

### NMLS Ombudsman Meeting Pointe Hilton Tapatio Cliffs Phoenix, AZ Salon GHIJ 8:30 am – 11:30 am (MT) February 19, 2016

### Agenda:

- 1. Scott Corscadden, NMLS Ombudsman Supervisor, Bureau of Loans, Alabama State Banking Department
  - Ombudsman Update and issue review
     Exhibit 1
- 2. Mike Sacks, Senior Compliance Specialist, ADP Payroll Services, Inc.
  - Amendment Checklists

### 3. Amy Greenwood-Field, Senior Attorney, Bradley Arant Boult Cummings

 Issues with Notice and Timely Processing With Respect to Individuals Transitioning from Registration to Licensing
 Exhibit 3

Exhibit 2

- 4. Cindy Corsaro, Licensing Specialist, FirstKey Mortgage, LLC
  - Timeline before setting deficiencies after submission of MU1
  - State-specific renewal checklists
  - Sponsored entity name on MLO invoice receipts
     Exhibit 4

5.	Robert Niemi, Baker & Hostetler LLP	
	<ul><li>Pace of State Coordination with Multistate Exams</li><li>Examination Management Tool Suite</li></ul>	Exhibit 5
6.	Jennifer Naudin, Chartwell	
	<ul><li>Notification of Record Deletions</li><li>New Individual User Request Form (without SSN)</li></ul>	Exhibit 6
7.	Costas Avrakotos, K&L Gates	
	NMLS Attestations	Exhibit 7
8.	Ken Markison, Vice President & Regulatory Counsel, MBA William Kooper, Associate Vice President, MBA	
	<ul> <li>Expanding Approved Inactive License Status through NMLS to Serve Consumers</li> </ul>	Exhibit 8
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9. Additional Topics



NMLS Ombudsman Meeting Pointe Hilton Tapatio Cliffs, Phoenix, Arizona 8:30 a.m. – 11:30 a.m. Mountain Time February 19, 2016

### I. SUMMARY OF NMLS OMBUDSMAN ISSUES

The NMLS Ombudsman received 46 unique emails between July 24, 2015 and February 5, 2016. The Ombudsman reviews all submissions and either responds directly or refers the question to SRR staff. Many of the questions are answered by referring the individual to: (1) a specific state regulator; (2) the NMLS Call Center; (3) the NMLS Resource Center; or (4) the appropriate federal regulator/CFPB.

Sample issues that are received in the Ombudsman mailbox included:

- General licensing renewal inquiries
- General System enhancement and usability proposals
- Disclosure question clarification and guidance on proper disclosure
- SAFE MLO Test Testing requirements; the SAFE Act mandated waiting period in between failed attempts; refund requests
- Requests for state regulator contact information
- CE and PE requirements
- Request for NMLS security information
- Mortgage Call Report reporting and submission questions
- Requests to join working groups
- Disclosure question interpretation

### II. OMBUDSMAN MEETINGS/OUTREACH

In addition to the two public annual meetings at the NMLS Annual Conference and AARMR, the Ombudsman attends annual meetings of state regulatory groups such as MTRA and NACCA and also speaks at mortgage industry conferences.



ADP Payroll Services, Inc. 400 Covina Boulevard Mail Stop 209 San Dimas, CA 91773

Via Email: ombudsman@stateregulatoryregistry.org

February 3, 2016

Scott Corscadden NMLS Ombudsman c/o Conference of State Bank Supervisors 1129 20<sup>th</sup> Street, N.W., 9<sup>th</sup> Floor Washington, D.C. 20036

Re: Ombudsman Topics – 2016 NMLS Annual Conference

Dear Mr. Corscadden,

I would like the submit the following topic for discussion during the Ombudsman meeting in Phoenix: **Amendment Checklists**.

Specifically, there appears to be a lack of uniformity amongst state checklists for money transmitters in presenting clear requirements for a change in control executive officers and/or directors. Some checklists provide no specific requirements and advise to contact the agency directly. Other checklists provide limited and incomplete information on required fingerprinting/background and/or supplemental disclosure forms. To mitigate the flow of inquiries to/from agencies and to allow for the most efficient processing of such changes, it is suggested for respective states to provide the adequate required information in the checklists.

