



NMLS Ombudsman Meeting
Hilton Tampa Downtown
Tampa, FL
Bayshore 2-4
9:00 am – 12:00 pm (ET)
August 2, 2016

Agenda:

1. Scott Corscadden, NMLS Ombudsman

Supervisor, Bureau of Loans, Alabama State Banking Department

Ombudsman Update and Issue Review

Exhibit 1

2. Haydn Richards, Bradley Arant Boult Cummings LLP

Licensure of Foreign Entities and Verification Processes for Foreign
Control Persons

3. Lisa Marie Lanham, Dentons US LLP

Licensing Requirements for Account Executives and Branch Office
Locations for Wholesale Mortgage Lenders

Exhibit 2

4. Ken Markison, Vice President and Regulatory Counsel, MBA

Stakeholder Engagement with NMLS: MBA's Updated Views

Exhibit 3

**5. Amy Greenwood-Field, Bradley Arant Boult Cummings LLP
Costas Avrakotos, Mayer Brown LLP**

NMLS Company License Application – Attestation Language
- Limiting Ability to Attest to individuals “Employed By” or “Officer
or Control Persons of a Company”

Exhibits 4&5

6. Cilla Conrow, Project Manager, Veterans United Home Loans

Backdating of License Application Approval Dates

7. Terri Baer, One Main Holdings, Inc.

Request from AFSA members for states to share the suite of general questions
and information asked for in consumer finance examinations so that companies
can be better prepared to respond in a timely manner.

8. Scott Nowak, Assistant Director of State Government Affairs, MBA

Suggested Uniform State Advertising and NMLS Consumer Access

**9. Charlie Fields, First Vice President, Mortgage Regulatory Affairs, PennyMac
Loan Services, LLS**

Notable trends in consumer complaint handling by mortgage servicers and any
origination and servicing trends noted by state regulators

**10. Mortgage Call Report Update, Rich Cortes,
Principal Financial Examiner, Connecticut Department of Banking**

Exhibit 6

11. Additional Topics



SRR Public Comment Policy [DRAFT]

July 2016

PURPOSE

The purpose of this Public Comment Policy ("Policy") is to adopt a formal policy to ensure effective notice and procedures for a period of public comment on certain functionality, reporting or policy changes (individually and collectively, "updates") being considered for adoption by the State Regulatory Registry ("SRR") that may significantly impact users of the Nationwide Multistate Licensing System ("NMLS").

SRR believes that public involvement in the updates process is the best way to develop and manage NMLS and encourage public understanding and participation in NMLS activities. Accordingly, SRR requires notice and a public comment period for updates that may significantly impact parties that use NMLS. This Policy outlines the roles, responsibilities and procedures for this process to assure the public has effective notice and the ability to submit timely and meaningful comment on proposed NMLS updates.

APPLICABILITY

Under this Policy, any updates that impact outside parties (i.e. is not strictly limited to the internal operations of SRR) and are determined by the NMLS Committee as requiring public comment, may be posted for notice and public comment. Updates that warrant a public comment period include, but are not limited to, the following:

- Major NMLS functionality updates
- Call Report updates
- Impacts to usability of NMLS
- Uniform Form changes
- Fee changes

This Policy does not apply to any SRR updates that do not have an impact on external users of NMLS or that the Committee has determined as not requiring public comment under this Policy.

ROLES AND RESPONSIBILITIES

A. NMLS Working Group. The NMLS Working Group generally consists of state regulators but may include industry representatives and is responsible for the subject matter of the update. The Working Group analyzes the comments, involves other interested parties as necessary, and makes a final recommendation to the NMLS Policy Committee based on the original proposal with any modifications deemed appropriate from the content of the comments. The Working Group is staffed by the NMLS Policy Coordinator.

B. NMLS Policy Coordinator. The NMLS Policy Coordinator is the SRR staff person who is generally responsible for the subject area addressed in proposed updates. The NMLS Policy Coordinator shall

DRAFT POLICY

Updated: July 2016

be responsible for preparing notices and assuring that proposed updates for public comment are posted in a timely manner. In addition, the NMLS Policy Coordinator shall be responsible for coordinating the process of analyzing and recommending a disposition on all comments received during the comment period. This process will be conducted by the appropriate NMSL Working Group(s) that is responsible for the particular issue or functionality that is the subject matter of the update. The NMLS Policy Coordinator will be responsible for ensuring all comments are posted on the NMLS Resource Center no later than 5 business days from the end of the comment period and for coordinating the final response to comments developed by the appropriate Working Group which will also be posted on the NMLS Resource Center.

C. Senior Vice President of Policy (“SRR SVP-Policy”). The SRR SVP-Policy shall assign a NMLS Policy Coordinator when such action is required and shall review recommendations before they are sent to the NMLS Policy Committee.

D. General Counsel. The Office of the General Counsel shall provide counsel upon request to the NMLS Policy Coordinator, the SRR SVP-Policy, NMLS Policy Committee or any SRR staff member regarding the proposed updates, posting of the document for effective notice and comment, review and disposition of any comment received, or any interpretation of this Policy.

E. NMLS Policy Committee (“Committee”). The NMLS Policy Committee, as appointed by the SRR Board of Managers, shall approve a final determination on the updates presented for public comment and, if appropriate, present that determination to the SRR Board of Managers for their approval prior to adopting the updates. The Committee may approve a public comment period of less than 30 days, under limited circumstances and when good cause is demonstrated as provided in this Policy.

