



NMLS Ombudsman Meeting
Park Plaza Hotel, Boston, MA
Georgian Room
9:00 – 11:30 am Eastern
August 14, 2012

Agenda:

1. NMLS Ombudsman Update – Exhibits 1 & 2

Tim Siwy
Pennsylvania Department of Banking

2. Reciprocal Licensing – Exhibit 3

Ken Markison & William Kooper
Mortgage Bankers Association of America

3. Exempt Company Registration – Exhibit 4

- a. Requirement for Licensing MLOs

Kathleen Egan
Radian Guaranty Inc.

- b. Application to Exempt Mortgage Providers

Costas Avrakotos
K&L Gates

4. Document Upload and Disclosure Explanations in NMLS

Rose Patenaude
HSBC

5. Implementation of Updated NMLS Forms

Sam Wolling
Prospect Mortgage

6. Open Discussion

**NMLS Ombudsman Meeting
Double Tree Paradise Valley
Scottsdale, AZ**

**MEETING SUMMARY
February 6, 2012**

Attendees:

Approximately 250 regulator and industry participants attended the NMLS Ombudsman meeting in Scottsdale.

Meeting Summary

Deb Bortner, NMLS Ombudsman and Director of Consumer Services, Washington Department of Financial Institutions, gave a short summary of the types of information requests and questions that have been submitted to the Ombudsman during the past 6 months.

Submitted Industry Issues

1. Notification, Document Submission, and Licensee Posting Suggestions (Sam Wolling, Prospect Mortgage)

Sam Wolling, Prospect Mortgage, brought up several issues relating to industry use of NMLS. Upon the surrender of a license or license type by a company, an email is sent to every MLO sponsored in that jurisdiction by the company with the subject line, "NMLS – Administrative Action Taken On [Company Name Here]". It was suggested that this subject line is misleading and lends to a negative connotation. Tim Doyle, Senior Vice President of State Regulatory Registry replied that it had been brought to the attention of SRR, and that NMLS will turn off that notification system and the language will be reworded.

The next issue raised was the possibility of introducing a PDF document upload process within NMLS so that when a company is preparing an update to disclosure questions, it would no longer be necessary to prepare multiple individual packets and FedEx them to each individual state regulator. Deb Bortner replied that this step is already being taken, and that in April licensees will be able to upload not only answers to disclosure questions, but also additional forms necessary with an MU1 or MU4 application.

The last issue brought up by Mr. Wolling was the lack of easy two-way communication concerning Active License items. While it is very easy for regulators to communicate with licensees in this way, there is no easy way for the licensees to respond. If the regulator does not specifically include an email address for the licensee to respond to, this easily leads to delayed responses and additional work load because the licensee because must maintain copious records in anticipation of the regulator not receiving their response. Tim Doyle responded that this problem is system-wide, and SRR is aware of it. The goal of creating a completely internal record system for Active License items will continue to be a goal of future NMLS enhanced functionality.

2. Facilitating Labor Mobility and Competition for Loan Originators through Approved Inactive Licensing (Pete Mills, Community Mortgage Banking Project)

Pete Mills, Managing Director, Community Mortgage Banking Project, discussed some of the practical issues and problems facing mortgage loan originators as they attempt to move from depository institutions to state-licensed mortgage companies. In such cases, the MLO has to first sever ties with their employer, and would then wait 30-90 days while he completes education and testing requirements and background checks before they could legally begin originating loans. The proposed solution to this problem is having states adopt a “de novo inactive” license status, which would allow qualified individuals to obtain an inactive status license without first being sponsored by a company. Another important stipulation of the de novo status is that the future MLO would not have to inform their current employer that they were going through mortgage loan education or background checks. Deb Bortner stated that Washington State already allows de novo licensing, as do a handful of other states, and she called on the other representatives to speak up if they did see an issue with it. Tina Templeton from Shore Financial Services asked if the individual would have to pay for the education and background checks themselves, and the general consensus appeared to be that the sensible solution was to have them pay for themselves up front, and then be reimbursed by their sponsoring company. Pete Mills then made an appeal to the various state agencies that permit de novo inactive licensing to put up FAQs on their websites to raise awareness about the process, and Mary Pfaff from CSBS suggested that the states get together later and work out a universal wording for de novo inactive licenses that would work in each state.