If you should have any questions, please do not hesitate to contact me at (909) 592-6411 ext. 4345 or by e-mail: <u>mike.sacks@adp.com</u>

Sincerely,

Mike Sacks, CAMS Senior Compliance Analyst

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### BRADLEY ARANT BOULT CUMMINGS

Amy Greenwood-Field Senior Attorney Direct: (202) 719-8238 afield@babc.com

February 3, 2016

Scott Corscadden NMLS Ombudsman c/o Conference of State Bank Supervisors 1129 20<sup>th</sup> Street, N.W., 9<sup>th</sup> Floor Washington, DC 20036 ombudsman@stateregulatoryregistry.org

#### RE: February 2016 NMLS Ombudsman Meeting Topics

Dear Mr. Corscadden:

I would like to submit the following topic for discussion during the upcoming February 2016 NMLS Ombudsman Meeting in Phoenix, Arizona: Issues with Notice and Processing with respect to Individuals Transitioning from Registration to Licensing.

#### **Issues with Notice and Timely Processing**

Recently, our firm had the opportunity to assist with a large transaction that included the transition of a number of Federally Registered Loan Officers. Knowing that the system would not currently easily accommodate a transition between Registration and Licensing (as it can when an individual moves between state-licensed entities) we encouraged our client to have the affected individuals submit new state license applications on a nationwide basis well in advance of the transaction. This was challenging for our client to manage, as following NMLS guidelines, they could not establish a relationship with the individuals in the system prior to the transaction taking place. The company devised a work around and was able to get the majority of applications submitted well in advance of the transaction for regulator review.

The vast majority of jurisdictions were able to either approve the license requests in an inactive status in advance of the transaction or were able to hold the approvals until the transaction date when sponsorship could be submitted. However, some jurisdictions were less accommodating and, despite advance notification, applications were not able to be processed on or before the transaction date. This included not only jurisdictions indicating that workflow was such that new applications could not be reviewed within a six week timeframe, but also issues with timely sponsorship approvals on the transaction date.

I have brought the sponsorship issue to the attention of the previous Ombudsman on other occasions and I am hopeful that with the advent of NMLS 2.0 a solution can be implemented in the system to alleviate issues when sponsorship approval is not timely when an individual moves between statelicensed entities. However, those solutions would not have worked in this particular instance. Would it be possible, as we rethink how NMLS works, to include the relationship/sponsorship pieces of the record as part of the Advance Change Notification feature? Allowing an acquiring entity to submit an ACN for relationship and/or sponsorship of an individual prior to the transaction taking Scott Corscadden February 3, 2016 Page 2

place with a future effective date, but still allowing that entity to manage submissions for individuals who have granted them access to their records, would allow for these large transactions to be processed more efficiently.

In conjunction with this transaction, we also sent transaction notice letters directly to all affected jurisdictions to provide them with advance notice of the transaction and to also provide a jurisdiction-specific list of individuals who would be affected by the transaction and submitting new applications. As we found out on the actual transition date, there was a disconnect within individual Departments and Agencies and a number of these notice letters were not provided to the actual individual(s) who would be reviewing the new applications and these individuals were unaware of the transaction or its importance. Would it be possible for jurisdictions to provide the contact information for the individuals who are able to assist with processing filings to NMLS to be provided to counsel and licensees to use when there is a large, time-sensitive transaction? This information does not necessarily need to be publically posted but in most cases counsel also informs NMLS of large transactions so perhaps they could disseminate as necessary.

