



NMLS Ombudsman Meeting
2019 AARMR Annual Regulatory Conference
Westin San Diego Gaslamp Quarter, San Diego, California
August 8, 2019, 2:00 p.m. to 5:00 p.m. PT

Agenda

1. **Scott Corscadden, *NMLS Ombudsman & Supervisor, Bureau of Loans, Alabama State Banking Department***
 - Welcome, Ombudsman Update & Issue Review

2. **Cindy Corsaro, *Promontory Fulfillment Services LLC*** Exhibit 1
 - Regulator Communication & NMLS Improvements

3. **Robert Niemi, *Bradley*** Exhibit 2
 - State-to-State Temporary Authority

4. **Costos Avrakotos, *Mayer Brown LLP*** Exhibit 3
 - State-Specific Information in NMLS & Artificial Intelligence and Licensing

5. **Open Discussion**



July 15, 2019

NMLS Ombudsman
Conference of State Bank Supervisors (CSBS)
1129 20th Street NW
Washington, DC 20036

Re: AARMR 2019 Ombudsman Meeting topics – Cindy Corsaro

Dear NMLS Ombudsman

Thank you for your request for discussion topics for the Ombudsman Meeting at the AARMR 2019 Annual Conference in San Diego, CA. These are the topics I would like to address:

Regulator Communication:

- 1) Thank you to Hawaii, Missouri and Utah regulators for working with me to help identify available Approved-Inactive MLOs to fulfill Qualifying Individual and/or Branch Manager brick and mortar requirements. As a non-originating third party fulfillment services entity, we were having a hard time locating an MLO who did not want to originate loans, and all of these states provided information to help us locate someone in their jurisdictions. Many thanks for allowing us the ability to be licensed in your states!
- 2) Thank you as well to Jim Malloy of New Hampshire for providing examination questions and requirements to us two weeks prior to the official notice of examination. This gave us the opportunity to review what was needed for the examination and ask questions of the examiner, without the pressure of the clock ticking during the actual examination timeframe. As a result, we were able to begin gathering information and documents prior to the start of the exam, which guaranteed us an on-time delivery of all required materials!

NMLS Improvements:

- 3) It would be helpful to view Registered Agents in alphabetical order in a submitted MU1 filing. The only way to see it in alphabetical order is to create a new MU1 filing, then delete it after you locate the information you are looking for in the Registered Agent section. This becomes important when checking addresses in the NMLS when address change notifications are received.
- 4) The ability to review an entity's selected Business Activities under Composite View and the Company Snapshot would be greatly appreciated. Right now, you can only view them in an MU1 filing.
- 5) Although all states do not required a Primary and Secondary Contact be listed in the NMLS, when regulators are contacting an entity outside of NMLS for important state-specific notices or requirements, I would like to suggest that they include both the Primary and Secondary Contacts listed in the NMLS on the email, and not just the Primary Contact. This guarantees timely receipt of any and all time-sensitive and/or important notifications by the entity, should the Primary Contact be out of the office or otherwise unavailable when the email is sent.

Thank you as always for the opportunity to present these observations, questions, and concerns.

Sincerely,

Cindy Corsaro
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JULY 12, 2019

VIA EMAIL: OMBUDSMAN@NMLS.ORG

Scott Corscadden, NMLS Ombudsman
State Regulatory Registry LLC
129 20th Street, N.W., 9th Floor
Washington, DC 20036

RE: State-to-State Temporary Authority

Dear Scott:

First, let me thank you for your efforts as NMLS Ombudsman and the team at CSBS that supports you in your role, as well as for the opportunity to share my questions and concerns about proposed implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155. I hope that this letter provides the necessary detail to illuminate my concerns and the potential implications if implemented as currently being communicated by CSBS.

It is my head and not my heart that brings these concerns to you, as removing barriers to level the playing fields has been an effort since we first began the discussion in Ohio in 2011. While that grew to our working with the MBA and CSBS on many fronts, including the expansion of approved inactive license status for state licensed mortgage loan originators ("MLOs"), the Ohio Transitional Licensing Bill was drafted while I served as executive director for the Ohio MBA and was introduced, enacted and implemented while I served as the Ohio Deputy Superintendent. Lastly, I highlight my participation in the four plus year journey for the adoption of the Uniform State Test. Again, I only mention these to show my history of support for the opportunity to allow state licensed MLOs to continue to earn income for their families while undergoing employment changes and relocation.