3. Federal Access to MLO State Licensing Record

Tim Doyle, CSBS, discussed a solution to one aspect of the transitional licensing issue which involves a federal registrant employer’s ability to view any education or testing records of that employee. This has been cited as a deterrent to encouraging federally registered MLOs to seek licensure prior to obtaining employment by a state-licensed entity. A solution that is being investigated is to cut off that access by adding a privacy wall to the System, effectually hiding the fact that an MLO may be taking their education tests in preparation of moving to the state-licensed field. This could be accomplished either by: (a) severing the ability for federal registered institutions to access state licensing information on MLOs; (b) removing federally registered institutions’ ability to access specific state licensing information while retaining the ability to view other information; or (c) introducing the ability for MLOs to determine which information federally registered institutions can view.

Rose Patenaude, HSBC – North America, said that while this would undoubtedly be helpful to the individual MLO’s privacy, it would be a big disadvantage to the federal institutions, and that giving MLOs the option of fixing their own privacy settings may not be a feasible as an MLO might be hesitant to inform his current employer that they could not have access to his record. Tim Doyle reiterated that the goal of NMLS is still transparency, but considerations must be made to ease the passage from federal register to state license and that staff would continue to investigate this issue and obtain recommendations from the state regulators.

4. Transitional Licensing

Andrew Szalay, Mortgage Bankers Association, began with a brief description of transitional licensing, saying that there should be a clear path available between federal registration and state licensure. Szalay stated that the SAFE Act does not directly address transitional licensing and that MBA has requested that the CFPB issue guidance to permit transitional licensing. He wants transitional licensing to be left in the hands of the states, and said it is an issue for state legislatures to address and implement. Sue Toth, New Jersey Department of Banking and Insurance, said that with transitional licensing, a federally registered MLO would be able to issue loans as a state-licensed individual without

first meeting the education requirements, which would not be fair to an individual who is equally qualified, but is moving either from state to state, or has been out of the game for a few years and is now re-entering. Those individuals would be required to obtain a license before originating mortgage loans. She also stressed that this adds a new layer of business processes to track transitional individuals, which is additional work for state regulators. Timothy Siwy, Pennsylvania Department of Banking, also prefers the approach of a de novo inactive license, stated that there are issues with allowing individuals to originate loans without first having a criminal or a credit screening, both of which are required by the SAFE Act.

5. NMLS Consumer Access and NMLS Relationships

Michelle Canter, Lotstein Legal PLLC, presented this section. On *NMLS Consumer Access*, there is a section for the MLO to self-disclose their past 10 years of employment history, and also a section that shows their current sponsorship status. When a company terminates the sponsorship, it is the responsibility of the MLO to the employment history. If they do not, it may appear that they still work for the company, when in fact their sponsorship was cancelled. Bobby Brian, Louisiana Department of Financial Institutions, stated that in his state when they encounter this issue they attempt to get in touch with the MLO and have them correct their record; however, frequently the contact email in NMLS is the company email, which is probably no longer valid after termination. Tim Doyle stated that MLOs are allowed to have two emails in the system, and the backup email should be a personal email address to avoid this issue. Gus Avrakotos, K&L Gates, asked why the System itself cannot go in and periodically delete the invalid records, to which Doyle replied that only the MLO can change their record.

6. Licensure Requirement Based on MLO Residential Address

Stephanie Ochoa, Kondaur Capital, brought up the fact that in Pennsylvania and possibly a few other states, MLOs are required to be licensed in the state of their residence even if they do not originate any loans in that state. Tim Siwy from Pennsylvania said that this is a long-standing position with respect to licensure in Pennsylvania because they didn't want it to be a 'safe haven' for bad MLOs; however, Pennsylvania is currently working on removing this requirement and should have new language coming out in the near future. Deb Bortner said that Washington also has this requirement for the same reason.

