

Electronic Surety Bond Tracking
Request for Public Comments

Proposal 2014-3
October 1, 2014 – October 30, 2014

The State Regulatory Registry invited public comments on the proposed implementation of electronic surety bond tracking in NMLS during a public comment period from October 1, 2014 to October 30, 2014. Six individuals or organizations submitted comments during the comment period.

The comments are contained in this document as received, without editing. Comments received in email format were copied exactly as submitted and pasted in the comments section of the table with the submitting individual's name and company displayed. Comments received as an email attachment or via USPS are displayed as submitted in their original format. These comments are noted in the table and numbered accordingly as attachments.

Comments are listed in the order received. Comments received without full name or contact information are not included.

The Surety Bond Working Group will review the comments and make recommendations to the [NMLS Policy Committee](#). The NMLS Policy Committee, after consultation with all participating NMLS state regulatory agencies will make final approvals for the implementation of electronic surety bond tracking in NMLS and publicly respond to comments received.

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#	Date	Name & Company	Comments
1	10/2/2014	Robert Wiley	Please don't.
2	10/3/2014	Gary Lupo Old J Corporation	Surety Bond. Gee that's why I have over \$250,000 of cash assets on the books . Surety bond is another payment of doing nothing. Stay out of my pockets.
3	10/7/2014	Traci Ramirez Tri-County Mortgage, Inc.	If surety bonds are to be called upon by either the state regulator agency, a lender against a broker, or a GSE against a lender with buyback – why should this information be available to the general public? I can see surety companies using the NMLS to solicit my company to switch bonding companies, price shopping, etc. I believe it is a valuable tool for the regulators though, but should not be open to public review. Just as there have been bad MLOs and banks, there are bad clients seeking to scam and get money out of small firms. Crooks are always on the prowl for sources of information (and we all know even the best systems are being hacked these days)... someone looking for bond amounts will be a more likely to use that information to propagate a scam. And we don't all have the resources to fight against their fraud or criminal intent...not ours.
4	10/28/2014	Robert J. Duke The Surety & Fidelity Association of America	See Attachment 1
5	10/28/2014	Lawrence E. LeClair National Association of Surety Bond Producers (NASBP)	See Attachment 2
6	10/31/2014	Lisa Schumacher Zurich North America	<p>1. Is the information proposed to be collected for the entitlement process adequate to validate information on surety companies?</p> <p>The information proposed to be collected does seem adequate, but in regards to the list of "bond types, amounts, etc.", will we be able to submit a list electronically as these lists can contain 50+ bonds, and would be very cumbersome entering into NMLS individually.</p> <p>Also, if we choose to create a bond provider association, would we be able to disassociate a bond provider at our discretion?</p> <p>2. Is the licensee information proposed to be available for surety companies adequate for a surety company and licensee to properly create electronic surety bonds acceptable to state regulators in NMLS?</p> <p>Yes, the information proposed on licensees would be adequate at this</p>

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			<p>point as we (Surety and Agent / Bond Provider) would have already established a relationship and obtained the necessary information to underwrite the licensee's bond needs. The licensee information given would be sufficient to make any changes to the bonds that may be needed.</p> <p>3. What other items should state regulators consider in order to promote adoption of electronic surety bonds in NMLS and replace paper based, outside NMLS requirements?</p> <p>Quite often, a copy of the completed / issued bond is needed. Therefore, the State specific bond form generated with all the required information that has been entered in NMLS for a licensee, would prove to be beneficial.</p> <p>Separate field stating the cancellation provisions for each bond (ie; number of days bond will be cancelled after Cancellation Notice has been processed).</p> <p>Under Addendum E, the Surety Company / Bond Provider should receive Approval of the Rider as well. Currently the Work Flow Chart only states that they will receive a Notice of the 'Returned Bond / Rider'.</p> <p>You already state that 'Contact Information' will be requested for the Surety Company / Bond Provider, but feel it would be more efficient to collection separate Surety Company Contact Information requested for Claim Reporting purposes.</p>
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The Surety & Fidelity Association of America

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October 27, 2014

Via Electronic Mail

State Regulatory Registry
Conference of State Bank Supervisors
1129 20th Street, NW
9th Floor
Washington, DC 20036
Attn: Tim Doyle, Senior Vice President

Re: NMLS – Electronic Surety Bond Tracking

Dear Mr. Doyle:

The Surety & Fidelity Association of America ("SFAA") is a non-profit corporation whose member companies collectively write the majority of surety and fidelity bonds in the United States. SFAA is a licensed rating or advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience. The vast majority of bonds that secure licensing and regulatory obligations are provided by SFAA members, including bonds that must be furnished by mortgage brokers, lenders and originators. We have had an opportunity to review the proposal by the State Regulatory Registry LLC ("SRR") to establish the NMLS Electronic Surety Bond. SFAA supports the implementation of electronic bonding, as it can be instrumental in increasing the efficiency and cost effectiveness of the bond execution process. However, the methodology and systems supporting the process must include certain formalities to ensure a valid and binding obligation. Further, it should replicate the process and relationships involved in the paper bond execution process. Finally, the methodology should enable the interoperability of disparate systems. That is, a major interest to sureties is that bond obligees implement methodologies that are not restricted to a technology or system provided by a specific vendor.

