



**NMLS Ombudsman Meeting
Double Tree Paradise Valley
Scottsdale, AZ**

**MEETING SUMMARY
February 6, 2012**

Attendees:

Approximately 250 regulator and industry participants attended the NMLS Ombudsman meeting in Scottsdale.

Meeting Summary

Deb Bortner, NMLS Ombudsman and Director of Consumer Services, Washington Department of Financial Institutions, gave a short summary of the types of information requests and questions that have been submitted to the Ombudsman during the past 6 months.

Submitted Industry Issues

1. Notification, Document Submission, and Licensee Posting Suggestions (Sam Wolling, Prospect Mortgage)

Sam Wolling, Prospect Mortgage, brought up several issues relating to industry use of NMLS. Upon the surrender of a license or license type by a company, an email is sent to every MLO sponsored in that jurisdiction by the company with the subject line, "NMLS – Administrative Action Taken On [Company Name Here]". It was suggested that this subject line is misleading and lends to a negative connotation. Tim Doyle, Senior Vice President of State Regulatory Registry replied that it had been brought to the attention of SRR, and that NMLS will turn off that notification system and the language will be reworded.

The next issue raised was the possibility of introducing a PDF document upload process within NMLS so that when a company is preparing an update to disclosure questions, it would no longer be necessary to prepare multiple individual packets and FedEx them to each individual state regulator. Deb Bortner replied that this step is already being taken, and that in April licensees will be able to upload not only answers to disclosure questions, but also additional forms necessary with an MU1 or MU4 application.

The last issue brought up by Mr. Wolling was the lack of easy two-way communication concerning Active License items. While it is very easy for regulators to communicate with licensees in this way, there is no easy way for the licensees to respond. If the regulator does not specifically include an email address for the licensee to respond to, this easily leads to delayed responses and additional work load because the licensee because must maintain copious records in anticipation of the regulator not receiving their response. Tim Doyle responded that this problem is system-wide, and SRR is aware of it. The goal of

creating a completely internal record system for Active License items will continue to be a goal of future NMLS enhanced functionality.

2. Facilitating Labor Mobility and Competition for Loan Originators through Approved Inactive Licensing (Pete Mills, Community Mortgage Banking Project)

Pete Mills, Managing Director, Community Mortgage Banking Project, discussed some of the practical issues and problems facing mortgage loan originators as they attempt to move from depository institutions to state-licensed mortgage companies. In such cases, the MLO has to first sever ties with their employer, and would then wait 30-90 days while he completes education and testing requirements and background checks before they could legally begin originating loans. The proposed solution to this problem is having states adopt a “de novo inactive” license status, which would allow qualified individuals to obtain an inactive status license without first being sponsored by a company. Another important stipulation of the de novo status is that the future MLO would not have to inform their current employer that they were going through mortgage loan education or background checks. Deb Bortner stated that Washington State already allows de novo licensing, as do a handful of other states, and she called on the other representatives to speak up if they did see an issue with it. Tina Templeton from Shore Financial Services asked if the individual would have to pay for the education and background checks themselves, and the general consensus appeared to be that the sensible solution was to have them pay for themselves up front, and then be reimbursed by their sponsoring company. Pete Mills then made an appeal to the various state agencies that permit de novo inactive licensing to put up FAQs on their websites to raise awareness about the process, and Mary Pfaff from CSBS suggested that the states get together later and work out a universal wording for de novo inactive licenses that would work in each state.

3. Federal Access to MLO State Licensing Record

Tim Doyle, CSBS, discussed a solution to one aspect of the transitional licensing issue which involves a federal registrant employer’s ability to view any education or testing records of that employee. This has been cited as a deterrent to encouraging federally registered MLOs to seek licensure prior to obtaining employment by a state-licensed entity. A solution that is being investigated is to cut off that access by adding a privacy wall to the System, effectually hiding the fact that an MLO may be taking their education tests in preparation of moving to the state-licensed field. This could be accomplished either by: (a) severing the ability for federal registered institutions to access state licensing information on MLOs; (b) removing federally registered institutions’ ability to access specific state licensing information while retaining the ability to view other information; or (c) introducing the ability for MLOs to determine which information federally registered institutions can view.