7. PEO/Mortgage Firm Relationships

Andrea McHenry, National Association of Professional Employers Organization, gave a summary of the business structure of PEOs that provide services to small businesses through a co-employment arrangement. The PEOs give the companies access to health benefit plans/workers comp/compliance with HR/payroll/etc. but do not direct the client's employees in connection with any business activities. When a client comes on board there's a contract made that outlines the relationships with the existing workforce and although the W2 is issued by the PEO, it is not the employer. The PEOs would like to see consistent regulatory policy that will allow this arrangement without requiring the PEO to obtain a mortgage-related license and be treated as the sponsor of the MLOs. PEOs are licensed in numerous states and some of the statutes, such as in Connecticut, clarify that for purposes of licensing activities, the client (the mortgage company) remains the employer who directs all of the of the employee's activities. Sue Toth stated that New Jersey is looking into the issue and that NAPEO makes a compelling argument to allow these relationships. Tim Siwy said that Pennsylvania took a good look at this and they're favorably considering allowing this. Michelle Cantor, Lotstein Legal, said that PEOs have had relationships with national and state bankers for years.

8. State Regulatory Actions in NMLS

Mary Pfaff, CSBS, gave an update on the functionality in NMLS that allows states to upload regulatory actions in NMLS and ultimately in *NMLS Consumer Access*. The SAFE Act requires this type of information to be posted on MLOs, and states will be also making actions taken against companies public when appropriate. In April 2012, all named respondents to posted actions will receive email notification from the System alerting them to the posting. Some of the specifics of the functionality were discussed such as types of actions being posted, the ability of a state to remove an action at its discretion, etc.

9. Falsely Compelled Representations

Costas Avrakotos, K&L Gates, brought up two issues for discussion. With regard to falsely compelled representations, he noted that there are some instances when a state requires a licensee to make a filing, or make a filing in a certain way that would lead to a false attestation. For example, if a company is engaged only in mortgage servicing, the state in which it is seeking a license may only offer a license that authorizes lending, brokering and servicing and may require the applicant to designate that it conducts mortgage lending when completing other parts of the application form in NMLS.

Tim Doyle discussed the fact that the System is expanding the section on the form for business activities, allowing companies to more narrowly define their business activities in each state. It is incumbent upon the licensee to understand the definitions and choose the correct activities. Gus likes the intent of this, but he thinks confusion will arise between the NMLS general definitions and the specific wording in state statutes. Further discussion on this issue will be brought up at the August AARMR meeting which will be held several months after the new forms are put into use.

10. Open Discussion

Tina Templeton asked how an MLO should answer the applicable disclosure question if he recently had a felony conviction deferred and the felony will be expunged after five years. There seems to be a good deal of differences between the state laws on this issue - some states indicated that if it is an actual conviction (regardless of whether it will be expunged in the future) then it still a conviction but if he pleads guilty but it's deferred for five years then all charges are dropped, its pending, but never a conviction. Massachusetts indicated that the answer would have to be "yes" because the question asks "have you ever" been convicted. In North Carolina, if the person had pled guilty, then it still would be considered to be a felony. Florida has rules to describe pending situations, and consider everything to be pending until the final ultimate outcome, even if it was originally plead guilty to - however the individual would not be approved until it was cleared up. In Tennessee, an order of deferral means the defendant didn't plea, therefore there was no conviction. In Washington, a deferred sentence would not affect the conviction, but a deferred prosecution would not be considered a conviction.

Carol Queen from PennyMac Loan Services had some comments about the new business activities definitions on the revised licensing forms and how a company that engages in servicing and lending, but not in every state will complete the forms and also investor companies since some states do require investors to be licensed.