However it is also a sincere concern that the current interpretation being provided by CSBS in the published FAQ may have overreached the federal statute. One primary purpose of the amendment to the Federal SAFE Act was to eliminate barriers to jobs for mortgage loan originators. *"The law amends the SAFE Mortgage Licensing Act of 2008 to revise the Act's civil liability immunity provisions and to temporarily allow loan originators that meet specified requirements to continue to originate loans after moving: (1) from one state to another, or (2) from a depository institution to a non-depository institution."*¹ This quote is the bill summary.

¹ <https://www.congress.gov/bill/115th-congress/senate-bill/2155>

There are two references to the state-to-state temporary authority that concern me, the first is included on the fifth page of the FAQ in question eight.²

8. Can an MLO obtain temporary authority in all jurisdictions currently on NMLS?

Yes. There is no language in S. 2155 that limits the number of states where an applicant can apply for an MLO license and thereby become eligible to operate under temporary authority.

Later in FAQ and on the same page is question ten, where the interpretation shared goes beyond the original language and greatly expands the options for state-to-state temporary authority.

10. The amendments specifically address “temporary authority to originate loans for state-licensed loan originators moving interstate.” What is the intention of the word “move?” Does “move” refer to an MLO expanding their license from one state licensed jurisdiction to another or to an MLO moving physically to another state?

The amendments provide that an “application State means a state in which a registered loan originator or a State-licensed loan originator seeks to be licensed.” Based on this language, CSBS believes that “move” does not refer to nor require an MLO seeking temporary authority to change their physical address. CSBS believes that the intent of S. 2155 was to allow MLOs to expand their authority to originate mortgages from bank to non-bank and/or from state to state. With this understanding, an MLO could be eligible for temporary authority in any number of states at the same time.

The portion of the bill that has brought concern is in Section 106, point (c) that is titled as “Temporary Authority To Originate Loans For State-Licensed Loan Originators Moving Interstate.” While we know that this title language is not implementing upon itself, the words used may support the conflict between the interpretation being shared and the language of the statute. When there is any conflict, courts generally look first to the language of the statute and then to the legislative intent behind those words. The statute reads, in pertinent part:

“(1) IN GENERAL.—A State-licensed loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the State-licensed loan originator—

“(A) meets the requirements of subparagraphs (A), (B), (C), and (D) of subsection (b)(1);

“(B) is employed by a State-licensed mortgage company in the application State; and

“(C) was licensed in a State that is not the application State during the 30-day period preceding the date on which the information required under section 1505(a) was submitted in connection with the application submitted to the application State.”³

² FAQs S.2155 Temporary Authority to Operate.pdf – NMLS Resource Center - 04/04/2019

³ <https://www.congress.gov/bill/115th-congress/senate-bill/2155/text>

While review of FAQ #8 may be a grammatical review and not necessarily a legal one, the words used and order used in the text of the statute have specific meaning as a basis of law. The dependent clause in part (B) of the statute employs a prepositional phrase that breaks down to:

“A State-licensed loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the State-licensed loan originator is employed by a State-licensed mortgage company in the application State...”

Relying on the words and the grammar used in the statute, the phrase “is employed by a State-licensed mortgage company” in (B) refers to the entity by whom the loan originator is employed. The prepositional phrase “in the application State” refers to the location where the loan originator is employed as this modifies the subject of the original sentence, “A State-licensed loan originator..”

So there is difficulty in accepting the FAQ to mean either the additional licensing of another single state other than the one where the MLO is employed or the addition of double-digit multiple states seems to again be in conflict. Further, comparing the congressional bill summary with the CSBS FAQ understanding support this concern:

- Bill Summary published by CRS:⁴
“to continue to originate loans after moving: (1) from one state to another,”
- FAQs S.2155 Temporary Authority to Operate:
“With this understanding, an MLO could be eligible for temporary authority in any number of states at the same time.”

While I am neither a grammarian nor a lawyer, I would request that efforts for a formal legal opinion to resolve these concerns and support the CSBS interpretations be sought from the CFPB. While the current interpretation would benefit the industry in the short term, my overriding concern is the potential downstream impact.

Could a judge presiding in a foreclosure case in upstate New York rule against a state-licensed mortgage company who allowed an MLO to apply for 20 additional state licenses utilizing the ‘understanding’ as currently being implemented? Will the judge consider an FAQ as support for the authority of the MLO to originate the mortgage ahead of the state-mandated education and testing?

