



**NMLS Ombudsman  
The Westin St. Louis  
St. Louis, MO  
Promenade Ballroom**

9:00am-12:00pm (CT)  
August 10, 2010

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Agenda:

1. NMLS Ombudsman General Overview
  - Update on Previously Submitted Issues
  - General Issues of Interest
    1. Financial Responsibility Standards (Exhibit 1)
    2. Crimes of Dishonesty
    3. Update from the States on Application Processing and Licenses

*Deb Bortner  
NMLS Ombudsman  
Director, Non-Depository Institutions  
Washington Department of Financial Institutions*

2. Regulators Not Using NMLS to Record Deficiencies

*Terri Baer  
Director of Licensing  
CitiFinancial*

3. Inconsistent use of License Statuses in NMLS

*Tanya Anthony  
Compliance Manager  
Ally/Residential Capital*

4. Regulator Access to Information Submitted through NMLS

*Deborah Robertson  
Attorney  
McGlinchey Stafford PLLC*

5. Non-Mortgage Lending Company Sponsorship of MLOs

*Deborah Robertson  
Attorney  
McGlinchey Stafford PLLC*

6. Ombudsman Role and Process (Exhibit 2)

*Danielle Fagre Arlowe  
Senior Vice President -State Government Affairs  
American Financial Services Association*

7. Administrative Procedures Act (Exhibit 2)

*Danielle Fagre Arlowe  
Senior Vice President -State Government Affairs  
American Financial Services Association*

8. Notice and Comment on our Own Accord (Exhibit 2)

*Danielle Fagre Arlowe  
Senior Vice President -State Government Affairs  
American Financial Services Association*

9. No record of Issues Raised by Working Group and Resolutions (Exhibit 2)

*Danielle Fagre Arlowe  
Senior Vice President -State Government Affairs  
American Financial Services Association*

10. Use of NMLS Deficiency Functionality for Consumer Complaints

*Rose Patenaude  
Senior Vice President  
HSBC North America*

11. Provisional Licensing

*Jack Konyk  
Executive Director, Government Affairs  
Weiner Brodsky Sidman Kider  
On Behalf of the Mortgage Bankers Association of America*

12. Exempt Company Registration in NMLS

*Gus Avrakotos  
Partner  
K&L Gates*

13. Open Question and Answer

## **Financial Responsibility Requirements under the SAFE Act**

### **SAFE ACT Language:**

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this title.

### **Model State Law (MSL) language:**

(3) CHARACTER AND FITNESS—The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act.

(a) For purposes of this subsection a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but not be limited to:

- (i) Current outstanding judgments, except judgments solely as a result of medical expenses;
- (ii) Current outstanding tax liens or other government liens and filings;
- (iii) Foreclosures within the past three years;
- (iv) A pattern of seriously delinquent accounts within the past three years.

### **Examples of State Statutory Language:**

**Alabama/MLS** language plus: The superintendent shall not base a license denial, in whole or in part, on an applicant's credit score, nor shall the superintendent use a credit report as the sole basis for license denial.

**Delaware/MSL** language plus: In addition, the proposed regulations contain same language, but add: failure to pay the State or Commissioner any money when due.

**Florida/SAFE** language plus: “may not use a credit score or the absence or insufficiency of credit history information to determine character, general fitness or financial responsibility. If information contained in a credit report is used as the basis for denying a license, the office shall provide with particularly the grounds or basis for denial. The use of the terms “poor credit history” “poor credit rating” or similar language do not meet the requirements of this section.

**Illinois** - The applicant has demonstrated financial responsibility, character, and general fitness so as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act. For purposes of this item (3) a person has shown that he or she is not financially responsible when he or she has shown a disregard for the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but is not limited to, consideration of: (A) current outstanding judgments, except judgments solely as a

result of medical expenses; (B) current outstanding tax liens or other government liens and filings, educational loan defaults, and non-payment of child support;

(C) foreclosures within the past 3 years; (D) a pattern of seriously delinquent accounts within the past 3 years; and (E) an independent credit report obtained under Section 7-2(c)(2) of the Act; provided that, a credit score may not be the sole basis for determining that an individual has not shown financial responsibility; provided further that, the credit report may be the sole basis for determining that an individual has not shown financial responsibility.