She also discussed the issue that the education and testing requirements for MLOs are problematic for those MLOs who are engaged only in loan modification activities and questioned whether it is at all feasible to have separate curriculums. Tim Doyle responded that perhaps the education offerings for continuing education can be expanded to include different focuses and that the issue will be reviewed.

Jennifer Edwards of Primary Residential Mortgage stated the company has had licenses in two states suspended accidentally since NMLS began and reflected in the system with these accidental suspensions. The state agencies have since updated the license status in NMLS for the company to reflect that the licenses are indeed not suspended. The company has been unsure how to respond to disclosure questions on whether or not the company has had any licenses suspended. The solution rests with the state agency to provide external notes that are viewable to all regulators stating that the suspension was in error. It is imperative that the agency also provide contact information in case other states have questions. Kirsten Anderson from Oregon noted that it does look to see if the other regulator has put notes.

Tanya from Residential Capital asked if changes in sponsorship could be made automatic since she has experienced lengthy wait periods when a MLO sponsorship has not been accepted by a state. Kirsten Anderson from Oregon discussed the work flow process involved in approving and finalizing a change of sponsorship. This process consists of steps that are needed to be taken by both the regulator and licensee. This is an issue that comes up frequently and it as noted that the processes will continue to be reviewed to see what steps may be taken to make it more efficient.



Issue Briefing

Updated August 7, 2012

Responses to Transitional Licensing for Mortgage Loan Originators

Issue: State-licensed, nondepository mortgage companies have indicated they are at a disadvantage in hiring mortgage loan originators (MLOs) who are actively registered with a federally chartered or insured depository institution due to the SAFE Act state licensing requirements. The companies assert that federally chartered or insured depository institutions do not have the same hurdles because only a criminal background check is required prior to federally registering the MLO. The Mortgage Bankers Association (MBA) has proposed that states grant a 120-day transitional license, without requiring passage of the National and State Components of the MLO SAFE Act test, completion of 20 hours of pre-licensure education, and other state license prerequisites, thus allowing formerly registered MLOs to begin to originate on behalf of the company in a timeframe closer to that experienced by federally registered MLOs. All state requirements would have to be successfully completed during the 120 day period.

State licensed, nondepository mortgage companies would also like state agencies to grant a reciprocal license for MLOs currently holding a state license who are applying for additional state licenses.

Background: Under the SAFE Act, requirements for mortgage loan originators differ depending on whether or not the MLO originates for a federally chartered or insured institution or an owned and controlled subsidiary. Loan originators for federally regulated lenders, their regulated subsidiaries and affiliates, and institutions regulated by the Farm Credit Administration, must be registered with NMLS after having a criminal background check reviewed by their employer against standards established by their federal regulator. All other mortgage loan originators must be state licensed. In order to become a state licensed MLO, an individual must meet federally mandated minimum standards including pre-licensing education, testing, criminal background standards and financial responsibility.

MBA presented at the August 2011 and February 2012 NMLS Ombudsman meetings and proposed state legislative changes to authorize transitional MLO licenses for individuals who are currently federally registered loan originators or are state-licensed in a different jurisdiction. The issuance of the transitional license would permit the individual to originate loans for a sponsoring mortgage company or mortgage broker for a set period of time during which he or she would be required to successfully meet all license standards for a state-licensed MLO.

Proponents of transitional state MLO licensing claim that state-licensed companies are disadvantaged in attracting and putting to work experienced and currently active originators from federally regulated institutions or other states. State-licensed originators may leave their place of employment and begin work within a few days at a banking institution, but a registered MLO is precluded from making a similar change to a state-licensed company until the MLO completes all of the license prerequisites. In order to address this issue, some companies hiring such individuals have had to have them on the payroll for extended periods of time without originating mortgages while they complete licensing requirements.