We also had an issue with jurisdictions failing to timely approve sponsorship as the transaction closed. A number of jurisdictions have indicated that they are running dual systems and this requires a delay in approval of sponsorship. Some jurisdictions indicated that they process everything, including sponsorship additions and removals, in date order. Does this also mean that these jurisdictions are delaying sponsorship removal? What does this mean for the accuracy of Consumer Access and of B2B Reports that are provided by NMLS for compliance purposes? Further, because this particular transaction coincided with the beginning of the renewal season, some jurisdictions told us that they couldn't process sponsorships until "later that month" or that it could take until January to approve as renewals are given all priority. I understand that renewals can stretch the resources of licensees and regulators alike, but with the advent of "automatic renewals" in NMLS, I was of the belief that the days when all business stopped but for renewal processing had gone the way of paper applications.

I am aware that these issues affect only a minority of the jurisdictions that are using NMLS and certainly there is no process in place to prioritize any filing. However, it seems reasonable, with enough advance notification, to process things timely and to help keep individuals working and serving consumers nationwide. If we can determine how to help the system process more "routine" items, freeing up time for jurisdictions to review material items I think that everyone would benefit.

I look forward to visiting with you about these issues at the upcoming meeting.

Best regards,

lenwood Field

Amy Greenwood-Field Senior Attorney



February 3, 2016

Memo to:NMLS OmbudsmanFrom:Cindy Corsaro, Licensing SpecialistRe:NMLS 2016 Ombudsman Meeting Topic Points

Please see the following topic points I would like to present at the NMLS Ombudsman meeting on February 19, 2016 at the NMLS Annual Conference in Phoenix, AZ:

- 1) In the Expanded MCR, "Section III Subservicing by Others" pool information, why do some sub-servicer names auto-populate in the Servicer Name field from the NMLS ID# and others do not?
- 2) After an MU1 update is submitted, could state regulators please wait the allotted 5 days before posting a Deficiency for missing items? Often the documents are on the way, but once the Deficiency posts, it is difficult to get them removed once the documents have been received and processed.
- 3) When the MCR falls on a week-end, would it be possible to adjust the due date to the following Monday? Requirement could read "Due 45 days after the end of the quarter, except when the date falls on a Saturday or Sunday. In those cases, the MCR is due on the following Monday."
- 4) The use of the word "Control" in Amendment Checklists needs to be consistently defined. Some states use this to refer to a Control Person/Executive Officer or Qualifying Individual update, while others use it to refer to a change in the controlling entity. This can be confusing when trying to define which requirements need to be submitted for an MU1 update. A better definition would be very helpful across all checklists.
- 5) Consistency of the check boxes among state-specific Amendment Checklists would be beneficial. Some say "Filed in NMLS" and "Not Applicable", other say "Filed in NMLS", "Not Applicable" and "Attached". Others have pre-populated N/A in boxes under "Attached" where documents need to be attached. When working on multiple state submissions, these differences can be confusing and slow the preparation process.
- 6) Sponsored entity name on MLO invoice receipts in NMLS rather than only the MLO name and NMLS ID# would be very helpful for those of us managing multiple LOs and entities.
- 7) Could state regulators please be sensitive to the enormous dedication of time involved in submitting the Expanded MCR for multiple states and/or entities, and not issue compliance exam deadlines for the 2 weeks preceding each quarterly Call Report?
- 8) Required renewal documents are not always listed on the Renewal Checklist. Some are sent via email notices prior to renewal and some are posted as Deficiencies after the renewal documents have been submitted. For a smoother renewal process, posting all documents required for renewal in NMLS on the state-specific Renewal Checklist would be quite helpful and result in less Deficiencies posted relating to renewals!



Please feel free to contact me for further discussion or clarification of these suggestions.

Thank you again for the opportunity to present these ideas at the conference again this year. It is greatly appreciated!

Sincerely,

### Cíndy Corsaro

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February 1, 2016

Mary Pfaff Senior Policy Director CSBS 1129 20th Street NW Washington, DC 20036

Dear Mary:

This letter is to confirm the area of discussion I would like to participate in during the NMLS Ombudsman meeting.

1) The pace of state coordination with multi state exams – both at the Multistate Mortgage Committee and to a greater extent the regional or coordinated exams. It is the express discussion that states working together would be good for both state regulators and regional entities. The supervision could be modern and efficient financial services regulation when the discussion is held between states, when the companies are coordinated by states. Is there a dialogue among the policy associations to further this effort and reduce burden on the companies?

