



## ***Response to Public Comments*** **Uniform NMLS Licensing Forms and Mortgage Call Report**

### **RESPONSE TO COMMENTS RECEIVED DURING THE SRR COMMENT PERIOD ON THE UNIFORM NMLS LICENSING FORMS AND MORTGAGE CALL REPORT APRIL 12, 2013 to NOVEMBER 11, 2013**

On April 12, 2013, the State Regulatory Registry LLC (SRR)<sup>1</sup> invited [public comments](#) on the Uniform NMLS Licensing Forms (“Forms”) and the Mortgage Call Report (“MCR”). The deadline for submitting comments was June 11, 2013. After a review of the comments by the MCR Working Group, the Forms Working Group (Addendum A) and the [NMLS Policy Committee](#), SRR invited public comments on October 11, 2013 for the [proposed changes](#) to the Forms and the MCR. Comments were due November 11, 2013. All submitted comments for the [April](#) comment period and [October](#) comment period are available on the NMLS Resource Center. The following is a summary of the comments received with responses to submitted comments.

#### **Purpose of Forms and MCR**

The Forms create a national standard of information collection for company, branch, and individual licensure agreed to by all NMLS participating state agencies. The Forms are intended to provide state regulators with sufficient information to make a decision to approve a new license, continue a license authority, or approve a license renewal request, while at the same time promoting transparency and driving uniformity across NMLS participating state agencies.

The NMLS Mortgage Call Report provides timely, comprehensive, and uniform information concerning the financial condition of licensed mortgage companies, their mortgage loan activities, and the production information of their mortgage loan originators. This information enhances a state regulator’s ability to effectively supervise licensees, determine examination schedules, monitor compliance with state law and requirements of Title V of P.L. 110-289, the *Secure and Fair Enforcement for Mortgage Licensing Act of 2008* (“SAFE Act”)<sup>2</sup>, and accurately calculate assessments when applicable.

A goal of both the Forms and the NMLS Mortgage Call Report is that, over time, they include all necessary information required by regulators such that requirements do not need to be submitted and tracked outside NMLS. With each revision of the Forms since 2008, this goal has been furthered, as is evidenced by the significant reduction in the items on state specific checklists.

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<sup>1</sup> State Regulatory Registry LLC (SRR) is a nonprofit subsidiary of the Conference of State Bank Supervisors (CSBS) that operates NMLS on behalf of state financial services regulatory agencies.

<sup>2</sup> The full text of the SAFE Act can be found at <http://mortgage.nationwidelicensingsystem.org/SAFE/NMLS%20Document%20Library/SAFE-Act.pdf>

## **Background**

On a biennial basis, the NMLS Policy Committee (NMLSPC) undertakes a review of the Forms and the MCR after receiving input from participating state agencies and inviting public comment. The purpose is to update the Forms and MCR to provide better information to state regulators and to make improvements in the use of NMLS to support these changes.

All Form comments were reviewed by the Forms Working Group, comprised of state regulators, and discussed with all state regulators. All Mortgage Call Report comments were reviewed by the Mortgage Call Report Working Group comprised of state regulators and were reviewed with all state regulators. The recommendations for proposed changes from the regulator groups were sent to the NMLS Policy Committee for consideration and these changes were submitted for additional public comment on October 11, 2013. The general responses and direction from the NMLS Policy Committee is reflected in this document.

## **Responses to Comments**

At the end of the public comment periods, SRR had received submissions from 35 commenters concerning the Forms and MCR. Commenters included industry trade groups, state-licensed financial services companies and law firms. The comments were reviewed by the NMLS Forms Working Group, the Mortgage Call Report Working Group, and the NMLS Policy Committee.

The NMLS Policy Committee concluded that a majority of the comments submitted warranted more substantive policy review and discussion with regulators and industry participants than the time allotted for changes in early 2014. A review of these identified issues will occur in 2014.

Changes to the Mortgage Call Report are limited in 2014 to data layout and usability enhancements. No new required data fields have been added. A comprehensive review of the MCR's components and reporting obligations will be reviewed in 2014 with possible implementation in Q1 2015.

The following is a summary of the major topics raised in the comments and SRR's response to those comments. Details on the final approved changes to the Forms and MCR to be implemented on March 31, 2014 will be posted in advance of the system release and sent to all system administrators

## **UNIFORM NMLS LICENSING FORMS**

### **Forms – Branch Issues**

Several commenters noted that the current functionality in NMLS limiting the identification of branch managers to only one per industry (mortgage, consumer finance, debt and money services) continues to place a burden upon branches operating in multiple jurisdictions. Commenters noted that it is challenging to find one individual who meets the licensing requirements in all jurisdictions where the branch is licensed.