Rose Patenaude, HSBC – North America, said that while this would undoubtedly be helpful to the individual MLO’s privacy, it would be a big disadvantage to the federal institutions, and that giving MLOs the option of fixing their own privacy settings may not be a feasible as an MLO might be hesitant to inform his current employer that they could not have access to his record. Tim Doyle reiterated that the goal of NMLS is still transparency, but considerations must be made to ease the passage from federal register to state license and that staff would continue to investigate this issue and obtain recommendations from the state regulators.

4. Transitional Licensing

Andrew Szalay, Mortgage Bankers Association, began with a brief description of transitional licensing, saying that there should be a clear path available between federal registration and state licensure. Szalay stated that the SAFE Act does not directly address transitional licensing and that MBA has requested that the CFPB issue guidance to permit transitional licensing. He wants transitional licensing to be left in the hands of the states, and said it is an issue for state legislatures to address and implement. Sue Toth, New Jersey Department of Banking and Insurance, said that with transitional licensing, a federally registered MLO would be able to issue loans as a state-licensed individual without first meeting the education requirements, which would not be fair to an individual who is equally qualified, but is moving either from state to state, or has been out of the game for a few years and is now re-entering. Those individuals would be required to obtain a license before originating mortgage loans. She also stressed that this adds a new layer of business processes to track transitional individuals, which is additional work for state regulators. Timothy Siwy, Pennsylvania Department of Banking, also prefers the approach of a de novo inactive license, stated that there are issues with allowing individuals to originate loans without first having a criminal or a credit screening, both of which are required by the SAFE Act.

5. NMLS Consumer Access and NMLS Relationships

Michelle Canter, Lotstein Legal PLLC, presented this section. On *NMLS Consumer Access*, there is a section for the MLO to self-disclose their past 10 years of employment history, and also a section that shows their current sponsorship status. When a company terminates the sponsorship, it is the responsibility of the MLO to update the employment history. If they do not, it may appear that they still work for the company, when in fact their sponsorship was cancelled. Bobby Brian, Louisiana Department of Financial Institutions, stated that in his state when they encounter this issue they attempt to get in touch with the MLO and have them correct their record; however, frequently the contact email in NMLS is the company email, which is probably no longer valid after termination. Tim Doyle stated that MLOs are allowed to have two emails in the system, and the backup email should be a personal email address to avoid this issue. Gus Avrakotos, K&L Gates, asked why the System itself cannot go in and periodically delete the invalid records, to which Doyle replied that only the MLO can change their record.

6. Licensure Requirement Based on MLO Residential Address

Stephanie Ochoa, Kondaur Capital, brought up the fact that in Pennsylvania and possibly a few other states, MLOs are required to be licensed in the state of their residence even if they do not originate any loans in that state. Tim Siwy from Pennsylvania said that this is a long-standing position with respect to licensure in Pennsylvania because they didn't want it to be a 'safe haven' for bad MLOs; however, Pennsylvania is currently working on removing this requirement and should have new language coming out in the near future. Deb Bortner said that Washington also has this requirement for the same reason.

7. PEO/Mortgage Firm Relationships

Andrea McHenry, National Association of Professional Employers Organization, gave a summary of the business structure of PEOs that provide services to small businesses through a co-employment arrangement. The PEOs give the companies access to health benefit plans/workers comp/compliance with HR/payroll/etc. but do not direct the client's employees in connection with any business activities. When a client comes on board there's a contract made that outlines the relationships with the existing workforce and although the W2 is issued by the PEO, it is not the employer. The PEOs would like to see consistent regulatory policy that will allow this arrangement without requiring the PEO to obtain a

mortgage-related license and be treated as the sponsor of the MLOs. PEOs are licensed in numerous states and some of the statutes, such as in Connecticut, clarify that for purposes of licensing activities, the client (the mortgage company) remains the employer who directs all of the of the employee's activities. Sue Toth stated that New Jersey is looking into the issue and that NAPEO makes a compelling argument to allow these relationships. Tim Siwy said that Pennsylvania took a good look at this and they're favorably considering allowing this. Michelle Cantor, Lotstein Legal, said that PEOs have had relationships with national and state bankers for years.

