



NMLS Ombudsman Virtual Meeting

Our biannual meeting to address the issues that matter to you

September 30, 2021, 3:00 p.m. to 5:00 p.m. ET

Agenda

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| 1. <i>Ombudsman Update</i> | Jim Payne, NMLS Ombudsman, Kansas Office of the State Bank Commissioner |
| 2. <i>NMLS Modernization Update</i> | Bill Young, CSBS |
| 3. <i>State Examination System (SES) Update</i> | Kyle Thomas, CSBS |
| 4. <i>Industry Experience with the SES</i> | Cindy Corsaro, Promontory MortgagePath LLC |

Break

- | | |
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| 5. <i>The Pandemic & Remote Work</i> | Kobie Pruitt, Mortgage Bankers Association |
| | Bob Niemi, Bradley |
| | Michael Stidham, Rocket Mortgage |

Break

- | | |
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| 6. <i>MSB Model Law Concerns</i> | Keisha Whitehall Wolfe, Miles & Stockbridge |
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Additional Panelists

- Gus Avrakotos, Miles & Stockbridge
- Jedd Bellman, Maryland Office of the Commissioner of Financial Regulation
- Janine Bjorn, CSBS
- Adam Fleisher, Cooley
- Kara Kuchar, Schulte Roth & Zabel
- Matt Lambert, CSBS
- Devon Phelps, Washington Department of Financial Institutions
- Erin Van Engelen, Idaho Department of Finance
- Anya Tabb, Washington Department of Financial Institutions
- Deborah Taellious, Washington Department of Financial Institutions
- Daryl Wetter, Kansas Office of the State Bank Commissioner
- Max Zappia, Minnesota Department of Commerce



Ombudsman Exhibit Submissions

Cindy Corsaro, Promontory MortgagePath LLC	Exhibit 1
<i>State Examination ("SES") Experience – Good and Bad with State Examiners & Return to Office Protocol</i>	
Kobie Pruitt, Mortgage Bankers Association	Exhibit 2
<i>The Need to Make Remote Work Guidance Permanent and Update All Temporary Licensing Flexibilities through 2022</i>	
Bob Niemi, Bradley	Exhibit 3
<i>Remote Work & Branch Licensing</i>	
Michael Stidham, Rocket Mortgage	Exhibit 4
<i>MLO Remote Work</i>	
Keisha Whitehall Wolfe, Miles & Stockbridge	Exhibit 5
<i>MSB Model Law Concerns</i>	
Keisha Whitehall Wolfe, Miles & Stockbridge	Exhibit 6
<i>CSBS Model Money Transmission Modernization Act - Control & Passive Investor Definitions</i>	
Keisha Whitehall Wolfe, Miles & Stockbridge	Exhibit 7
<i>Control Definition Comparison (2021)</i>	
Keisha Whitehall Wolfe, Miles & Stockbridge	Exhibit 8
<i>CFS MSB Model Law Control Issues (Organization Chart and Passive Investor Attestation)</i>	
Keisha Whitehall Wolfe, Miles & Stockbridge	Exhibit 9
<i>Proposed Technical Amendment</i>	



September 10, 2021

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

Re: NMLS 2021 Fall Ombudsman Meeting topics – Cindy Corsaro

Dear NMLS Ombudsman:

Thank you for your request for discussion topics for the 2021 Fall Ombudsman Meeting. These are the issues I would like to address:

1) State Examination (“SES”) Experience – Good and Bad with State Examiners:

As the remaining states and industries transition onto the SES for examinations and complaint management, those of us in the mortgage industry now using the SES for examinations have experienced a few “bumps in the road” with certain states not utilizing the system as the efficient, streamlined tool it was intended to be. As a recent new user of the SES, I experienced a wonderful time with one state and a difficult time with another state’s use of the system. I have heard from other industry members that the volume of questions they now must answer during an examination have jumped to over 100 – 150, when a usual examination was only 25 – 50 questions. It would be helpful for all of us if the SES could provide more guidance to the states using the SES to establish best practices for its use. Here are a few examples of the issues experienced by industry members:

- a. Examination questions previously used for paper examinations should not simply be cut and pasted into the SES. This can be problematic and adds to the burden of industry’s ability to respond quickly to Information Requests (“IRs”). For instance, certain questions which have to be answered in the SES should not be inserted as multi-tiered questions requiring several responses within one answer (i.e., main question, then sub-questions 1a – 1s). Although this works when responding in Word or Excel outside of the SES, the SES is not set-up to easily handle this type of answer. Consolidating the question so that only one response is needed or separating the sections into different questions would be much easier.
- b. Entities should be able to upload all documents within the SES. It is difficult when a state indicates certain documents to be uploaded in the SES and other documents to be uploaded outside the SES using a separate file share site. This is not only cumbersome and time-consuming, but a bit confusing to keep everything straight regarding which location to use for each question.
- c. When choosing questions to be answered, please try not to choose every standard question available for a particular industry or activity reflected in the Business Activities in the entity’s MU1. Consider the actual activities reported in the MCR as well. Several entities may have numerous business activities listed, but only a few that they actually



engaged in during the examination timeframe. While answering N/A may seem easy, when you are juggling more than one examination at a time, having additional questions to answer – even if N/A – adds to the burden and response time of the examination for both the entity and the examiner.