In response to this proposal, the NMLS Ombudsman and the NMLS Policy Committee (formerly the Mortgage Licensing Policy Committee) facilitated extensive dialogue with the various members of the



industry including MBA presentations at two NMLS Ombudsman meetings (August 2011 and February 2012), a panel presentation at the August 2011 AARMR Annual Convention, and a conference call between state banking and mortgage commissioners and MBA leadership on August 4, 2011.

In these discussions, state agencies expressed understanding of the business issues faced by state-licensed companies, and indicated an interest in working with industry to find ways to streamline the licensing process and help alleviate any obstacles that may hamper mortgage companies from hiring qualified loan officers while still remaining in compliance with state law and the SAFE Act.

Legislative Authority: States have particularly noted the uncertainty as to whether they have the legal authority to permit an individual who has not met the minimum licensing standards set forth in the SAFE Act to act as an originator, even for a defined period of time. Individuals working for a depository as a loan originator have not met the education and testing requirements and may not meet the standards for financial responsibility and criminal background that the SAFE Act or a particular state may require. The final SAFE Act rule did not address the issue of transitional licensing.¹ The final rule commentary did contain a discussion of reciprocal (state to state) licensing and concluded that in order to grant a license to an individual, the state must find that the individual has satisfied the minimum eligibility requirements, but that “states may take into consideration or rely upon the findings made by another state in determining whether an individual is eligible under its own laws.”

Thus, one prerequisite cited consistently by state regulators has been that the Consumer Financial Protection Bureau (CFPB), as the regulator of the state agencies compliance with the SAFE Act, would have to approve such a transitional license authority in writing. In April 2012, the CFPB issued a bulletin in response to inquiries regarding whether it is consistent with the SAFE Act for states to permit transitional licensing of mortgage loan originators ([CFPB Bulletin 2012-05](#)). In the bulletin, the CFPB stated that Regulation H prohibits states from allowing unlicensed individuals to engage in the business of a loan originator which precludes states from providing for a transitional license for a registered MLO. However, the CFPB also opined that Regulation H does permit state reciprocity with respect to transitional loan originator licensing begin granted to an individual who is already state-licensed.

Administrative Issues: Establishing a process to issue a reciprocal license may be problematic to state agencies from a staffing and resource standpoint as it will require another level of application processing and approvals that must be tracked and analyzed during the transitional period and then followed by a final license approval (or denial).

State Regulatory and NMLS actions: Outside of developing legal authority for a transitional license, state regulators have pursued several system and licensing process changes that should ease and streamline the process of transition between the state and federal MLO requirements, and between state-to-state transitions. Three recommendations that have been acted on are summarized below.

1. **Approved Inactive License Status for MLOs:** In order to assist individuals seeking state licensure, industry has asked that state agencies approve MLO license applications by individuals not currently employed by a state licensed company in an Approved-Inactive status, indicating to potential employers that the individual meets all licensing requirements (except employment) and is an eligible candidate for hiring. The license status may be placed in an Approved-Inactive status until sponsorship by a mortgage company is approved by the state agency. Although some states did previously permit this action, it was not clear on the state license check lists.

¹ The SAFE Mortgage Licensing Act rule (Regulations G & H, 12 CFR Part 1007 and 1008) can be found at: <http://www.consumerfinance.gov/regulations/>.

Currently, 24 state agencies that will place qualified individuals who are not currently employed by a mortgage company into an Approved-Inactive license status include: AZ, CA-DOC, CA-DRE, HI, ID, IL, IN-DFI, LA, MD, ME, NC, ND, OH, OK, OR, SC-BFI, SC-DFI, SD, TN, TX-OCCC, TX-SML, UT-DRE, WA, and WY.

2. Limiting Access to State Information. NMLS was constructed to give employers, both state licensed companies and federally regulated depository institutions, access to an MLO's complete record. One issue that was raised by state-licensed companies as a deterrent to encouraging federally registered MLOs to seek licensure prior to obtaining employment by a state-licensed entity is the ability for an institution to view the MLO's education and testing activities in NMLS. A federally registered institution with Access to the MLO's record was able to see when they schedule to take the National or State components of the SAFE MLO Test or have pre-licensure credit hours banked in the system (though there is no active notification to the employer when this activity occurs).