2) I would like to discuss the growing development plans of the exam management tool suite and how this will be funded. I know the process is still early and most likely undecided how it development and maintenance will be funded, but we should have an open discussion of this may impact users and non-users of the NMLS.

Sincerely,

Robert S. Niemi Financial Services Regulatory & Compliance Senior Advisor

Atlanta Chicago Houston Los Angeles Cincinnati ( New York

Cleveland Columbus Orlando Philadelphia Costa Mesa Denver Seattle Washington, DC

#### **MASTER PAGE 9**



Scott Corscadden, NMLS Ombudsman State Regulatory Registry LLC Conference of State Bank Supervisors 1129 20th Street, NW Washington, DC 20036

February 1, 2016

Dear Scott,

Thank you for the opportunity to participate in the Ombudsman meeting at the 8<sup>th</sup> Annual Nationwide Mortgage Licensing System and Registry (NMLS) conference on February 19th in Phoenix, Arizona.

I would like to bring to the attention of the Ombudsman the following issues related to the expiration of company records and NMLS ID's for international Officers and Directors:

- (1) Notification of record deletions.
- (2) New Individual User Request Form (without SSN)

#### Notification of record deletions:

Over the past year, two of our client companies had their MU1 company records and all MU2 records for the Executive Officers, Directors and control person information deleted due to the fact that the application had not been submitted within 180 days. The records were not dormant and both companies were uploading and updating information while actively preparing to submit the money transmitter license applications. However, the records were missing the transaction bank account for the money services business (MSB), so the records were not ready for submission. Since the application was not submitted within 6 months, the records were deleted.

It typically takes more than 180 days, or 6 months, for MSBs to obtain a bank account. Most MSBs have great difficulty receiving approval for a bank account with banks de-risking themselves of MSB accounts due to regulatory and other pressures. States generally require an active MSB bank account in the application and some states will reject an application with a pending MSB bank account.

Once an MU1 or MU2 record is deleted it is not possible to get the information back, and it is very onerous on a company. Besides an email notification that the company record will be deleted within 30 days, there is no other way for administrative users and/or users to know how much time is remaining before a record is deleted. If the dashboard would show this information, it may help a company better plan and manage their NMLS record when the file is getting close to the 180 days deadline and about to get deleted. In addition, it would be extremely helpful if NMLS had an archive feature so that the



applicant could save the MU1 and MU2 record information and the IDs to protect the time consuming efforts that go into the building the records.

The MSB bank account will continue to be an issue for many companies in the foreseeable future. Until all states are more accepting of applications with pending bank accounts, we would like NMLS to allow MSBs more than 180 days (6 months) for records that are actively involved in applying for money services licenses, or provide a mechanism for saving the data in an archive for future reinstatement.

#### NMLS users that have no U.S. Social Security Number (SSN):

International companies that have Executive Officers, Directors or Control person with no U.S. Social Security Number sometimes take more than one week to be get processed. We have developed clear guidance for clients explaining that the scanned copy of the government issued ID should be a clear high resolution color copy and the scope of the letter from the employer verifying employment or ownership. We always recommend communicating with NMLS via the encrypted e-mail option because the fax option is usually unsuccessful. Despite those guidelines, we have encountered wait times of two weeks or more for a login and password.

Some issues have arisen for key individuals who went to college or spent some time in the United States and had a Social Security number in the past. There is a misconception that the Social Security numbers expire. We request that international officers indicate whether or not they have ever had a Social Security number to avoid delays and confusion.

Please let me know if you have any questions. Thank you again for allowing me to participate in the Ombudsman meeting at the upcoming NMLS Conference.

If you have any questions or concerns, please contact me at (714) 296-6996 or <u>JenniferNaudin@chartwellcompliance.com</u>.