- d. On the SES side, we feel that better training for all state examiners who transition onto the SES would be advantageous, as well as reviewing a sample exam for existing SES state users. This would help the SES and state examiners work together to produce a more cohesive approach to using the SES and reinforce the streamlined tool that it was intended to be when initiated.
- e. Also, on the SES side, the ability to download all IR's once they have been submitted to the examiner would help industry easily keep a record of their responses so that they are better prepared during an exit interview to discuss their responses with the state examiner or answer any follow-up questions posed by the examiner before closing the exam. Right now, unless you keep your own record of answers uploaded in the SES, there is no way to easily download all IR questions and answers from the SES, unless you copy and paste each individual IR question and answer from the SES into a Word or Excel document.

I feel if the SES, state examiners and industry work together, we can resolve the above issues and make the SES an even more robust and dynamic resource for all of us to use!

2) Return to Office Protocol:

As the vaccine is now available to most individuals, as entities begin to try and resume routine operations, and as states consider lifting COVID-19 exemptions, it is important for regulators and industry to continue to communicate and address a smooth return to the office. As work-from-home exemptions are set to expire at different times throughout the coming months, some as early as September 30 while other states have extended the exemptions to the end of the year, the issue remains on how we determine the guidelines for licensed entities, their MLOs and other employees to transition back to the office and normal operations. Here are some of the questions and concerns:

- a. When new state guidance notices are issued and uploaded onto the State Agency Communication/Guidance on Coronavirus/COVID-19 page in the NMLS, there is no way to easily see which states have been updated without checking each state for new information. It would be helpful to flag new notices in a different color or post them in a separate section for ease of reference. A chart of upcoming expiration dates in the NMLS would be extremely helpful!
- b. When a state exemption is expiring, prior notice of 30 – 60 days from either the state or the NMLS would be beneficial so that entities can plan accordingly.
- c. To date, only two states have required licensed mortgage entities to return to the office. Several have enacted legislation to make remote operations permanent, and more states are starting the process to make remote operations permanent. Some states have remained silent without any further guidance regarding when their exemptions will expire



or if they are considering adopting legislation to make remote operations permanent. How can entities plan for an organized return to operations when all the states are not on the same page regarding these requirements? If licensed in all 51 jurisdictions, how do we juggle one state's mandated return to the office over another that does not require in-office operations?

- d. As entities try to return to in-office operations, how will regulators address entities with individuals who are not comfortable returning to routine operations for various reasons (i.e., they do not wish to get a vaccine, have underlying health or religious issues which may preclude them from a vaccine, have a general fear regarding contracting the disease by working in a shared space environment, etc.), even if that state requires operations to be conducted from a licensed location?
- e. With so many differing approaches from states regarding remote operations, there is a real need for industry to receive clearer guidelines and a more organized, uniform approach to transitioning back to routine operations. How can we work together to achieve this?

I feel strongly that both the SES enhancements and the return to office topics should be addressed as soon as possible to allow for the efficient use of the SES, and a safe, compliant, and smooth transition back to routine operations in 2021 and 2022.

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

Sincerely,

Cindy Corsaro.

Cindy Corsaro
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The Need to Make Remote Work Guidance Permanent and Update All Temporary Licensing Flexibilities through 2022

The Mortgage Bankers Association (MBA)¹ and its member companies thank state policymakers for their leadership during the global Coronavirus pandemic for issuing guidance that has provided real estate finance industry staff the necessary flexibility to work from other than a licensed location in those that have branch or office mandates. These “no action” letters and temporary authorizations have been essential to protect the health of mortgage loan originators (MLOs) and other team members as well as the customers they serve. They have also been instrumental in protecting those who have family members in the same household that are at higher risk of serious, or life-threatening, illness from viral infection.

However, profound medical uncertainties about the coronavirus continue to challenge the country in general, and the industry in particular. With each day, more is learned about the science of the virus and the medical tools necessary to combat the spread of infection. Yet, despite the remarkable progress made since the release and widespread administration of the vaccines in the U.S. and around the world, the pandemic is far from over.

MBA urges regulators to continue to aggressively support policies that reinforce public health protections, rather than diminish them, and help make licensing flexibility permanent. To support this important policy change in state legislatures during 2022 and to meet necessary regulatory rulemaking timelines, MBA also urges state regulators to issue long term extensions until at least December 31, 2022 of any existing temporary written guidance.

