



**RESPONSE TO COMMENTS AND APPROVED CHANGES TO THE
COMPANY FORM (MU1) AND BRANCH FORM (MU3) FILING
ATTESTATIONS**

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Background

On May 1, 2015, SRR, on behalf of the state regulatory agencies using NMLS, solicited public comments on the [Uniform NMLS Licensing Forms and Mortgage Call Report](#). The comment period ended on June 1, 2015 and all public comments were posted on the [NMLS Resource Center](#). The Request for Public Comment contained proposed changes to the attestation language as part of Company Form (MU1), Branch Form (MU3) and Individual Form (MU4 and MU2) filing submission. The Forms Working Group (Addendum E), comprised of state regulators, reviewed the public comments received and made recommendations to the NMLS Policy Committee (NMLSPC)¹ for consideration. Based on the initial comment period, SRR indicated that proposed changes would go out for a second 30-day comment period prior to finalization by the NMLSPC.

During the initial Request for Public Comment Period, between May 1, 2015 and June 1, 2015, some state agencies voiced concerns that the attestation language as part of form filing submission is inadequate. While companies may utilize third-party firms to assist with licensing compliance, NMLS Policy states that filing attestation and submission should be completed only by an employee of the company who is authorized to attest on behalf of the company. To reduce attestation by third-party firms, such as compliance personnel who are not employees of the entity licensed within NMLS, the NMLSPC recommended strengthening Company and Branch attestation language. The recommended language to strengthen the Company and Branch attestation language was included in the second [Request for Public Comments](#).

On July 21, 2015, SRR solicited the second [Request for Public Comments](#) on the Uniform NMLS Licensing Forms and Mortgage Call Report which contained proposed changes that resulted from the initial open comment period and regulator discussions. Based on [Comments Received](#), and additional recommendations made by the SRR Lawyers Committee and approved by the Forms Working Group, on December 23, 2015, the NMLSPC published the [Response and Approved Changes to the Licensing Forms and Mortgage Call Report](#).

The final changes published on December 23, 2015 contained a change to the Company Form (MU1) and Branch Form (MU3) attestation language that was not contained in either the May 1, 2015 nor the July 21, 2015 comment periods. Concerns were raised at the NMLS Ombudsman Meeting on February 19, 2016 that industry had not had an opportunity to comment on this change to the attestation language and that the change will have substantive impact on licensee's ability to comply. Specifically, industry voiced concern with the removal of "...to the best of my knowledge, information, and belief..." from language proposed to be presented to company users within the second Request for Public Comments. The concern from the state regulators is that inclusion of "...to the best of my knowledge, information, and belief..." may allow applicants to argue that the attesting individual did not have the requisite "knowledge, information, or belief" and therefore has not knowingly made a false statement of fact.²

¹ To assist it in making decisions and handling operational matters, the SRR Board of Managers created the NMLS Policy Committee (NMLSPC) which is comprised of 11 state regulators. The NMLS Policy Committee provides SRR a mechanism to make policy decisions for NMLS with regards to its impact on meeting state licensing regulations. Decisions are made after considering input from NMLS Participating State Agencies, licensees and industry. The roster of the NMLSPC can be found at <http://mortgage.nationwidelicencingsystem.org/about/Documents/2016.2.1%20NMLS%20POLICY%20COMMITTEE%20LIST.pdf>

² See Addendums A, B, C, and D for current, former, and approved versions of the attestation language.

For this reason, SRR decided to provide an additional 30-day public comment period solely on the specific change to the Company Form (MU1) and Branch Form (MU3) attestation language. Comments were due by April 28, 2016.

Goal of System Attestations

The System attestations, required as part of filing submissions through NMLS, serve to provide assurance to state agencies that the information contained in a record is true, accurate and up to date. By attesting to a certain filing, applicants and licensees are making a legal attestation to all states in which they are applying for or maintaining a license through NMLS. Companies are required to attest upon initial license application, subsequent license applications or amendments to the company or branch record, renewal of approved licenses, and when submitting a Mortgage Call Report (MCR) or financial statement.