Preservation of Formalities

As the process moves from a physical to an electronic environment, SRR should be mindful that the process still involves the execution of a bond, a contract of suretyship. State statutes of frauds require that certain contracts be in writing and signed by the party intending to be bound.

One type of contract subject to this requirement is a contract of suretyship. For example, the Missouri statute states:

No action shall be brought ... to charge any person upon any special promise to answer for the debt, default or miscarriage of another person [suretyship], ... unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person by him thereto lawfully authorized...

Mo. Rev. Stat. 432.010 (emphasis added).

The required writing typically must state with reasonable certainty the identity of both contracting parties, the subject matter of the contract and the essential terms and conditions of all the promises constituting the contract.

Further, the electronic signature (whether it is an actual signature or a process) must unequivocally indicate the surety's and licensee's intent to be bound.

The description of the process in the proposal and the process flow do not show clearly how or whether the surety is submitting a writing or bond prescribed by the state and "signed" by the surety and the licensee. If the surety is merely approving a few data elements related to the bond, such a process may not be sufficient.

Replication of the Paper Process

When the bond is a paper document, the bond execution process generally follows the following steps:

- Surety agent completes the necessary information on the bond form.
- Surety agent signs the bond on behalf of the surety and attaches a power of attorney evidencing its authority to do so.
- Surety agent sends the bond form to the principal.
- Principal signs the bond form.
- Principal delivers the bond to the obligee.

The process takes place through the whole lifecycle of the bond and can include cancellations, renewals and amendments.

First, it appears that the process proposed by SRR attempts to replicate the process by maintaining the relationship of the parties and ensuring that the party executing the bond is authorized. However the proposed process differs from the paper process in some respects. For example, under the paper process, the licensee and agent seek approval of the bond from a particular surety and then the bond is executed with the bond reflecting the appropriate underwriting company. Under the proposed process, licensees can select a surety in the system that has been "entitled." A surety company may have a number of underwriting companies, each possibly with a different premium rate structure, and the company that is used on a particular bond may depend on whether that company has the rate to which the surety and licensee agreed. What controls will be in place to ensure that the licensee selects the correct underwriting company?

Second, a surety company typically authorizes an insurance agent to sign bonds on its behalf by issuing the agent a power of attorney. Page 3 of the proposed process refers to "an insurance company or provider" creating associations "with other insurance companies or providers." This language suggests that an agent could select an insurance company enabling the agent to act on the surety's behalf. The authorization should flow only from the insurance company to the agent. That is, the insurance company should select the agent, and not the other way around.

Third, the process may be establishing requirements that are not required by the relevant state statute. Page 3 of the proposal states that sureties "not entitled by SRR will not be able to sell surety insurance through NMLS to licensees required to have it for state licensure." Unless a particular state provides some other means to provide a surety bond (other than through NMLS), the requirement of entitlement adds an additional requirement beyond that established in many state statutes. For example, the Maryland statute for the bond furnished by licensees states that the bond must be issued by a surety company authorized to do business in the State. (Md. Code Fin. Inst. 11-508(b)) The proposal is adding a requirement in addition to state licensure – entitlement by SRR. Similarly, does SRR envision charging a fee to sureties and agents to participate? This additional cost would be an additional requirement beyond the statute.

Fourth, it appears that the proposed process contemplates that the licensee is "signing" the bond when it approves it after the bond is completed by the surety. Please confirm that this is SRR's intention.

Finally, the typical paper process contemplates that bonds will be cancelled, renewed and amended from time to time. How will the proposed process handle these transactions?

Interoperability

The process appears to execute the bond within a closed system. That is, the surety would be required to use the SRR system to execute a mortgage broker bond even if it has other systems that could provide a bond electronically. A major interest to sureties is that bond obligees implement methodologies that are not restricted to a technology or system provided by a specific vendor. Sureties desire the ability to choose the technology or vendor that best meets their needs

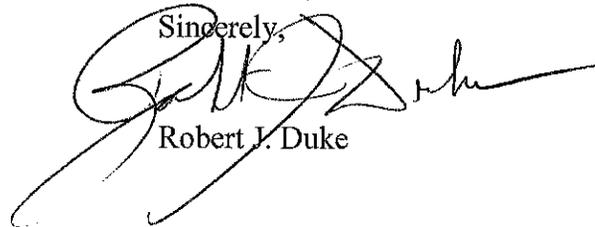
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rather than be required to use a particular vendor or system. Rather than building a system, we recommend that SRR establish requirements at a high level and accept bonds from systems or technologies that meet those requirements.