EFFECTIVE AND SUFFICIENT NOTICE

A. Comment Period. At a minimum, SRR will, in most instances, provide a period of public comment of no less than 60 days on all updates. The NMLS Policy Coordinator at his/her discretion may extend the period for public comment. The comment period on any update may not exceed 180 days unless so extended by the SRR SVP-Policy when good cause is demonstrated for extending the comment period. Considerations for extension shall include, but are not limited to, the content of the proposed update, the complexity of the proposed update, and intervening circumstances during the comment period.

SRR recognizes that there may be good cause for the comment period to be less than 60 days so that SRR can respond to a time sensitive matter in a timely manner. The NMLS Policy Coordinator must request such an exception in writing to the Committee, justifying the reason for requesting that the comment period be less than 60 days. The Committee may grant such an exception when good cause is demonstrated for reducing the public comment period and must do so in writing. Under no circumstance shall the period of public comment be less than 21 days.

B. Notice to the Public. In order to ensure that members of the public are apprised of SRR’s publication of proposed updates and solicitation for comments on proposed updates, SRR will use the following methods of publication and notice to the public: (1) publishing the proposed update on the NMLS Resource Center (including publishing a News Item) and soliciting comments by a certain date; and (2) sending notice to SRR stakeholders, including but not limited to, NMLS Regulators, system account administrators, and relevant working groups and committees (e.g., SRR Lawyers Committee, Industry Development Working Group).

The NMLS Policy Coordinator shall prepare notice of the proposed update and the solicitation for comments and cause it to be published in the means identified above. Included in this responsibility is

the duty to analyze and assign a reasonable period for accepting comments within the parameters established by this Policy.

COLLECTING AND RECEIVING PUBLIC COMMENTS

For all proposed updates, SRR shall accept comments by email or in hard copy. However, SRR shall encourage members of the public to provide comments by email to comments@csbs.org or through an SRR-established centralized comment submission program. Comments must contain the name, email address and mailing address of the submitter. After the public comment period is complete, SRR will compile all comments, regardless of the means of transmission, and make them available to the public on the NMLS Resource Center.

CONSIDERATION OF COMMENTS

The applicable Working Group, staffed by the NMLS Policy Coordinator, must timely read and consider each and every comment submitted during the comment period and recommend a disposition for all comments. In the final consideration of the update, the Working Group shall provide a written summary of all comments received, indicating which of those comments should be accepted, rejected, or tabled for future consideration.

The written response summary of all comments received, as described above, must be completed within a reasonable time period after the end of the stated open comment period and may be reviewed by other regulator working groups or groups of regulators when additional input is desired before a final recommendation is prepared for the NMLS Policy Committee. The length of time to complete the summary report and recommendation will vary depending upon the complexity of the subject matter as additional input is reviewed and analyzed and the NMLS Policy Coordinator is responsible for keeping the NMLS Policy Committee informed of specific timelines.

If after releasing the written response summary and recommendations to the public, SRR deems it necessary to provide an additional public comment period, the NMLS Policy Coordinator will seek approval from the relevant Working Group and the NMLS Policy and Committee for such additional comment period. Any additional comment period must follow the same procedures set out in this Policy.

ADOPTION OF A RULE OR POLICY OF GENERAL APPLICABILITY

Any updates determined by the Committee as requiring public comment shall be adopted only if:

- (1) the proposed updates have been posted for public comment in accordance with this Policy;
- (2) all comments submitted in response to the proposed updates have been reviewed, assessed and considered by the relevant working group(s) who make a final recommendation that is presented to, and approved by, the NMLS Policy Committee and, where appropriate, the SRR Board of Managers.

All finalized policies must be, at a minimum, posted on the NMLS Resource Center and communicated to targeted groups as deemed appropriate.

June 23, 2016

By FedEx

Massachusetts Division of Banks
Attention: Mortgage Loan Originator Licensing Unit
1000 Washington Street, 10th Floor
Boston, MA 02118-2218

Re: Inquiry Regarding Licensing Requirements for Account Executives and Branch Office Locations
for Wholesale Mortgage Lender

Dear Sir or Madam:

We are writing to inquire as to whether the individual account executives ("AEs") of a wholesale mortgage lender need to be individually licensed as mortgage loan originators ("MLOs"). As further described below, these AEs would not have any contact with borrowers and are employed by the mortgage lender solely for the purposes of expanding and maintaining the lender's mortgage broker network. In addition, we would like to know whether the locations that those AEs operate from would be required to be licensed as branch offices of the mortgage lender.

I. Account Executive Activities

As a threshold matter, please be advised that wholesale mortgage lenders do not engage in direct lending activities with the public and do not employ loan officers/MLOs of their own. Instead, wholesale mortgage lenders only offer their loan products through networks of independent mortgage brokers. These unaffiliated mortgage brokers offer and negotiate the mortgage loans with the public, and then once a consumer has decided to apply for a mortgage loan, submit completed mortgage applications to the wholesale mortgage lender. The mortgage lender will then underwrite, fund and close the mortgage loan. Significantly, the mortgage lender does **not** have any contact with the consumer during the mortgage lending process and all communications with the consumer are handled by and through the mortgage broker.

