



NMLS Ombudsman Meeting Summary

NMLS Ombudsman
The Westin St. Louis
St Louis, MO

Attendees:

Approximately 60 participants attended the NMLS Ombudsman meeting in St. Louis which included representatives from 10 state mortgage regulatory agencies.

Meeting Summary (corresponding exhibits may be found on the meeting agenda):

Director Bortner called the meeting to order at 9:00 am CST. She was joined by Tim Doyle, Vice President with the State Regulatory Registry (SRR).

Director Bortner reviewed some of the issues and questions that have been reviewed during the past year and noted that over 80 emails have been sent to the NMLS Ombudsman. She noted that SRR is investigating the possibility of recording all future Ombudsman meetings so that the meetings could be accessed by those not in attendance.

Director Bortner brought up three issues for discussion to start off the session.

Financial Responsibility: Samples of some of the state laws and regulations regarding financial responsibility standards for loan originators were attached as an exhibit and Director Bortner stated that states are developing policies and posting on their websites. She invited questions and discussion from the audience but there were no responses.

Crimes Involving Dishonesty: States are working to develop a more uniform understanding (to the extent possible under the various state laws and judicial opinions) and the SRR Lawyers Committee is researching the issue.

Update on Application Process and Licensing in the States: Director Bortner discussed the status of the licensing processes in the states, particularly noting the July 31 deadline for licensing that affected over 20 states. Tim Doyle reviewed a chart detailing the percentage of completed licenses in those states as well as the percentage of pending and pending deficient license applications.

Submitted Industry Issues

1. Regulators Not Using NMLS to Record Deficiencies (Terri Baer, Director of Licensing CitiFinancial)

Terri Baer discussed issues revolving around the need for uniformity and consistency with regard to recording deficiencies in NMLS. She noted several examples of how states differ in use of this status such as backdated deficiencies, deficiencies that are not reflected in the system but rather by letter to the licensee; adding deficiencies before the 5-day submission period has expired; and existing deficiencies not being timely cleared (sometimes as long as 6 months).

There was also discussion among both industry and regulators about the problem that employers have in tracking (and being aware of) deficiencies on their loan originators' records and the work load issues on both regulators and licensees which make it difficult to ensure that deficiencies are removed in a timely manner as they are resolved. One

suggestion was to utilize license item reports that list the oldest deficiencies first (and possible solutions) as a tickler system. Also, some companies noted that they email state regulators with notice that certain items have been cleared. It would be helpful if regulators routinely placed full contact information in the external notes section on NMLS in order to facilitate this process.

2. Inconsistent use of License Statuses in NMLS (Tanya Anthony, Compliance Manager, Ally/Residential Capital)

Tanya Anthony pointed out that there is often inconsistency between the states regarding the use of license status types and that although the Guidebook contains definitions for each of the 26 license types, companies have found that in many instances, it is necessary to check with each jurisdiction to understand how the agency interprets and uses a specific license status. For example, some states will place a deficient status on a license record within 24 – 48 hours of the license submission rather than waiting until the 5 day submission period has elapsed. Other examples of the lack of uniformity and the confusion that arises included approved conditional (in some states you can do business with that status, but not in all states), and use of a license denial vs. withdrawn (for example, when an applicant has not passed the examination).

There was discussion about whether the number of license status types should be scaled back, that there was a need for more training to ensure as much uniformity of use as possible. The Texas SML Department was noted as one that issued a very clear list of license status types and how each impacted the licensee or license applicant and that list will be shared among the other state regulators.

3. Regulator Access to Information Submitted through NMLS (Deborah Robertson, Attorney, McGlinchey Stafford PLLC)

Deborah Robertson noted that a client's employees who had submitted an MU4 to one state found that another state agency where the client was not licensed had access to the MU4 information and submitted questions to the applicant regarding "yes" answers to some disclosure questions. It was discussed that NMLS is an open system and any state regulator can view non-personal identifying information of a license applicant. However, the comments of the Ombudsman and other regulators at the session were unanimous in that they could not think of any reason why a state would have any interest in investigating an individual who was not attempting to become licensed in their jurisdiction. Ms. Robertson was invited to give additional information to Director Bortner off-line if her client wanted to investigate further.