In addition, the proposed process flows include a number of steps (e.g. creating an association between agent and surety and creating an association between surety and licensee) that appear to require a user interface with the system. Thus, a surety would be required to enter the system each time it needs to create associations or make changes. Such an approach is cumbersome and requires the surety to maintain multiple databases and systems. A surety typically maintains a database of agents that it has authorized to execute bonds on the surety's behalf and to whom it has supplied powers of attorney. We recommend that the SRR system allow the bulk transfer of data from the surety systems to SRR. Such a functionality would avoid the double entry of data, the need to maintain two databases and the need to enter the SRR system each and every time a change is needed.

We thank you for the opportunity to submit comments. SFAA would be happy to discuss our concerns further and work with SRR to develop a methodology that is interoperable and maintains the needed formalities for a valid and binding surety obligation.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Duke", written over the typed name.

Robert J. Duke



National Association of Surety Bond Producers

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October 28, 2014

State Regulatory Registry
Conference of State Bank Supervisors (CSBS)
Attn: Tim Doyle, Senior Vice President
1129 20th St NW, 9th Floor
Washington, DC 20036

RE: Public Comments on Implementing Electronic Surety Bond Tracking in Nationwide Mortgage Licensing System (NMLS)

Dear Mr. Doyle:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association whose membership includes firms employing licensed surety bond producers placing surety bonds throughout the United States and its territories, I am writing to you to express our comments concerning the implementation of an electronic surety bond tracking system for mortgage loan originators and mortgage companies as required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).

NASBP recognizes the goal of implementing an electronic bond tracking system and has dedicated substantial resources in the use of developing and using electronic bonds, which are the future of our industry. NASBP, however, would like to raise concerns regarding the administrative burden, cost, and duplicative registration requirements as contemplated by implementing this system. Moreover, paramount to suretyship is the process of authorization and the execution of the bond. As currently proposed, the NMLS seems to not follow standard surety underwriting practices.

NASBP suggests that, because only a 30-day comment period was offered, CSBS might consider extending that period and meeting with the surety industry to discuss our concerns that we outline below. The NMLS is quite complex and deserves reflective thought and careful consideration before implementation. **Addendum A** includes a list of representatives who participated on the Surety Bond Working Group. NASBP believes that producers and company representatives should also have been invited to participate in the process. NASBP's Automation & Technology Committee, whose membership includes the leading surety bond producers engaged in the electronic filing process, has several members that are able to participate on this Working Group.

The proposal indicates that sureties and producers will need to individually register for the multi-tiered processes, which include entitlement, association and authorization in order to issue bonds to mortgage loan originators/companies (licensees) through the NMLS. Surety companies and bond producers are regulated, licensed, and disciplined by state insurance departments. State insurance departments are responsible for performing financial evaluations of a surety's financial strength and stability. These registration requirements seem duplicative, as sureties and producers already are required to provide such licensing information to their respective state insurance departments. If CSBS has not already done so, it may want to consider creating a joint working group of the National Conference of State Insurance Legislators (NCOIL) and the National Association of Insurance Commissioners (NAIC) for their input on the proposed NMLS. Both of these groups interface with the surety industry and may be able to offer suggestions as to how the NMLS might impact state licensing laws.

In addition, by virtue of the various processes involved, a producer who does not go through the multi-tiered application process for electronic filing is excluded from processing bonds for clients and/or prospective clients. This may narrow the field significantly of those producers able to handle such applications, which may lead to needless processing delays and reduced competition in the marketplace.

Finally, it is unclear what the actual costs are associated with implementing and administering the NMLS system. If costs are incurred, who will be responsible for the administration— the surety, the producer, or the licensee?

NASBP appreciates the efforts expended to conceptualize the system but believes this is an area that requires careful analysis and a more inclusive working group to be representative of surety industry interests to ensure the system will be user-friendly and not overly burdensome or cost prohibitive. NASBP would value the opportunity to meet with you and your members who serve on the Surety Bond Working Group to discuss our concerns.

Yours sincerely,



Larry LeClair
Director, Government Relations

cc: Kathleen Mitchell, Chair, NASBP Commercial Surety Committee
Nick Newton, Chair, NASBP Automation & Technology Committee