Because the wholesale mortgage lender itself does not directly lend to the public, in order to grow and maintain its business, the lender hires AEs in order to entice new mortgage brokers to join its broker network and expand the number of potential brokers from whom it may receive new mortgage applications. Notably, these AEs communicate **only with mortgage brokers and are not involved in the actual mortgage lending process**. Instead, the AEs act as the mortgage lender's representatives and engage solely in business-to-business activity to educate new and existing brokers regarding the loan programs offered by the mortgage lender, give brokers thoughts regarding potential loan scenarios and whether the mortgage lender may accept/approve certain application and otherwise act as business liaisons between the mortgage broker and the lender. Again, these AEs **do not** participate in the actual

mortgage process and **do not** take applications, negotiate or offer terms or otherwise speak directly with consumers, process or underwrite any loans.

Based on the foregoing, we would like to know whether these individual AEs must obtain MLO licenses with the Massachusetts Division of Banks.

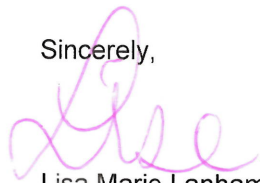
II. Branch Licensing for AEs

In addition, please note that the AEs generally operate under two sales models. In the "outside" sales model, the AEs do not work in an office and instead, these AEs will drive to meet mortgage brokers in person at their offices, at coffee shops, etc. They may also work out of their home offices or elsewhere by phone or online. We would like to know whether these AEs need to be "tied" to any licensed branch office. Again, these AEs are **not** engaged in any conversations and are not otherwise directly engaged in the mortgage lending process and are **only** speaking with mortgage brokers, and not consumers.

In the "inside" sales model, AEs will work at a call center that is only comprised of AEs. From that location, AEs will make phone calls, engage in telemarketing to new mortgage brokers, provide webinars to mortgage brokers on mortgage lender's products, policies, etc. There is **no** communication with consumers from this location and it is strictly business-to-business focused activity. We would like to know whether these AE call centers must be licensed a branch offices of the mortgage lender.

Thank you in advance for your attention to this matter. Please contact me at (212) 398-5222 or lisamarie.lanham@dentons.com with any questions.

Sincerely,



Lisa Marie Lanham
Associate



MORTGAGE BANKERS ASSOCIATION

May 2, 2016

Mr. Tim Doyle
 Senior Vice President
 State Regulatory Registry, LLC
 Conference of State Bank Supervisors
 1129 20th Street NW, 9th Floor
 Washington, DC 20036
comments@csbs.org

Re: Request for Public Comments—Proposed Changes to Company and Branch Filing Attestations (Proposal 2016-1)

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the changes proposed on March 29, 2016 (March proposal) to the Uniform Nationwide Mortgage Licensing System and Registry (NMLS) Company and Branch Filing Attestations. MBA particularly appreciates that this opportunity has been provided by NMLS to rectify concerns raised by the industry at the February 2016 NMLS Ombudsman meeting in Phoenix, Arizona—that final changes to these attestations published in December 2015 (Addendum D of the March proposal) had not been proposed for public comment.

I. Preliminary Comments—The Need for a More Structured Framework for Engagement

MBA greatly appreciates the diligence of state regulators working collaboratively through their various organizing bodies, especially through volunteer committees of the State Regulatory Registry, LLC (SRR), to create more uniform standards for regulatory compliance among the states. MBA also appreciates the efforts of NMLS to seek wide outreach to ensure that supervisory policies appropriately consider marketplace realities. Nevertheless, MBA believes that based on the matter involved here and similar problems, the process of seeking public input could be strengthened.

Specifically, MBA first suggests lengthening the time periods being afforded for stakeholder comments on proposed changes, as well as other process improvements to make stakeholder input more useful to regulators. MBA does not believe, for example, that 30 days is a sufficient

¹ MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the Association works to ensure the continued strength of the Nation's residential and commercial real estate markets; to expand homeownership and 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 over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

public comment period to elicit well considered, well crafted, and well vetted responses from a sufficient number and diverse group of stakeholders.

In its previous comments (attached), MBA reviewed NMLS records available on its website and found that longer comment periods generally result in a much greater number and higher quality of comments and viewpoints. In instances when the Conference of State Bank Supervisors (CSBS)/SRR granted stakeholders 60-day notice and comment periods for the Forms and Mortgage Call Report (MCR), the number of comments was much higher. Notably, only one comment was submitted for Proposal 2013-3—the first Forms/MCR proposal to transition from a 60-day to a 30-day timeframe. Based on this review, MBA concluded that NMLS should move to a policy of holding comment periods open for a minimum of 60 days, except in exigent circumstances.

MBA also believes that NMLS input would be improved if the following other changes in the outreach process were implemented:

1. Additional advance notice of new initiatives, to assist industry and other stakeholders to focus more attention on forthcoming policy changes and their subsequent opportunities for comment. This might take the form of advance public presentation pre-proposal at NMLS Ombudsman meetings or similar events, with advance notice of a draft proposal circulated to NMLS subscribers and posted to the NMLS website ahead of said meeting;
2. The advance notice should include a review of findings necessitating the proposal, and a preliminary assessment of the costs, benefits, and legal authority appropriate to the proposal;
3. At the time the proposal is issued, a clear and complete description of the proposal specifying what is proposed as clearly as possible;²
4. Effective dates for new policies and rules that allow a reasonable time under the circumstances of at least 90 days before the policy or rule becomes effective, to allow lenders and their vendors to test and operationalize systems changes as necessary;
5. A review of potentially duplicative or conflicting federal requirements;
6. A review of potential conflicts with, or instances of new NMLS requirements exceeding, individual state laws or rules; and
7. The burden or impact on small business, defined as those with fewer than 25 employees, to implement new NMLS requirements in the time period provided.