There have been several questions and requests for interpretation of the validity of loans originated by MLOs utilizing Temporary Authority, but no formal guidance by the CFPB. The Bureau issued Bulletin, 2012-05 to clarify how state-to-state licensing could work. The bulletin specifically stated that Regulation H of the SAFE Act *“does not allow states to provide*

⁴ Congressional Research Service (CRS) of the Library of Congress works exclusively for the United States Congress, providing policy and legal analysis to committees and Members of both the House and Senate, regardless of party affiliation. CRS provides Congress with analysis that is authoritative, confidential, objective, and non-partisan.

for transitional license for a registered loan originator who leaves a federally regulated institution to act as a loan originator while pursuing a SAFE Act-compliant state license.”⁵

There is more in the memo but clearly the Bureau has reviewed and opined on this issue in the past, and certainly any interpretation or formal legal and regulatory support of Section 106 of S.2155 should come from the Bureau. Especially with the number of states updating their state laws to allow for Temporary Authority. These state law revisions also seem contrary to CSBS comments shared that state law changes are not required to implement Temporary Authority under S.2155. The Bureau should share guidance and provide clarity on how state laws and the SAFE Act, as now amended, overlay.

Scott, this may be a small concern and rises above your pay grade and mine. But I want to remind everyone that the clock is running. While we realize the system may at times mandate that policies become like a regulation, this reaches far beyond the MLO and their families. There are potential downstream implications by courts across the country when the first foreclosure case is being argued and what that plaintiff’s lawyer might dispute if this were to move forward without revision or regulatory clarity.

In closing I do wish to once again quote the Bureau Memo 2012-05, hoping that the intent stated back in 2012 and willingness to work with regulators and industry still exists today:

“The Bureau recognizes that this can create impediments to job changes and is committed to working with the states, industry, and the NMLSR to minimize these impediments going forward, consistent with the statutory language of the SAFE Act.”⁶

Thank you for your time reviewing and addressing these concerns and I look forward to the opportunity to discuss.

Sincerely,



Bob Niemi, CMB®
Senior Advisor

^{5,6} https://files.consumerfinance.gov/f/201204_cfpb_bulletin_safe-act-transitional-loan-originator-licensing.pdf



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July 17, 2019

VIA ELECTRONIC MAIL

Scott Corscadden
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c/o Conference of State Bank Supervisors
1129 20th Street, N.W., 9th Floor
Washington, DC 20036

RE: Ombudsman issue for 2019 AARMR Conference

Dear Mr. Corscadden:

In this Ombudsman session, I want discuss two matters.

The first is a revisiting of an issue that I raised previously involving state regulators requesting state-specific information to be uploaded in the NMLS. As CSBS is closer to revamping the NMLS to create NMLS 2.0, and because I have not heard if any decision or progress has been made on this issue, I thought it would be timely to again focus on and seek comments from regulators and industry on this matter.

Since our last AARMR session, I have increasing concerns about state regulators asking for state-specific information to license an entity, or to consider and approve a change in control transaction, and the state regulator demanding that the information be uploaded in the NMLS, rather than accepting the information outside the NMLS. By demanding that the state-specific information be uploaded in the NMLS, the information becomes available to regulators in all states in which an entity is seeking a license, or to acquire a licensee, even though additional states may not require such information to approve a license or a change in control transaction. Moreover, as we predicted, because this practice has not been curtailed, regulators in additional states are requiring state specific information to be uploaded in the NMLS.

Each time this happens, I am reminded of the NMLS Policy Guidebook which provides that one of the goals of the NMLS is to “increase consistency in licensing requirements,” as well as to improve supervision, heighten communication across states, and automate the process to the

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greatest degree possible. With the goal of increasing consistency and uniformity in the licensing process, industry worked with state regulators to create the NMLS and both sides largely were comfortable as to the information that must be provided to license an entity. State-specific information could be submitted and accepted outside the NMLS. State regulators signed on to this goal, and largely agreed as to the information required for purposes of the NMLS. For over 10 years, at every one of these conferences we heard that one of the key goals of the NMLS is to provide uniformity and to standardize the licensing process.

Increasing consistency in the licensing process seems to have been lost as a goal, unless the consistency that is being sought is adhering to the request of each state regulator that demands that certain information be uploaded in the NMLS. I am not questioning the legitimacy of a particular regulator's request. The regulator knows what his or her state law requires. I also am not questioning as to whether the NMLS is the best repository to keep such state-specific information for each state. There are valid reasons for making the NMLS the custodian of this information. I have heard and understand these reasons. My concern is with state regulators compelling an entity or licensee to upload the regulator's required information in the NMLS when such information is not required by all other states. There are strong reasons for not allowing state regulators to act in this manner that undermines the policy of the NMLS, disregards its goals, and dismisses the promise of the NMLS when first created.