**Iowa/MSL language plus:** The superintendent shall not deny a license on the sole basis of an applicant's credit score.

**Iowa regulations (proposed)** An application may be denied for any of the following reasons: failed to pay child support and is identified in a certificate of noncompliance; failed to pay student loans and is identified in a certificate of noncompliance; failed to pay state debt and is identified in a certificate of noncompliance

**Pennsylvania/MSL:** Adds: has an outstanding debt to the Commonwealth or a Commonwealth agency.

**West Virginia :** The Commissioner may not use a credit score as the sole basis for license denial.

## **EXAMPLES OF STATE REGULATIONS**

### **IOWA (ADMINISTRATIVE RULES)**

**187-19.3(2)** The superintendent may deny an application for a mortgage loan originator license for any of the following reasons:

h. The applicant has failed to pay child support and is identified in a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J.

i. The applicant has failed to pay student loans and is identified in a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261.

j. The applicant has failed to pay state debt and is identified in a certificate of noncompliance from the department of revenue according to the procedures set forth in Iowa Code chapter 272D.

## NORTH CAROLINA (ADMINISTRATIVE RULES)

### 04 NCAC 03M .0205 FINANCIAL RESPONSIBILITY

(a) In order for applicants to be deemed to have the financial responsibility such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly under G.S. 53-243.05(i), the applicant shall:

- (1) If a mortgage banker:
  - (A) provide an audited statement of financial condition that demonstrates a net worth of at least one hundred thousand dollars (\$100,000);
  - (B) provide evidence of warehouse line of credit of one million dollars (\$1,000,000) or other evidence of funding capacity to conduct mortgage originations;
  - (C) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years; and
  - (D) provide an explanation of the corporate or ownership structure of the applicant, including information regarding any required distributions to investors or owners.
- (2) If a mortgage broker:
  - (A) provide a certified statement of financial condition that demonstrates a net worth of at least twenty-five thousand dollars (\$25,000);
  - (B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years; and
  - (C) provide evidence (in the form of a copy of a bank statement or other verifiable document) that the broker owns and holds on a continual basis cash or other liquid assets in a demand deposit account under the firm's name of at least ten thousand dollars (\$10,000) in an FDIC-insured financial institution.
- (3) If a loan officer or limited loan officer:
  - (A) have a credit score of 600 or greater; and
  - (B) demonstrate a history of satisfying debt obligations, as indicated by an absence of current outstanding judgments by creditors or tax liens within the past seven years.

(b) The Commissioner may, waive any requirement listed in Paragraph (a) of this Rule if he believes the predominant weight of the evidence supports a determination that the applicant has the financial responsibility necessary to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly.

*History Note:* Authority G.S. 53-92; 53-104; 53-243.04; 53-243.05(i);  
Eff. July 18, 2008.

**OKLAHOMA ADMINISTRATIVE RULES****§160:55-3-12. Standards for determining financial responsibility**

(a) Purpose. Mortgage loan originator applicants and the owners, officers, directors and partners of mortgage broker applicants must demonstrate financial responsibility pursuant to the SAFE Act and this rule. The SAFE Act authorizes the Administrator to deny license applications if an applicant for a mortgage loan originator license or if any owner, officer, director or partner of a mortgage broker applicant has not demonstrated financial responsibility. The SAFE Act provides general guidelines for determining a failure to demonstrate financial responsibility, such as outstanding judgments, foreclosures, tax liens and a pattern of seriously delinquent accounts. The purpose of this rule is to establish specific criteria for determining when an applicant for a mortgage loan originator license or when any owners, officers, directors or partners of a mortgage broker applicant have failed to demonstrate financial responsibility pursuant to the SAFE Act and this rule.

(b) Standards demonstrating financial responsibility pursuant to the SAFE Act and this rule.

(1) Threshold combined credit score. A threshold credit score shall be set by the Administrator. The credit score of an applicant shall be the combined, average credit score of the applicant from the three (3) major credit reporting bureaus. The Administrator shall publish the threshold credit score on the Department website. The Administrator may adjust the threshold credit score as necessary. Any adjustments to the threshold credit score shall be published on the Department website.