In addition to the challenges noted in MBA’s June 2020 letter to the Conference of State Bank Supervisors,² changes to the legal framework for licensing would help prepare industry and regulators for any future national emergencies or regional natural disasters. It is important to additionally note that:

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 1,900 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² Available at www.MBA.org/LicensingFlexibility

- More time is needed to combat the Delta variant and possibly other future variants of COVID-19 that are more easily transmitted and contain greater viral load.
- There is at best incomplete data available to company-wide decision makers about the long-term efficacy of current vaccine doses and the need for boosters.
- In many parts of the country there is conflict between what the federal government and state governments are directing employers and the general public to do in terms of mask and vaccine mandates.
- There remains widespread hesitancy regarding vaccines despite approval from the Food and Drug Administration (FDA). As of this writing, barely more than 50 percent of the American population is fully vaccinated.³
- Without remote work flexibility, member companies must contend with the increasing possibility of litigation for failing to protect staff from covid-related workplace health risks. This challenge is further exacerbated by changing employment law statutes in some states and potential conflicts with OSHA mandates.

MLOs and state-licensed companies have proven in this national health crisis that they can operate in a new paradigm where they can remotely serve consumers effectively while respecting important consumer and data protection rules. Indeed, the industry's service to consumers impacted by the pandemic and needing assistance is a remarkable success story with nearly 4.3 million consumers receiving forbearance in the early weeks of the crisis. MBA believes this moment presents an opportunity to learn from current exigencies and facilitate new and more efficient ways for companies to operate and for regulators to conduct oversight.

Again, MBA encourages state policymakers to issue long term extensions of existing temporary remote work flexibilities for licensed staff through at least December 31, 2022, and to help pass state law and/or promulgate rules to ensconce these changes into permanent law. MBA's model state law and rule can serve as tools to assist policy makers, and the industry will continue to serve as partners in this effort.

MBA welcomes the opportunity to engage the Ombudsman and other state regulators further on this issue. If you have any questions, please contact William Kooper (wkooper@mba.org) or Kobie Pruitt (kpruitt@mba.org or 202-557-2870).

Thank you.

³ https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-total-admin-rate-total

Bob Niemi, CMB

Senior Advisor for Regulatory Compliance
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September 10, 2021

VIA ELECTRONIC MAIL

Jim Payne, NMLS Ombudsman
Conference of State Bank Supervisors
1129 20th Street NW, 9th Floor
Washington, DC 20036

RE: Topic for Third Virtual Ombudsman Meeting

Dear Jim & Team:

A year ago, this meeting focused on remote work and supervision in a post-pandemic world, and that could be similarly titled discussion this year. We have seen another year pass without the ability to see each other. In the now 18 months since the declaration of emergencies, we have seen so much change and so little change at the same time.

Customer expectations have increased as the current normal replaces expectations for a return to normal. Borrowers want what they want, when they want and where they want – and not in a nine to five office. While this is not encompassing of all homebuyers, most borrowers have embraced the digital world that lies in the palm of their hand. Customers want simpler and faster service... now.

Last fall, Bradley coordinated a team of regulatory experts from many companies worked with the MBA to prepare a model statute and administrative language for state regulatory agencies to consider. We shared our efforts with the AARMR board, CSBS staff and other state regulators. These discussions began and still continue to focus on several core fundamentals:

- 1) Removal of brick and mortar in-state branches
- 2) Removal of commutable distance requirements for MLOs and Managers
- 3) Elimination of mandates that all work must be from a licensed location
- 4) Licensees are responsible for the MLOs they sponsor

Whenever and wherever possible, we urge state regulators to reimagine branch licensing or when not possible, permit work from a remote location when under the supervision and oversight of their employer. Consumer expectations and company supervision has evolved since these requirements were put into state code years ago.

While this was THE entire focus for the 1September 2020 Virtual Meeting, this was only one agenda item during April 2021's virtual meeting. Yet, it was also a pre-pandemic topic back in August of 2019 in San Diego as a late entry from my colleague Haydn Richards. At that point, Haydn pointed out how consumers expectations had changed with increased needs for instant responses and technology to approve their mortgage via their smartphone. Haydn respectfully requested collaborative discussions about branch licensing. That day, it was shared that CSBS staff had also been discussing the future of branch licensing and formation of a working group to address this topic.

After the last 18 months, the discussion time is now for a revisioning of how office locations are considered to be a branch, a remote location, a home office or just a place of business. It is time for collaboration between industry and regulators about maintaining standards for remote supervision while still providing opportunity for consumers to dictate how they would like to engage with their mortgage company.

- 1) Does work from a licensed location benefit the consumer?
- 2) Does the licensee have the ability to supervise their employee while working?
- 3) Does a regulator need a licensed location to supervise a licensee?
- 4) How will a reduction in branch licensing impact state regulator budgets?