- 1) If certain information is not required by regulators in one state, regulators in another state should not force the information to be uploaded in the NMLS where it would come before regulators in all states. Regulators in one state have no authority to compel regulators in another state to review information submitted by an applicant or licensee, and therefore they should not be able to dictate what other states should receive when considering a license application or a change in control transaction.
- 2) As a basic issue of fairness and transparency, companies should know what is required of them to obtain a license and not have concerns that information not otherwise required by regulators in most states could be needed because one state demanded the information to be uploaded on to NMLS.
- 3) State regulators who do not require or need to see certain information, such as a purchase agreement, to approve a change in control transaction, may review the purchase agreement and inquire about the agreement or a provision of the agreement, causing a delay in getting the approval, or triggering a request for other information.
- 4) If information required or insisted upon by one state regulator is uploaded in the NMLS, the information may be with a state that has a weaker data protection mechanism, a broadly worded FOIA statute, or an open records law, that would make sensitive proprietary information about the entity, its business activities, a transaction, or the purchaser, more readily available or accessible to competitors or hackers.

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- 5) When such demands are made to submit certain information, the state regulator is acting unilaterally, outside the bounds of the administrative law of his or her state, or of the policies and practices of CSBS in administering the NMLS. Since the NMLS was created, CSBS would publicly post proposed changes to the NMLS MU1 and MU2, and invite public comment. This is generally consistent with each state's Administrative Practices Act. I and others took this opportunity to comment on many of the changes proposed by CSBS to the NMLS. Those comments were fairly considered, and some were not pursued. If in the course of licensing a company or considering a change in control transaction a state regulator demands that state-specific information be upload in the NMLS, the applicant has no opportunity to question the demand, and has little choice but to comply, and hope that the filing will be approved. The state regulator is effectively imposing a new regulatory requirement without going through a notice and comment rulemaking as to the requirement.

Over the last few years, as more states were requiring state-specific information to approve a license or a change in control transaction, we were advised that as NMLS 2.0 was being developed, some mechanism would be instituted that state-specific information could be submitted in the NMLS that would be available for review only by the regulators in the state that had requested such information. Although not optimum, this was a reasonable approach. Since the start of the development of NMLS 2.0, we have heard nothing as to whether this approach is being considered or abandoned. I would think we are far enough down the road of creating NMLS 2.0 that this concern has been considered and a solution proposed. Has something been considered and decided? We would hope the Ombudsman could pursue an answer to this question, and if this approach has been abandoned, to notify companies whether anything else has been considered to address the filing of state-specific information on the NMLS.

The second matter is one relating to artificial intelligence ("AI"). Several weeks ago, at the first hearing of the House Financial Services Committee Task Force to explore the use of artificial intelligence in the financial services sector, Chairman Forster said that the "financial services sector is facing a period of rapid disruption in innovation and artificial intelligence is at the heart of these changes." We certainly agree with this statement – especially in light of the currently available technologies that include machine learning, deep learning and chatbots.

However, as it relates to AI, one of the challenges with state laws is whether a licensing obligation arises as a mortgage loans originator ("MLO") when an application is taken through an artificially intelligent system such as a chatbot (generally, a natural language processing algorithm which provides a personalized and conversational experience to users). While most state mortgage finance licensing laws are written in such a way to require a license of an entity that employs an AI system by which applications are taken for a mortgage loan, under most (if not all) state laws that provide for the licensing of an MLO, the licensing obligation applies to an individual who conducts the activities that define an MLO (e.g., minimally, taking an application for a mortgage loan or offering or negotiating the terms of a mortgage loan). Often, an individual is expressly defined as a natural person and a few states define what constitutes

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taking an application for a mortgage loan. Generally, however, how the individual takes an application for a mortgage loan (whether completing a paper or electronic version of an application person to person, over the phone, or via email) is not regulated, so regulators can apply taking an application broadly.

Recently, California enacted legislation that requires clear and conspicuous disclosures when bots are used to communicate or interact online with people in California. While this California legislation does not address a licensing obligation, has any other state either introduced/enacted legislation or a policy related to the regulation of AI in the mortgage industry? Alternatively, is any state presently contemplating legislation, policies and/or concerns related to this area?

Thank you for your consideration of these matters and I look forward to discussing more fully in San Diego.

Sincerely,

Costas A. Avrakotos