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**VIA EMAIL** 

Scott Corscadden Ombudsman c/o State Regulatory Registry Conference of State Bank Supervisors 1129 20th St. NW, 9th Floor Washington, D.C. 20036

Dear Mr. Corscadden:

We have prepared this letter for your attention to provide issues to be taken up during the Ombudsman session at the 2016 CSBS NMLS Conference. We appreciate the opportunity to submit issues for the Ombudsman's consideration. This year, with the changes that have been approved for the attestation language, and the issue we have seen with the MU1 attestation, we have focused our comments on the attestation language.

#### Proposed/Approved NMLS Company Attestation Language

We have a number of comments, both procedurally and substantively, with respect to the NMLS Company Attestation language.

Procedurally, we are quite surprised at the changes in the NMLS Attestation Language that the State Regulatory Registry ("SRR") and the NMLS Policy Committee appear to have approved on December 23, 2015, as this language does not reflect the language that was proposed for public comment in the summer of 2015.<sup>1</sup> We recognize that the NMLS did not receive many comments to its proposed changes, but such an absence of comments should not be interpreted as free rein to adopt changes that the industry has never reviewed or considered. Since the inception of the NMLS, the SRR Board and the Policy Committee have

<sup>&</sup>lt;sup>1</sup> The proposed attestation changes were published for comment on May 1, 2015 as part of the changes being considered for this Uniform NMLS Licensing Forms and Mortgage Call Report. The proposed changes were published for a second round of comments on July 21, 2015.

recognized the need and importance to discuss proposed NMLS changes with the mortgage finance and other consumer financial services companies that are regulated by the states to provide them with an opportunity to comment. Indeed, I am sure that many state regulators are subject to his or her state administrative procedures act that would require notice and comment for rule changes. Moreover, the comments in the December 23, 2015 Report provide no justification for, or even an explanation of why, the approved attestation language was so different from that which was proposed. Accordingly, the implementation of the new attestation language should be delayed until the industry is given an opportunity to comment on what actually may be required.

**The current MU1 attestation language** provides for a check-off box, and states "I verify that I am the named person above and that I am authorized to attest and submit this filing on behalf of the Applicant."

**The summer 2015 proposed attestation language provided:** I DO SOLEMNLY AFFIRM that I am the named person above, I am authorized to attest to and submit this filing and under the penalties of perjury that the contents of the forgoing application/filing are true and correct **to the best of my knowledge, information, and belief.** 

In the comments we submitted to SRR on the proposed attestation language, we favored conditioning the attestation language on the information being made to the "best of the attester's knowledge, information, and belief," as it was a "recognition of the realities of the attestation and consistent with the manner in which other attestations are structured."

The December 2015 Report indicates that the approved attestation language will provide: [check box]. On this <<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.

The reported approved language does not indicate that the information being provided should be to the best of the person's knowledge, information, or belief, when those considerations were a key part of the proposed attestation language. If the SRR and the Policy Committee see a need to change the attestation language, a person should only be required to attest to the truthfulness and correctness of information submitted to the best of the person's knowledge, information, and belief. Nothing more can be reasonably expected. Such language, that the attestation is made to the best of the person's knowledge, information, or belief, is commonly provided, and the states should not impose a greater burden on licensees and their account administrators than otherwise has been found to be acceptable and appropriate.

We understand that state regulators wish to strengthen the attestation language submitted through the NMLS, but we think it is unreasonable to place a burden on an account administrator, officer, or control person (herein, the "account administrator") to know if all of the voluminous information in a Company's NMLS Account Record is true, accurate and correct. The attestation is made not only for the information being submitted, but also is made with respect to information previously submitted that has not changed. It is unrealistic to expect an account administrator to (i) review every response contained as part of the filing for accuracy (which would also reach the individual (MU2) records which are part of the filing), and (ii) expect the person (under penalty of perjury) to attest that those responses were both reviewed for accuracy and that they were true and correct.