While we certainly hope that this time, we are truly looking toward a post pandemic world, that remains in question. So, while work remotely, lets engage the process for open discussion between states and industry, with the coordination of CSBS and not just a state by state effort. Let's consolidate the conversations in hopes of a common set of standards and regulations.

Looking forward to the opportunity to revisit this topic during the Ombudsman meeting and also during the upcoming AARMR conference.

Sincerely,



Bob Niemi, CMB
NMLS Ombudsman Alumnus



1050 Woodward Ave.
Detroit, MI 48226

September 10, 2021

VIA EMAIL

Mr. Jim Payne
Ombudsman, Nationwide Multistate Licensing System
1129 20th Street, N.W., 9th Floor
Washington, DC 20036

Re: September 30, 2021 NMLS Ombudsman Meeting Topics

Dear Ombudsman Payne,

The COVID-19 pandemic has redefined the concept of remote work in ways that were previously unimaginable across all industries. The way businesses have been able to quickly adapt their operations to accommodate remote work models demonstrates how it can be done with thoughtful oversight and collaboration between regulators and industry. In fact, some states have made legislative and regulatory changes to accommodate permanent remote work models. These updated statutes or regulations are particularly beneficial for companies in the lending space, as they will allow us to continue to manage and scale our operations with little interruption to our client services.

Aside from the present pandemic, any natural disaster or extreme weather condition may create barriers for mortgage loan originators to continue their work. Allowing mortgage origination activity to be performed remotely provides flexibilities whenever it may be unsafe or hazardous for a mortgage loan originator to enter a licensed location.

Additionally, client expectations of mortgage originators have significantly changed over the years. With proper safeguards and oversight by a sponsoring entity, a mortgage loan originator should be able to accommodate any consumer on their own terms. Defining and setting standards for what constitutes a remote location provides the mortgage loan originator with the flexibility of their own physical location while maintaining important standards for security and privacy.

Accordingly, we would like to raise the following:

1050 Woodward Ave.
Detroit, MI 48226

1. Within 2021 we have seen a lot of positive movement in permanently allowing remote work from remote locations. COVID-19 provided a great business case to show this can be done, but the use cases for allowing remote work go beyond the pandemic. We've seen some states quickly make the changes needed to allow work from a remote location and would like to understand how they were able to accomplish this.
2. We feel allowing work from a remote location should be part of business continuity plans and sponsoring entities should meet a set of standards. Many states face extreme weather or disasters that can prevent licensees from being able to get into their licensed offices. Are there any other states considering these changes and how can industry help support implementing the needed changes?

Sincerely,



Michael Stidham
Director, Regulatory Affairs
Rocket Mortgage



Keisha Whitehall Wolfe
410-385-3453
kwhitehallwolfe@milesstockbridge.com

September 13, 2021

VIA ELECTRONIC MAIL

Mr. Jim Payne
NMLS Ombudsman
c/o Conference of State Bank Supervisors
1129 20th Street, N.W., 9th Floor
Washington, DC 20036
ombudsman@nmls.org

Dear NMLS Ombudsman,

Thank you for facilitating another opportunity to discuss matters of concern related to the NMLS. We would like to submit the following topic for discussion during the upcoming NMLS Ombudsman Meeting: Proposed Technical Amendments to the CSBS Uniform Money Transmission Modernization Act.

We appreciate the combined efforts of both industry and regulators in crafting the Uniform Money Transmission Modernization Act, also known as the "Money Transmitter Model Law," the "Money Services Businesses ("MSB") Model Law," and the "CSBS Model Money Transmission Modernization Act" ("MSB Model Law"). It is our understanding that the MSB Model Law, which was recently approved and made public by the CSBS Board of Directors, is intended to be a single set of nationwide standards and requirements that state legislatures will be encouraged to enact.

One integral part of the MSB Model Law is that it provides standard definitions and it is the intent that adoption of such standard definitions would eliminate technical differences between states that make obtaining a license difficult for companies operating in multiple states.

It is important to note that although the current MSB Model Law only applies to money services businesses, during a recent CSBS presentation to Industry attendees at the 2021 MTRA Virtual Conference, CSBS Administrators publicly discussed that the common requirements found within the MSB Model Law are currently being built into the functional components of NMLS in connection with the NMLS Modernization effort. It is our understanding that as the NMLS Modernization effort entails the building of a system that will be used by MSBs, mortgage lenders and servicers, and other non-MSB companies. The MSB Model Law will serve as the basis for the development of core data requirements of all licensees and applicants that are processed through the NMLS.

While we recognize that the MSB Model Law went out for two rounds of comments before approval by the CSBS Board of Directors, it has come to our attention that core data requirements will require the identification of any person who has direct or indirect control over the licensee or applicant. Therefore,

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EASTON, MD • FREDERICK, MD • RICHMOND, VA • ROCKVILLE, MD • TYSONS CORNER, VA • WASHINGTON, D.C.