Responses to Comments

On behalf of the state regulatory agencies using NMLS, SRR sought comments from the public on the content of the Company Form (MU1) and Branch Form (MU3) attestation language. SRR was particularly interested in input on the inclusion of “...to the best of my knowledge, information, and belief...” to the Company Form (MU1) and Branch Form (MU3) attestation language. All responses were reviewed by the NMLS Licensing Forms Working Group, the SRR Lawyers Committee, and the NMLSPC.

At the end of the April public comment period, SRR had received responses from fourteen individuals or organizations.

“...to the best of my knowledge, information, and belief...”

Many commenters provided substantive feedback to support the inclusion of “...to the best of my knowledge, information, and belief...” within the Company Form (MU1) and Branch Form (MU3) attestation language. It was argued that exclusion of such language introduces strict liability and goes above and beyond reasonable standards and expectations of accuracy. A legitimate clerical or typographical mistake may occur and one single person may not have the requisite knowledge to allow assured attestation if the filing was compiled by multiple persons, from multiple sources, and especially when an entity is licensed/operates in multiple jurisdictions. Many times the individuals preparing a filing are not the ones attesting and submitting the filing. Industry recognized the importance of an accurate and up-to-date record, but also pointed out the difficult and almost impossible nature of a single person ensuring the accuracy of everything contained in a record. Furthermore, the initially approved language puts the attester in a difficult situation in ensuring that the MU2 information regarding another person is “true and correct.” It was also mentioned that the initially approved language does not recognize that the information may be accurate when submitted, but requires the information to be true and correct for all time. Many examples were given of other attestations used by state agencies and businesses that contain similar language as “...to the best of my knowledge, information, and belief...” and pointed out that its inclusion is a common practice.

SRR Response

SRR, on behalf of the state regulatory agencies using NMLS, has decided to retain the use of “...to the best of my knowledge, information, and belief...” in the approved Company Form (MU1) and Branch Form (MU3) attestation language (Addendum D). In review of the comments and the weighing of the obligations under submitting the filings, it was decided that including “have made

diligent inquiry as to their accuracy, and they are true and correct to the best of my knowledge, information and belief” is sufficient to hold both the company and the individual accountable for the submission of the filing.

Restriction of Attestation by Third Parties

One commenter mentioned that the proposed attestation language eliminates the possibility of delegating the completion and submission of form filing tasks to third parties outside of the company. It is important to allow multiple individuals and parties to assist in the compilation of Company Form (MU1) and Branch Form (MU3) license applications and record updates.

SRR Response

SRR, and the state regulatory agencies using NMLS, are not trying to restrict who prepares the content of a company or branch filing, instead who can attest to and submit the filing. State agencies do not want the accuracy of a company’s record attested to by third parties. To accommodate common business practices, companies will be given two new user roles for Organizational Users that will allow designated third party users to assist with completing company and branch filings without having the ability to attest and submit the filing.

New Organizational User Role

One commenter mentioned that that introduction of the new user roles to allow designated third party users to assist in completing company and branch filings, without having the ability to attest and submit the filing, already ensures that company and branch filings are attested to and submitted by authorized individuals of the company. The commenter asserted that these new user roles make it unnecessary for the strengthening of the attestation language which serves to prevent the attestation and submission of the Company Form (MU1) and Branch Form (MU3) by third parties.

SRR Response

Even with the introduction of a new user role for Organization Users, SRR and the state regulators support in the strengthening of the Company Form (MU1) and Branch Form (MU3) attestations as an additional check in place to discourage attestation by third parties and hold the company and individual responsible. Not only does the revised language make clear that attestation needs to be a function performed by an employee or an authorized control person or officer of the company, but helps reinforce the accuracy of the information submitted to state regulators, contained within a filing.

