revised to determine how the standards

should apply to such smaller institutions. Terry Ryan – servicing issue. CFPB servicing rules. Servicing for private and city/non-profit affordable loans. Not agency servicers. More than 5,000 loans. Niche market. Versus a “big box servicer” Specifically the net worth provisions. Exception for smaller non-agency servicers. He discussed some of the comments that have been received from industry and particularly stated that the MBA response was very helpful in setting out different viewpoints that should be considered in developing and implementing the regulatory goals particularly because the servicers vary greatly in their business models and size. Once the standards are finalized, any implementation or adoption will be done on a state by state basis.

8. Mortgage Call Reports

Rich Cortes, Connecticut

Ken Markison, MBA

Rich Cortes gave an update on the changes and updates that are being proposed for the mortgage call report subsequent to the review of the responses to the request for public comments.

Markison stated that the MBA appreciates the ongoing efforts being made to review and revise the reporting requirements and the general move towards uniform reporting. Any consolidation in the various reports that are required would be extremely helpful to industry. He did request that CSBS consider extending the time period for all Requests for Public Comment beyond the 30 or 60 days that is normally granted. Given the efforts of industry focused on TRID implementation and other issues, a shorter comment period is not suitable in order to glean thoughtful and substantive comments. The application definition remains a concern with regard to conforming to the HMDA definitions and adds another layer of complexity to lender reporting and tracking. He requested that CSBS consider developing a “rule on rules” that would clearly set the standards on the process and focus on both the timing issue and ensuring a broad dissemination of any proposals that are issued.

9. Open Q&A

Niemi opened up the meeting to any additional questions or comments that the audience wanted to raise. Jack Konyk, Wiener Brodsky Sidman Kidner, commented on the continual need and focus on driving state laws and practices towards uniformity including such issues as processes for change of control of licensed entities. He noted the vast benefits of being able to depend upon information in a single state system of record while still balancing state differences.

Josh Weinberg brought up an issue related to the new TRID disclosures and how fees are listed on the form. His example was various ways that title fees are named according to the particular vendor and the need to standardize fee names and a list of acceptable abbreviations.

The last two comments were a question on state regulation of lead generators and how states determine which companies are engaged in that business (in Ohio, the department has begun to

ask the name of lead generators in examinations and then following up with those entities to ensure licensing compliance) and a request for an update on the CSBS Virtual Currency Framework which Mike Stevens responded to.

Niemi brought the meeting to a close by thanking all of those who participated during the session and particular thanks to AARMR Board for hosting the meeting. The meeting adjourned at 5:00 p.m. and he announced the date of the next open NMLS Ombudsman meeting which will be held on February 19, 2016 in Phoenix, Arizona during the NMLS Annual Conference.