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 Jim Payne
 NMLS Ombudsman

recent Industry discussions about the MSB Model Law have focused on a closer inspection of the proposed uniform definitions of "control" and of "passive investor" as they relate to the definitions of "individual" and "person."

Below are the MSB Model Law definitions (with added emphasis) that are causing concern:

CSBS MODEL MONEY TRANSMISSION MODERNIZATION ACT

Section 2.01 – Definitions

(f) "Control" means

(1) (A) the power to vote, directly or indirectly, at least 25 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(B) the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(2) Rebuttable Presumption of Control.

(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.²

(B) A person presumed to exercise a controlling influence as defined by this [Section 2.01(f)] can rebut the presumption of control if the person is a passive investor.

(3) For purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in law, sons- and daughters-in-law,

² Commentary: The obligation to rebut control rests exclusively with the person acquiring ≥10% of the outstanding voting shares or voting interests of a licensee or person in control of a licensee. It is not the responsibility of the licensee to rebut control. This is consistent with Section 601(a) of the Act which requires the person acquiring control to obtain prior approval.

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Jim Payne
NMLS Ombudsman

brothers- and sisters-in-law, and any other person who shares such person's home.

(k) "Individual" means a natural person.³

(l) "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.⁴

(v) "Passive investor" means a person that:

(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(3) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee;⁶

and

(4) Either:

(A) Attests to (1), (2), and (3), in a form and in a medium prescribed by the [Commissioner]; or

³ Commentary: This Act differentiates between persons and individuals. A person can include both a natural person and a corporate entity, whereas an individual can only be a natural person.

⁴ Commentary: Key individuals are limited to the natural persons responsible for establishing or approving policies and procedures relating to material functional areas of the licensee or applicant. Such areas generally include compliance, finance, information security, and operations. States are strongly encouraged to utilize the NMLS Key Individual Wizard to ensure consistency, including that only the minimum number of key individuals with ultimate responsibility for policies and procedures are identified.

⁶ Commentary: A person does not have the power to exercise a controlling influence if the person does not participate in the day-to-day decisions or operations of a licensee or person in control of a licensee.



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Jim Payne
NMLS Ombudsman

(B) Commits to the passivity characteristics of (1), (2), and (3), in a written document.

(y) "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the [Commissioner].

As the definition of "person" includes an individual and "individual" is defined as a natural person, it seems the drafters contemplated that a "person in control of a licensee" could be either a natural person or a corporate entity. However, Section 2.01(f)(C), in part, defines "control" to be "the power to exercise, directly or indirectly, a controlling influence over the management or policies of a . . . person in control of a licensee." As worded, this definition of control would reach not only those directly influencing corporate entities and natural persons, but would also reach natural persons with a controlling influence over the licensee/applicant. That controlling influence would be exercised indirectly through that individual's authority or power to exert a direct or indirect controlling influence over the corporate entity that is both multiple levels removed from the licensee/applicant and deemed to have control over the licensee/applicant.

Was it the intent of the drafters to capture all such individuals as described in the preceding paragraph? Was consideration given as to the practical application of the proposed language with the NMLS attestation requirements at both the company and individual levels? In addition, was any consideration given to the burden that maintaining an accurate record of all such information would impose on applicants, existing licensees and regulators?

In light of the exceedingly broad application of the definitions and the lack of guardrails to advise future readers of the intent, we have concerns. Further, the definition of "control" and "passive investor" as worded will undermine a stated goal of the MSB Model Law to "advanc[e] multistate harmonization in the . . . industry." Therefore, we are requesting an open discussion of this issue and believe that a technical amendment to the MSB Model Law may be beneficial before states begin the process of adopting this model law.



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Jim Payne
NMLS Ombudsman

Thank you in advance for your consideration, and for the opportunity to participate in the upcoming Ombudsman meeting.

Sincerely,

A handwritten signature in black ink that reads 'Keisha Whitehall Wolfe'.

Keisha Whitehall Wolfe

A handwritten signature in black ink that reads 'Costas A. Avrakotos'.

Costas Avrakotos

CSBS MODEL MONEY TRANSMISSION MODERNIZATION ACT
ARTICLE II
Definitions

Section 2.01 Definitions.

For purposes of this [Act], the following definitions shall apply:

(f) "Control" means

(1) (A) the power to vote, directly or indirectly, at least 25 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(B) the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(2) Rebuttable Presumption of Control.

(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.³

(B) A person presumed to exercise a controlling influence as defined by this [Section 2.01(f)] can rebut the presumption of control if the person is a passive investor.

(3) For purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares such person's home.