Other System Attestations

Four commenters provided feedback regarding attestations associated with the Mortgage Call Report (MCR), licensing renewals, and/or financial statement submissions.

SRR Response

SRR, on behalf of the state regulatory agencies using NMLS, would like to clarify that the Request for Public Comments issued on March 29, 2016, was solely in regards to the attestation language associated to Company Form (MU1) and Branch Form (MU3) filing submissions. Changes to the attestation language as part of the MCR, licensing renewals, and/or financial statement submissions are not being considered at this time and were not included in the March 29th Request for Public Comments. In the future, if changes are considered for MCR, licensing renewals, and/or financial

statement submission attestations, SRR will seek public comments on those changes. As a reminder, the Uniform Forms and definitions are available for public comment every two years.

Additional Language Suggestions

Three commenters suggested that state regulators incorporate language into the attestation that includes a reference to “diligent inquiry” or the assertion that the attesting party exercised “due diligence” on reviewing the information being submitted to state regulators. These commenters noted that some other attestations use similar language.

SRR Response

SRR, on behalf of the state regulatory agencies using NMLS, agrees with these suggestions to include language related to “diligent inquiry” and have amended the final language to reflect this in attestation.

Implementation of Approved Changes

Initially the approved changes to the Forms were slated for implementation in the second quarter of 2016. Due to industry requests to allow additional review of the amended attestation language, changes to the Forms have been retargeted for the third quarter of 2016 (currently September 12, 2016). All other changes to the Forms outlined in the response posted on December 23, 2015, will be implemented within NMLS as outlined in the [Approved Changes](#) document, with just the date of implementation being changed to the third quarter of 2016.

As previously mentioned and outlined in the Approved Changes document, companies will be provided two new user roles for Organizational Users that will allow designated third party users to assist with the completion of company and branch filings without having the ability to attest and submit the filing (Create and Edit MU1/MU2 Filings and Create and Edit MU3/MU2 Filings). These new user roles will be made available the third quarter of 2016 and at that time Company Account Administrators will be required to re-evaluate users and assign the Create and Submit roles to only authorized users.

Additionally, in September 2016 SRR will update the User Profile page of Company/ Institution Account Administrators and Organizational Users to require imputation of “Title/Position.” This new data field will be pulled into the attestation language presented to company and branch filers upon filing attestation and submission.

Addendum A: Current Company Form (MU1) and Branch Form (MU3) Attestation Language

Addendum B: December 2015 Initially Approved Company Form (MU1) and Branch Form (MU3) Attestation Language in Redline

Addendum C: Approved Company Form (MU1) and Branch Form (MU3) Attestation Language in Redline Displaying Changes from December 2016

Addendum D: Approved Company Form (MU1) and Branch Form (MU3) Attestation Language Clean Version

Addendum A

Current Company Form (MU1) and Branch Form (MU3) Attestation Language

I <<NAME>>, of <<COMPANY>>, (Applicant) on this date <<SYSTEM DATE>>, swear (or affirm) as follows, that I executed this form on behalf, and with the authority, of said Applicant and said Applicant agrees to and represents the following:

- (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;*
- (2) To the extent any information previously submitted is not amended, such information remains accurate and complete;*
- (3) To the extent any information submitted is part of an advance change notice with a delayed effective date, such information is accurate and complete as of this submission;*
- (4) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into the background of the applicant, and any related individuals or entities, in accordance with all laws and regulations for purposes of making a determination on the application;*
- (5) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and*
- (6) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which the applicant is applying.*

If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.

[check box] I verify that I am the named person above and that I am authorized to attest to and submit this filing on behalf of the Applicant.