Again, MBA believes that strengthening the framework for outreach on and engagement of stakeholder views would significantly improve input and facilitate the establishment of thoughtful standards and consumer protections.

² The May 2015 request for comments on changes to the MCR included open-ended questions that did not relate to any specific regulator policy direction. For example: “The Financial Condition (FC) component of the NMLS Mortgage Call Report is based on the Mortgage Bankers Financial Reporting Form (MBFRF) but this form has not been updated on a consistent basis to keep pace with standard accounting changes and relevancy to certain areas of state supervision of mortgage companies. Do you have specific suggestions to improve the information collected on the FC?” In this example, regulators who had been working to update the FC component chose not to use the comment process to discuss any specific fields they wished to consider adding to the MCR and why, and the industry was at a loss as to how to respond.

II. The Changes to Company and Branch Filing Attestations

The specific issues raised in this March proposal by CSBS/SRR regarding the proposed language for company and branch filing attestations are complex and significant, and they will impact a very large number of companies. MBA therefore appreciates this additional comment period on this subject.

After conducting a review of the attestation language proposal (Addendum D), discussing it with a wide range of member company representatives—individually and on a conference call, and receiving several written suggestions, MBA is opposed to this language which was originally to be finalized in December 2015. The December version of the language differs significantly from Addendum C, which MBA supports. Addendum D would place an undue burden on control persons, exposing both member companies and their personnel to significantly enhanced and unprecedented risk—making this formulation unworkable.

For reference, key provisions from Addendum B, Addendum C, and Addendum D are set forth below:

- Addendum B (The Current Language): requires certification 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 C’s Proposed Language: requires certification that “I, <<NAME>>, am employed by/an officer of <<COMPANY>>, and am authorized to verify the foregoing responses on its behalf. The information set forth herein was collected by others, and such information is not necessarily within my personal knowledge. Nevertheless, I solemnly declare and affirm under the penalties of perjury that I have reviewed the foregoing responses, and am informed and believe that the foregoing responses are true and correct to the best of my knowledge, information, and belief.”
- Addendum D’s “Final” Approved Language: requires certification that “[o]n 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.”

If ultimately finalized following this comment period, Addendum D would hold the certifier to a “true and correct” attestation standard “under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law.” What makes this standard disconcerting is the exclusion of language stating that the certifier is making this attestation “to the best of my knowledge, information, and belief”—the standard that frames Addendum C and which recognizes *perfection* is not something that can be rationally attested to under all circumstances.

The points noted below offer further explanation of MBA’s concerns; accordingly, the

association vehemently believes that Addendum C's proposed changes should be utilized by regulators.

1. Addendum D is Contrary to Existing Reasonable Requirements:

After a brief review in the time available of several states' requirements related to filings of annual reports, MBA has determined that a sufficient number of incongruities exist between what is currently required in annual reports directly by states and what is being proposed in Addendum D. Accordingly, MBA strongly urges state regulators to conduct a more exhaustive review of existing laws and requirements in all states before proceeding with attestation changes like those in Addendum D, which will have sweeping national impact. Below are a few examples, but please note that MBA is willing to work with state regulators and industry counsel to conduct a more thorough analysis:

- Kansas Mortgage Company Annual Report—An authorized executive officer of the mortgage company must make the following attestation:

*I hereby swear and affirm that the information contained herein is true and correct **to the best of my knowledge and belief**. Further, I understand that filing with the commissioner any document or statement containing any false representation, inaccuracy, or omission may cause the Mortgage Company License to be denied, suspended, or revoked in accordance with K.S.A. 9-2201 et seq.³ [Emphasis Added]*

- Louisiana Consumer Loan License Annual Report—A licensee's authorized company representative must make the following attestation:

*I affirm that **to the best of my knowledge and belief** the statements contained in this report are true and complete.⁴ [Emphasis Added]*

- Montana Consumer Lender Annual Report—The licensee must make the following attestation:

*I, _____ the undersigned, being the _____ of _____ swear or affirm that, **to the best of my knowledge and belief**, the statements contained in this report, including the accompanying schedules and statements, if any, are true and that the same is a true and complete statement in accordance with the law.⁵ [Emphasis Added]*

- New Hampshire Mortgage Banker-Broker Servicer Annual Report—The authorized signor must make the following attestation:

³ http://www.osbckansas.org/cml/applications/mc_ar_2015.pdf.

⁴ <http://www.ofi.louisiana.gov/LCCLAnnualRptForm.pdf>.

⁵ <https://banking.mt.gov/Portals/58/Consumer%20Loan/CL%20Annual%20Report.pdf>.