3b. Non-Mortgage Lending Company Sponsorship of MLOs

Ms. Robertson also discussed problems facing individuals who are not employees of mortgage companies or mortgage brokers but are required to obtain a mortgage loan originator license. In most jurisdictions, a MLO must be sponsored by a company in order to obtain a license and in many instances, that sponsor must be a licensed mortgage company or mortgage broker. For example, manufactured housing retailer employees who engage in mortgage loan origination activities need an avenue for licensure. Approximately 20 states have utilized the exempt company registration option, but others may not have statutory authority to do so or are hesitant to "register" a company that it has no jurisdiction over. Ms. Robertson wanted to raise awareness of this issue and industry has offered to work with state regulators in cases where a statutory change in the law may be necessary.

A similar situation exists in certain states regarding the licensure of loan processing companies due to the definition of mortgage loan originator as contained in the SAFE

Act. Some states, such as Georgia, would require such companies to be licensed as mortgage brokers which would allow the company to sponsor its LOs. In Idaho, the agency has set up a second category of exempt company registration specifically for loan processing companies and assigns different license number prefixes to individual loan processors in order to be able to identify them as processors. Several state regulators noted that given the more immediate issues of transitioning mortgage loan originators and companies onto NMLS, they have not yet had an opportunity to consider the best avenue on this issue.

4. Ombudsman Role and Process (Danielle Fagre Arlowe, Senior Vice President -State Government Affairs American Financial Services Association)

Danielle Arlowe discussed what the industry views the role of the ombudsman to be – a mutual arbitrator between the industry, consumers and the states who can independently attempt to resolve issues with all parties. She said that the industry would like to see a more thorough written record of both the issues that are raised and the resolutions.

Director Bortner discussed her view of the role of the ombudsman – one who is an unbiased individual, but not a strictly unbiased third party due to her role as a state regulator. The ombudsman provides a forum where industry or consumers can raise issues that they would like to see addressed or explained. The ombudsman facilitates that process by explaining the reasoning behind a particular policy or by recommending that a suggestion that is submitted be further reviewed by the appropriate NMLS committee, and ensures that those answers or policy considerations are communicated back to the industry. Tim Doyle did a short presentation of the resources and information available on the NMLS resource center, including the ombudsman webpage.

4b. Administrative Procedures Act

Ms. Arlowe requested that the NMLS follow the procedures contained in the federal Administrative Procedures Act with regard to open comment periods in connection with proposed system and policy changes.

Director Bortner discussed that states do post rules for comments, review those comments, and then adopt rules as deemed appropriate and that it is not always necessary to address each comment and explain why or how a state makes a particular decision. The NMLS policy procedure is still being developed and will continue to evolve so as to reach an appropriate level of reaching out for formal industry input and comment on significant developments.

4c. Notice and Comment on our own Accord

Ms. Arlowe recommended that NMLS provide for a notice and comment period for all proposed system changes. She noted that AFSA believes that several of the system changes that have been implemented have had the effect of changing policies and procedures of the licensed companies and that providing prior notice and an opportunity for comments would help industry focus on pertinent issues and articulate concerns and suggestions.

4d. No record of issues raised by Working Group and Resolutions

Lastly, Ms. Arlowe noted that there is no formal written record of the input and issues discussed by the Industry Development Working Group (IDWG)¹ and suggested that because this industry group discusses and suggests system-related changes, a record should be kept of those suggestions and resolutions.

Tim Doyle discussed the fact that the IDWG is a technical working group and not an official policy producing group of NMLS. There are two official ways for industry to bring up policy issues – the Mortgage Advisory Committee and the Ombudsman.