Although preventing a federal institution from viewing the MLO's education and testing activity in NMLS will result in an inability for institutions to confirm such activity through the system, the SRR NMLS Policy Committee decided to remove federal registered institutions' ability to access information regarding any testing and education taken by an employed MLO in NMLS, but retain ability to view other information such as disclosure questions. This change became effective July 23, 2012.

3. Uniform State Test. SRR is currently in the process of developing a uniform state test that would replace existing individual state test components. Under a uniform state test, an individual seeking licensure in multiple states would be relieved of the current requirement to pass separate tests in order to operate in each state. Adoption of this model will remove the necessity of taking numerous individual state tests and would particularly aid those individuals who are moving from state to state.

The uniform state test will be available in the spring of 2013.



Green Light on Reciprocity for Mortgage Loan Originators

MBA Recommends

States recognize the licenses of those out-of-state mortgage loan originators who hold a valid loan originator license from another state. At a minimum, states should grant provisional licenses to such mortgage loan originators (MLOs) pending their completion of any necessary requirements of the state where they are seeking licensure.

Background

All mortgage loan originators employed by independent mortgage bankers are required to be licensed and registered under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE). Consequently, all states have enacted laws for that purpose. Under these laws, State regulators, with few exceptions, have not allowed MLOs licensed in other states to originate mortgages in their states, without the MLO also undergoing a licensure process for the “new” state. Because of this, the ability of independent mortgage bankers to hire well-qualified licensed MLOs has been impeded notwithstanding that these out-of-state MLOs have satisfied background, licensing and testing standards and currently serve borrowers. At the same time, federally regulated institutions are not impeded by licensure requirements and can freely hire out-of-state MLOs.

In order to address this concern, state-regulated mortgage companies have sought clarification from state regulators and the federal Consumer Financial Protection Bureau (CFPB) whether state mortgage regulators may recognize the licenses of MLOs licensed in another state. On April 19, 2012, the CFPB issued Bulletin 2012-05, SAFE Act – Transitional Loan Originator Licensing. In this bulletin, the CFPB emphasizes that the preamble to the final SAFE Act rule provides the final rule “does not limit the extent to which a state may take into consideration or rely upon the findings made by another state in determining whether an individual is eligible under its own laws.”^[1]

Action Needed

MBA recommends that states, in accordance with the Bulletin, recognize licenses from other states. Short of that, states should amend their regulations to offer Transitional Licenses to MLOs that are licensed and qualified in other states for a period of 90 to 120 days so that the MLO may complete any unique or additional education and testing requirements for the new state. This process would allow licensed MLOs to continue to serve consumers. If regulations are insufficient, MBA recommends that states amend their state SAFE statute to provide a Transitional License for MLOs.

^[1] 76 Fed. Reg. 38464, 38482 (2011)

SAFE Act

Exempt Company Registration Challenges

Kathleen Egan
Radian Guaranty, Inc.

Exemption Criteria

- Making/servicing owner occupied residential mortgages.
- Non-Profit Company
- Primary Regulator confirmation you are permitted to make and broker loans.
- List of activities that fall under exemption, none include underwriting.

Required Items

- Employer Origination Surety Bond
- Employee Surety Bonds difficult to obtain
- Surety Bond to protect consumers (we don't interact with consumers)
- Financial Statements geared towards origination entities. (we report at group level, not individual company.)
- Direct Owner/Executive Officer – Net Worth Statements (MU-2) personal financial information.
- Local business license for originations
- Branches

Feedback to MU1

- You don't fit either the Originator License, or the Exempt License, we have nothing to give you;
- We can register you but not on NMLS;
- You need a Qualifying Individual, but they can't register until the company is registered.
- I wish I could help, but you don't fit under our statutory requirements so we can't license you.
- NMLS only has this category available and you don't fit.