

NMLS Background Check Processing – *Request for Public Comments*

September 14, 2009

On behalf of the state regulatory agencies participating in the Nationwide Mortgage Licensing System and Registry (NMLS, or “the System”)¹, the State Regulatory Registry LLC² invites public comments on the proposed implementation of background check processing in NMLS.

Purpose of NMLS Background Check Processing

Background check processing in NMLS requires mortgage loan originators and other individuals to furnish fingerprints for the purpose of obtaining a national criminal history background check and to give NMLS authorization to request and obtain an independent credit report. Background check processing in NMLS will provide state mortgage regulators with criminal and credit history information concerning individuals applying for or maintaining licensure in the most efficient and transparent method possible.

Background

Pre-SAFE Act

Prior to the passage of the SAFE Act³, about 35 states conducted separate criminal background checks as part of corporate or individual license application and approximately 20 states required credit history data to be supplied as part of corporate or individual licensure. A majority of these jurisdictions required criminal background checks and credit history data on company officers, company owners and branch managers in addition to mortgage loan originators.

The SAFE Act

Title V of the Housing and Economic Recovery Act of 2008 (H.E.R.A.), the SAFE Act, became effective July 30, 2009 and mandates all states to enact laws requiring the licensure of mortgage loan originators. As part of this process, state mortgage regulators must determine that a mortgage loan originator has not had certain felony convictions within a specified time period in addition to determining that the individual has demonstrated financial responsibility.

The SAFE Act requires all mortgage loan originators, whether state licensed or federally registered, to furnish NMLS with:

“...fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a State and national criminal history background check [§ 1505(a)(1)].”

¹ Information about NMLS can be found at: www.stateregulatoryregistry.org/nmls.

² Information about the State Regulatory Registry LLC can be found at: <http://www.stateregulatoryregistry.org>.

³ The SAFE Act is Public Law 110-289 (PL 110-289) and information can be found at: http://www.csbs.org/AM/Template.cfm?Section=SAFE_Act&Template=/CM/ContentDisplay.cfm&ContentID=18486.

The SAFE Act also states that all state-licensed mortgage loan originators shall furnish NMLS with:

“...personal history and experience, including authorization for the System to obtain –
(a) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act [§1505(a)(2)].”

Because many states also require criminal history record information and independent credit reports on company owners, directors or other control persons, state mortgage regulators want to ensure that these individuals can also utilize the proposed background check functionality in NMLS.

CSBS/AARMR SAFE Act Implementation Working Group (SAFE IWG)⁴

Shortly after the passage of the SAFE Act, the SRR Board of Managers created a working group of state mortgage regulators to formulate the most efficient and effective implementation of the SAFE Act requirements. The SAFE IWG made the following general recommendations that pertain to background checks:

- The System shall fully process the acquisition and delivery of fingerprints to the Federal Bureau of Investigation (FBI);
- The System shall accept the return of criminal history record information from the FBI for use by one or more state agencies;
- The System shall provide an electronic process for fingerprinting to increase efficiency and reduce application processing times; and
- The System shall automate the authorization process, retrieval and dissemination of credit reports to state regulators.

The SAFE IWG held conference calls for state trade associations in December 2008 to brief the associations on the proposed SAFE Act Implementation Plan.

The background check processing functionality is expected to be available during the 1st and 2nd quarters of 2010 in NMLS so that state regulators can use NMLS functionality to ensure that all state licensed mortgage loan originators are compliant with the state's enacted SAFE Act law by January 1, 2011. Additional details about each aspect of the background check process are outlined in this document.

NMLS Background Check Policies

NMLS proposes to implement fingerprint collection and criminal and credit history record checks according to the following policies:

- Mortgage Loan Originators (MLOs) will be required to undergo a criminal history background and a credit history check each time they submit a new license request through NMLS. This will occur regardless of the timing of any previous background

⁴ The CSBS/AARMR Safe IWG is comprised of state mortgage regulators from 18 jurisdictions.

check through NMLS. MLOs already licensed through NMLS must provide the System or its designee a set of fingerprints for submission to the FBI as well as authorization to obtain a credit report on or before the 2010 renewal period. If a MLO submits a license request through NMLS for multiple jurisdictions at the same time, only one criminal history background and credit history check is required. A new criminal history background check is proposed to be required a minimum of once every three years or until such time that the FBI implements an automated criminal history update process.