#### *SRR Response*

State regulators understand the issues presented with multiple and separate requirements for branch managers across state lines. As the System currently allows only one branch manager

per industry, that individual effectively must meet standards in every state where a company is licensed to be approved as branch manager. NMLS was initially developed in this manner due to regulator concerns that multiple branch managers may dilute accountability for the branch operations.

State regulators have agreed to allow more than one branch manager per branch be identified through NMLS (similar to the process of qualifying individual), provided the system enforces that there is not more than one branch manager assigned to a particular state for a particular license type. State regulators want to ensure that allowing multiple branch managers does not become a tool to avoid minimum standards of licensing in any state.

The Branch Form will be updated with the 2014 revisions to allow a company to designate more than one branch manager per industry (mortgage, consumer finance, debt and money services) per branch. The Branch Form will allow the designation of only one branch manager per industry per state. Branch managers cannot be designated in a state where the branch is not licensed.

One commenter felt that the question whether the "branch office and/or individuals at this branch office operate pursuant to a written agreement or contract with the main office" is being too broadly interpreted by state regulators (i.e., goes beyond the main goal of the question which is to determine whether net branching is present).

#### *SRR Response*

While it may be a point of redundancy for larger branches, the question is still relevant for smaller branches where the answer might not automatically be "yes." State regulators do not believe this question poses an unnecessary burden

### **Forms – Control Person Issues**

Commenters continued to express concerns over the definition of "control," determining individuals who meet this definition, and the resulting obligations imposed upon those individuals. One commenter stated that the guidance provided during the 2012 Form changes broadened the scope of individuals falling under the "control" definition. In addition, this commenter suggested guidance should be developed in order for a licensee to rebut a presumption, based on the definition of "control," that an individual actually is acting in a control capacity.

#### *SRR Response*

The NMLS Policy Committee recognizes that there continues to be disagreement between state regulators and licensees as to who within an organization meets the definition of "control" and must be disclosed.

The NMLS Policy Committee intends to work with their fellow state regulators and industry participants to develop a definition, guidance and functionality for the term "control" in NMLS that (1) generally satisfies state reporting requirements in a uniform manner and (2) allows state regulators to obtain information through NMLS without imposing burdens for other state reporting requirements. The issues raised around "control" will be separately considered in 2014 with possible changes to the Forms and guidance implemented after review and adoption.

## **Business Activity Definitions**

In 2012, the Forms were updated to allow entities to indicate all lines of business they engage in at the company and branch levels. These business activities have corresponding definitions to guide users when completing company and branch filings. The request for comments specifically asked respondents to discuss whether the list of activities and corresponding definitions is sufficient and comprehensive, and whether they clearly and accurately capture the applicable business activities.

Four commenters gave specific feedback and suggestions regarding the existing business activity definitions. The first suggested that the activity of reverse mortgage servicing should be added to the list.

### *SRR Response*

State regulators agreed with this suggestion, and have recommended that the existing business activity definition of “Reverse Mortgage Originations” be replaced with “Reverse Mortgage Activities” and that the definition be expanded to include servicing of reverse mortgage loans. This change will be implemented on the Company and Branch Forms on March 31, 2014.

One commenter requested revision to the definition of “consumer loan lending” to clarify that it excludes sales finance company activities, specifically, indirect auto lending.

### *SRR Response*

The goal in writing the business activity definitions was to include all areas of relevant business, while ensuring that the definitions did not (to the extent possible) overlap. Out of necessity, there are broad groupings such as “consumer loan lending” but in addition, there are also two definitions related to sales finance company activities (general and motor vehicle). The goal is for companies to identify the type of activity they are engaged in (in this case, “sales finance company activities – motor vehicles”). The definitions are meant to be exclusive of each other; therefore, if the specific activity is covered by one of the available choices, and the company’s business activities are limited to that choice, it generally would not be necessary to also choose the broader applicable category (e.g., consumer loan lending).

One commenter noted numerous examples of specific business activities with accompanying questions as to which business activity should be chosen in the company form.

### *SRR Response*

State regulators feel that it is not feasible to give universal guidance on which business activity (or activities) to pick for every specific business model. Choosing a business activity does not automatically create a license requirement but rather is used to drive the company towards the licenses that might apply to their business operations. It is the responsibility of the company to determine license applicability which will be verified by the state regulator as part of the license application review and approval process. Applicants should discuss particular questions with the applicable state agency(ies).

## Disclosure Questions

Several commenters posed questions and suggestions about the disclosure questions contained in the Company and Individual forms.

One commenter requested clarification about the discrepancy between the company and individual forms regarding use of the terms “regulatory action” and “regulatory action proceeding.” The term “proceeding” is defined in the NMLS Guidebook while “action” is not separately defined.

### *SRR Response*

In order to provide greater clarity and to make the terminology the same in both forms, the word “proceeding” will be added to disclosure Question E on the Company Form with the March 31, 2014 system release.