As we indicated when we submitted our comments to the proposed attestation changes, requiring account administrators to review the Account Record "responses for accuracy" would appear to be a near impossible test to satisfy. A number of questions come to mind, including: How does a new account administrator verify the accuracy of information in a licensee's Account Record submitted by a prior administrator, or some other authorized person? What does it mean to review the responses for accuracy in connection with making the attestation? Must the individual making the attestation review all of the information in the Company's Account Record, as well as the control person's MU2 record, and determine that all of the information is current, true, and complete? Can the account administrator not rely on the information entered by the control person, who must attest to his or her individual MU2 record? When uploading the Company Organizational Chart that has been provided by the Company's legal team, must the attesting person review and independently verify the ownership of the company to ensure that the information provided to them by their legal department is accurate? Does an attesting person need to confirm from secondary sources that the information provided by a resident agent is correct? What is the expectation of state regulators on this "accuracy test?" These are but a few examples of tasks that the attestation will require of the account administrators, and under the approved changes the person must make this attestation without the attestation being limited to that which is true and correct to the best of the person's knowledge, information or belief. I fear that the account administrator is being set up for failure.

We also believe this new attestation language creates a number of additional issues for those attesting to a Company's MU1 Record. In seeking comments from state regulators and industry in connection with the proposed changes in the attestation language, the SRR and the Policy Committee were concerned with attestations and filings being made by persons "on behalf of a company who may not be actual employees or agents of the company." Nevertheless, the "summer 2015" proposed introductory sentence to the attestation language left the current language intact. This provision now reads:

"I, <<NAME>>, <<COMPANY>> (Applicant) on this date<<xxx>> swear (affirm) as follows, that I executed this form on behalf, and with the authority, of said Applicant and said Applicant agrees to and represents the following: [and the six attestations in the MU1 are set out]."

The current language further provides that: "If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied."

Although no changes were proposed for the above introductory sentence to the attestation language on which the industry could comment, the approved language in the introductory sentence to the attestation made significant changes, so that it reads:

"I, <<NAME>>, <<TITLE/POSITION>>, am employed by or am an officer or a control person of <<COMPANY>> (Applicant). I am authorized to verify the foregoing responses, attest to, execute and submit this filing on Applicant's behalf. Applicant agrees to and represents the following [and the six attestations in the MU1 are again set out]."

The attestation provisions will continue to provide: "If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied."

As with the approved attestation provisions above, we are surprised to find that the approved language was not presented for consideration when the changes in the attestation language were proposed, as we believe this new language creates a number of issues for those attesting to a Company's MU1 record.

The new language provides that the person attesting is employed by or is an officer or control person of the Company. The comments to the proposed changes referenced the state regulators' concerns about a third party making the attestation who <u>was not an</u> <u>employee or agent of the Company</u>, suggesting that an agent of the Company could make the attestation. However, the approved language does not make mention of an agent of a Company being permitted to make the attestation. The changes and the comments also do not define what it means to be "employed by" the company, and "employee, we assume that someone "employed by" a Company does not need to be a W-2 paid employee of the Company, but can be (i) contracted to work for the Company, (ii) a person paid on a 1099 basis or (iii) an employee of commonly owned affiliate of the Company assigned to manage the NMLS Account Record of a licensee. Is this assumption correct?

We are concerned with this language as we represent a number of clients who have several affiliated entities, under common ownership with one another, each of which may hold a number of licenses maintained through the NMLS. Typically, our clients will identify one individual to act as the account administrator and oversee the license filings, update the Account Record, and make new submissions for all of the affiliated licensees. Such individual will not be an employee of each of the licensed entities, 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, and in some respects it is fairly common in the industry, as many non-loan originating employees of licensees are "housed" with a parent or affiliated company for human resource and benefit purposes. Had the specific new attestation language been proposed for comment, more licensees may have presented their concerns on this change. As worded this new attestation provision could create some hardship in the way many company Account Records have been reasonably and appropriately managed over the years consistent with the NMLS and state law requirements.

It seems from the comments to the proposed attestation changes that agents of licensees are 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 there is agreement, then the NMLS should provide as much by broadening the attestation provisions to include agents, those persons who are employees or officers of affiliates or parent companies of licensees, employees of a general partner or an investment advisor, or others who have contracted with the licensee to manage the Account Record or the licensee, and make the attestation, or the NMLS Policy Guidebook should expressly provide such direction.<sup>2</sup> 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.