- Only jurisdictions that license an individual and jurisdictions where the individual is applying for a license will have access to the criminal history record information and credit history of the individual.
- MLOs and companies will not have access to criminal history record information or credit history data unless required by law or authorized by the FBI. It is proposed that in the event that a state regulator takes an adverse action based upon information contained in a criminal background check or credit history report, the regulator will be able to provide a copy of the report to the individual outside NMLS to the extent allowed by law and regulations.
- Criminal history background and credit history checks will become part of the individual's NMLS record. Any jurisdiction that licenses or is considering an application for licensure of an individual will have access to the most recent criminal background check or credit report. Thus, an individual licensed in one jurisdiction who subsequently applies to a second jurisdiction requiring an updated criminal background check and credit report, both states will have access to the updated reports.
- NMLS will provide appropriate avenues for FBI Name Check criminal history record information reports and medical waivers from fingerprinting requirements as needed.
- The designated credit reporting agency will check the applicant against the Office of Foreign Assets Control (OFAC) list and similar identity verification databases.
- The return of the credit report data will not negatively affect the credit score or credit history of the individual.
- The System will collect fees from the individual or company submitting the license request covering the cost of the criminal history and credit history processing through NMLS. The fees have not yet been determined, but will be commensurate with fees typically paid today for such services.

Process Steps

Fingerprinting and FBI Criminal Background Checks

1. MLOs and control persons will submit a filing through NMLS that will authorize the individual to visit a Livescan⁵ vendor location to provide fingerprints for the purpose of a FBI criminal background check. NMLS will collect the fees associated with this at the time of the filing and authorization.

⁵ A list of Livescan vendor locations will be published when this functionality is available through NMLS.

2. The individual will visit a Livescan vendor location for fingerprinting and the fingerprints will be submitted to the FBI to obtain criminal history record information.
3. Fingerprint images will be securely archived and will be used when the MLO authorizes a new FBI criminal history check in order to minimize the number of times the MLO must be fingerprinted.
4. In the cases where a fingerprint-based FBI criminal history check is unable to be completed due to unreadable prints, an individual's name and other identifying information will be used by the FBI to conduct a Name Check background check.
5. The FBI will transmit the results of the criminal history check to NMLS and these results will become part of the individual's NMLS record.
6. State mortgage regulators who license an individual will have access to his/her criminal background check information within the individual's record and will review it as part of their routine review process.
7. State mortgage regulators will communicate with the individual on specific questions or comments they have on the criminal background check information.

Credit Report Processing

1. MLOs and control persons will submit a filing through NMLS that will authorize NMLS to obtain a credit report on that individual. NMLS will collect the fees associated with obtaining the report at the time of the filing and authorization.
2. NMLS will request credit report information on that individual from a designated credit reporting agency using the filing authorization as the basis of the inquiry.
3. The designated credit reporting agency will return the credit report information, flagging the following items if they exist for manual regulator review:
 - Bankruptcies filed within the last 10 years;
 - Current outstanding judgments (except judgments solely as a result of medical expenses);
 - Current outstanding tax liens or other government liens and filings;
 - History of and current Collection Accounts;
 - Foreclosures within the past three years;
 - Three or more accounts more than 90 days past due;
 - A credit score below one certain threshold [Score TBD];
 - Multiple Social Security Numbers attached to the individual's name;
 - Consumer provided comments;
 - No credit history for the individual; and
 - Credit items the individual is appealing, if noted in the report

4. If a credit report is returned with no items flagged, the regulator will have the option to dispense with a manual review of the credit report and expedite approval.
5. State mortgage regulators who license an individual will have access to his/her credit report information and flagged information within the individual's NMLS record and will review it as part of their routine review process.
6. State mortgage regulators will communicate with the individual for specific questions or comments they have on the credit report information.

Request for Public Comments

On behalf of the state regulatory agencies using NMLS, the State Regulatory Registry LLC is seeking comments from the public on the proposed background check policies and functionality in NMLS. Comments are sought on the policies and processes outlined above as well as the following specific areas:

1. Flagging credit history data for specific items in order to decrease the processing time required for regulators to review credit report data. SRR is concerned that applications for licensure or renewal could be significantly delayed if all state regulators must manually review each credit history report for each state licensed MLO. As outlined above, state regulators are proposing to flag for manual review only those credit histories that contain certain incidences.
2. SRR specifically invites comments to identify a score they believe to be an appropriate threshold to trigger manual review. Credit scores can be a means to provide a general assessment of overall credit worthiness. Given the mortgage industry's experience in using credit scores, SRR invites feedback concerning the value of a credit score as only *one element* of the flag process that can allow a regulator to forego a manual review and expedite processing.

Comments are requested to be limited to the content of this document as it relates to background checks and NMLS.

SRR's Mortgage Licensing Policy Committee (MLPC) will review all comments and publish a final document outlining *NMLS Background Check Processing*.

Comments can be submitted by email to: comments@stateregulatoryregistry.org.

Comments may also be submitted in physical form to:

Conference of State Bank Supervisors
Attn: Tim Doyle
Background Check Public Comments
1155 Connecticut Avenue, NW
Fifth Floor
Washington, DC 20036-4306

Comment submission deadline: October 14, 2009

Persons submitting comments are requested to include their contact information in order to ensure SRR has accurate follow-up information.

For questions about this Request for Public Comments, please contact Tim Doyle at tdoyle@csbs.org.