*I subscribe and affirm, under penalty of perjury and under penalty of Unsworn Falsification pursuant to NH RSA 641:3 that the statements made in this report have been examined by me and **to the best of my knowledge and belief** are true, correct and complete, and that I am duly authorized to submit this report and to execute this affirmation. I understand that any misrepresentation made to the banking department may result in denial or revocation of the license to which this form relates.*

I acknowledge on behalf of the licensee that the licensee will retain work papers and other documents used in the preparation of this report and that the licensee will make such records available to the department upon request or examination.⁶ [Emphasis Added]

- New Jersey Mortgage Lender License Annual Report—The licensee or responsible party must make the following attestation:

*I hereby certify that the information provided in connection with this Annual Report is true **to the best of my knowledge and belief.**⁷ [Emphasis Added]*

- Massachusetts Mortgage Lender Annual Report—The authorized officer must make the following attestation:

*The undersigned is authorized to attest that the financial statements submitted through the NMLS in accordance with the instructions of this report, along with the information provided in this report, are true and accurate **to the best of their knowledge and belief.**⁸ [Emphasis Added]*

2. Potential Inconsistency with other NMLS Managed Attestations:

MBA is interested in knowing if Addendum D's proposed language is consistent with attestation requirements of other "expanded" industries reporting to NMLS. For example, New Hampshire's Debt Adjustor applications includes the following attestation language:

*I subscribe and affirm, under penalty of perjury, that the statements made in this application, including the MU1 and Part II-DA of the NH Application Form and statements made in any accompanying papers, schedules and attachments, have been examined by me **and to the best of my knowledge and belief are true, correct and complete,** and that I am duly authorized to execute this affirmation. I understand that any misrepresentation made to the banking department may result in denial or revocation of the mortgage license to which this form relates.⁹ [Emphasis Added]*

⁶ <https://www.nh.gov/banking/consumer-credit/documents/ar-mortgage-2015.pdf>.

⁷ <http://www.state.nj.us/dobi/bankdedfund/annualreportworksheets/ResidentialMortgageLender2015.pdf>.

⁸ <http://www.mass.gov/ocabr/licensee/license-types/banks-banking/dob-annual-and-quart-report-forms/>.

⁹ <http://mortgage.nationwidelicensingsystem.org/slr/StateForms/NH10-Part-II%20DA.pdf>.

MBA suggests that state regulators conduct a thorough review of any inconsistencies among the attestation requirements on the mortgage industry and those of other financial service industries also managed by the NMLS before imposing a higher burden like Addendum D on state-regulated MBA members.

3. The Proposed Language in Addendum D is Not Reasonable and Does Not Reflect Current Business Realities:

MBA members, in discussing the March proposal, expressed their view that the current attestation in Addendum B and the proposed attestation in Addendum C were both reasonable and that establishment of a significantly higher burden (i.e., Addendum D) does not reflect the reality of current business structures or practices. Requiring control persons to attest to the 100 percent accuracy of all information submitted under penalty of perjury, instead of to the best of their knowledge, information and belief, is unrealistic when considering the simple fact that control persons cannot be held to standards of absolute accuracy in normal business practices. The NMLS attestations have to date been realistic. Addendum D would be a dramatic departure, not only from past standards, but from what has been found so far in MBA's admittedly brief review.

There are also other practical concerns. For example, if one company purchases another firm, how can the control person of the purchasing company possibly attest under the standards proposed in Addendum D to all of the information previously submitted to NMLS by the company they have purchased? Moreover, if Addendum D goes into effect, does it mean that all previously submitted information will be held to this new higher standard? MBA believes that these unanswered questions, and several others raised during the most recent NMLS Ombudsman meeting, warrant further attention and should give pause.

4. Comparison to Legal Affidavits:

The legal weight of affidavits is greater than the attestations in question, yet the language in them is more in line with a "knowledge, information and belief" standard. Therefore, it does not follow as to why CSBS/SRR is seeking to make the certifications at issue more onerous, as there is not an unquestionable justification provided in the March proposal for a higher threshold like Addendum D.

III. Other Concerns

Finally, MBA would be remiss if it did not note that the proposed attestation language within Addendum D actually runs counter to the direction that the federal government has taken with respect to the certifications required by the Federal Housing Administration (FHA). One of the most significant challenges in the post-crisis mortgage market has been the debilitating uncertainty created by the Department of Justice's pursuit of multi-million dollar settlements from FHA lenders for alleged violations of the federal False Claims Act. The root cause of the problem has been the loan-level and annual certifications signed by participating FHA lenders that effectively attested to 100 percent compliance with all aspects of the FHA program's underwriting, processing, and servicing standards.

FHA has recently recognized the adverse impact that these settlements have had on lender participation in the FHA program, including the imposition of significantly tighter underwriting standards that have limited the ability of FHA to serve its target market. In response, FHA has proposed revisions to both certifications, and in both cases added a “knowledge” standard:

- FHA’s original loan-level certification required all of the information in the application to be “true, complete, and accurate” and did not contain a knowledge qualifier. FHA recently modified the certification to explicitly clarify that the individual is certifying that the information is **“to the best of the lender/mortgagee’s knowledge...complete and accurately represents the information obtained...”**¹⁰ [Emphasis added]
- Similarly, FHA recently changed its annual lender certification requirements in 2015, and has proposed further changes in 2016 to incorporate a knowledge standard and narrow an otherwise overbroad certification.