5. Use of NMLS Deficiency Functionality for Consumer Complaints (Rose Patenaude, Senior Vice President, HSBC North America)

Rose Patenaude noted that one jurisdiction is placing a deficiency status on a company license when there is consumer complaint received and questioned whether that is an appropriate use of the licensing system. Among other issues, generally speaking, the employees who access NMLS are not the same as the public contact person for a company who may be tasked with tracking and resolving consumer complaints. Although the deficient status does not cause a license status change that would be viable on Consumer Access, the companies feel that this causes an additional administrative burden that is not an appropriate use of the states authority. One agency representative stated that while such an action might be considered in a renewal process to prevent renewal after other courses had been followed, no other states present indicated that they would follow this process. Director Bortner stated that the issue will be discussed in the proper SRR committee.

6. Provisional Licensing; Licensing of Servicers (Jack Konyk, Executive Director, Government Affairs, Weiner Brodsky Sidman Kider, On Behalf of the Mortgage Bankers Association of America)

On behalf of the MBAA, Jack Konyk raised the issue of providing provisional, or transitional, licensing for a registered mortgage loan originator making an employment move that requires the originator to complete the education and testing requirements for a state-licensed mortgage loan originator. Mr. Konyk asked the state regulators give credence to the fact that such an individual would be without income until such time as he or she completed the license requirements, whereas a loan originator moving from a state-licensed position to one with a depository would be able to move directly into the new position.

The regulator response to the argument was not sympathetic. Nothing prohibits a loan originator from taking the education and testing requirements at any time and state regulators feel that it would be an unfair advantage to allow a transitional licensing time period when no such period has been allowed for those licensees who are currently under time mandates to meet the licensing prerequisites.

Mr. Konyk also discussed the issue of licensing for employees of mortgage servicers who engage in loan modification activities and pointed specifically to the federal SAFE Act rules which do not include loan modification as an activity that triggers the definition of loan originator. The CSBS/AARMR comment letter to HUD recommended that any decision about licensing for servicing activities should be deferred until at least the end of 2012.

¹ The IDWG is comprised of everyday industry users of NMLS and meets on a monthly basis.

7. Exempt Company Registration in NMLS (Gus Avrakotos, Partner, K&L Gates)

Gus Avrakotos discussed the effect the changes to state law preemption included in the Dodd-Frank bill may have on licensing requirements for certain subsidiaries of depository institutions and the fact that none of the states define “owned and controlled” as those terms are used to describe subsidiaries whose employees qualify as registered loan originators. For those companies whose employees may now have to be licensed, how will they be shown on the system and should exempt companies be permitted to register on NMLS without completing all of the MU forms that a licensed company is required to submit? Shortened forms have not yet been considered but the idea will be brought up to the appropriate committee. Other questions and comments included the fact that there are still a few states that do not have companies on NMLS and that there is still disparity in the process from state to state which highlights the continued need for standardization. Director Bortner made the point that this is still a very young project and that the drive for uniformity is an ongoing process.

8. Open Questions

Courtney Kennedy – Attorney at Law

Ms. Kennedy wanted to clarify that companies should be able to rely on definitions when completing the MU1 and discussed a particular situation where certain information regarding sanctions and administrative actions was not disclosed on the form where the applicant relied in good faith on the definitions. When one state wanted other information, and required the disclosure to be changed, that triggered new disclosures and explanations to all states. A state may require additional information but when one state forces that additional information into the system for notification, it has an impact on all of the entities’ licenses. The industry is asking for collaboration and uniformity among the states to avoid this type of situation. Another example was made regarding a particular state’s decision that a reprimand was an administrative action that must be reported which then, again, triggered a new set of disclosures and explanations to all other jurisdictions. Again, the definitions and guidance that is contained in the NMLS Guidebook and Definitions should be able to be relied upon.

Terri Baer - CitiFinancial

Ms. Baer questioned whether a Spanish language version of the national (or state) exam is planned. The issue of the Spanish language test has been discussed but there are no plans at this time to develop such a product.