Another item that differs on the company and individual forms was brought up by one commenter. Companies must report certain regulatory actions against an organization that occurred within the past 10 years. Similar information is requested for control persons during the entire time period during which the person exercised control over an organization (with no 10-year time period noted). The commenter suggested that because both questions relate to actions taken against a company, both questions should be limited to a 10-year look back.

### *SRR Response*

Not all state agencies add Control Persons as respondents to actions taken against a company as a matter of practice, yet these state agencies want to be informed of any past control positions an individual had where an action had been taken against the company. No changes to the question or guidance will be implemented.

Several commenters mentioned the need for a licensee to be able to upload supporting explanatory documents when updating “yes” answers to “no” when pending regulatory and civil matters have been resolved.

### *SRR Response*

System functionality was upgraded in October 2014 to allow licensees to explain and upload supporting documentation regarding any “no” response, including when a “yes” is subsequently changed.

One commenter asked for clarification regarding what needs to be reported on the disclosure questions as a “foreclosure action” indicating that some states require short sales transactions reported as such.

### *SRR Response*

The definition of foreclosure in the NMLS Policy Guidebook is clear that it includes any initiation of a foreclosure action, whether or not the action is considered final. If a short sale or a deed in lieu (or any other action other than a completed foreclosure) is the end result, the answer should still be “yes” if a foreclosure action was initiated. As with all disclosure questions, state regulators will review the accompanying explanations and proceed accordingly.

One commenter requested clarification regarding answers to disclosure questions that specify answers based on “activities that occurred while you exercised control over an organization.” The commenter asked whether the question should rather state “while you were employed,” or include the ability to add a comment on a “no” answer such as “to the best of my knowledge.”

*SRR Response*

The existing question already limits questions to the time period during which the individual exercised control. Use of the term "employed" is problematic because owners or members of a board of directors are not necessarily employed by a company. The key term is "exercised control" with regard to the individual's role in the company. Regulators felt that all disclosure questions should already be answered "to the best of your knowledge" and the inclusion of that language would not be necessary.

One commenter requested that four questions under the Regulatory Action Disclosure section of the Individual Form be combined since a single action may result in a “yes” response for each of the questions.

*SRR Response*

While a single action may result in more than one “yes” response to disclosure questions, it is also possible that certain regulatory actions may only require a single “yes” response to the questions. Given the variability of state, federal, foreign financial regulatory or self-regulatory methods of reporting regulatory actions, no elimination of these regulatory action disclosure questions will be implemented. NMLS permits applicants/licensees to associate a single action to “yes” responses for one or more questions.

One commenter questioned whether a licensee should answer “yes” to disclosure questions related to control affiliate violations that occurred before the licensee owned or controlled the affiliate. The commenter suggested that a licensee should be required to report only on sanctions that arose from its own actions or those of a control affiliate that occurred when the licensee controlled or was associated with the affiliate.

*SRR Response*

An acquisition of a control affiliate does not absolve that entity from any obligations or restrictions placed upon it as a result of a regulatory action. Because the control affiliate may not submit a Company Form through NMLS, it continues to be appropriate for the acquiring company to disclose the past regulatory actions against the control affiliate.

**General**

Several general comments were submitted during the initial comment period and are available on the NMLS Resource Center. The issues listed below constitute the comments most closely relevant to the Forms, MCR and states’ use of NMLS.

One commenter asked whether it is necessary to require an attestation with every NMLS submission. The commenter indicated that attesting to the accuracy of information submitted in every filing through the system is burdensome and “frustrating” to system administrators and/or control persons in some cases.

#### *SRR Response*

The purpose of a filing through NMLS is to either submit a new application or update information that is currently in the system. NMLS is a system of record for state and federal agencies and the “attestation” is no different than including your signature on a document submitted to regulators. These submissions are made to one or more state or federal regulators. An attestation serves as an acknowledgement that the information submitted is true and accurate. The system currently requires control persons to attest to new application filings and not each and every submission from a company. The system allows, and states accept, attestation on subsequent filings from authorized company users. Eliminating an attestation with each submission would significantly diminish the ability of state and federal regulators to rely on the information submitted through the system and most assuredly require that paper attestations outside NMLS or attestations through multiple and varied state specific websites be implemented. The NMLS Policy Committee does not believe this is an efficient or desired behavior for supervisory purposes and no changes will be implemented in 2014.

## **MORTGAGE CALL REPORT**

### **Mortgage Call Report – Definition Questions**

SRR requested comment on the definition of “application” in the April 12, 2013 public comment notice. As noted, SRR recognizes various definitions of “application” exist in state and federal law. Commenters agreed with this observation and provided examples of the challenges they face when collecting loan origination information and synthesizing the different reporting requirements and interpretations of what constitutes an “application” for purposes of state, federal and MCR purposes. Larger lenders suggested a stronger adoption of the Home Mortgage Disclosure Act (HMDA) definition of “application” with specific guidance added to the MCR instructions. In addition, SRR was encouraged to further vet the definition with state regulators and possibly adopt varying definitions based upon state law.