# Attestations when the Disclosure Answer is No Longer Current, True, Accurate, or Complete.

The NMLS and the Disclosure Questions on the MU1 Forms have been inexistence for a number of years. We recently encountered a situation that may not have been

<sup>&</sup>lt;sup>2</sup> 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 those, who for NMLS purposes, are covered as agents, including employees or officers of a parent company or an affiliate under common ownership, an employee of a general partner, a manager of a limited liability company, or a trustee, or another contracted for employee.

contemplated at the time the NMLS and the MU1 Form were created, but since has arisen given the dynamics of the marketplace. To best explain the situation, here is an illustration of a situation that recently arose.

As we all know, the MU1 Disclosure Questions apply to an applicant or licensee, and to its control affiliate.

ABC Company has answered the questions for itself and for its parent, XYZ Company. ABC Company has an unblemished regulatory record. (There are some of those companies in the marketplace.) However, XYZ Company was the subject of a 2014 Consent Order with the CFPB. (There are also a fair number of those Companies in the marketplace.)

Although ABC Company has no regulatory sanctions, it recognized its licensing obligations and due to the CFPB Order involving its parent company, correctly answered YES to Regulatory Action Disclosure Questions (C) (2), (found the entity or a control affiliate to have been involved in a violation of a financial services-related regulation(s) or statute(s); and (C)(4), entered an order against the entity or control affiliate in connection with a financial services-related activity. The Regulatory Action Disclosure questions apply to regulatory matters that occurred within the past 10 years.

XYZ Company sold 100% of the stock of ABC Company to LMN Company. LMN Company has a clean regulatory record. LMN Company is now a control affiliate of ABC Company, and XYZ Company is no longer a control affiliate. Should ABC Company continue to answers to questions (C)(2) and (C)(4) affirmatively, or should ABC Company change its YES answers to NO answers for those two questions, and upload an explanatory statement in the NMLS?

For the following reasons, we believe that ABC Company must change its YES answers to NO answers, even though the regulatory actions involving the former Control Affiliate occurred within the last 10 years.

- The directions to answering the MU1 Disclosure Questions with respect to control affiliates are written in the present tense. Specifically the directions provide that "for purposes of responding to the questions below, the term "control affiliate" means: a partnership, corporation, trust, LLC or other organization that directly or indirectly controls, or is controlled by, the applicant." The directions for a control affiliate apply to an entity that controls the applicant or licensee, not an entity that had controlled the applicant or licensee.
- 2) If a YES answer remains for the referenced control questions due to the acts of a former control affiliate, the applicant or licensee cannot make the attestation, or

will be compelled to make a false attestation, as the answers to the Regulatory Action Disclosure questions will not be current, true, accurate, or complete.

- 3) We believe the reputation of an applicant or licensee should not be tarnished by the actions of a former parent company. It is simply unfair and misrepresentative to require an applicant or licensee to continue to answer such questions affirmatively, when the applicant or licensee is no longer owned by the company that was the subject of the regulatory action.
- 4) As we understand, ABC Company's historical record will still have information about the action involving the former control affiliate, as such information does not disappear from the NMLS, but ABC Company will not need to keep attesting to something that is no longer true.
- 5) Changing a YES answer to a NO answer is not a novel concept, as it is a recognized and appropriate way to proceed when a pending regulatory action proceeding or a pending civil action is answered YES, and the matter is withdrawn, dismissed, or settled.

Accordingly, we believe that it should be the accepted policy of the states and the NMLS, and that the NMLS Guidebook and other reference sources, should explain that it is appropriate and acceptable to change a YES answer involving a former parent company to a NO answer once the former parent company is no longer a Control Affiliate of the applicant or licensee. We can draft language for the Policy Committee to consider.