(2) Mortgage loan originators. If an applicant's credit score equals or exceeds the threshold credit score, the applicant shall be deemed to have demonstrated financial responsibility pursuant to the SAFE Act and this rule. If the credit score of an applicant is less than the threshold credit score, the Administrator shall review the credit reports of the applicant for any current outstanding judgments (excluding judgments solely as a result of medical expenses) current outstanding tax liens or other government liens and filings, foreclosures within the past three (3) years and seriously delinquent accounts within the past three (3) years to determine if the applicant demonstrates financial responsibility pursuant to the SAFE Act and this rule.

(3) Mortgage brokers. If the credit score of all of the owners, officers, directors or partners of the applicant equals or exceeds the threshold credit score, the applicant shall be deemed to have demonstrated financial responsibility pursuant to the SAFE Act and this rule. If the credit score of any of the owners, officers, directors or partners of the applicant is less than the threshold credit score, the Administrator shall review the credit reports of the owners, officers, directors or partners of the applicant with a credit score that is less than the threshold credit score for any current outstanding judgments, excluding judgments solely as a result of medical expenses, current outstanding tax liens or other government liens and filings, foreclosures within the past three (3) years and seriously delinquent accounts within the past three (3) years of such owner, officer, director or partner to determine if the applicant demonstrates financial responsibility pursuant to the SAFE Act and this rule.

# AFSA MEMBER TOP CONCERNS FOR OMBUDSMAN MEETING AUGUST 3, 2010

**OMBUDSMAN ROLE AND PROCESS: Background:** The role of the ombudsman is unclear. Does she have independence from CSBS / NMLSR? The process the Ombudsman operates under is likewise unclear. We submitted concerns in February from which we have yet to have a response. We appreciate the fact that an Ombudsman has been appointed, and we think it's a step in the right direction, but we are concerned that without some independence and process, it is form over substance. **Industry Request:** Ombudsman independence; a clear process to be followed, with set time frames by which questions are addressed and a publicly-available record of issues raised and resolutions. An ombudsman charged with acting as the word "ombudsman" is commonly understood, as a neutral arbiter / negotiator between government (i.e. CSBS and the states, if applicable) and those aggrieved (i.e. consumers or industry).

**ADMINISTRATIVE PROCEDURE ACT: Background:** The NMLSR, controlled entirely by the states and employees of an association of the states with limited federal regulatory oversight, is not subject to the Administrative Procedure Act (P.L. 79-404) or state Administrative Procedure Acts. Yet the actions of the NMLSR have the effect of government action. The purpose of the federal and state administrative procedure acts typically include 1) a requirement that agencies keep the public informed of their organization, procedures and rules; and 2) a provision for meaningful participation in the rulemaking process. **Industry Request:** While AFSA members appreciate the opportunity to comment on rules put forth by the NMLSR, we would like the NMLSR to voluntarily follow the structure of the Administrative Procedure Act, whereby comments would have to be taken into account. For example, on at least one occasion, rules were approved before the comment period had closed. Essentially, where meaningful comments are presented, they should be addressed explicitly.

**NOTICE AND COMMENT ON OUR OWN ACCORD: Background:** AFSA members are frustrated that CSBS determines what system changes rise to the level of "policy" so that they deserve notice and comment. Our members say that policy changes are repeatedly driven by "system changes" with limited discussion. Some changes in the system have had the effect of changing state law with no opportunity for us to have meaningful opportunity to add our comments (and no record of our concerns being raised. See below). **Industry Request:** Some semi-formal, written, public mechanism to comment on system changes where there won't be any hard feelings from CSBS and there is a record of industry concerns. CSBS would benefit too, because it would force industry to articulate our concerns clearly.

**NO RECORD OF ISSUES RAISED BY WORKING GROUP AND RESOLUTIONS: Background:** Our members are frustrated that no record exists of issues that have been raised by the Industry Development Working Group (IDWG). There are numerous items that were resolved before the NMLS was launched and debated at that time (i.e. MU form content, limitation on how far up chain reporting extended for a "control person") that have been changed. **Industry request:** We would like a record kept of all issues raised with the IDWG, the industry's concerns, and the resolution. Most important, we want an explanation about why our requests were rejected and an opportunity to make our case to decision-makers directly, and not have our perspective filtered through CSBS. All this information should be shared with the IDWG and Mortgage Advisory Council.