8. State Regulatory Actions in NMLS

Mary Pfaff, CSBS, gave an update on the functionality in NMLS that allows states to upload regulatory actions in NMLS and ultimately in *NMLS Consumer Access*. The SAFE Act requires this type of information to be posted on MLOs, and states will be also making actions taken against companies public when appropriate. In April 2012, all named respondents to posted actions will receive email notification from the System alerting them to the posting. Some of the specifics of the functionality were discussed such as types of actions being posted, the ability of a state to remove an action at its discretion, etc.

9. Falsely Compelled Representations

Costas Avrakotos, K&L Gates, brought up two issues for discussion. With regard to falsely compelled representations, he noted that there are some instances when a state requires a licensee to make a filing, or make a filing in a certain way that would lead to a false attestation. For example, if a company is engaged only in mortgage servicing, the state in which it is seeking a license may only offer a license that authorizes lending, brokering and servicing and may require the applicant to designate that it conducts mortgage lending when completing other parts of the application form in NMLS.

Tim Doyle discussed the fact that the System is expanding the section on the form for business activities, allowing companies to more narrowly define their business activities in each state. It is incumbent upon the licensee to understand the definitions and choose the correct activities. Gus likes the intent of this, but he thinks confusion will arise between the NMLS general definitions and the specific wording in state statutes. Further discussion on this issue will be brought up at the August AARMR meeting which will be held several months after the new forms are put into use.

10. Open Discussion

Tina Templeton asked how an MLO should answer the applicable disclosure question if he recently had a felony conviction deferred and the felony will be expunged after five years. There seems to be a good deal of differences between the state laws on this issue - some states indicated that if it is an actual conviction (regardless of whether it will be expunged in the future) then it still a conviction but if he pleads guilty but it's deferred for five years then all charges are dropped, its pending, but never a conviction. Massachusetts indicated that the answer would have to be "yes" because the question asks "have you ever" been convicted. In North Carolina, if the person had pled guilty, then it still would be considered to be a felony. Florida has rules to describe pending situations, and consider everything to be pending until the final ultimate outcome, even if it was originally plead guilty to - however the individual would not be approved until it was cleared up. In Tennessee, an order of deferral means the defendant didn't plea, therefore there was no conviction. In Washington, a deferred sentence would not affect the conviction, but a deferred prosecution would not be considered a conviction.

Carol Queen from PennyMac Loan Services had some comments about the new business activities definitions on the revised licensing forms and how a company that engages in servicing and lending, but not in every state will complete the forms and also investor companies since some states do require investors to be licensed.

She also discussed the issue that the education and testing requirements for MLOs are problematic for those MLOs who are engaged only in loan modification activities and questioned whether it is at all feasible to have separate curriculums. Tim Doyle responded that perhaps the education offerings for continuing education can be expanded to include different focuses and that the issue will be reviewed.

Jennifer Edwards of Primary Residential Mortgage stated the company has had licenses in two states suspended accidentally since NMLS began and reflected in the system with these accidental suspensions. The state agencies have since updated the license status in NMLS for the company to reflect that the licenses are indeed not suspended. The company has been unsure how to respond to disclosure questions on whether or not the company has had any licenses suspended. The solution rests with the state agency to provide external notes that are viewable to all regulators stating that the suspension was in error. It is imperative that the agency also provide contact information in case other states have questions. Kirsten Anderson from Oregon noted that it does look to see if the other regulator has put notes.

Tanya from Residential Capital asked if changes in sponsorship could be made automatic since she has experienced lengthy wait periods when a MLO sponsorship has not been accepted by a state. Kirsten Anderson from Oregon discussed the work flow process involved in approving and finalizing a change of sponsorship. This process consists of steps that are needed to be taken by both the regulator and licensee. This is an issue that comes up frequently and it was noted that the processes will continue to be reviewed to see what steps may be taken to make it more efficient.