#### Changes in the NMLS Account Record that Should not Require an Attestation

We have long advocated that an attestation should not be required of every filing made through the NMLS. The MU1 submissions are not only made at the time of application, but also are made in connection with amendments to the MU1 by the licensee. Some amendments may significantly change the information available in the NMLS, such as a change in direct or indirect ownership, or a change in the list of executive officers. In those situations, new attestations may be warranted. However, some of the amendments to a licensee's MU1 Account Record are relatively minor, such as providing a current surety bond continuation certificate in the document uploads, or updating a telephone number for a books or records contact. No matter what the change, with the approved language, the person is still attesting that in connection with every single submission, significant or small, the person has reviewed the responses for accuracy of the entire MU1 Company Record and MU2 Control Person Record. For the account administrator of some companies with multiple licensees, this would be an excessively burdensome and time consuming task to require the account administrator to conduct such a review for accuracy every time, for

every change, for every piece of information in a license's Account Record. With the changes that are being considered to strengthen language of the attestation, all the more reason exists to free the person making the attestation from needing to do so for insignificant changes to a Company's Account Record. Consequently, we again suggest that the Forms Group and the Policy Committee consider allowing for certain non-material changes to the MU1 Form to be made without the need for an attestation.

We thank you for the opportunity to provide these issues for discussion during the Ombudsman session, and we look forward to a full and vigorous discussion.

# Increasing "Approved Inactive" License Opportunities would Better Protect Consumers

Many, but not all, state regulators, permit mortgage loan originators (MLOs) employed by a bank or bank subsidiary to satisfy or maintain state licensing requirements, except company sponsorship, while remaining employed by a federally-insured depository, subsidiary or affiliate. This "approved inactive" license status for federally regulated MLOs also satisfies the Consumer Financial Protection Bureau's (CFPB) training requirements. In the absence of transitional licensing, which MBA supports, states should allow and encourage federal MLOs to complete the requirements necessary to achieve and maintain "approved inactive" license status.

### **OVERVIEW**

Under the federal *Secure and Fair Enforcement (SAFE) Act* all MLO are required to be registered in the Nationwide Mortgage Licensing System and Registry (NMLS). Congress did not require those MLOs working for federally regulated lenders to take specific education classes which are required of their state-licensed counterparts. However, the CFPB's loan officer compensation rule, consistent with the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, established that all federally registered MLOs must be "qualified." To meet this definition the CFPB provides, they must receive training that is appropriate and consistent with their origination activities.<sup>1</sup> The CFPB provided flexibility to banks and bank subsidiaries in how they provide this training but also noted that NMLS-approved training can satisfy this requirement:<sup>2</sup>

Training that the NMLSR has approved to meet the licensed loan originator continuing education requirement at \$1008.107(a)(2) of this chapter satisfies the requirement of \$1026.36(f)(3)(iii), to the extent that the training covers the types of loans the individual loan originator originates and applicable Federal and State laws and regulations.<sup>3</sup>

For more information, visit mba.org or call (202) 557-2700.



<sup>&</sup>lt;sup>1</sup> The specific language of this requirement: "Provide periodic training covering Federal and State law requirements that apply to the individual loan originator's loan origination activities."

<sup>&</sup>lt;sup>2</sup> Supplement I to Part 1026–Official Interpretations, <u>http://files.consumerfinance.gov/f/201301\_cfpb\_final-rule\_loan-originator-compensation.pdf</u>, pages 537-538

<sup>&</sup>lt;sup>3</sup> Ibid

### IMPACT

The SAFE Act inadvertently restricted labor mobility by creating different standards for MLOs based on their employer's regulator. In states that have permitted an "approved inactive" license status, bank MLOs have been able to complete or maintain the licensing process themselves, but without a sponsoring employer. This allowed bank MLOs to demonstrate they meet all education and testing standards, and has also facilitated a greater degree of mobility for all MLOs to serve consumers' needs.

The "approved inactive" status, in states where it has been available, has served as an incentive to these MLOs to learn their state's mortgage laws, submit to background checks and pass the NMLS test.

### MBA'S POSITION/NEXT STEPS

MBA supports the adoption of transitional licensing for all MLOs. In the meantime, MBA encourages all state regulators that have not already allowed for an "approved-inactive" status to do so.

Working with state mortgage banking associations and member firms, MBA will continue urging state regulator adoption if this important license status.