IV. **Recommendation**

MBA encourages the state regulators participating in NMLS to finalize Addendum C as the new attestation, as its proposed language recognizes that the individual attesting may not have direct knowledge, and contains a “best of my knowledge, information, and belief” standard.

V. **Conclusion**

MBA appreciates CSBS/SRR’s consideration of our comments. MBA would also appreciate the opportunity to discuss them further to help advance the efforts of state regulators, while avoiding undue regulatory burdens and costs on state-regulated mortgage companies.

Sincerely,



Pete Mills
Senior Vice President
Residential Policy and Member Engagement
Mortgage Bankers Association

Attachment

¹⁰ <http://portal.hud.gov/hudportal/documents/huddoc?id=FTDO03152016.pdf>.

Amy Greenwood-Field

Senior Attorney
afield@bradley.com
202.719.8238 direct



July 18, 2016

Mr. Scott Corscadden
NMLS Ombudsman
c/o Conference of State Bank Supervisors
1129 20th St NW, 9th Floor
Washington, DC 20036
ombudsman@stateregulatoryregistry.org

RE: NMLS Ombudsman Meeting Topic

Dear Mr. Corscadden:

I would like to submit the following topic for discussion during the upcoming August 2016 NMLS Ombudsman Meeting in Tampa, Florida: The Recent Decision to Limit Attestation to Individuals "Employed By" or Officer or Control Persons of a Company.

Our firm represents many users of the NMLS and I recently commented on their behalf to the Request for Public Comments regarding Proposed Changes to Company and Branch Filing Attestation. On June 22, 2016, NMLS published the response to comments received and provided the "approved changes to the company form (MU1) and branch form (MU3) filing attestations." While this approved attestation version addressed many of industry's concerns regarding the originally proposed attestation language, it specifically did not incorporate any change in response to comments regarding the inclusion of the phrase that limits attestation to individuals who are "employed by" or officer or control persons of a company. I respectfully urge the Ombudsman and the policy committee to reconsider this determination.

The original request for comment stated that, "[t]o 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." Attestation language currently in use in the system indicates that the attesting individual "executed this form on behalf, and with the authority, of said Applicant. . ." Several representations follow. Under current system functionality, no individual that is not authorized by the company is able to attest to filings in that the company alone controls who is given access to its NMLS record. As such, if an individual has a login and password assigned to them to access a company's record, they can be presumed to have the authority to make filings on behalf of the applicant. In that respect, the current attestation language is accurate. In addition, some states have adopted forms that allow a company to delegate filing authority to third parties. However, as set forth in the current request for comment, it appears that regulators want not only an individual who has been authorized by the company to make the filing to attest but now want only employees, officers or control persons of the company to be able to attest to filings.

Limitation of Attestation to Individuals "Employed By" or Officer or Control Persons of a Company

The most recent "approved company attestation language," reads, in applicable part:

I, <<NAME>>, <<TITLE/POSITION>>, am employed by or am an officer or a control person of <<COMPANY>> (Applicant). (emphasis added)

The approved language limits attestation to an individual who is “employed by” or is “an officer or a control person” of the company. Our firm represents several large nationwide clients that, because of their business structure, may have one set of compliance individuals responsible for the records of multiple affiliated entities. These individuals may be only employed by one of several licensees, or may be employed by a parent entity (for insurance and benefits purposes) that does not hold any licenses at all.

Additionally, the proposed language also allows for attestation to be completed by an “officer or a control person” of the company. Currently, the term “control person” is defined by the NMLS Policy Guidebook as “[a]n individual (natural person) named that directly or indirectly exercises control over the applicant.” Taking into account the definition of a “control person” the proposed language would allow filing by an individual who may exercise indirect control over the company. Given the current regulatory environment, it is unclear whether this is truly the intention of agencies participating in NMLS. Furthermore, the term “officer” is not specifically defined in the NMLS Policy Guidebook. Many companies routinely provide officer titles and signing authority to individuals who may not be named as senior officers of the company.

With that in mind, I had previously proposed in response to the request for comment that the language, “am employed by or am an officer or a control person of” be changed to read “am an authorized agent of” in order to accurately reflect the relationship that these individuals may have with multiple licensed entities and to reduce the opportunity for confusion in which officers or control persons are authorized to submit filings. I further suggested that entities can provide authorization to file for individuals by properly granting them access within NMLS once the new user roles are implemented.

I respectfully urge the Ombudsman and the policy committee to reconsider this proposal and either change the approved attestation language to clarify that individuals authorized by the company can attest to filings and/or provide additional guidance via the NMLS Guidebook regarding revising the current “control person” definition to reflect filing authority and providing a definition of “officer” and “employee” for filing purposes.

I look forward to visiting with you about this issue at the upcoming meeting. Should you have any questions or require additional information please feel free to contact me at afield@bradley.com or (202) 719-8238.

Best Regards,


Amy Greenwood-Field

MEMORANDUM

Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101

July 18, 2016

Main Tel +1 202 263 3000
Main Fax +1 202 263 3300
www.mayerbrown.com

BY E-MAIL

TO: Scott Corscadden
Ombudsman
c/o Conference of State Bank Supervisors

Costas A. Avrakotos
Direct Tel +1 202 263 3219
Direct Fax +1 202 263 5317
cavrakotos@mayerbrown.com

FROM: Costas A. Avrakotos

RE: The MU1 & MU3 Attestations

We have prepared this letter to address an issue that we believe warrants consideration during the Ombudsman session at the 2016 American Association of Residential Mortgage Regulators (“AARMR”) Conference. As always, we appreciate the opportunity to submit issues for the Ombudsman’s consideration.