Addendum B

December 2015 Initially Approved Company Form (MU1) and Branch Form (MU3) Attestation Language in Redline

**Highlights indicates language additions or movement in placement*

**Red strikethrough indicates language removal*

~~I <<NAME>>, of <<COMPANY>> (Applicant) on this date <<SYSTEM DATE>> swear (or affirm) as follows, that I executed this form on behalf, and with the authority, of said Applicant and said Applicant agrees to and represents the following:~~

I, <<NAME>>, <<TITLE/POSITION>>, am employed by or am an officer or a control person of <<COMPANY>> (Applicant). I am authorized to verify the foregoing responses, attest to, execute and submit this filing on Applicant's behalf. Applicant agrees to and represents the following:

- (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;
- (2) To the extent any information previously submitted is not amended, such information remains accurate and complete;
- (3) To the extent any information submitted is part of an advance change notice with a delayed effective date, such information is accurate and complete as of this submission;
- (4) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into the background of the Applicant, and any related individuals or entities, in accordance with all laws and regulations for purposes of making a determination on the application;
- (5) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and
- (6) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which the Applicant is applying.

If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.

~~[check box] I verify that I am the named person above and that I am authorized to attest to and submit this filing on behalf of the Applicant.~~

[check box] On this <<SYSTEM DATE >>, I verify that I am the named person above and that I am authorized to attest to and submit this filing on behalf of the Applicant. I solemnly swear (or affirm) under the penalty of perjury or un-sworn falsification to authorities, or similar provisions as provided by law that I have reviewed the foregoing responses for accuracy, and that they are true and correct.

Addendum C

Approved Company Form (MU1) and Branch Form (MU3) Attestation Language in Redline Displaying Changes from December 2016

**Highlights indicates language additions or movement in placement*

**Red-strikethrough indicates language removal*

I, <<NAME>>, <<TITLE/POSITION>>, am employed by or am an officer or a control person of <<COMPANY>> (Applicant). I am authorized to verify the foregoing responses, attest to, execute and submit this filing on Applicant's behalf. Applicant agrees to and represents the following:

- (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;
- (2) To the extent any information previously submitted is not amended, such information remains accurate and complete;
- (3) To the extent any information submitted is part of an advance change notice with a delayed effective date, such information is accurate and complete as of this submission;
- (4) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into the background of the Applicant, and any related individuals or entities, in accordance with all laws and regulations for purposes of making a determination on the application;
- (5) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and
- (6) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which the Applicant is applying.

If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.

[check box] On this <<SYSTEM DATE >>, I verify that I am the named person above and that I am authorized to attest to and submit this filing on behalf of the Applicant. I solemnly swear (or affirm) under the penalty of perjury or un-sworn falsification to authorities, or similar provisions as provided by law that I have reviewed the foregoing responses, have made diligent inquiry as to their accuracy, and they are true and correct to the best of my knowledge, information and belief. ~~for accuracy, and that they are true and correct.~~

Addendum D

Approved Company Form (MU1) and Branch Form (MU3) Attestation Language Clean Version

I, <<NAME>>, <<TITLE/POSITION>>, am employed by or am an officer or a control person of <<COMPANY>> (Applicant). Applicant agrees to and represents the following:

- (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;
- (2) To the extent any information previously submitted is not amended, such information remains accurate and complete;
- (3) To the extent any information submitted is part of an advance change notice with a delayed effective date, such information is accurate and complete as of this submission;
- (4) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into the background of the Applicant, and any related individuals or entities, in accordance with all laws and regulations for purposes of making a determination on the application;
- (5) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and
- (6) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which the Applicant is applying.

If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.

[check box] On this <<SYSTEM DATE >>, I verify that I am the named person above and that I am authorized to attest to and submit this filing on behalf of the Applicant. I solemnly swear (or affirm) under the penalty of perjury or un-sworn falsification to authorities, or similar provisions as provided by law that I have reviewed the foregoing responses, have made diligent inquiry as to their accuracy, and they are true and correct to the best of my knowledge, information and belief.

Addendum E

NMLS Licensing Forms Working Group

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