(k) "Individual" means a natural person.⁴

³ Commentary: The obligation to rebut control rests exclusively with the person acquiring $\geq 10\%$ of the outstanding voting shares or voting interests of a licensee or person in control of a licensee. It is not the responsibility of the licensee to rebut control. This is consistent with Section 601(a) of the Act which requires the person acquiring control to obtain prior approval.

⁴ Commentary: This Act differentiates between persons and individuals. A person can include both a natural person and a corporate entity, whereas an individual can only be a natural person.

(l) "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.⁵

(m) "Licensee" means a person licensed under this [Act].

(v) "Passive investor" means a person that:

(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(3) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee;⁶ and

(4) Either:

(A) Attests to (1), (2), and (3), in a form and in a medium prescribed by the [Commissioner]; or

(B) Commits to the passivity characteristics of (1), (2), and (3), in a written document.

(y) "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the [Commissioner].

⁵ Commentary: Key individuals are limited to the natural persons responsible for establishing or approving policies and procedures relating to material functional areas of the licensee or applicant. Such areas generally include compliance, finance, information security, and operations. States are strongly encouraged to utilize the NMLS Key Individual Wizard to ensure consistency, including that only the minimum number of key individuals with ultimate responsibility for policies and procedures are identified.

⁶ Commentary: A person does not have the power to exercise a controlling influence if the person does not participate in the day-to-day decisions or operations of a licensee or person in control of a licensee.

The Evolution of the Definition of “Control” – Federal Reserve Regulations vs National Conference of Commissioners on Uniform State Laws Uniform Money Service Act vs States that Adopted the Uniform Money Service Act vs CSBS Model Money Transmission Modernization Act

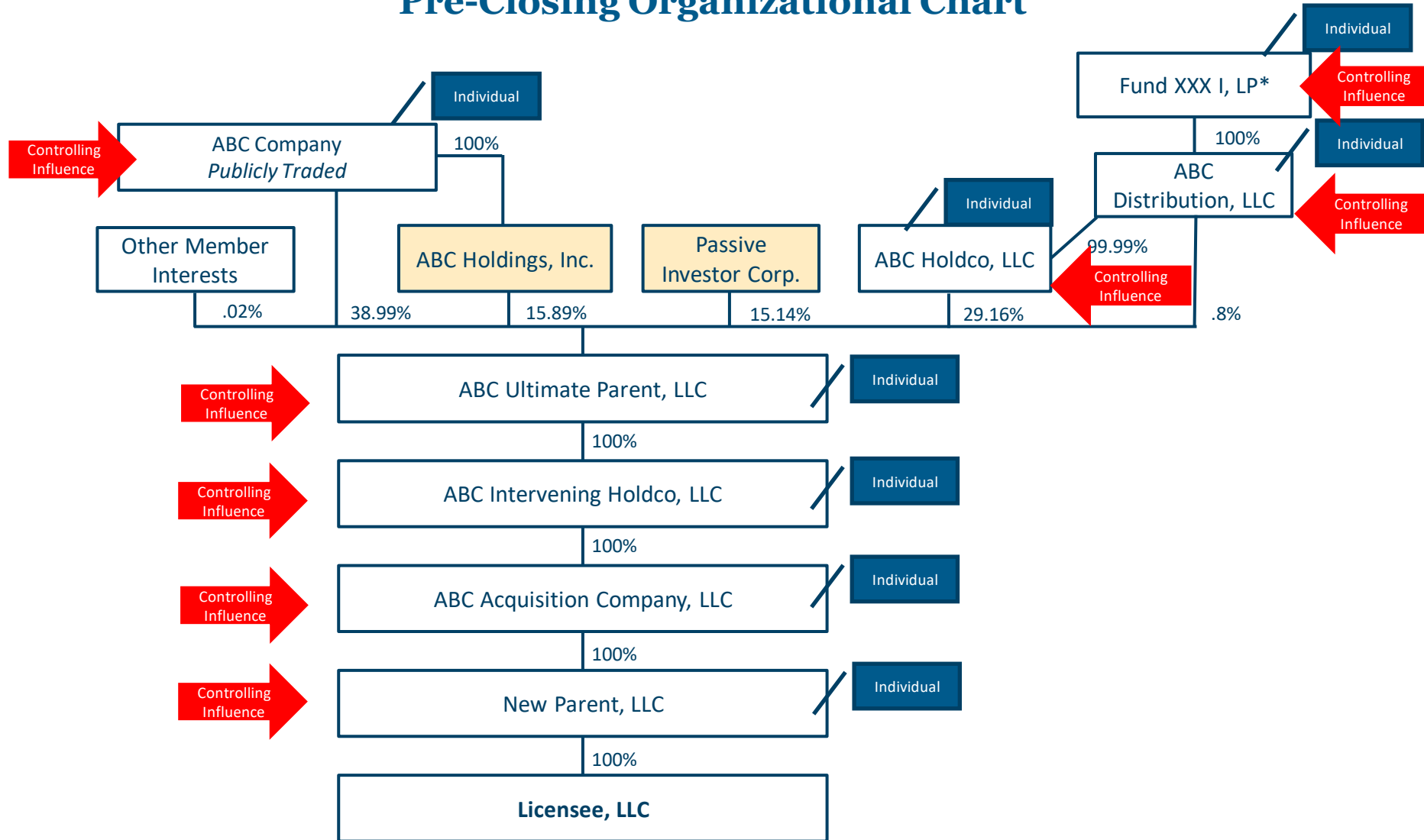
Federal Reserve Regulation Y 12 C.F.R. Section 225.2(e)(1) (2001)	National Conference of Commissioners on Uniform State Laws (2000 and Amended 2004) ¹	New Mexico (2016), South Carolina (2016), Arkansas (2007), Alaska (2007), Iowa (2003), Washington (2003) – State Enacted the Uniform Money Service Act Definition of Control	North Carolina (2016) - State Enacted the Uniform Money Service Act, but adopted a modified definition of control	Texas (2005) - State Enacted the Uniform Money Service Act, but only adopted a modified part of the definition of control	CSBS Model Money Transmission Modernization Act (2021)
Control of a company means: (i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the company, directly or indirectly or acting through one or more other persons; (ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; (iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as determined by the Board after notice and opportunity for hearing in accordance with § 225.31 of subpart D of this part; or (iv) Conditioning in any manner the transfer of 25 percent or more of the outstanding shares of any class of voting securities of a company upon the transfer of 25 percent or more of the outstanding shares of any class	“Control” means: (A) ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee; (B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or (C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.	“Control” means: (A) ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee; (B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or (C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.	Control [means] the power, directly or indirectly, to direct the management or policy of the licensee or person subject to this Article, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has ownership of or the power to vote ten percent (10%) or more of a class of outstanding voting securities; (iii) in the case of a limited liability company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the licensee or person subject to this Article.	“Control” means: ownership of, or the power to directly or indirectly vote, 25 percent or more of the outstanding voting interests of a license holder or applicant, and includes an individual whose ownership is through one or more legal entities.	“Control” means: (A) the power to vote, directly or indirectly, at least 25 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee; (B) the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or (C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