1) Retention of the Knowledge Standard to the Attestation

At the CSBS NMLS conference in February 2016, in Phoenix Arizona, we raised the issue that the December 23, 2015 attestation language approved for the MU1 and MU3 forms was different from the attestation language that had been issued for consideration in July 21, 2015. Although the proposed attestation had included language that the “...contents of the foregoing application/filing are true and correct to the best of my knowledge, information, and belief,” the approved language did not include that the application or filings were true and correct to the best of the attesting person’s knowledge, information, and belief. We were quite surprised that the attestation language without this “knowledge standard” was approved, as such attestation language had not been published for comment.

During the Ombudsman session, we were appreciative that the State Regulatory Registry (“SRR”) and the NMLS Licensing Forms Working Group (the “Working Group”) were willing to withdraw the attestation language that initially had been approved, and again post this attestation language as being proposed for comment. On behalf of our clients, we submitted comments on this new attestation language, as did the Mortgage Bankers Association and other law firms, and we universally believed that the knowledge standard should be retained. A number of comments were submitted with very strong and compelling reasons that supported the retention of this knowledge standard. We were greatly pleased that the knowledge standard was retained when the changes to the MU1 Form were announced in the June 2016 Response to Comments and Approved Changes to the Company Form (MU1) and Branch Form (MU3) Filing Attestations (the “June Response”). We thank SRR and the Working Group for their efforts, and for being willing to keep an open mind when considering the concerns of the companies they regulate.

July 18, 2016

Page 2

2) Submission of the Attestation

As indicated in the final June Response, the SRR comments provided that the NMLS attestation “serves to provide assurance to the 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 [herein, also generally the “Companies” or individually, a “Company,” unless the context requires otherwise] are making a legal attestation to all states in which they are applying for or maintaining a license through the NMLS.”

The preface to the final MU1 and MU3 Attestations provides that “I, <<NAME>>, <<TITLE/POSITION>> am employed by or am an officer or a control person of <<COMPANY>> (Applicant). Applicant agrees to and represent the following:”

We commented on this language a couple of time over the last year or so, and sought confirmation as to how it would be applied, but the issue we raised has not been fully addressed. We raised questions about who could submit the attestation in our August 20, 2015 comments to SRR’s July 21, 2015 “Proposed Changes to the Uniform NMLS Licensing Forms and Mortgage Call Report.” In our comments, we pointed out that the comments of the Working Group stated that the revised attestation language would be updated “[t]o compensate for third-party individuals such as compliance personnel, who file on behalf of a company who may not be actual employees or agents of the company.” As this statement distinguished third party individuals, such as compliance personnel, from employees or agents, and because the attestation was to be submitted by a person “employed by” the applicant or licensee, as well as an “officer or control person” of the applicant or licensee, we assumed that agents of applicants or licensees, as well as their employees, would be able to make the attestation. Nevertheless, we requested that the attestation clearly set forth who is authorized to submit the attestation.

We again raised this issue in the comments we submitted to the NMLS Ombudsman for the Ombudsman session of the February 2016 CSBS NMLS conference. The preface to the approved attestation language continued to provide that it is to be submitted by a person “employed by or [who is] an officer or control person” of the Company. SRR’s comments to the attestation language did not address the ambiguity we raised, and did not confirm or preclude an agent of a licensee from being permitted to make the attestation. In addition, the attestation changes and SRR’s comments did not define the term “employed,” or set out what constitutes being “employed by” a Company. As the concern of SRR and the state agencies was with third-party individuals, such as compliance persons, making the attestation who were not employees or agents of a Company, it appeared that an agent of a Company would be permitted to make the attestation as well as an employee.

As we explained in our earlier submissions, it is a fairly common practice that entities under the common ownership, each of which may hold multiple state licenses through the NMLS, have one common Account Administrator, who will oversee the licensees’ filings, update the licensees’ Account Records, and make new submission for all of the affiliated licensed entities. With one individual servicing as the Account Administrator for a family of licensed companies it is easier

July 18, 2016

Page 3

for state regulators to contact the one individual who controls the Account Records. Moreover, it is fairly common that when there is a change in the Account Record of one licensee, such as when (i) commonly owned affiliates or (ii) control affiliate disclosure questions are involved, the same change needs to be made in the Account Record of the other affiliated licensees. Consequently, it makes sense to have one Account Administrator who is knowledgeable and responsible for making these Account Record changes and attesting to the changes for each licensee. Moreover, it serves the purpose of the NMLS to better ensure the accuracy of the Account Records of commonly owned licensees or applicants, and for the timely updating of their Account Records if one person can make the changes and attest to their Account Records being current, true, and accurate.

We are concerned with this language as we represent a number of licensed clients who have several affiliated entities, under common ownership, each of which may hold a number of licenses through the NMLS. Typically, our clients will identify one individual to act as the Account Administrator and be responsible for the NMLS submissions for all of the affiliated licensees. Such individual will not be an employee of each of the licensed entity, and may in fact be an employee of a parent company which does not hold any licenses through the NMLS. This is not an unusual situation, as many non-loan originating employees of licensees are “housed” with a parent or affiliated company for human resources and benefit purposes. This is the way the Account Records of many entities have been reasonably and appropriately managed over the years, consistent with the NMLS and state law requirements.