SRR also requested general comments on any of the definitions and terms used in the MCR. Comments submitted for the definitions other than “application” focused on the term “gross revenue from operations” as found in Section I, field AC1100 of the MCR and what state regulators expect to be reported for this data field. The definition reads: “All revenue from whatever source received by your company on mortgage loans in this state during the reporting period before any expenses are deducted. Include gross revenue from sales of mortgages at or subsequent to closing and from any other mortgage related activity.” One commenter inquired as to the full extent of the reach of this definition and what should be included in this calculation given multiple scenarios that seem to be outside the scope of origination, acquisition, sale or servicing activities. One commenter noted that most companies do not calculate gross revenue on a per state basis and may have different approaches to this calculation, presumably leading to numerical differences from company to company based solely on definitional interpretation.

In general, commenters sought more detailed examples and clarification on the MCR definitions and expressed a desire (1) for all states to interpret and apply the definitions consistently and (2) mirror federal definitions to the greatest extent possible.

#### *SRR Response*

No changes to the current definitions of “application” or “gross revenue from operations” will be implemented for the 2014 MCR revisions. SRR will work over the next year with state regulators and industry participants to review the current definitions, and applicable guidance, for these terms as they relate to the MCR. State and federal reporting requirements will be considered and any changes to the definitions are anticipated to be adopted in Q1 2015.

### **Mortgage Call Report – Reporting Thresholds**

SRR requested comment on the appropriate criteria to determine which version – Expanded or Standard – of the MCR a company is required to complete. Currently, entities that indicate they are Fannie Mae or Freddie Mac Seller/Serviceers or Ginnie Mae Issuers complete the expanded version and all other companies complete the Standard version. Those commenters addressing this question suggested that the reporting requirements be based on loan origination volume, activity or combination and not on specific designations from Fannie Mae, Freddie Mac or Ginnie Mae.

#### *SRR Response*

The NMLS Policy Committee reiterates that the designation originally established for the different reporting requirements was meant to facilitate an easier transition for companies to begin reporting information via the MCR. As many Fannie Mae or Freddie Mac Seller/Serviceers or Ginnie Mae Issuers have been familiar with the components of RMLA II and the Financial Condition section through other reporting requirements, adopting these as part of the MCR was intended to alleviate some of the initial burden of MCR reporting. It has become apparent that a significant number of companies engage in activities or have loan volumes that may warrant an expanded collection of information than is currently required based on the Fannie Mae or Freddie Mac Seller/Serviceer or Ginnie Mae Issuer designation trigger. It is also apparent that not all companies with the Fannie Mae or Freddie Mac Seller/Serviceer or Ginnie Mae Issuer designation are automatically familiar with all data areas of RMLA II or the Financial Condition section through other reporting requirements as originally proposed. The MCR Working Group will work with other state regulators and industry representatives to determine reporting requirements based on factors that contribute most to the supervisory purposes of state regulated entities. Changes to the reporting requirements are anticipated in 2015.

### **Mortgage Call Report – State adoption of the MCR to eliminate or reduce state specific reports and streamlining various state and federal reporting definitions and requirements**

Commenters encouraged state regulators to review their specific reporting requirements and to adopt, when possible, the accurate and timely MCR filing as a satisfactory completion of state specific reporting requirements. Commenters also asserted that state regulators have not



demonstrated their use of the MCR for examination or other supervisory purposes and many do not understand the functionality and contents of the MCR.

Commenters also expressed a continued desire to streamline various loan origination, servicing and purchase reporting requirements with the MCR and state, federal and Mortgage Bankers Financial Reporting Form (MBFRF) reporting requirements. Commenters noted that a common data set amongst these requirements will lead to better reporting quality, more timely and accurately filed reports and increased understanding of regulatory expectations.

### *SRR Response*

One of the goals of the MCR is to reduce state specific reporting requirements when possible. Many states have eliminated their specific origination volume reports and eliminated their unaudited financial statement requirements as a result of the MCR. As compliance with the MCR has increased and states have ensured the information is accurately and timely filed for all state agencies, additional states have seen the value in eliminating duplicative reports both from a regulator standpoint and their own ability to review multiple reports with substantially similar information.

SRR will continue to work with state regulators to provide training on the MCR, its contents and functionality and working to synthesize MCR data fields with information required under state law.

## ADDENDUM A

### FORMS WORKING GROUP MEMBERS

<b>Member Name</b>	<b>Agency Name</b>
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