¹ Per the National Conference of Commissioners on Uniform State Laws (and some states) the definition of control (and the notion of controlling influence) is derived from the definition contained in the federal Bank Holding Company Act, 12 U.S.C. Section 1842(a)(2) (Supp. V 1999) and Federal Reserve Regulation Y, 12 C.F.R. Section 225.2(e)(1) (2001).

Federal Reserve Regulation Y 12 C.F.R. Section 225.2(e)(1) (2001)	National Conference of Commissioners on Uniform State Laws (2000 and Amended 2004) ¹	New Mexico (2016), South Carolina (2016), Arkansas (2007), Alaska (2007), Iowa (2003), Washington (2003) – State Enacted the Uniform Money Service Act Definition of Control	North Carolina (2016) - State Enacted the Uniform Money Service Act, but adopted a modified definition of control	Texas (2005) - State Enacted the Uniform Money Service Act, but only adopted a modified part of the definition of control	CSBS Model Money Transmission Modernization Act (2021)
of voting securities of another company.					

ABC Lending, LLC

Pre-Closing Organizational Chart



* Fund XXX I, LP has approximately 60 limited partners in the fund. None of the limited partner investors hold a 25 percent or greater interest in the fund. In addition, no natural person holds a collective indirect ownership interest in ABC Ultimate Parent, LLC that would result in a 10 percent or greater ownership interest in Licensee, LLC.

Proposed Passive Investor Attestation Form – Individuals

Passive Investor Attestation Form (published for comment with the MSB Model Law in 2020)

For individuals:

I, [Name], on this date, [Date], swear (or affirm) that I executed this document on my own behalf, that I am attesting to and submitting this document for purposes of being declared a passive investor of [Licensee] and that I agree to and represent the following:

*(1) I do not own or have the power to vote, directly or indirectly, 10 percent or more of a class of voting securities or voting interests of the licensee **or person in control of the licensee.** **PASS – no voting power over licensee or 10% owner of the licensee***

*(2) I do not have the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial control of the licensee **or person in control of the licensee;** **PASS – cannot elect majority of persons of licensee or 10% owner of the licensee***

*(3) I am not employed by and do not have any managerial duties of the licensee **or person in control of a licensee;** **and FAIL – although no managerial duties for the licensee, an officer may be employed by and/or have managerial duties for the 10% owner***

*(4) I do not, in any way, participate in the day-to-day decisions or operations of the licensee. **PASS – no participation in day-to-day decisions or operations of the licensee.***