It seemed from the comments to the proposed attestation changes that agents of licensees would be permitted to act as Account Administrators and make the attestations. We also believe that employees of affiliated or parent companies of licensees should be permitted to act as Account Administrators and make the attestations. Based on the approved attestation language, it is unclear if the SRR and the Policy Committee agree with this view. If the SRR and the Policy Committee do not agree with this view, then this change in the introductory sentence to the attestation should not be made, but rather the proposed language should be again published for comment by those who may be affected by the change.

The attestation does not use the term “employee.” Rather the attestation continues to provide that it is acceptable for a person “employed by” an applicant or licensee to make the attestation. If the working group wanted to limit the attestation to employees, they would have done so, as that term is used and defined under many state mortgage finance licensing laws. Therefore, it appears, self-evident that the person does not need to be a W-2 paid employee of the applicant or licensee to make the attestation, but can be a person who is (i) an employee of a commonly owned affiliate of the applicant or licensee assigned to manage their NMLS Account Records, (ii) paid on 1099 basis, or (iii) in an agent/principal relationship with the applicant or licensee.

The comments of the SRR and the Working Group to the June Response have cast a cloud over what is intended, as their comments do not distinguish between the third parties who are recognized as being able to attest to a Company’s Account Record. The SRR and the state regulatory agencies have strayed far afield from their initial concerns of restricting third-party individuals, such as compliance personnel, from making the attestations, while recognizing that employees and agents

July 18, 2016

Page 4

of an applicant or licensee could make the attestation, to possibly limiting the attestations to employees, officers or control persons of applicants or licensee. The SRR and the state regulatory agencies also appear to have settled on a false distinction, as they have indicated in their comments to the June 2016 Response that “they are not trying to restrict who prepares the content of a company or branch filing, instead who can attest to and submit the filing.” From our perspective, applicants and licensee are as concerned about who prepares the filings, as well as who makes the attestation. In that regard, licensees manage the attestation through Account Administrators that they can trust, whether they are employees of the licensee, its officers, control persons, employees of the parent companies of licensees, or others.

The comments to the June Response separate the person making the filings from the person making the attestation. If the person making the NMLS filings has been diligent in assembling the information and making the filings, that person is likely the most responsible person with the most complete knowledge to make the attestation. Why add another layer of review to the attestation if the person making the NMLS submission and making the attestation is trusted and responsible. Licensees and their control person officers, directors, managers, general partners, or trustees are at risk if false attestations are made. We believe SRR and the state regulatory agencies recognize this, and they should provide licensees with the flexibility and authority to manage their NMLS filings and attestation in the way that best meets their needs.

We further believe that the person making the attestation does not need to be a W-2 paid employee of the licensee given the strength of the adopted attestation language, as the language provides that the person making the attestation (i) be identified by name, (ii) is “authorized to attest and submit this filing on behalf of the applicant or licensee, (iii) solemnly swear (or affirm) under penalty of perjury that the person reviewed the responses and made diligent inquiry that the responses were accurate, true, and correct to the best of the person’s knowledge, information, and belief. Moreover, an officer or control person of a licensee who can attest does not need to be an employee of the licensee, but could be with a parent company or affiliate of the licensee. As such non-W-2 paid individuals can make the attestation, it would be reasonable to conclude that a person “employed by” the licensee, as set forth above, also can make the attestation, without being an employee of the licensee. Finally, we recognize that an applicant’s or licensee’s application would be denied if a false statement of material fact was made in the application or in any submitted documentation. Therefore, we believe the state regulatory agencies (i) have sufficient protection to ensure that attestations are made by the designated responsible individuals of the licensee, and (ii) and have authority to take issue with the applicant or licensee if that was not the case.

For these reasons, we believe a person who is (i) an employee of a commonly owned affiliate of the applicant or licensee assigned to manage their NMLS Account Records, (ii) paid on 1099 basis, or (iv) in an agent/principal relationship with the applicant or licensee should be able to make the attestations for NMLS purposes. To ensure that no state raises the bar as to who can make the attestation, we respectfully requests that the Ombudsman and the Working Group provide further direction that the aforementioned individuals can make the attestation.

July 18, 2016

Page 5

If there is agreement, then the NMLS could provide as much by broadening the attestation provisions to include those persons who are employees or officers of affiliates or parent companies of licensees, employees of a general partner or an investment advisor, or those who have an agent/principal relationship with the licensee to manage its Account Record and make the attestation, or the NMLS Policy Guidebook could expressly provide such direction.¹

Again, we thank the Ombudsman, the SRR, and the Working Group for the opportunity to submit comments to the attestation language.

¹ The attestation provision could be broadened to include a person who is “employed by, an agent of, or officer or control person of an applicant,” and agent could be defined in the NMLS Guidebook to include for NMLS purposes, those who qualify as agents under the law of state in which the entity is organized, or those who meet an NMLS definition of agent, including employees or officers of a parent company or an affiliate under common ownership, an employee of a general partner or manager of the licensee, or a trustee of the licensee.

State Adoption of Mortgage Call Report