***Because all four (4) parts of the criteria must be satisfied, the officer of a 10% owner **FAILS** the passive investor attestation and thus, would be required to complete the disclosures as a control person.**

Proposed Passive Investor Attestation Form – Entities

For entities:

I, [Name], on this date, [Date], swear (or affirm) that I am an authorized representative of [Entity/Fund], that I am able to execute this document on [Entity's] behalf, that I am attesting to and submitting this document for purposes of [Entity] being declared a passive investor of [Licensee] and that I agree to and represent the following:

*(1) [Entity] does not own or have the power to vote, directly or indirectly, 10 percent or more of a class of voting securities or voting interests of the licensee **or person in control of the licensee.** FAIL*

*(2) [Entity] does not have the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial control of the licensee **or person in control of the licensee;** FAIL*

*(3) [Entity] is not employed by and does not have any managerial duties of the licensee **or person in control of a licensee;** and PASS*

(4) [Entity] does not, in any way, participate in the day-to-day decisions or operations of the licensee. I verify that I am the named person above and agree to the language as stated PASS

***Even if the entity does not participate in the day-to-day decisions of the operations of the licensee or elect a majority of officers...of the licensee, it will FAIL the test because it owns 10% of intervening holdings companies that are persons in control of the licensee. Most 10% or greater entity owners would not be able to make the attestation as a passive investor and thus, the entity would be deemed to be a person in control of the licensee.**

**Proposed Technical Amendment to CSBS Model Money Transmission Modernization Act
Section 2.01 Definitions.**

Exhibit 9

Current Text:	Proposed Technical Amendments:
<p>For purposes of this [Act], the following definitions shall apply:</p> <p>(f) "Control" means</p> <p>(1) (A) the power to vote, directly or indirectly, at least 25 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;</p> <p>(B) the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or</p> <p>(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.</p> <p>(2) Rebuttable Presumption of Control.</p> <p>(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.³</p> <p>(B) A person presumed to exercise a controlling influence as defined by this [Section 2.01(f)] can rebut the presumption of control if the person is a passive investor.</p> <p>(3) For purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares such person's home.</p>	<p>For purposes of this [Act], the following definitions shall apply:</p> <p>(f) "Control" means</p> <p>(1) (A) the power to vote, directly or indirectly, at least 25 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;</p> <p>(B) the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or</p> <p>(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.</p> <p>(2) Rebuttable Presumption of Control.</p> <p>(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.</p> <p>(B) A person presumed to exercise a controlling influence as defined by this [Section 2.01(f)] can rebut the presumption of control if the person is a passive investor.</p> <p>(3) For purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares such person's home.</p>
<p>(k) "Individual" means a natural person.⁴</p>	<p>(k) "Individual" means a natural person.</p>

³ Commentary: The obligation to rebut control rests exclusively with the person acquiring $\geq 10\%$ of the outstanding voting shares or voting interests of a licensee or person in control of a licensee. It is not the responsibility of the licensee to rebut control. This is consistent with Section 601(a) of the Act which requires the person acquiring control to obtain prior approval.

⁴ Commentary: This Act differentiates between persons and individuals. A person can include both a natural person and a corporate entity, whereas an individual can only be a natural person.

**Proposed Technical Amendment to CSBS Model Money Transmission Modernization Act
Section 2.01 Definitions.**

Exhibit 9

(l) "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee. ⁵	(l) "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.
(m) "Licensee" means a person licensed under this [Act].	(m) "Licensee" means a person licensed under this [Act].
<p>(v) "Passive investor" means a person that:</p> <p>(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;</p> <p>(2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;</p> <p>(3) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee;⁶ and</p> <p>(4) Either:</p> <p>(A) Attests to (1), (2), and (3), in a form and in a medium prescribed by the [Commissioner]; or</p> <p>(B) Commits to the passivity characteristics of (1), (2), and (3), in a written document.</p>	<p>(v) "Passive investor" means a person that:</p> <p>(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;</p> <p>(2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;</p> <p>(3) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and</p> <p>(4) Either:</p> <p>(A) Attests to (1), (2), and (3), in a form and in a medium prescribed by the [Commissioner]; or</p> <p>(B) Commits to the passivity characteristics of (1), (2), and (3), in a written document.</p>
(y) "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the [Commissioner].	(y) "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the [Commissioner].

⁵ Commentary: Key individuals are limited to the natural persons responsible for establishing or approving policies and procedures relating to material functional areas of the licensee or applicant. Such areas generally include compliance, finance, information security, and operations. States are strongly encouraged to utilize the NMLS Key Individual Wizard to ensure consistency, including that only the minimum number of key individuals with ultimate responsibility for policies and procedures are identified.

⁶ Commentary: A person does not have the power to exercise a controlling influence if the person does not participate in the day-to-day decisions or operations of a licensee or person in control of a licensee.